

[DO NOT PUBLISH]

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 21-12732

Non-Argument Calendar

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GREGORY WALKER,

Plaintiff-Appellant,

*versus*

SOCIAL SECURITY ADMINISTRATION,  
COMMISSIONER,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Alabama  
D.C. Docket No. 4:20-cv-00555-ACA

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Before JORDAN, NEWSOM, and BLACK, Circuit Judges.

PER CURIAM:

Gregory Walker appeals the district court's affirmance of the Commissioner's denial of his claim for a period of disability and disability insurance benefits (DIB), which he filed in March 2018. Walker asserts four claims on appeal, which we address in turn. After review,<sup>1</sup> we affirm.

### I. MEDICATION SIDE EFFECTS

Walker contends the Administrative Law Judge (ALJ) failed to consider or discuss how his medications affected his ability to work, citing *Cowart v. Schweiker*, 662 F.2d 731, 737 (11th Cir. 1981). He asserts his testimony included that his medications made him sleepy and drowsy and caused him frequent urination and constipation, and that the medical records establish he used "heavy" pain medications.

To establish a disability based on testimony of pain and other symptoms, the claimant must show: "(1) evidence of an underlying medical condition; and (2) either (a) objective medical

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<sup>1</sup> We review a social security disability case to determine whether the Commissioner's decision is supported by substantial evidence, and we review *de novo* whether the correct legal standards were applied. *Moore v. Barnhart*, 405 F.3d 1208, 1211 (11th Cir. 2005). We will not decide the facts anew, make credibility determinations, or reweigh the evidence. *Winschel v. Comm'r of Soc. Sec.*, 631 F.3d 1176, 1178 (11th Cir. 2011).

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evidence confirming the severity of the alleged [symptoms]; or (b) that the objectively determined medical condition can reasonably be expected to give rise to the claimed [symptoms].” *Wilson v. Barnhart*, 284 F.3d 1219, 1225 (11th Cir. 2002). The ALJ must articulate adequate reasoning for discrediting subjective testimony, and as a matter of law, failure to do so requires the testimony be accepted as true. *Id.*

If the objective medical evidence establishes an impairment that could be reasonably expected to produce the alleged symptoms, the ALJ must evaluate the intensity and persistence of the claimant’s alleged symptoms. 20 C.F.R. § 404.1529(c)(1). In addition to “all of the evidence,” ALJs should consider the following factors when evaluating “the intensity, persistence, and limiting effects of” a claimant’s symptoms: (1) daily activities; (2) “location, duration, frequency, and intensity of” symptoms and pain; (3) precipitating and aggravating factors; (4) “type, dosage, effectiveness, and side effects of” medications; (5) treatment other than medication; (6) any other measures used to relieve symptoms; and (7) any other factors concerning his functional limitations. *Id.* § 404.1529(c)(1)-(4).

In *Cowart*, we held, as relevant here, that the ALJ failed to discharge his duty to develop the facts when he “made little or no effort to elicit evidence favorable to” the claimant. 662 F.2d at 735. Among other failures, the ALJ did not elicit testimony or make any findings on the effect of the claimant’s medications on her ability

to work, even though she had testified to taking various medications and experiencing side effects. *Id.* at 737.

Walker's reliance on *Cowart* is misplaced because, here, the ALJ explicitly questioned Walker about his medications, elicited testimony regarding their side effects, and made a finding on how they affected his ability to work. *See id.* Contrary to Walker's argument, the ALJ's decision sufficiently addressed the impact of side effects because the ALJ reduced Walker's residual functional capacity (RFC), which directly affects his ability to work, to account for reasonable side effects. *See* 20 C.F.R. §§ 404.1520(a)(4)(iv)-(v) (referencing a claimant's RFC in steps four and five of the five-step sequential evaluation process), 416.967 (providing the claimant's RFC is used to determine his capability of performing various designated levels of work (sedentary, light, medium, heavy, or very heavy)). Further, the ALJ articulated sufficient reasoning for partially discrediting Walker's testimony when he determined the record lacked the prolonged use of medications that produced Walker's alleged debilitating side effects. *See Wilson*, 284 F.3d at 1225. To the extent the ALJ did not highlight specific side effects of pain medications, he did not need to do so, and the ALJ's decision is not a broad rejection of Walker's claims given that he addressed Walker's allegations of side effects, pain, and daily living separately, developed a record, and cited numerous pieces of medical evidence to support his conclusions. *See Dyer v. Barnhart*, 395 F.3d 1206, 1211 (11th Cir. 2005) (stating while the ALJ need not discuss every piece of evidence, his decision cannot be a broad

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rejection that precludes a reviewing court from concluding he considered the claimant's conditions as a whole). Accordingly, we affirm<sup>2</sup> as to this issue.

## II. DR. FAVA'S OPINION

Second, Walker contends the ALJ, without good cause and without stating some measure of clarity, rejected the opinion of Anthony Fava, M.D., the consultative physician, whose opinion, he argues, is well-supported by the record.

The ALJ considers medical opinions from acceptable medical sources, which include licensed physicians and licensed psychologists. 20 C.F.R. §§ 404.1502(a), 404.1513(a)(2). For claims filed on or after March 27, 2017, new Social Security Administration's (SSA) regulations apply. *Id.* § 404.1520c. Under the new regulatory scheme, the ALJ must articulate how persuasive he finds each medical opinion, but he no longer must assign more weight to a treating source's medical opinion or explain why good cause exists to disregard it. *Compare id.* § 404.1520c(a)-(b) *with id.* § 404.1527(c)(2). Rather, ALJs should focus on the opinion's persuasiveness in light of five factors: (1) supportability; (2) consistency; (3) relationship with the claimant; (4) specialization; and

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<sup>2</sup> Because Walker does not assert the ALJ's evaluation of his testimony is unsupported by substantial evidence, we do not address the Commissioner's contentions on appeal regarding whether the treatment record supports Walker's allegation of pain and limitations. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680-81 (11th Cir. 2014) (stating issues not briefed on appeal by a litigant are deemed abandoned).

(5) “other factors that tend to support or contradict” the opinion. *Id.* § 404.1520c(c)(1)-(5).

Supportability and consistency are the most important factors and must be explained, but the ALJ is not required to explain the other factors. 20 C.F.R. § 404.1520c(b)(2). “The more relevant the objective medical evidence and supporting explanations presented by a medical source are to support his or her medical opinion(s) or prior administrative medical finding(s), the more persuasive the medical opinions or prior administrative medical finding(s) will be.” *Id.* § 404.1520c(c)(1). Further, “[t]he more consistent a medical opinion(s) or prior administrative medical finding(s) is with the evidence from other medical sources and nonmedical sources in the claim, the more persuasive the medical opinion(s) or prior administrative medical finding(s) will be.” *Id.* § 404.1520c(c)(2). Also under the new regulations, evidence of decisions by other governmental agencies “is inherently neither valuable nor persuasive,” and the ALJ “will not provide any analysis about how [he] considered such evidence in [his] determination or decision.” *Id.* § 404.1520b(c)(1).

As an initial matter, Walker filed for DIB in 2018, so the new regulations apply to his claim. *See id.* § 404.1520c. For this reason, Walker’s reliance on an unpublished case from 2015, which applied the prior version of the regulations, is inapplicable because the ALJ was not required under the new regulations to provide more weight to Dr. Fava’s opinion absent good cause, or state with clarity his reasons for not doing so.

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While Walker's arguments indirectly concern the supportability and consistency of Dr. Fava's opinion, Walker fails to challenge the ALJ's specific conclusions that (1) Dr. Fava's opinion is inconsistent with his own examination findings, (2) the severity of pain that Walker alleged to Dr. Fava was inconsistent with other evidence, and (3) Dr. Fava was a one-time examining physician who was not privy to the record. Accordingly, the ALJ's decision on this issue is due to be affirmed. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014) (stating a court's "judgment is due to be affirmed" when an appellant fails to challenge one of the grounds on which the court made its decision).

In any event, the ALJ's conclusions are supported by substantial evidence because, as the ALJ noted, Walker mostly complained of a pain level below ten, and about a month after complaining to Dr. Fava of ten-out-of-ten pain, Dr. Lawler noted that Walker exhibited no pain. *See Lewis v. Callahan*, 125 F.3d 1436, 1440 (11th Cir. 1997) (explaining substantial evidence is any relevant evidence, greater than a scintilla, that a reasonable person would accept as adequate to support a conclusion). Substantial evidence likewise supports the ALJ's conclusion that Dr. Fava mostly relied on Walker's subjective complaints because Dr. Fava's statement that Walker's pain rendered him unable to work was made within the context of Walker's complaints to Dr. Fava, whereas his objective examination findings showed Walker's ability to get off and on the examination table without difficulty, ambulate normally with knee braces, squat, arise, and heel-to-toe walk. Dr.

Fava's objective findings also indicated Walker retained strength in his major muscles, grip in his fingers, and a non-extreme decrease in his extremities' ranges of motion, except for his left shoulder which had recently undergone surgery. Further, Walker's disability rating from the U.S. Department of Veterans Affairs is not inherently valuable evidence, and the ALJ properly declined to address it. 20 C.F.R. § 404.1520b(c)(1). Thus, we affirm as to this issue.

### III. VOCATIONAL EXPERT

Walker asserts the Vocational Expert's (VE) testimony is not substantial evidence of the ALJ's disability determination because the VE's testimony was prompted by a hypothetical question that lacked a full statement of his limitations, such as his pain level, the effects of his pain medications, or the need to keep his legs raised. "In order for a [VE's] testimony to constitute substantial evidence, the ALJ must pose a hypothetical question which comprises all of the claimant's impairments." *Wilson*, 284 F.3d at 1227. However, the ALJ is "not required to include findings in the hypothetical that the ALJ had properly rejected as unsupported." *Crawford v. Comm'r of Soc. Sec.*, 363 F.3d 1155, 1161 (11th Cir. 2004). In other words, the hypothetical question need not list every symptom but "must provide the VE with a complete picture of the claimant's RFC." *Samuels v. Acting Comm'r of Soc. Sec.*, 959 F.3d 1042, 1047 (11th Cir. 2020).

The RFC is an assessment of a claimant's ability to do work despite his impairments. *Lewis*, 125 F.3d at 1440. The SSA has



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explained that an RFC is the measure of an individual's "maximum remaining ability to do sustained work activities in an ordinary work setting on a regular and continuing basis," *i.e.* for eight hours per day and five days per week or an equivalent schedule, and that "the RFC assessment must include a discussion of the individual's abilities on that basis." SSR 96-8p, 61 Fed. Reg. 34474-01 at 34475. At step four of the sequential analysis, the ALJ must determine a claimant's RFC by considering all relevant medical and other evidence. *Phillips v. Barnhart*, 357 F.3d 1232, 1238 (11th Cir. 2004). The ALJ makes this determination by considering the claimant's ability to perform exertional tasks as well as the claimant's mental abilities. 20 C.F.R. § 416.945(b)-(c). The ALJ may consider daily activities at step four of the sequential evaluation process. *Macia v. Bowen*, 829 F.2d 1009, 1012 (11th Cir. 1987).

Walker's argument is meritless because, in posing a hypothetical question to the VE, the ALJ did not need to include the aspects of Walker's testimony that he rejected as unsupported by the evidence, or every symptom. As discussed above, the ALJ accounted for reasonable side effects in finding Walker's RFC. The ALJ rejected Walker's testimony regarding the full extent of his pain and functional limitations, including the need to keep his legs raised, by reasoning that no diagnostic study or physical finding in his medical history supported his allegations, citing specific pieces of evidence in support. Additionally, the ALJ could consider Walker's reported daily activities when determining his RFC and concluding that his allegations were not objectively verifiable.

Further, the VE's testimony was prompted by a hypothetical question that includes Walker's RFC, and importantly, Walker has abandoned any challenge to the reasoning underlying the ALJ's RFC finding and whether substantial evidence supports that reasoning. Accordingly, we affirm as to this issue.

#### IV. APPEALS COUNCIL EVIDENCE

Walker asserts he submitted new evidence to the Appeals Council (AC) from his orthopedic physician, but he concedes the AC considered this evidence. The AC commits legal error when it refuses to consider new, material, and chronologically relevant evidence, and we review the issue *de novo*. *Washington v. Soc. Sec. Admin., Comm'r*, 806 F.3d 1317, 1320-23 (11th Cir. 2015); *see also Pupo v. Comm'r, Soc. Sec. Admin.*, 17 F.4th 1054, 1063 (11th Cir. 2021) (holding the AC "erred in refusing to consider Pupo's new, material, and chronologically relevant evidence"); 20 C.F.R. § 404.970(a)(5) (instructing the AC to review a case if it "receives additional evidence that is new, material, and relates to the period on or before the date of the hearing decision, and there is a reasonable probability that the additional evidence would change the outcome of the decision").

In denying a request for review, the AC is not required to "give a detailed rationale for why each piece of new evidence submitted to it does not change the ALJ's decision." *Mitchell v. Comm'r, Soc. Sec. Admin.*, 771 F.3d 780, 784 (11th Cir. 2014). In *Mitchell*, we concluded the AC adequately evaluated new evidence submitted where it accepted the evidence but denied review

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because the additional evidence failed to establish error in the ALJ's decision. *Id.* at 784-85.

As an initial matter, Walker has abandoned any challenge to the AC's consideration of his bone cancer diagnosis by raising this issue in passing outside the argument section of his brief. Further, Walker fails to provide any discrete challenge to the AC's evaluation of his new evidence, instead only highlighting new evidence without explaining how it was material or chronologically relevant. Walker correctly concedes that *Washington* is distinguishable from the instant case because the AC's decision here indicates it considered his evidence but determined that it would not affect the ALJ's decision or was not temporally relevant. Thus, because Walker does not challenge the AC's reasoning underlying its evaluation of this evidence, we affirm as to this issue.

Accordingly, for the foregoing reasons, we affirm.

**AFFIRMED.**