[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 24-10770

Non-Argument Calendar

MARIBEL PEREZ,

Plaintiff-Appellant,

versus

COMMISSIONER, SOCIAL SECURITY ADMINISTRATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:23-cv-21513-BB

Before ROSENBAUM, JILL PRYOR, and ABUDU, Circuit Judges.

PER CURIAM:

Maribel Perez appeals the district court's order affirming the Commissioner of Social Security's denial of her application for disability insurance benefits. She argues that there was an apparent conflict between expert testimony offered by the vocational expert at a hearing before an administrative law judge ("ALJ") and information included in the Dictionary of Occupation Titles ("DOT"), an authoritative Department of Labor publication. Because the ALJ failed to resolve this apparent conflict, Perez says, substantial evidence did not support the ALJ's decision. After careful consideration, we agree. We thus reverse the judgment of the district court and remand with instructions for the district court to remand to the Commissioner.

I.

Perez applied for disability insurance benefits, claiming that she was unable to work due to the following conditions: rheumatoid arthritis, herniated and bulging discs in her spine, chronic inflammation and pain, and depression. After the Commissioner denied her application initially and upon reconsideration, she received a hearing before an ALJ.

At the hearing, Perez testified and offered documentary evidence about the limitations she faced because of her impairments. Having previously worked in event planning, as a real estate agent, and as a general contractor, she testified that she could no longer

work because of her health. She explained that she experienced frequent pain, had difficulty walking, and could not stand for long.

At the hearing, the ALJ also heard testimony from a vocational expert, Mark Capps. The ALJ asked Capps whether a hypothetical person who retained the residual functional capacity to perform light work, except that she could stand or walk for only four hours a day and had certain other exertional limitations, would be able to perform Perez's past work. Capps testified that this hypothetical person would not be able to perform Perez's past work because these jobs required a person to spend more time on her feet than was permitted under the hypothetical.

The ALJ then asked Capps whether the same hypothetical person would be able to perform any other jobs in the national economy. Capps answered that this person would be able to perform the following jobs: (1) warehouse checker, (2) assembler for small products, and (3) inspector and hand packer. He explained that the DOT classified each position as light work. He offered no other testimony about the jobs, such as the amount of time a person performing each job would be required to stand or walk. He stated that his opinions were based on the DOT as well as his field experience as a vocational rehabilitation counselor.

After the hearing, the ALJ issued a decision applying the Social Security Administration's five-step sequential evaluation framework and determined that Perez was not disabled. At the first step, the ALJ found that Perez had not been engaged in substantial gainful activity during the relevant time. At the second

step, he determined that she suffered from several severe impairments including inflammatory arthritis. At the third step, he concluded that she did not have an impairment or combination of impairments that met or medically equaled the severity of a listed impairment.

The ALJ then assessed Perez's residual functional capacity. He concluded that she was able to perform light work with certain exertional limitations. Under Social Security regulations, a job may qualify as "light work" for several reasons, including if it involves a "good deal of walking or standing." 20 C.F.R. § 416.967(b). According to the Social Security Administration, "the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday." SSR 83-10, 1983 WL 31251, at *6 (Jan. 1, 1983). The ALJ concluded that Perez was limited to light work that required her to stand or walk for no more than four hours in an eight-hour workday. At step four, after considering the vocational expert's testimony, the ALJ concluded that Perez was unable to perform her past relevant work.

At step five, he considered whether given Perez's age, education, work experience, and residual functional capacity, there were jobs that existed in significant numbers in the national economy that she could perform. He explained that if she had the residual functional capacity to perform a full range of light work, she would not be deemed disabled. But he acknowledged that she had additional limitations.

The ALJ then looked to the vocational expert's testimony to determine whether, given these additional limitations, there were jobs that existed in significant numbers in the national economy that Perez could perform. He concluded that she was able to perform the positions of (1) warehouse checker, (2) small products assembler, and (3) inspector and hand packager. He noted that each of these positions involved light work. He did not identify any actual or apparent conflict between the vocational expert's testimony and the DOT listings for these positions. To the contrary, he concluded that the vocational expert's testimony was consistent with the DOT. Because there were jobs that existed in significant numbers in the national economy that Perez could perform, the ALJ concluded that she was not disabled.[1]

Perez filed an action in district court challenging the Commissioner's decision denying her benefits. She argued that there was an apparent conflict between the vocational expert's testimony and the DOT. Because the ALJ failed to resolve this apparent conflict, substantial evidence did not support the ALJ's decision.

The district court affirmed the Commissioner's decision. It concluded that there was no apparent conflict between the vocational expert's testimony and the DOT. This is Perez's appeal.

II.

[1] Perez sought review of the ALJ's decision by the Appeals Council, which denied review.

We review the Commissioner's decision to determine whether it is supported by substantial evidence, but we review *de novo* the legal principles upon which the decision is based. *Moore v. Barnhart*, 405 F.3d 1208, 1211 (11th Cir. 2005). Substantial evidence refers to "such relevant evidence as a reasonable person would accept as adequate to support a conclusion." *Id.*

III.

A disabled individual may be eligible for disability insurance benefits. 42 U.S.C. § 423(a)(1). To determine whether a claimant is disabled, an ALJ applies a five-step sequential evaluation process. "The first three steps deal with whether the claimant is currently engaged in 'substantial gainful activity,' the 'medical severity of the [claimant's] impairment(s),' and whether the impairments meet the requirements of a listed impairment." *Washington v. Comm'r of Soc. Sec.*, 906 F.3d 1353, 1359 (11th Cir. 2018) (quoting 20 C.F.R. § 416.920(a)(4)). If a claimant fails to establish that she is disabled at the third step, the ALJ proceeds to step four and considers the claimant's "residual functional capacity" to determine whether she can still perform her "past relevant work." *Id.* (quoting 20 C.F.R. § 416.920(a)(4)(iv)). "Residual functional capacity" refers to the most a claimant can still do despite her limitations. 20 C.F.R. § 416.945(a)(1). When assessing a claimant's residual functional capacity, the ALJ considers her "ability to meet the physical, mental, sensory, and other requirements of work." *Id.* § 416.945(a)(4).

If a claimant establishes at step four that she has an impairment that prevents her from doing the kind of work she performed

in the past, then the ALJ continues to step five. *Washington*, 906 F.3d at 1359. At this step, the burden shifts to the Social Security Administration "to show the existence of other jobs in the national economy which, given the claimant's impairments, the claimant can perform." *Id.* (internal quotation marks omitted).

At step five, an ALJ may consider data drawn from the DOT as well as the testimony of a vocational expert.[2] *See* 20 C.F.R. § 416.966(d)(1), (e). The DOT, which is compiled by the Department of Labor, "is an extensive compendium of data about the various jobs that exist in the United States economy." *Washington*, 906 F.3d at 1357 n.2. It "includes information about the nature of each type of job and what skills or abilities [each type of job] require[s]."[3] *Id.* A vocational expert is a "vocational professional[]"

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[2] At step five, an ALJ also may look to the Medical Vocational Guidelines, known as the grids. *Phillips v. Barnhart*, 357 F.3d 1232, 1240 (11th Cir. 2004), *superseded on other grounds by* 20 C.F.R. § 404.1520c. The grids, which are included in the Social Security regulations, direct an ALJ "to consider factors such as age, confinement to sedentary or light work, inability to speak English, educational deficiencies, and lack of job experience." *Id.* Each factor may "independently limit the number of jobs realistically available to an individual." *Id.* The grids set forth when a combination of these factors yields a finding that the claimant is disabled. *Id.* Because we conclude that the grids are inapplicable here, we discuss them no further.

[3] The Department of Labor stopped updating the DOT in 1998, and the Social Security Administration has been "developing a new Occupational Information System to replace the DOT and provide its ALJs with more up to date information about current occupations and their requirements." *Washington*, 906 F.3d at 1357 n.2. Although it has been more than 25 years since the DOT

who provides an "impartial expert opinion[]." *Id.* at 1357 n.1. An ALJ may ask a vocational expert to opine about what occupations a hypothetical person with the claimant's limitations could perform. *See Wilson v. Barnhart*, 284 F.3d 1219, 1227 (11th Cir. 2002). A vocational expert also may opine about the number of jobs in those occupations that exist in the national economy. *See* SSR 96-9p, 1996 WL 374185, at *9 (July 2, 1996).

The Social Security Administration has addressed in a ruling how an ALJ should weigh vocational expert testimony and information from the DOT.[4] *See* SSR 00-4p, 2000 WL 1898704 (Dec. 4, 2000). Before an ALJ can rely on a vocational expert's testimony about the requirements of a job or occupation, the ALJ has "an affirmative responsibility" to inquire about any possible conflict between the vocational expert's testimony and the information provided in the DOT. *Id.* at *4. When there is an "apparent conflict" between the vocational expert's testimony and the DOT, neither automatically controls; instead, the ALJ must explain how he resolved the conflict. *Id.* When an ALJ fails to identify and resolve an

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was last updated, ALJs must continue to rely on the DOT while the Social Security Administration continues to develop its new system.

[4] Although we are not bound by an agency ruling interpreting its regulations, we have recognized that a Social Security Administration ruling is "binding within the Social Security Administration." *Washington*, 906 F.3d at 1361. In addition, we require an "agency to follow its regulations where failure to enforce such regulations would adversely affect substantive rights of individuals." *Id.* (internal quotation marks omitted).

apparent conflict, his "decision . . . is not supported by substantial evidence." *Washington*, 906 F.3d at 1356.

Perez argues that substantial evidence did not support the ALJ's decision because the ALJ failed to resolve an apparent conflict between the vocational expert's testimony and the DOT about the amount of walking or standing required for the jobs of warehouse checker, small products assembler, and inspector and hand packager. This appeal turns on whether there was an apparent conflict between the vocational expert's testimony and the DOT.

We have previously addressed when an apparent conflict exists. A conflict is apparent when it "is reasonably ascertainable or evident from a review of the DOT and the [vocational expert's] testimony." *Id.* at 1365. The purported conflict must "seem[] real or true." *Id.* at 1366 (internal quotation marks omitted). An apparent conflict thus exists when "a reasonable comparison of the DOT with the [vocational expert's] testimony suggests that there is a discrepancy, even if, after further investigation, that turns out not to be the case." *Id.* at 1365; *see also Viverette v. Comm'r of Soc. Sec.*, 13 F.4th 1309, 1316 (11th Cir. 2021) (determining that there was an apparent conflict when "it seem[ed] . . . from a side-by-side comparison" that the information in the DOT and the vocational expert's testimony were inconsistent). We have explained that the conflict must be one that would be apparent "to an ALJ who has

ready access to and a close familiarity with the DOT."[5] *Washington*, 906 F.3d at 1366.

In *Washington*, we recognized that an apparent conflict existed when there was a discrepancy between the vocational expert's testimony and the DOT listing about the frequency with which a person needed to perform a particular activity for a job. *See id.* In that case, the claimant had limitations related to fine manipulation with his fingers. The vocational expert testified that a hypothetical person limited to "occasional" tasks requiring fine manipulation with his fingers could perform the positions of bagger or table worker, even though the DOT specified that these positions required "frequent" fine manipulation. *Id.* After performing a side-by-side comparison of the vocational expert's testimony and the DOT listing, we concluded that the case presented "one of the clearest examples" of a conflict. *Id.*

Here, we conclude that there is an apparent conflict because a comparison of the vocational expert's testimony and the information in the DOT seems to show a discrepancy about the frequency of standing or walking required for the jobs of warehouse checker, small products assembler, and inspector and hand packer. On the one hand, the vocational expert's testimony indicates that a person who can stand or walk for no more than four hours per

[5] Because "ALJs frequently use the DOT, treat it as an authoritative source, and actively investigate the evidence for and against granting disability benefits," we have recognized that "identifying these 'apparent conflicts' falls well within their wheelhouse." *Washington*, 906 F.3d at 1365.

day can perform these jobs. On the other hand, the DOT states that each job "requires walking or standing to a significant degree." U.S. Dep't of Labor, Dictionary of Occupational Titles §§ 222.687-010, 559.687-074, 706.684-022 (4th ed. 1991); *see also id.* app. C § IV. Although the DOT does not quantify the number of hours per day of walking or standing required for a job to involve a "significant degree" of walking or standing, nothing in the DOT indicates that such a job requires no more than four hours of walking or standing per day.[6] Because it would be apparent to an ALJ who has close familiarity with the DOT that a job with a significant degree of walking or standing may require walking or standing for more than four hours per day, there seems to be a discrepancy between these two sources. *See Washington*, 906 F.3d at 1366.

Because there was an apparent conflict here, the ALJ had an affirmative duty to identify this discrepancy and then explain how he resolved it. *See id.* But the ALJ never mentioned this discrepancy or offered any explanation about how to resolve it. At most, the record shows that the vocational expert testified that there was no conflict between his opinions and the DOT. But we have explained that an ALJ's duty "is not fulfilled simply by taking the [vocational expert] at his word that his testimony comports with the DOT when the record reveals an apparent conflict." *Id.* at 1362.

Because the ALJ failed to acknowledge or resolve the apparent conflict, we conclude that the ALJ's decision is not supported

[6] Indeed, the Commissioner concedes in his brief that a job that is classified as light work may require more than four hours of standing or walking.

by substantial evidence and remand is required. *See id.* at 1366. It is possible that on remand the apparent conflict may be resolved—for example, if the vocational expert testifies that the three positions in question do not actually require walking or standing for more than four hours per day. But we must reverse and remand for further proceedings so that an ALJ can perform this inquiry in the first instance. *See Viverette*, 13 F.4th at 1317 (concluding that there was an apparent conflict but explaining that "[t]his does not mean that there is an actual conflict"); *see also Lockwood v. Comm'r of Soc. Sec. Admin.*, 914 F.3d 87, 93 (2d Cir. 2019) (explaining that an ALJ must "identify and resolve the *apparent* conflict between [the vocational expert's] testimony and the [DOT], even if there is a chance that, upon inquiry, no *actual* conflict would have emerged" (emphasis in original)).[7]

IV.

For the reasons given above, we reverse the judgment of the district court and remand with instructions to remand to the Commissioner.

REVERSED and **REMANDED**.

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[7] An ALJ's failure to address an apparent conflict does not warrant reversal when the error is harmless. *See Viverette*, 13 F.4th at 1317–18. But we cannot say that the ALJ's error was harmless here when the apparent conflict applied to all three occupations that the vocational expert presented to the ALJ. *See id.* (concluding that error was not harmless when "over eighty percent of the jobs presented to the ALJ [were] affected by the apparent conflict").