NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No: 03-2465

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PAMELA L. RICE

Appellant

v.

JOANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY

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On Appeal from the United States District Court
for the Western District of Pennsylvania
(Civil Action No. 02-cv-00051E)
District Judge: Hon. Sean J. McLaughlin

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Submitted Pursuant to Third Circuit LAR 34.1(a)
February 13, 2004

Before: SCIRICA, Chief Judge, ROTH, and McKEE, Circuit Judges,

(Opinion filed March 25, 2004)

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OPINION

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McKee, Circuit Judge.

We are asked to review the denial of Pamela Rice's application for disability insurance benefits ("DIB") under Title II of the Social Security Act, 42 U.S.C. §§ 401-434. The district court granted summary judgment in favor of the Commissioner of the Social Security Administration. For the reasons that follow, we will affirm.

I.

Because we write solely for the parties, it is not necessary to recite the facts of this case in detail. Rice makes three arguments on appeal. She claims that the ALJ erred by ignoring relevant evidence that she submitted to support her previous failed claim for DIB, and that the district court erred by invoking the doctrine of res judicata in affirming the final order of the ALJ. She also argues that the ALJ had a duty to secure additional consultative examinations, and that the hypothetical question that the ALJ asked the vocational expert at the hearing improperly omitted some of her impairments. We address each claim separately.[1]

A. Res Judicata and the Relevance of the Earlier Medical Evidence

Rice argues that the ALJ erred because he did not consider medical evidence from before her alleged onset date of July 31, 1996.[2] She also argues that the district court

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[1] We exercise plenary review over decisions to grant and deny motions for summary judgment. *Sutton v. Rasheed*, 323 F.3d 236, 248 (3d Cir. 2003). Where the ALJ's findings of fact are supported by substantial evidence, we are bound by those findings, even if we would have decided the factual inquiry differently. *Fargnoli v. Halter*, 247 F.3d 34, 38 (3d Cir. 2001).

[2] For brevity's sake, this evidence will be referred to as "the earlier evidence" in the rest of this opinion.

erred in affirming the ALJ's decision despite this error, and in incorrectly applying the doctrine of res judicata.

1. The District Court's Application of Res Judicata

The district court correctly concluded that res judicata barred the ALJ from considering the portion of Rice's claim for benefits up to August 16, 1996, but incorrectly implied that it automatically made the earlier evidence irrelevant. Res judicata applies when there has been "a prior determination or decision . . . about [the claimant's] rights on the same facts and on the same issue or issues, and this previous determination has become final by either administrative or judicial action." 20 C.F.R. § 404.957©)(1); *see also Purter v. Heckler*, 771 F.2d 682, 691 (3d Cir. 1985). In the Social Security benefits context, we have said that an ALJ may apply res judicata where the "same injuries, the same dates, and the same issues" are involved in a subsequent disability claim. *Tobak v. Apfel*, 195 F.3d 183, 188 (3d Cir. 1999).

The prior ALJ considered whether Rice had a disabling emotional or psychological impairment pursuant to her 1993 application for DIB and rejected this claim in his 1996 decision. R. at 373-83. He ruled that "at the time of application the claimant did not allege disability due to any emotional impairment[,]" but noted that Dr. Singh questioned how much of Rice's reported symptoms were related to a psychological condition. Dr. Singh had diagnosed her with "adjustment disorder with depressed mood." He also noted that Rice was being treated for "emotional complaints" by Dr. Woods, and that Dr.

Woods stated that "the claimant appears obsessed with physical problems" but that she "was not consistent with attending therapy sessions." R. at 376. He concluded that any psychological impairments Rice may have had did not render her disabled. *Id*.

The ALJ considered the same issue presented here, whether Rice's "disability" was merely a psychosomatic illness. The ALJ's decision resolves that issue for the period up to and including August 16, 1996. Res judicata thus prevented a subsequent ALJ from reconsidering whether Rice was disabled through August 16. *Tobak v. Apfel*, 195 F.3d 183, 186, 188 (3d Cir. 1999) (finding that res judicata applied because both of petitioner's DIB applications alleged disability due to the same injuries beginning on the same date).

The district court correctly ruled that res judicata would not bar a subsequent ALJ from considering whether Rice had the impairments she alleges after August 16, 1996. However, this does not mean that res judicata barred Rice from relying on earlier evidence offered in support of her 1993 DIB application when she reapplied in 2000. As Rice correctly points out, res judicata bars the same claim from being relitigated but does not bar using the old evidence to prove a new claim.

2. Relevance of the Earlier Evidence to the Current Claim

However, there was no need for the second ALJ to review the earlier evidence unless Rice could illustrate its relevance to her second claim. Rice seems to argue that the ALJ should have considered the earlier evidence because res judicata did not bar doing so. However, the fact that the earlier evidence was available for consideration does

not establish its relevance, and Rice does not explain its relevance to her current claim. She might have done so by arguing that her mental disorders establish a basis for her current disability, but she has not made that argument. Thus, the ALJ did not err in ignoring the earlier evidence.[3]

3. Equitable Argument for Admitting This Earlier Evidence

The mere fact that the ALJ requested a consultative evaluation that may have considered the earlier evidence and included that in the record does not mean that the ALJ reconsidered evidence from before August 1996, or that he should have done so. Moreover, Dr. Cynthia Hoffmeir's evaluation did not significantly rely on evidence from before August 1996. She stated that she began treating Rice in the early 1990s, and that Rice has made various complaints "over the years" which have led other doctors to say that Rice had "somatization syndrome." R. at 192. Most of Dr. Hoffmeir's evaluation detailed Rice's current condition as of the date of her last examination on June 14, 2000. Dr. Hoffmeir concluded by stating: "I believe that [Rice] has somatatization (sic) syndrome as well as what I would consider Munchausen syndrome.[4] . . ." R. at 196.

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[3] Moreover, since the first ALJ obviously concluded that Rice's problems were mostly in her mind, it is obvious that consideration of her earlier evidence would have greatly undermined her current claim absent an argument that she has a disabling mental disability.

[4] Munchausen syndrome is a factitious disorder in which a person acts as if he or she has a physical illness when he or she is not really sick. WebMD: Health: Factitious Disorders, *at* http://my.webmd.com/content/article/60/67132.htm (visited Mar. 11, 2004). Factitious disorders are considered mental illnesses because they are associated with severe emotional difficulties. *Id*. These disorders are similar to somatoform disorders, in

Nor does the ALJ's treatment of Dr. Hoffmeir's evaluation establish that the ALJ relied on evidence from before August 1996. The ALJ notes that Dr. Hoffmeir had difficulty determining which of Rice's physical complaints were real and which were exaggerated. R. at 12. The ALJ's second reference states simply that Dr. Hoffmeir's records "do not reflect objective signs or findings of abnormality to corroborate the existence of a musculoskeletal impairment of disabling severity[.]" *Id*. The third time, the ALJ states that Dr. Hoffmeir "speculated that Ms. Rice might have 'Munchausen's Syndrome,'" but goes on to say that there is no significant mental health treatment during the period at issue and that the state psychologist evaluating Rice found that she did not have a mental impairment that significantly affected her ability to work. R. at 13 (internal citation omitted). The ALJ also lists Dr. Hoffmeir's report, together with the other doctors' reports, in detailing the evidence he considered in ruling on Rice's claim. R. at 14. This does not suggest that the ALJ reconsidered the earlier evidence. *See Coup v. Heckler*, 834 F.2d 313, 317 (3d Cir. 1987).

B. Duty to Secure Further Consultative Examinations

Rice argues that the ALJ had a duty to secure additional consultative examinations

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which a person "experiences symptoms of an illness even though a doctor can find no medical cause for the symptoms." WebMD: Health: Types of Mental Disorders, *at* http://my.webmd.com/content/article/60/67134.htm?lastselectedguid={5FE84E90-BC77 -4056-A91C-9531713CA348}. "The main difference between the two groups of disorders is that people with somatoform disorders do not fake symptoms or mislead others about their symptoms on purpose." WebMD: Health: Factitious Disorders, *at* http://my.webmd.com/content/article/60/67132.htm (visited Mar. 11, 2004).

under 20 C.F.R. §§ 404.1512, 404.1517, and 404.1519a.

Section 404.1512 states:

> (a) General. In general, you have to prove to us that you are blind or disabled. Therefore, you must bring to our attention everything that shows that you are blind or disabled. This means that you must furnish medical and other evidence that we can use to reach conclusions about your medical impairment(s) and, if material to the determination of whether you are blind or disabled, its effect on your ability to work on a sustained basis.
> . . .
> (c) Your responsibility. You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. You must provide evidence showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your case.
> . . .
> (d) Our responsibility. Before we make a determination that you are not disabled, we will develop your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application.

It is thus clearly the claimant's burden to produce sufficient medical evidence to support his or her claim, and the government is obligated to fill in the gaps only if it does not have a complete medical history for the preceding year.

The ALJ apparently thought he needed more information from Dr. Hoffmeir before he could render a decision, and he therefore asked for a consultive examination. He made his decision on Rice's claim after considering Dr. Hoffmeir's consultative

examination. However, Rice argues that he either had to use Hoffmeir's consultative evaluation to conclude that Rice was disabled or, having rejected her opinion, had to gather more information regarding Rice's potential disability based on psychiatric disorders. That argument rests on the false assumption that accepting Hoffmeir's opinion equates to finding Rice disabled due to Munchausen syndrome or a somatoform disorder. Hoffmeir's report states only that she believed Rice "has somatatization (sic) syndrome as well as what I would consider Munchausen syndrome. . . ."[5] R. at 196. She does not comment on whether these psychiatric disorders rose to the level of being a "disability" under the Social Security Act.

The ALJ could therefore rely totally upon Dr. Hoffmeir's opinion and still find that Rice's impairments did not result in disability for purposes of DIB. He was free to reach that conclusion based on his assessment of Rice's lack of credibility and Dr. Hoffmeir's professional opinion that Rice exaggerated her symptoms. R. at 11-12. The ALJ's conclusion is thereby supported by substantial evidence on the record, and there was no need for him to secure additional evidence.

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[5] We assume here that Dr. Hoffmeir's report renders more than a speculation regarding Rice's possible mental disorders. The ALJ's statement that Dr. Hoffmeir's conclusion was speculative is supported by Dr. Hoffmeir's conditional language when rendering her opinion. *See* Op. at 14. It is also supported by her report's content: because her opinion states that Rice has both somatization syndrome and Munchausen syndrome, the reader is left to figure out whether Rice knew that her medical complaints were false or if the complaints were psychosomatic in origin. *See supra* note 4 (regarding the differences between somatoform disorders and factitious disorders such as Munchausen syndrome).

C. Failure to Include Every Impairment in Hypothetical to the Vocational Expert

Rice's final argument is that the ALJ erred in posing his hypothetical to the vocational expert because the question did not include Rice's visual impairment. It is undisputed that Rice had "only one functional eye" due to "the significant retinal damages resulting in the loss of central and some peripheral vision" in her left eye. R. at 293. It is also undisputed that the ALJ incorporated this impairment by requiring the vocational expert to come up with jobs that did not require "keen or acute bilateral vision." R. at 71. Rice argues that the ALJ erred when he used the word "keen" in relation to "vision" because "keen vision" is not a concept that "has any functional definition in the record on in the ALJ's decision." She also argues that the ALJ erred because he failed to restrict her ability to perform manual coordination requiring depth perception in the hypothetical. Appellant's Br. at 41-42.

Her argument regarding the ALJ's use of the word "keen" is meritless. First, Rice's counsel did not object or request clarification of the term "keen." Second, and perhaps more importantly, the meaning of the ALJ's phrase "keen vision" can be taken from the ordinary meaning of "keen." The Oxford English Dictionary defines "keen" with regard to "the eyes or eyesight" as: "[s]harp, penetrating" and "[a]cute, highly sensitive."[6]

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[6] *See* "keen, a. (adv.)" in the Oxford English Dictionary on-line, *at* http://dictionary.oed.com/cgi/entry/00125769?query_type=word&queryword=keen&edition=2e&first=1&max_to_show=10&sort_type=alpha&result_place=2&search_id=FPyu-HIKb7V-122&hilite=00125769.

Rice's argument regarding the ALJ's failure to incorporate the manual coordination limitation is also meritless. The ALJ could properly assume that any secondary impairment of her motor skills resulting from her visual impairment would be taken into account simply by accounting for the visual impairment itself.

III.

For all of the above reasons, we will affirm the district court's judgment.