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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DERDLIM C. CHIQUI, Plaintiff-Appellant, v. KILOLO KIJAKAZI, Acting Commissioner of Social Security, Defendant-Appellee.	No. 22-35264 D.C. No. 1:21-cv-03074-TOR MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Thomas O. Rice, District Judge, Presiding

Submitted December 6, 2022**
San Francisco, California

Before: GRABER, WALLACH,*** and WATFORD, Circuit Judges.

Derdlim Chiqui appeals from the district court's order affirming the denial of her applications for disability insurance benefits and supplemental security

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* 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 Evan J. Wallach, United States Circuit Judge for the U.S. Court of Appeals for the Federal Circuit, sitting by designation.

insurance benefits under Title II of the Social Security Act. We have jurisdiction under 28 U.S.C. § 1291 and 42 U.S.C. § 405(g). We affirm.

1. Substantial evidence supports the Administrative Law Judge's (ALJ's) finding that Chiqui's back condition was not per se disabling under Listing 1.04A. The listings recognize specific, severe impairments that would prevent an adult—regardless of age, education, or work experience—from performing any gainful work. *Sullivan v. Zebley*, 493 U.S. 521, 532 (1990). At step three of the sequential evaluation process, the ALJ assesses the claimant's medical impairments against the listing in question.

The ALJ permissibly found that Chiqui did not meet every element of Listing 1.04A in the relevant period. AR 20. Chiqui's medical records show, for example, that she periodically demonstrated normal motor strength in the relevant period. *See, e.g.*, AR 367 (finding "[f]ull, normal range of motion" and noting motor strength as "5/5" in extremities); AR 838 (finding "[n]ormal range of motion and strength").

2. Substantial evidence supports the ALJ's discounting of Chiqui's subjective complaints. If a claimant's impairments could reasonably cause the symptoms and there is no evidence of malingering, the ALJ must offer "specific, clear and convincing" reasons for rejecting the claimant's testimony on the severity of the symptoms. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017) (internal

quotation marks omitted). An ALJ may not discredit a claimant's symptom testimony solely because objective medical evidence does not support the degree of symptom severity alleged, but objective medical evidence is a relevant factor in evaluating the severity of the symptoms. *See Rollins v. Massanari*, 261 F.3d 853, 856–57 (9th Cir. 2001).

The ALJ permissibly relied on Chiqui's daily activities and objective medical evidence to discount her allegations. Chiqui maintained a relatively high level of activity in the relevant period. As the ALJ noted, Chiqui was "very busy on a daily basis," and engaged in a range of activities that included driving, working on her GED, and caring for her children. AR 22–23. Chiqui's medical records show that treatment diminished the severity of her symptoms, *see, e.g.*, AR 603, 611, 911, 929. And treatment notes from her providers contradict her allegations of acute distress. *See, e.g.*, AR 622, 727, 792, 1002.

3. Substantial evidence supports the ALJ's assessment of the medical opinions challenged by Chiqui. Under new regulations that both parties recognize now apply, "an ALJ's decision, including the decision to discredit any medical opinion, must simply be supported by substantial evidence." *Woods v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022).

The ALJ permissibly credited the opinions of Drs. Wacker and Hopp. These doctors determined that Chiqui was "capable of work" at only a light duty level,

"probably [of] a sedentary type." AR 1093. In reaching these conclusions, these doctors physically examined Chiqui, supported their findings with explanations, and made findings that were consistent with other medical records. All three factors indicate their opinions were sufficiently supported under existing regulations. *See* 20 C.F.R. §§ 404.1520c(c)(1)–(3), 416.920c(c).

The ALJ permissibly found the opinion of Dr. Jackson to be unpersuasive. AR 23. In a brief, check-box form, Dr. Jackson indicated that Chiqui was unable to work, AR 308, and "unable to lift at least 2 pounds or unable to stand or walk," AR 309. Dr. Jackson's notations, however, are contradicted by treatment reports completed by Chiqui's medical providers, including Dr. Jackson. Dr. Jackson later reported Chiqui being fairly active and "doing [a lot] of lifting lately." AR 730. Her notes recommend that Chiqui "[a]void heavy lifting," defined as "[n]o more than 10-20 pounds"—a finding consistent with the limitations the ALJ integrated into her residual functional capacity. AR 58–60, 729.

The ALJ permissibly found the opinion of Mr. Commet, an advanced registered nurse practitioner, to be of mixed persuasiveness. Commet evaluated Chiqui on numerous occasions. In July 2016 and December 2017, he found that Chiqui could occasionally lift up to 12 pounds and occasionally sit, stand, and walk. AR 451, 480. In April 2019, he found that Chiqui could perform a sedentary job that did not require bending and twisting or lifting more than 20

pounds on occasion. AR 746. In February 2020, he found that Chiqui could perform a job that did not require bending and twisting or lifting more than 35 pounds on occasion. AR 1075.

The ALJ determined that Mr. Commet's findings that Chiqui was capable of a sedentary job were "generally persuasive," and his findings that she could not do certain postural movements were "not well supported." AR 23–24. Faced with a variety of—and at times, competing—opinions from an individual provider regarding Chiqui's ability to work and the restrictions she would need, the ALJ reasonably evaluated the evidence in conjunction with other medical evidence in the record. "Where evidence is susceptible to more than one rational interpretation, it is the ALJ's conclusion that must be upheld." *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005).

AFFIRMED.