

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-14474
Non-Argument Calendar

D.C. Docket No. 1:14-cv-00066-MP-GRJ

NANCY A. WILSON,

Plaintiff-Appellant,

versus

COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Florida

(April 12, 2016)

Before ED CARNES, Chief Judge, JORDAN, and JULIE CARNES, Circuit
Judges.

PER CURIAM:

Nancy Wilson appeals the district court's order affirming the Social Security Commissioner's denial of her application for a period of disability and disability insurance benefits. She contends that the administrative law judge (ALJ) should have granted her application based on evidence of her intellectual disability.

Wilson sought disability benefits based on vertigo, depression, numbness, and fibromyalgia. After the Social Security Administration denied her initial application and her request for reconsideration, she sought a hearing before an ALJ. At that hearing, she presented evidence that she suffered from pain and swelling throughout her lower body, vertigo, sleep apnea, hearing loss, major depressive disorder, and post-traumatic stress disorder. The ALJ concluded that, while she had a number of severe impairments, none of them met or equaled one of the impairments listed in the Code of Federal Regulations. He denied Wilson's application, finding that she could still perform jobs that existed in significant numbers in the national economy.

Wilson requested review of the ALJ's decision by the Appeals Council. She attached, for the first time, evidence that IQ testing done when she was 12 years old showed that she had a low IQ. She argued that the ALJ should have found that she was disabled because she had an intellectual disability that met the requirements of Listing 12.05 of the Code of Federal Regulations. The Appeals Council denied Wilson's request for review, concluding that the additional

evidence did not provide a basis for changing the ALJ's decision. Wilson, represented by counsel, filed a civil action in the district court, which affirmed the denial of disability benefits.

Wilson, still represented by counsel, now argues that substantial evidence does not support the ALJ's decision because she provided evidence showing that she has an intellectual disability that meets Listing 12.05. Where the ALJ denied benefits and the Appeals Council denied review of that decision, "we review the ALJ's decision as the Commissioner's final decision." Doughty v. Apfel, 245 F.3d 1274, 1278 (11th Cir. 2001). "[W]hen the [Appeals Council] has denied review, we will look only to the evidence actually presented to the ALJ in determining whether the ALJ's decision is supported by substantial evidence." Falge v. Apfel, 150 F.3d 1320, 1323 (11th Cir. 1998). If the applicant attacks only the ALJ's decision, we may not consider evidence that was presented to the Appeals Council but not to the ALJ. See id. at 1324.

Wilson does not challenge the Appeals Council's denial of review. She argues only that the ALJ's decision was not supported by substantial evidence because he did not address the evidence of her intellectual disability. But she never presented that evidence to him. We cannot fault the ALJ for failing to consider evidence that he never saw. See id. at 1323–24.

AFFIRMED.