NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued December 5, 2022
Decided December 9, 2022

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-1389

JENNIFER M. KUHN,
Plaintiff-Appellant,

v.

KILOLO KIJAKAZI, Acting Commissioner of Social Security,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Indiana, Fort Wayne Division.

No. 1:20-cv-00452-SLC

Susan L. Collins,
Magistrate Judge.

O R D E R

Jennifer Kuhn appeals the district court's affirmance of an ALJ's decision to deny her Social Security benefits. Because there was substantial evidence for the ALJ's finding that Kuhn retained the ability to perform a significant number of jobs in the national economy, and she has not pointed to any medical opinion indicating a disabling functional limitation during two discrete periods of time, we affirm.

I. Background

Jennifer Kuhn applied for Social Security disability insurance benefits on July 3, 2018. She alleged a disability starting on January 16, 2018, due to "spinal disc problems, chronic back pain, leg muscle weakness and numbness, arthritis, migraines, and psoriasis." When she applied for disability benefits, she was thirty-eight years of age, and she had received a high school education and two years of college education. Before her alleged disability, Kuhn had worked as an occupational therapy assistant and as a laborer and shipper in the manufacturing industry. Her claim was initially denied and denied again on reconsideration. At Kuhn's request, an ALJ held a hearing at which Kuhn testified about her past work, her medical condition and treatment, and her daily activities.

On February 24, 2020, the ALJ denied Kuhn's request after finding her not disabled within the meaning of the Social Security Act. The ALJ found Kuhn's impairments limited her to sedentary work under 20 C.F.R. § 404.1567(a). The ALJ also found that Kuhn could "occasionally climb stairs or ramps, stoop, kneel, crouch, crawl" and "balance commensurate with performing the activities outlined herein, and can never climb ladders, ropes, or scaffolds;" could work " with a moderate level of noise;" needed a cane to walk over 50 feet; and needed a work environment with "an option to sit or stand, changing positions no more frequently than every 30 minutes, while remaining on task."

Given Kuhn's functional limitations, the ALJ found Kuhn unable to perform her past relevant work as an occupational therapy assistant. Then, based on testimony from a vocational expert, the ALJ identified that Kuhn could perform work as a document preparer (47,000 jobs nationally), an addresser (19,000 jobs nationally), and a table worker (23,000 jobs nationally). The ALJ concluded that this sum of 89,000 jobs constituted a "significant" number of jobs in the national economy. Because Kuhn could perform a significant number of jobs in the national economy despite her limitations, the ALJ denied Kuhn disability benefits for January 16, 2018, through February 24, 2020. The Social Security Appeals Council denied review of the ALJ's decision, rendering it the Social Security Commissioner's final decision. 20 C.F.R. § 404.981.

In December 2020, Kuhn sought review of the ALJ's decision in the U.S. District Court for the Northern District of Indiana, where the parties consented to proceedings before a magistrate judge. With jurisdiction under 42 U.S.C. § 405(g), the district court affirmed the ALJ's decision on January 12, 2022. Kuhn filed a timely notice of appeal

under Federal Rule of Appellate Procedure 4(a)(1)(B) and now seeks review of the ALJ's decision in this court. This court has appellate jurisdiction under 28 U.S.C. § 1291 and 42 U.S.C. § 405(g).

II. Analysis

Kuhn presents two issues on appeal: (1) whether the ALJ had substantial evidence to find that 89,000 jobs in the national economy is "significant;" and (2) whether the ALJ should have found closed periods of disability from March 2018 through March 2019 for lumbar spine problems, and from August 2018 through November 2019 for psoriatic arthritis/psoriasis.

We review the district court's decision de novo, and the ALJ's decision "will be affirmed if she supported her conclusion with substantial evidence." *Milhem v. Kijakazi*, 52 F.4th 688, 694 (7th Cir. 2022); 42 U.S.C. § 405(g). "Substantial evidence is not a high threshold, as it means only 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Prill v. Kijakazi*, 23 F.4th 738, 746 (7th Cir. 2022) (quoting *Karr v. Saul*, 989 F.3d 508, 511 (7th Cir. 2022)). A reviewing court looks at the whole record but must "not reweigh the evidence, resolve debatable evidentiary conflicts, determine credibility, or substitute [its] judgment for the ALJ's determination so long as substantial evidence supports it." *Gedatus v. Saul*, 994 F.3d 893, 900 (7th Cir. 2021).

A. Significant Jobs Finding

Under the Social Security Act, an individual seeking disability insurance benefits must establish that she is "unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment … which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. § 1382c(a)(3)(A). A physical or mental impairment is "an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." 42 U.S.C. § 423(d)(3). At hearings, "an ALJ uses a five-step evaluation to assess whether a claimant may engage in substantial gainful activity." *Milhem*, 52 F.4th at 691. The ALJ asks whether:

1. the claimant is presently employed;
2. the claimant has a severe impairment or combination of impairments;

3. the claimant's impairment meets or equals any impairment listed in the regulations as being so severe as to preclude substantial gainful activity;
4. the claimant's residual functional capacity leaves him unable to perform his past relevant work; and
5. the claimant is unable to perform any other work existing in significant numbers in the national economy.

Id. "The claimant has the burden to prove steps one through four of the analysis, and the burden shifts to the Commissioner at step five." *Id.* On appeal, Kuhn argues that the ALJ's findings at step five lacked substantial evidence.

Kuhn argues the ALJ did not have substantial evidence to conclude that 89,000 jobs was significant because the ALJ never defined the term "significant." Although courts need not establish a bright-line rule, Kuhn argues that the Commissioner must provide criteria for what constitutes significance and then must justify how 89,000 (or any other number of jobs) meets that criteria to satisfy the step-five evidentiary burden. Kuhn further contends that "the statutory concept of significance must have [a] definition, standard, and/or formula" to guard against "arbitrary decision making."

This court squarely addressed and rejected this argument in *Milhem*, holding that the statutory and regulatory framework governing disability insurance benefits "contains no such requirement." 52 F.4th at 694. Regulations put forth by the Commissioner state that "[w]ork exists in the national economy when there is a significant number of jobs." 20 C.F.R. §§ 404.1566(b), 416.966(b). "Isolated jobs that exist only in very limited numbers in relatively few locations outside of the region where [the claimant] live[s] are not considered 'work which exists in the national economy.'" § 404.1566(b). Thus, work existing in "very limited numbers" cannot be "significant." As this court held in *Milhem*: "It is within the ALJ's discretion to determine whether jobs exist only in very limited numbers. This determination does not depend upon the establishment of a standard for significance." 52 F.4th at 695 (citation omitted). This court also noted that the Supreme Court has rejected categorical or strict evidentiary rules for the substantial-evidence standard. *Id.* (citing *Biesteck v. Berryhill*, 139 S. Ct. 1148, 1152 (2019)). Under *Milhem*, Kuhn's argument for a significance standard fails.

Kuhn next contends, as the claimant did in *Milhem*, that the Commissioner failed to meet her step-five burden because she did not provide substantial evidence that 89,000 jobs nationwide was a significant number of jobs in the national economy. When Kuhn applied for disability benefits, 156,803,000 jobs existed nationwide. The ALJ found

Kuhn capable of working an aggregate 89,000 jobs, a finding not disputed by Kuhn. But Kuhn contends that those 89,000 jobs cannot be "significant" because they represent only 0.0567% of the nation's jobs.[1]

In *Milhem*, we affirmed an ALJ's finding that 89,000 jobs was a "significant" number of jobs in the national economy. 52 F.4th at 696. The ALJ had substantial evidence, shown by the ALJ's consideration of Milhem's "age, education, work experience, and residual functional capacity," ability to successfully adjust to other work, tolerance for absences in these positions, requirements for being on task in the workplace, and frequency of breaks during the workday. *Id.* We held that "a reasonable person would accept 89,000 jobs in the national economy as being a significant number" based on that record. *Id.*

Similarly, substantial evidence exists in Kuhn's case for the ALJ to find 89,000 jobs "significant." The ALJ found that Kuhn had the residual functional capacity to perform sedentary work under 20 C.F.R. § 404.1567(a). The ALJ also found that Kuhn could still "occasionally climb stairs or ramps, stoop, kneel, crouch, crawl," but could never "climb ladders, ropes, or scaffolds;" could work "with a moderate level of noise;" needed a cane to walk more than 50 feet; and needed "an option to sit or stand, changing positions no more frequently than every 30 minutes, while remaining on task." The ALJ then heard testimony from a vocational expert, who noted that Kuhn performed her prior work as a skilled occupational therapy assistant "at very heavy exertion," although the same work is generally performed at "medium exertion."

The ALJ then asked the vocational expert whether someone of Kuhn's residual functional capacity could perform Kuhn's past work, to which the vocational expert testified that such an individual could not, either as Kuhn performed it or as generally performed. The vocational expert testified that someone of Kuhn's "age, education, work experience, and residual functional capacity" could perform "the requirements of representative unskilled sedentary occupations," such as a document preparer (with 47,000 jobs existing nationwide), an addresser (with 19,000 jobs existing nationwide), or a table worker (with 23,000 jobs existing nationwide). None of Kuhn's limitations reduced the number of jobs she could perform out of the 89,000 total, according to the

---

[1] As the claimant did in *Milhem*, Kuhn relies on the unpublished decision of *Sally S. v. Berryhill*, No. 2:18cv460, 2019 WL 3335033, at *11 (N.D. Ind. July 23, 2019), which found that 120,350 jobs in the national economy was not significant. For the same reasons discussed in *Milhem*, 52 F.4th at 695, we do not rely on *Sally S.*

vocational expert. Based on this testimony, the ALJ found Kuhn "capable of making a successful adjustment to other work that exists in significant numbers in the national economy." Like *Milhem*, "a reasonable person would accept 89,000 jobs in the national economy" as significant based on this record. 52 F.4th at 696.[2]

B. Closed Disability Periods

When Kuhn first applied for disability benefits, she alleged a continuing disability from January 2018 through February 2020, when the ALJ issued a decision. On appeal, Kuhn focuses on two discrete closed periods of time. She argues the ALJ should have found her disabled from March 2018 through March 2019 due to her lumbar spine impairment, as well as from August 2018 through November 2019 due to her psoriatic arthritis/psoriasis.

As to the lumbar spine impairment, Kuhn argues that pain started in March 2018. It then continued after her April 2018 and August 2018 spinal surgeries and "presumably through a reasonable time of healing." Her primary care physician referred her to a pain clinic in March 2019, which, according to Kuhn, means a closed period of disability existed from March 2018 through March 2019. As to her psoriatic arthritis/psoriasis, Kuhn highlights that her primary care physician diagnosed her with psoriasis in August 2018. Then, in November 2019, her primary care physician recognized psoriasis "plaques in [her] scalp" but noted no "warmth, swelling or gross surrounding erythema." Kuhn argues that her doctor's November 2019 description, "if an indication of improvement," means that a closed period of disability existed from August 2018 through November 2019.

The Social Security Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). Kuhn bears the burden of producing evidence of her disability. *Castile v. Astrue*, 617 F.3d 923, 927 (7th Cir. 2010); 42 U.S.C. § 423(d)(5)(A); 20 C.F.R. § 404.1512(a). After going through the five-step process and analyzing the record evidence, the ALJ concluded that Kuhn was not disabled under the Act because she did not have

---

[2] We commend Kuhn's counsel's candor with our court as to the applicability of the *Milhem* decision to this case.

disabling functional limitations. The ALJ found Kuhn capable of performing sedentary work, as described above.

The ALJ relied on two examinations by State agency physicians in September 2018 and February 2019. Both physicians determined that Kuhn could perform limited activities consistent with sedentary work despite her impairments, including her lumbar back pain. In February 2019, the agency physician did not find that any of Kuhn's symptoms or conditions, whether considered alone or in combination, resulted in severe dysfunction. As to the psoriatic arthritis, the ALJ looked at the medical record and concluded that the "mild conditions" Kuhn experienced did not support finding that she was significantly limited. Following x-rays in April 2019, doctors did not find any "lesions, erosions, dislocations, or joint space abnormalities." The ALJ noted three instances in the record of mild swelling in April, May, and October 2019, but concluded that these minimal instances did not support finding a significant limitation.

The physicians' medical opinions on Kuhn's residual functional capacity during September 2018 and February 2019 are substantial evidence that Kuhn did not have a disability during either closed period. Neither the district court nor the ALJ had to disprove Kuhn's disability claim. Rather, it was her burden of proof. *See, e.g.*, 42 U.S.C. § 423(d)(5)(A) ("An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Commissioner of Social Security may require"); 20 C.F.R. § 404.1512(a); *Castile*, 617 F.3d at 927. Because Kuhn does not point to any medical opinion evidence that she suffered a disabling functional limitation, Kuhn has failed to meet that burden for either closed period.

AFFIRMED.