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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GINA G. MUNTZ, Plaintiff-Appellant, v. KILOLO KIJAKAZI, Acting Commissioner of Social Security, Defendant-Appellee.	No. 22-35174 D.C. No. 3:21-cv-05378-BAT MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Brian Tsuchida, Magistrate Judge, Presiding

Submitted December 5, 2022**
San Francisco, California

Before: LUCERO,*** BRESS, and VANDYKE, Circuit Judges.

* 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 Carlos F. Lucero, United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

Gina Muntz appeals the district court's decision affirming the denial of an application for Supplemental Security Income and Disability Insurance Benefits. "We review [the] district court's judgment … de novo" and "set aside a denial of benefits only if it is not supported by substantial evidence or is based on legal error." *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009) (quotation omitted).

To establish a disability for purposes of the Social Security Act, a claimant must prove that she is unable "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which … has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). "To determine whether or not a claimant is disabled, an ALJ follows a five-step evaluation." *Zavalin v. Colvin*, 778 F.3d 842, 845 n.1 (9th Cir. 2015) (citing 20 C.F.R. § 416.920(a)(4)).

In this case, the ALJ determined that Muntz was not disabled at step five of the analysis because she could perform light work. In making this determination, the ALJ discounted Muntz's subjective symptom testimony because it was inconsistent with the record, which included objective medical evidence. The ALJ discounted a third-party function report from Muntz's husband for the same reason. The ALJ also discounted portions of medical opinions from Drs. Head and Losee because they were unexplained, inconsistent with other objective medical evidence,

or both. Evaluating this testimony, the ALJ applied the correct legal standards and supported her findings with substantial evidence. We therefore affirm for the following reasons:

First, the ALJ gave specific, clear, and convincing reasons for discounting Muntz's subjective testimony. *See Molina v. Astrue*, 674 F.3d 1104, 1111, 1113–14 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R. § 404.1502(a). Muntz claimed to have been disabled since May 2015, following a motor vehicle accident. But the ALJ identified material inconsistencies between Muntz's testimony and the record, including objective medical evidence. *See Parra v. Astrue*, 481 F.3d 742, 750 (9th Cir. 2007). For example, Muntz was examined shortly after the accident and repeatedly over the next few years, and she "consistently showed normal or only minimally antalgic gait and full strength in the lower extremities." Muntz's providers also consistently recommended "conservative" treatment, and she primarily treated her pain with over-the-counter pain medications like ibuprofen. *See id.* at 751 ("[E]vidence of 'conservative treatment' is sufficient to discount a claimant's testimony regarding severity of an impairment.") (quoting *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995)). Muntz also failed to pursue available treatment options, *see Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005), and there are significant gaps in her treatment history.

Regarding Muntz's alleged cognitive impairment, the ALJ found that, although the record "tends to support a degree" of cognitive impairment, the record was inconsistent with further mental limitations. The ALJ permissibly observed that none of Muntz's "providers reported any impairment in memory, attention, or concentration during visits, and when other providers tested these areas, they were found to be normal." Muntz also appeared oriented and alert at visits, including immediately following her accident. And the ALJ specifically noted that Dr. Losee "doubted the degree of memory impairment suggested by [Muntz's] standardized test scores, as it was not consistent with [her] presentation at that evaluation." This evidence contradicts Muntz's testimony and supports the ALJ's determination. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

Second, the ALJ provided specific and legitimate reasons for discounting the weight afforded to the opinions of Drs. Head and Losee.[1] *See Carmickle v. Comm'r of Soc. Sec.*, 533 F.3d 1155, 1164 (9th Cir. 2008); *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). Dr. Head examined Muntz in October 2015 and determined that Muntz was capable of light to sedentary exertion. The ALJ found a portion of Dr. Head's opinion persuasive but gave "only partial weight" to the remainder because it was unexplained and inconsistent with his and other

[1] New regulations governing review of medical opinions in Social Security cases do not apply to this case based on the timing of Muntz's application for benefits.

examinations. *See Ford v. Saul*, 950 F.3d 1141, 1155 (9th Cir. 2020) ("An ALJ is not required to take medical opinions at face value, but may take into account the quality of the explanation when determining how much weight to give a medical opinion."). As the ALJ reasonably observed, Dr. Head's findings were at odds with his own examination of Muntz, which was largely unremarkable, and examinations by other providers throughout the medical record.

Dr. Losee examined Muntz in April 2019 and determined that "[s]he would have difficulty attending to, remembering, and carrying out detailed instructions on a sustained basis." The ALJ gave this portion of Dr. Losee's opinion "only partial weight." As the ALJ pointed out, Dr. Losee observed that Muntz's test scores were inconsistent with her self-reported symptoms. Dr. Losee also was uncertain about the cause of Muntz's poor test scores, and she ultimately recommended additional memory testing. Dr. Losee's opinion was also inconsistent with the remainder of the record. In fact, two weeks after the accident, Muntz "demonstrated better memory functioning than on the evaluation with Dr. Losee, in tests of both memory and concentration." And "[a]t all subsequent visits when memory was tested, the claimant's memory was found to be normal."

Third, the ALJ gave "germane reasons" for discounting the third-party function report from Muntz's husband. *Molina*, 674 F.3d at 1114. The ALJ found that some of Muntz's husband's statements were "contradicted either by the record

or by [Muntz's] own statements and are therefore unpersuasive." Germane reasons are sufficient to dismiss lay witness testimony, *see id.*, and "[i]nconsistency with medical evidence" provides such a germane reason. *See Bayliss v. Barnhardt*, 427 F.3d 1211, 1218 (9th Cir. 2005).

AFFIRMED.