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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEPHEN CONNOLLY, Plaintiff-Appellant, v. KILOLO KIJAKAZI, Acting Commissioner of Social Security, Defendant-Appellee.	No. 21-35663 D.C. No. 2:20-cv-00285-MKD MEMORANDUM[*]

Appeal from the United States District Court
for the Eastern District of Washington
Mary K. Dimke, Magistrate Judge, Presiding

Submitted December 5, 2022[**]
Seattle, Washington

Before: McKEOWN, MILLER, and H.A. THOMAS, Circuit Judges.

Plaintiff-Appellant Stephen Connolly ("Connolly") appeals the district court's order affirming an Administrative Law Judge's ("ALJ") denial of Connolly's claims for Social Security disability and supplemental income benefits.

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

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We have jurisdiction under 28 U.S.C. § 1291. We review the district court's decision de novo and may only overturn the ALJ's decision if it is not supported by substantial evidence or based on legal error. *Luther v. Berryhill*, 891 F.3d 872, 875 (9th Cir. 2018). "Substantial evidence is more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997) (internal quotation marks omitted) (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)). We affirm.

1. Connolly presents four arguments for the conclusion that the ALJ erred in evaluating the medical opinion evidence presented in his case. We reject each of these arguments.

First, Connolly argues that the ALJ erred in finding the opinions of Dr. Brown and Dr. Harrison, two reviewing doctors, more persuasive than the opinion of Dr. Nelmark, a treating doctor. This argument rests on a misunderstanding of both the applicable Social Security regulations and our precedent. In assessing a medical opinion, an ALJ need only explain her consideration of the factors of supportability and consistency, which the ALJ did here; generally speaking, an ALJ need not explain how a treatment relationship factored into her assessment. *See Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022).

Second, Connolly claims that the ALJ erred in finding Dr. Nelmark's

opinion unpersuasive without providing specific and legitimate reasons for doing so. But an ALJ does not need to provide "specific and legitimate" reasons for rejecting the opinion of a treating or examining doctor, so long as the ALJ (i) indicates how persuasive the relevant medical opinion is, and (ii) explains how the factors of supportability and consistency contributed to the ALJ's assessment of that opinion—as occurred here. *See id.*

Third, Connolly argues that the ALJ erred in stating that Dr. Harrison's opinion was consistent with Connolly's treatment records. Dr. Harrison, after reviewing some of Connolly's records, opined that Connolly was "able to maintain concentration, persistence, and pace for a normal workweek of simple repetitive tasks . . . where interaction with the public was not required to carry out his job duties." Connolly argues that this opinion is inconsistent with his post-June 2017 medical records, since those records show that his "progress and stability [were] highly dependent on his limiting the level of activity that he engaged in and avoiding stressful or anxiety-provoking situations." Even if we grant that this is a rational interpretation of the relevant evidence, the ALJ's alternative view is also a rational interpretation of the evidence and must therefore be upheld. *See Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005).

Fourth, Connolly argues that the ALJ erred in finding the opinions of Dr. Brown and Dr. Harrison persuasive. He contends that neither of these doctors

explained their conclusions. Our precedent, however, does not require particular recitations from an examining doctor, so long as substantial evidence supports the ALJ's finding regarding that doctor's opinion. Here, there is substantial evidence in the record for the ALJ's conclusions that Dr. Harrison's opinion was "well-supported," and that Dr. Brown's opinion was "somewhat persuasive, but ultimately too optimistic."

2. Connolly presents two arguments for the conclusion that the ALJ erred in finding that Connolly's symptom testimony was not reliable. We also reject these arguments.

First, Connolly argues that even though medical treatment helped him achieve some stability, the ALJ overlooked evidence that his stability was in fact very fragile and therefore failed to consider the evidence of Connolly's improvement "in the broader context of [his] impairment." *See Attmore v. Colvin*, 827 F.3d 872, 877 (9th Cir. 2016). We disagree. The ALJ offered "specific, clear, and convincing reasons" for finding that Connolly's testimony was not reliable, which is what our precedent requires. *See Ahearn v. Saul*, 988 F.3d 1111, 1116 (9th Cir. 2021).

Second, Connolly argues that the ALJ was mistaken to conclude that some of the activities he engaged in during treatment conflicted with his allegations of disability. But the ALJ again offered "specific, clear, and convincing reasons" for

finding that Connolly's testimony regarding these issues was not reliable, and, under substantial evidence review, we have no basis for rejecting that conclusion. *See id.*

AFFIRMED.