NOT FOR PUBLICATION

FILED

OCT 28 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT KENNETH SMITH, Plaintiff-Appellant, v. KILOLO KIJAKAZI, Acting Commissioner of Social Security, Defendant-Appellee.	No. 18-16509 D.C. No. 2:11-cv-01623-GMS MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
G. Murray Snow, Chief District Judge, Presiding

Argued and Submitted October 20, 2022
San Francisco, California

Before: HAWKINS, BEA, and NGUYEN, Circuit Judges.

1. Appellant Robert Smith timely appeals the district court's judgment affirming the Commissioner of Social Security's denial of disability benefits. We affirm.

2. The parties are familiar with the facts of the case, so we do not recite them here. We review the denial of benefits de novo and must uphold the ALJ's decision

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

if it is supported by substantial evidence. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005).

3. First, Appellant argues that the ALJ improperly discounted his treating physician's medical testimony.[1] ALJs must provide "clear and convincing reasons" for rejecting a treating physician's uncontradicted medical conclusions and "specific and legitimate reasons that are supported by substantial evidence" when rejecting a treating physician's medical opinions that are contradicted by other record evidence. *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008) (quoting *Lester v. Chater*, 81 F.3d 821, 830–31 (9th Cir. 1995)). The ALJ satisfied that standard here.

The ALJ properly rejected Dr. Anderson's 2008 note. It was contradicted by Appellant's testimony that he could engage in activities that Dr. Anderson claimed Appellant could not physically perform. *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 601–03 (9th Cir. 1999) (upholding an ALJ's discounting of a medical opinion that conflicted with claimant's testimony).

The ALJ properly rejected Dr. Anderson's 2009 and 2012 checklists as conclusory and unsupported by the objective medical evidence: Appellant's

[1] Because Appellant's claim was filed in 2007, the regulations on medical opinions that were in force before the 2017 revision apply. 20 C.F.R. § 404.1527. They create a presumption that treating and examining physician opinions carry more weight than non-treating and non-examining medical opinions, respectively. *Id.* § 404.1527(c).

treatment notes, including from Dr. Anderson himself, contradicted Dr. Anderson's asserted limitations and showed that Appellant was handling his medications well; had almost full muscle strength in all muscle groups; and demonstrated normal coordination, balance, and gait. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 & n.3 (9th Cir. 2004) (upholding an ALJ's rejection of conclusory medical opinions that were contradicted by other medical evidence). And Appellant does not dispute the ALJ's weighting of Dr. Rowse's opinion, which was found to be more consistent with the overall record. *See Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002).

The ALJ properly rejected Dr. Anderson's 2011 opinion because it contradicted Dr. Willis's opinion that Appellant had "persisten[t] subjective weakness in the arms and legs without objective findings on examination," and was not supported by contemporaneous medical testing. *See Batson*, 359 F.3d at 1195.

4. Second, Appellant argues that the ALJ improperly discounted his subjective testimony.[2] To make an adverse credibility finding, an ALJ must provide "specific,

[2] Two of Appellant's arguments are forfeited because he raises them for the first time on appeal. *Kaufmann v. Kijakazi*, 32 F.4th 843, 847 (9th Cir. 2022). Even if they are not forfeited, they lack merit. The ALJ's reference to "conservative treatment" is grounded in the medical records showing that Appellant's neck surgery was successful. And contrary to Appellant's contention, the ALJ discounted his testimony after making specific findings throughout the opinion that his testimony was inconsistent with his medical records. *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014).

clear and convincing reasons for" rejecting a claimant's assertions regarding the severity of his symptoms. *Garrison v. Colvin*, 759 F.3d 995, 1014–15 (9th Cir. 2014) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996)). The ALJ satisfied this standard.

The ALJ properly found that Appellant's admission that he performed daily activities, such as helping his son with homework, driving his car, and carrying up to twenty-five pounds when shopping, belied his claims that his pain and fatigue severely limited his ability to focus and that he was incapable of performing work-related tasks. These inconsistencies and the other medical evidence showing that Appellant had near full muscle strength and a normal range of motion and gait permitted the ALJ to discount Appellant's purported limitations. *Cf. Molina v. Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012) ("Even where those activities suggest some difficulty functioning, they may be grounds for discrediting the claimant's testimony to the extent that they contradict claims of a totally debilitating impairment.").[3]

AFFIRMED.

[3] Appellant has forfeited his argument regarding the vocational expert because he did not raise it on appeal. *Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001).