FILED
United States Court of Appeals
Tenth Circuit

September 4, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

LOYD W. NEAL,

Plaintiff - Appellant,

v.

COMMISSIONER, SSA,

Defendant - Appellant.

No. 18-1389
(D.C. No. 1:17-CV-00203-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HOLMES**, **BACHARACH**, and **McHUGH**, Circuit Judges.

In this appeal, Mr. Loyd W. Neal challenges the Social Security Administration's denial of insurance benefits based on an alleged disability. The proceedings began in 2012 when Mr. Neal applied for benefits. This application led to two hearings; both led to decisions that Mr. Neal was not disabled.

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* The parties do not request oral argument, and it would not materially help us to decide this appeal. We have thus decided the appeal based on the appellate briefs and the record on appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G).

This order and judgment does not constitute binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

Our appeal involves the second of these administrative decisions. In that decision, the agency found that Mr. Neal was not disabled because he could perform work existing in substantial numbers, such as a small products assembler, cleaner, router clerk, or mail sorter. Mr. Neal appealed to the district court, which affirmed. Mr. Neal now appeals to our court, and we affirm.

1. Standard of Review

We engage in de novo review, using our independent judgment to determine whether the administrative law judge committed a legal error and had substantial evidence for her decision. *Wall v. Astrue*, 561 F.3d 1048, 1052 (10th Cir. 2009). The evidence is substantial if it is relevant and could reasonably be regarded as adequate for a given finding. *Wilson v. Astrue*, 602 F.3d 1136, 1140 (10th Cir. 2010). To determine whether the evidence is substantial, we do not weigh it ourselves; that task is entrusted to the administrative law judge. *Vigil v. Colvin*, 805 F.3d 1199, 1201 (10th Cir. 2015).

2. Residual Functional Capacity

In weighing the evidence, the administrative law judge had to assess Mr. Neal's "residual functional capacity," which refers to the activities that he could perform despite his limitations. 20 C.F.R. § 404.1545(a)(1). In carrying out this assessment, the administrative law judge found that Mr. Neal could perform most work described as "light." *See id.*

§ 404.1567(b). Mr. Neal challenges these findings, arguing that the administrative law judge improperly interpreted medical tests and omitted a need for frequent breaks and changes in position.

Mr. Neal faults the administrative law judge for "attempt[ing] to interpret the significance of the clinical examination findings by Dr. Langlois." Appellant's Opening Br. at 10. But the judge did not overreach, "interpret raw medical data," or "step[] into the shoes of a medical examiner," as Mr. Neal suggests. *Id.* at 11-12. The judge instead analyzed the various medical reports and found Dr. Langlois's assessment less persuasive than others.

Mr. Neal also challenges the administrative law judge's findings, arguing that they improperly omitted the need to take frequent breaks based on post-traumatic stress disorder and physical problems involving his left shoulder and lower extremities. We reject these arguments.

Mr. Neal asserts that he needed frequent breaks based on his post-traumatic stress disorder, but he does not explain why or refer to supporting evidence. Mr. Neal's bare assertion is inadequately developed. *See Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007) ("[W]e routinely have declined to consider arguments that are not raised, or are inadequately presented, in an appellant's opening brief.").

Mr. Neal more thoroughly develops his argument involving physical problems with his shoulder and lower extremities. According to Mr. Neal,

these physical problems required frequent breaks. For this argument, Mr. Neal relies on medical opinions by two physicians, Mary Langlois, M.D. and Christopher Davis, D.O., as well as a prescription by Jill Watson, M.D.

Dr. Langlois is a physician for the Department of Veterans Affairs who examined Mr. Neal one time in January 2013. Based on this examination, Dr. Langlois found a need to take frequent breaks for standing and moving around. The administrative law judge discounted this opinion, reasoning in part that Dr. Langlois had

- arrived at her opinion after only a single examination and a review of medical records,
- relied on Mr. Neal's own statements about his limitations, and
- noted only minimal reductions in Mr. Neal's range of motion for his knee.

In addition, the administrative law judge relied on Dr. Langlois's failure to

- assess Mr. Neal's functional capacity over time and
- support her opinion with objective findings.

Lastly, the judge explained that the record supplied minimal evidence of knee complaints and ambulatory difficulties.

Mr. Neal counters by arguing that Dr. Langlois's assessment was also supported by Dr. Watson's prescription and Dr. Davis's opinion. Dr. Watson prescribed a right knee brace, bathroom aids, and a cane. And Dr. Davis opined that Mr. Neal could remain seated for only one hour at a

time and could continue standing or walking for only 30-40 minutes at a time.

The administrative law judge gave little weight to Dr. Watson's prescription, explaining that it lacked detail, conflicted with other medical evidence, and failed to establish any medically determinable impairment limiting Mr. Neal's ability to walk or stand. And the judge explained that Dr. Davis had little in the record to support his opinion regarding Mr. Neal's inability to walk or stand for prolonged periods or to sit for more than an hour. The administrative law judge's explanation was reasonable based on the record as a whole.

Mr. Neal also contends that the evidence showed a need to change positions. According to Mr. Neal, the only contrary evidence involved an opinion by Dowin Boatright, M.D.

Dr. Boatright conducted an examination and did not assess any limitations on how long Mr. Neal could sit, stand, or walk. The administrative law judge credited Dr. Boatright's opinion. Mr. Neal argues that (1) the judge's findings were inconsistent and (2) Dr. Boatright should have consulted more recent medical records. We reject both arguments.

The administrative law judge did inconsistently describe the weight given to Dr. Boatright's opinion. For example, the judge said that she would give "significant weight" to Dr. Boatright's opinion; elsewhere, however, the judge said that she would give Dr. Boatright's opinion "great,

but not significant, weight." R., vol. 3, at 663. But these inconsistencies were harmless. Regardless of whether the judge gave Dr. Boatright's opinion "significant" or "great" weight, we know that the judge put substantial weight in what Dr. Boatright had said. Reversal for the administrative law judge to clarify the inconsistency would serve no purpose.

The same is true of Mr. Neal's argument that Dr. Boatright should have consulted more recent medical records. Even if Dr. Boatright had relied on outdated records, the administrative law judge properly relied on four other categories of evidence when assessing Mr. Neal's residual functional capacity:

1. Mr. Neal had limited treatment and minimal findings of abnormality as to his right knee.

2. Doctors repeatedly noted that Mr. Neal walked with a normal gait.

3. Mr. Neal once said that he hiked three times per week and when hiking, he needed only about a five-minute break every half mile.

4. Dr. James McElhinney reviewed Mr. Neal's more recent medical records and assessed an ability to perform light work without any mention of a need to change positions.

Regardless of Dr. Boatright's opinion, the administrative law judge had substantial evidence for her assessment of residual functional capacity.

3. Consideration of Psychiatric Limitations

Mr. Neal also contends that the administrative law judge failed to consider psychiatric limitations assessed by R. Terry Jones, M.D. and Clark Jennings, M.D. We disagree.

A. Dr. Jones

Dr. Jones conducted a psychiatric examination, assessing post-traumatic stress disorder with chronic adjustment disorder, mixed emotional features, and chronic pain disorder. The administrative law judge omitted any mention of this assessment, and Mr. Neal challenges this omission. But the administrative law judge acknowledged that Mr. Neal had post-traumatic stress disorder, and Dr. Jones did not identify any work-related limitations from this condition. Any possible error was thus harmless.

B. Dr. Jennings

Clark Jennings, M.D. is a psychiatrist who treated Mr. Neal for roughly five years. Dr. Jennings stated that Mr. Neal's mental impairments would cause difficulty in working at a regular job on a sustained basis, partly because of his limited ability to maintain attention, work independently and with others, deal with work-related stress, and perform at a consistent pace without excessive rest periods. Mr. Neal argues that the administrative law judge failed to adequately explain why she discounted Dr. Jennings's assessment. We disagree.

The administrative law judge stated that she would give no weight to Dr. Jennings's assessment, explaining:

> [Dr. Jennings] cites the claimant's colorful Native American garb as a clinical finding that demonstrates the severity of the claimant's symptoms. He also [c]ites severe bipolar disorder with periodic manic and psychotic symptoms that are not documented anywhere else in this records [sic]. (For example, see Dr. Jennings treatment notes at [B]11F). His treatment notes do not even suggest such a severity of symptoms as described in [his] opinion statement and there is no evidence to suggest that the claimant's expression of his Native American heritage has any association whatsoever with a mental impairment. (Exh. B12F).

R., vol., 3 at 665.

The administrative law judge must ordinarily start by deciding whether to give controlling weight to a treating physician's opinion. *Krauser v. Astrue*, 638 F.3d 1324, 1330 (10th Cir. 2011). If the judge declines to give controlling weight to the opinion, the judge should spell out the weight given to the opinion and supply an explanation based on certain factors. *See id.* at 1330-31.[1] But administrative law judges need not

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[1] These factors are:

> (1) the length of the treatment relationship and the frequency of examination; (2) the nature and extent of the treatment relationship, including the treatment provided and the kind of examination or testing performed; (3) the degree to which the physician's opinion is supported by relevant evidence; (4) consistency between the opinion and the record as a whole; (5) whether or not the physician is a specialist in the area upon which an opinion is rendered; and (6) other factors brought to the [administrative law judge's] attention which tend to support or contradict the opinion.

discuss every factor if their overall explanations are sufficient. *Oldham v. Astrue*, 509 F.3d 1254, 1258 (10th Cir. 2007). We thus ultimately assess the sufficiency of the administrative law judge's explanation based on whether we can discern the weight that the judge gave to the treating source's medical opinion and the reasons for that assessment. *Watkins v. Barnhart*, 350 F.3d 1297, 1300 (10th Cir. 2003).

Under this test, the administrative law judge's explanation was sufficient. The judge said that she gave no weight to Dr. Jennings's opinion, explaining that it conflicted with this doctor's own treatment records. Dr. Jennings diagnosed severe bipolar disorder with periodic manic and psychotic symptoms. But Dr. Jennings's treatment records provided little support for that diagnosis. For example, before reaching this diagnosis, Dr. Jennings had noted that Mr. Neal was "overall . . . very satisfied with his response to medications" and displayed only "mild anxious dysphoria," "minimal thought disorganization," "no overt delusions or hallucinations," and mild distractibility. R., vol. 3, at 620. Given these notations in the treatment records, the administrative law judge's explanation was adequate.

Krauser, 638 F.3d at 1330 (internal quotation marks omitted).

4. Credibility

Mr. Neal described his mental and physical impairments, and the administrative law judge concluded that these descriptions were inconsistent with other evidence. For example, the judge relied on

- inconsistencies in Mr. Neal's testimony,
- complaints that doctors had not corroborated, and
- omission of any reference in the treatment records to anger or angry outbursts.

In addition, the administrative law judge noted that she had accounted for anger issues by imposing greater restrictions on Mr. Neal's ability to engage in social interaction. Mr. Neal challenges the adequacy of this explanation and its reasonableness given the evidence.

The judge's explanation was adequate. She did not need to discuss every factor bearing on credibility; she instead had a more general duty to adequately support her assessment of Mr. Neal's credibility. *White v. Barnhart*, 287 F.3d 903, 909–10 (10th Cir. 2002).

The administrative law judge had adequate evidence for her assessment. Mr. Neal's reports of daily activities (hiking, attending community college, and volunteering at a community center) could indicate an ability to do more than what he had said, his testimony bore some arguable inconsistencies, the record reflected relatively little treatment for Mr. Neal's right knee, his gait appeared normal at multiple examinations,

his post-traumatic stress disorder appeared to stabilize with therapy and medication, and testing at the Department of Veterans Affairs showed a lack of effort.

Mr. Neal contends that no treating psychiatrist or psychologist, agency doctor, or Veterans Affairs doctor found "malingering or faking." Appellant's Opening Br. at 27-28. But other evidence suggested exaggeration of Mr. Neal's impairments. For example, Mr. Neal had complained that he needed support to walk, but Dr. Watson saw him walk unassisted. And Dr. Melissa Polo-Henston assessed poor effort on testing at the Department of Veterans Affairs.[2] The administrative law judge could reasonably rely on this evidence to discount Mr. Neal's complaints.

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[2] Based on an evaluation for a traumatic brain injury and post-traumatic stress disorder, Dr. Polo-Henston concluded that Mr. Neal was exaggerating the symptoms of a brain injury. In his reply brief, Mr. Neal argues that the administrative law judge mistakenly found malingering based on her misunderstanding that the relevant tests pertained to post-traumatic stress disorder rather than a traumatic brain injury. But the administrative law judge never said that she thought Mr. Neal was malingering. The judge simply referred to a lack of effort in testing.

5. Conclusion

We conclude that the administrative law judge applied the proper legal standards and had substantial evidence for her assessment of residual functional capacity. We thus affirm the denial of insurance benefits.

Entered for the Court

Robert E. Bacharach
Circuit Judge