[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-11975
Non-Argument Calendar

D.C. Docket No. 6:17-cv-00375-DNF

NATALIE ANNA FRANQUI,

Plaintiff-Appellant,

versus

COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

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

(January 10, 2019)

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

PER CURIAM:

Natalie Franqui appeals the district court's order affirming the Commissioner of the Social Security Administration's denial of her application for disability insurance benefits under 42 U.S.C. §§ 405(g), 1383(c)(3). She contends that the Appeals Council applied the incorrect legal standard in determining that a questionnaire filled out by her rheumatologist was not chronologically relevant. She also contends that the Administrative Law Judge (ALJ) applied the incorrect legal standard in determining that her subjective testimony about her limitations was not credible.

I.

Franqui filed an application for disability insurance benefits in June 2013, alleging that her disability began on August 14, 2010. Franqui documented her history of fibromyalgia, lupus, and chronic back issues that required multiple surgeries. Her application for benefits was denied initially and upon reconsideration, so a hearing was held before an ALJ in September 2015. The following month the ALJ entered a decision finding that Franqui was not disabled as of October 22, 2015. The ALJ determined that Franqui's subjective reports of the "persistence and limiting effects of [her] symptoms [were] not entirely credible" because they were inconsistent with parts of Franqui's treatment history.

Franqui requested that the Appeals Council review the ALJ's decision, but the Appeals Council denied her request in January 2017. Franqui wanted the

Appeals Council to consider a questionnaire dated November 5, 2015 that was completed by Franqui's rheumatologist, Pamela G. Freeman, and Freeman's physician's assistant, Alicia Frisby. The final question on the questionnaire asked whether, in Dr. Freeman's and Frisby's opinion, Franqui's "impairments and limitations existed since Ms. Franqui had to stop working on August 4, 2010." They responded, "She has only been our patient since 2-10-14. She has complained of issues long before seeing us . . . I have only seen her since 2-10-14. She reports being diagnosed with [fibromyalgia and lupus] since 2010." The Appeals Council denied Franqui's request to consider the questionnaire because it determined that it was not chronologically relevant to the ALJ's decision that Franqui was not disabled as of October 22, 2015.

Franqui sought judicial review of the Commissioner's decision to deny her application, and the district court affirmed the Commissioner's decision in March 2018.

II.

In a Social Security case we review the legal principles upon which the Commissioner's decision is based de novo, but review the resulting decision only to determine if it is supported by substantial evidence. Moore v. Barnhart, 405 F.3d 1208, 1211 (11th Cir. 2005). "Substantial evidence is less than a preponderance, but rather such relevant evidence as a reasonable person would

accept as adequate to support a conclusion." Id. This limited review precludes us from "deciding the facts anew, making credibility determinations, or re-weighing the evidence." Id. "We will not disturb the Commissioner's decision if, in light of the record as a whole, it appears to be supported by substantial evidence." Lewis v. Callahan, 125 F.3d 1436, 1439 (11th Cir. 1997).

III.

Franqui first contends that the Appeals Council used the incorrect legal standard in finding that Dr. Freeman's questionnaire was not chronologically relevant. Even after an ALJ has issued a decision, the Appeals Council must consider additional evidence if the evidence is new, material, and chronologically relevant. Ingram v. Soc. Sec. Admin., Comm'r, 496 F.3d 1253, 1261 (11th Cir. 2007) (citing 20 C.F.R. § 404.970(b)). Whether or not evidence is new, material, and chronologically relevant is a legal question subject to de novo review. Washington v. Soc. Sec. Admin., Comm'r., 806 F.3d 1317, 1321 (11th Cir. 2015). New evidence is chronologically relevant if it relates to the period on or before the date of the ALJ's decision. Id.

Here the Appeals Council applied the correct legal standard in determining that Dr. Freeman and Frisby's questionnaire was not chronologically relevant. Franqui relies primarily on our decision in Washington to argue that reports completed after an ALJ has issued a decision can still be chronologically relevant.

In Washington we held that a psychologist's report issued seven months after an ALJ's decision was chronologically relevant because "(1) the claimant described his mental symptoms during the relevant period to the psychologist, (2) the psychologist had reviewed the claimant's mental health treatment records from that period, and (3) there was no evidence of the claimant's mental decline since the ALJ's decision." Hargress v. Soc. Sec. Admin., Comm'r, 883 F.3d 1302, 1309–10 (11th Cir. 2018) (citing Washington, 806 F.3d at 1319). We also limited our holding to "the specific circumstances of [the] case." Washington, 806 F.3d at 1323. We have held that similar records are not chronologically relevant where nothing in the new records "indicates the doctors considered [the claimant's] past medical records or that the information in [the new records] relates to the period at issue." Hargress, 883 F.3d at 1310–11.

Dr. Freeman and Frisby's questionnaire was not chronologically relevant because it included only vague statements about when Franqui became Dr. Freeman's patient and when Franqui claimed to have first reported her medical issues. Franqui contends that the questionnaire states that her limitations have existed since February 10, 2014, but Dr. Freeman's and Frisby's response merely indicate that this is when Franqui became Dr. Freeman's patient. As the district court noted, Dr. Freeman's and Frisby's response to the questionnaire leave the timeframe of Franqui's symptoms ambiguous; what is clear, though, is that their

response "did not specify the time period for which their opinions applied, let alone state that they existed before the date of the questionnaire." Unlike the report in Washington, Dr. Freeman and Frisby's response to the questionnaire did not consider Franqui's past medical records or clearly relate Franqui's claimed limitations to the relevant time period.

IV.

Franqui next contends that the ALJ applied the incorrect legal standard in determining that her subjective testimony about her symptoms and limitations was not credible. The Commissioner must consider a claimant's subjective testimony of pain if he finds evidence of an underlying medical condition and either (1) objective medical evidence that confirms the severity of the alleged pain or (2) that the medical condition is of such a severity that it can be reasonably expected to give rise to the alleged pain. Dyer v. Barnhart, 395 F.3d 1206, 1210 (11th Cir. 2005). If the ALJ discredits the claimant's testimony as to her subjective symptoms, it must clearly articulate explicit and adequate reasons for doing so. Id. The credibility determination cannot merely be a broad rejection that does not allow us to conclude that the ALJ considered her medical condition as a whole, id., but we will not disturb an ALJ's clearly articulated credibility finding if it is supported by substantial evidence, Mitchell v. Soc. Sec. Admin., Comm'r., 771 F.3d 780, 782 (11th Cir. 2014).

Here the ALJ clearly articulated explicit and adequate reasons for discrediting Franqui's subjective testimony as to her symptoms and limitations by outlining her medical history and identifying findings from her medical records that contrasted with her testimony. These inconsistencies constitute substantial evidence supporting the ALJ's credibility finding, so we cannot disturb that finding. See id.

AFFIRMED.