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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KATHERINE M. METCALF, Plaintiff-Appellant, v. KILOLO KIJAKAZI, Acting Commissioner of Social Security, Defendant-Appellee.	No. 22-35201 D.C. No. 3:20-cv-06023-MAT MEMORANDUM[*]

Appeal from the United States District Court
for the Western District of Washington
Mary Alice Theiler, Magistrate Judge, Presiding

Submitted December 9, 2022[**]
San Francisco, California

Before: NGUYEN and KOH, Circuit Judges, and BOUGH,[***] District Judge.

Katherine M. Metcalf ("Metcalf") appeals from the district court's judgment affirming the Commissioner of Social Security's denial of her application for

[*] 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 Stephen R. Bough, United States District Judge for the Western District of Missouri, sitting by designation.

supplemental security income under Title XVI of the Social Security Act. We have jurisdiction under 28 U.S.C. § 1291 and 42 U.S.C. § 405(g). The parties are familiar with the facts of the case, so we do not recite them here. We review de novo, *Attmore v. Colvin*, 827 F.3d 872, 875 (9th Cir. 2016), and we affirm.

Substantial evidence supports the ALJ's determination that the marked limitations assessed by Dr. Terilee Wingate were inconsistent with the medical record and with Metcalf's activities. *See Woods v. Kijakazi*, 32 F.4th 785, 787, 789 (9th Cir. 2022) (under the revised regulations that apply to claims filed on or after March 27, 2017, the ALJ's evaluation of a medical opinion is reviewed for substantial evidence).

Substantial evidence also supports the ALJ's finding that Dr. Daria Sciarrone's opinion was internally inconsistent, inconsistent with the medical record, and lacking support from objective findings. *See id.* at 792 (holding that an ALJ can "reject an examining or treating doctor's opinion as unsupported or inconsistent" if the ALJ "provide[es] an explanation supported by substantial evidence").

As to Dr. Desmond Tuason and Dr. Debra Baylor's opinions, substantial evidence supports the ALJ's determination that the standing/walking limitation they assessed was inconsistent with the medical record, which reflected minimal treatment for Metcalf's foot condition and no treatment for knee pain. *See id*.

To the extent that Metcalf contends the ALJ was required to provide "legitimate" reasons to discount the medical opinions, this contention is foreclosed by *Woods*. *See id.* (concluding that the "specific and legitimate" standard is "incompatible with the revised regulations"). We do not consider Metcalf's contention, raised for the first time in her reply brief, that the revised regulations are partially invalid. *See Coos Cnty. Bd. of Cnty. Comm'rs v. Kempthorne*, 531 F.3d 792, 812 n.16 (9th Cir. 2008) ("The general rule is that appellants cannot raise a new issue for the first time in their reply briefs." (citation and internal quotation marks omitted)).

Substantial evidence supports the ALJ's conclusion—articulated with specific, clear, and convincing reasons—that Metcalf's testimony was inconsistent with the medical record reflecting minimal treatment and improvement with treatment. *See Ahearn v. Saul*, 988 F.3d 1111, 1116–17 (9th Cir. 2021) (ALJ properly discounted claimant's subjective allegations as inconsistent with the medical record); *Tommasetti v. Astrue*, 533 F.3d 1035, 1039–40 (9th Cir. 2008) (ALJ may discount a claimant's allegations based on evidence of relief with conservative treatment); *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) (ALJ may consider a lack of corroborating medical evidence as one factor in the credibility determination). The ALJ also provided clear and convincing reasons to discount Metcalf's symptom testimony as inconsistent with her work history and

level of activity. *See Ahearn*, 988 F.3d at 1116–17 (ALJ properly discounted claimant's subjective allegations as inconsistent with work history and daily activities).

Any error in the ALJ's consideration of the lay witness evidence was harmless. *See Molina v. Astrue*, 674 F.3d 1104, 1122 (9th Cir. 2012) ("[A]n ALJ's failure to comment upon lay witness testimony is harmless where the same evidence that the ALJ referred to in discrediting [the claimant's] claims also discredits [the lay witness's] claims." (citation and internal quotation marks omitted)), *superseded on other grounds by* 20 C.F.R. § 404.1502(a).

Substantial evidence supports the ALJ's residual functional capacity ("RFC") assessment, and Metcalf shows no error in the ALJ's analysis. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005) (affirming the ALJ's RFC determination where the ALJ "applied the proper legal standard and his decision is supported by substantial evidence"). Metcalf's contentions concerning the ALJ's step five finding are based on her previously addressed arguments and thus lack support. *See Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175–76 (9th Cir. 2008) (rejecting claimant's step five challenge where she "simply restate[d] her argument that the ALJ's RFC finding did not account for all her limitations").

AFFIRMED.