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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AMY I. REILLY,

Plaintiff-Appellant,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant-Appellee.

No. 21-36003

D.C. No. 3:20-cv-05971-MLP

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Michelle L. Peterson, Magistrate Judge, Presiding

Submitted November 9, 2022**
Seattle, Washington

Before: IKUTA and COLLINS, Circuit Judges, and FITZWATER,*** District Judge.

* 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).

*** The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

Amy Reilly (“Reilly”) appeals the district court’s judgment affirming the Commissioner of Social Security’s denial of Reilly’s application for disability insurance benefits and supplemental security income under Titles II and XVI of the Social Security Act. The district court had jurisdiction under 42 U.S.C. §§ 405(g) and 1383(c)(3). We have jurisdiction under 28 U.S.C. § 1291. We review the underlying decision of the administrative law judge (“ALJ”) only for legal error or lack of substantial evidence. *Lambert v. Saul*, 980 F.3d 1266, 1270 (9th Cir. 2020). We affirm.

1. Substantial evidence supports the ALJ’s finding that Reilly’s impairments did not meet a Listing. In discussing whether Reilly’s mental impairments met Listing 12.04 or 12.06, the ALJ discussed in detail the four areas of mental functioning listed in “paragraph B.” And after considering the evidence in the record, the ALJ determined that Reilly had only a moderate restriction in each area. The ALJ also found that the alternative “paragraph C” criteria were not satisfied. 20 C.F.R. pt. 404, subpt. P, app. 1, §§ 12.00(A)(2).01. These findings are “supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (citation omitted).

2. Substantial evidence also supports the ALJ's decision to assign low weight to Reilly's testimony. The ALJ discussed in detail several inconsistencies between Reilly's testimony and the record before the Commissioner, including the medical evidence presented to the Commissioner contrasted with Reilly's reported activities. *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997).

3. Substantial evidence supports the ALJ's decisions regarding the persuasiveness of the medical opinions provided to the Commissioner. The ALJ considered the extent to which the opinions were based on Reilly's unreliable subjective reports and evaluated the opinions' consistency with the other evidence in the record, including objective clinical findings and observations of Reilly's reported activities. *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014) ("An ALJ can satisfy the 'substantial evidence' requirement by 'setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings.'" (quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998))); *see also Ford v. Saul*, 950 F.3d 1141, 1155 (9th Cir. 2020) (explaining that conflicts between a physician's opinion and the claimant's activity level is a reason for rejecting the medical opinion); *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th

Reilly forfeited her claim that the 2017 amendments to the regulations were invalid by raising the issue for the first time in her reply brief. *See Martin v. City of Oceanside*, 360 F.3d 1078, 1081 (9th Cir. 2004).

Cir. 2002) (“The ALJ need not accept the opinion of any physician . . . if that opinion is brief, conclusory, and inadequately supported by clinical findings.”).

4. The ALJ did not reversibly err in failing to meaningfully consider the third-party function report completed by Reilly’s ex-husband because the report echoed the claims of Reilly that were found to be inconsistent and unreliable. *See Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009). Nor did the ALJ err in failing to address the report of the Social Security facilitator; her observations, which were based on one telephone call with Reilly, did not constitute significant and probative evidence. *See Vincent ex rel. Vincent v. Heckler*, 739 F.2d 1393, 1394–95 (9th Cir. 1984).

5. Substantial evidence supports the ALJ’s determination that Reilly had the residual functional capacity (“RFC”) to perform a range of light work and therefore was not entitled to benefits. The ALJ considered and discussed the medical opinions that were determined to be reliable, objective medical findings, and other reliable evidence in the record when determining Reilly’s RFC. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005).

AFFIRMED.