

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 16, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUAN C.,¹

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

No. 4:17-CV-05159-EFS

**ORDER GRANTING SUMMARY JUDGMENT
FOR DEFENDANT**

Before the Court, without oral argument, are cross summary judgment motions. ECF Nos. 12 & 13. Plaintiff, Juan C., appeals the Administrative Law Judge's (ALJ) denial of benefits. See ECF Nos. 1 & 12. Defendant, the Commissioner of Social Security, asks the Court to affirm the ALJ's determination that Plaintiff is not disabled and is capable of performing substantial gainful activity in a field for which a significant number of jobs exist in the national economy. See ECF Nos. 8 & 15. After reviewing the record and relevant authority, the Court is fully informed. For the reasons set forth below, the Court denies Plaintiff's Motion for Summary Judgment and grants Defendant's Motion for Summary Judgment.

¹ To protect the privacy of social-security plaintiffs, the Court refers to them by first name and last initial. See proposed draft of LCivR 5.2(c). When quoting the Administrative Record in this order, the Court will substitute "Plaintiff" for any other identifier that was used, and – for the sake of readability – the Court will refrain from using brackets to indicate such substitutions.

1 **I. Facts and Procedural History**²

2 Plaintiff was born in 1971. See Administrative Record, ECF
3 No. 9, (AR) 220. In February 2012, after Plaintiff suffered a
4 workplace injury, an MRI of his lumbar spine showed desiccation of L4-
5 5, disc bulging, facet hypertrophy, loss of disc height, posterior
6 annular fissure, endplate irregularities, and spinal canal narrowing.
7 AR 527. And in March 2013, Plaintiff underwent a left L4-5 far
8 lateral discectomy with an endoscopic approach. AR 576. Since then,
9 Plaintiff has continued to see his medical care providers regarding
10 back-pain management. See, e.g., AR 700-703.

11 In April 2013, Plaintiff protectively filed SSI and DIB
12 applications, alleging an onset date of January 7, 2013. AR 220. His
13 applications were denied initially and upon reconsideration. AR 100,
14 123. After conducting a hearing in September 2015 and a supplemental
15 hearing in February 2016, Administrative Law Judge (ALJ) Ilene Sloan
16 issued a decision finding Plaintiff not disabled for purposes of the
17 Social Security Act. AR 32.

18 The ALJ found that Plaintiff has the following severe
19 impairments: "lumbar spine degenerative disc disease with stenosis and
20 disc protrusions with chronic left lower extremity referred/radicular
21 pain, status post three hernia repairs, status post two left hand
22 tendon repair, and obesity." AR 23. Regarding Plaintiff's residual
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24

25 ² Detailed facts are contained in the administrative hearing
26 transcript, the ALJ's decision, and the parties' briefs. The
Court summarizes only those facts that are relevant to its
decision.

1 functional capacity (RFC), after taking those impairments into
2 consideration, the ALJ found as follows:

3 Plaintiff has the residual functional capacity to perform
4 sedentary work as defined in 20 CFR 404.1567(b) and
5 416.967(b) except Plaintiff would be able to occasionally
6 climb ramps and stairs, ladders, ropes, and scaffolds.
7 Plaintiff would be able to frequently balance. Plaintiff
8 would be able to occasionally stoop, kneel, and crouch.
9 Plaintiff would never be able to crawl. Plaintiff must
10 avoid concentrated exposures to hazards such as moving
11 machinery and unprotected heights.

12 AR 25.

13 Given those limitations, the ALJ found that Plaintiff is unable
14 to perform any of his past relevant work. AR. 31. But, based on
15 testimony by a vocational expert, the ALJ went on to find that
16 Plaintiff is "capable of making a successful adjustment to other work
17 that exists in significant numbers in the national economy," namely, a
18 telephone solicitor. AR 31-32.

19 The Appeals Council denied Plaintiff's request for review, AR 1,
20 making the ALJ's decision the final agency action for purposes of
21 judicial review.³ Plaintiff filed this lawsuit on October 2, 2017,
22 appealing the ALJ's decision. ECF No. 1. The parties then filed the
23 present summary-judgment motions. ECF Nos. 12 & 13.

24 **II. Standard of Review**

25 The Court will uphold an ALJ's determination that a claimant is
26 not disabled if the ALJ applied the proper legal standards and there
is substantial evidence in the record as a whole to support the

³ See 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

1 decision.⁴ Substantial evidence is "more than a mere scintilla, but
2 less than a preponderance. It means such relevant evidence as a
3 reasonable mind might accept as adequate to support a conclusion."⁵

4 **III. Applicable Law & Analysis**⁶

5 Plaintiff raises three issues: (1) whether the ALJ improperly
6 rejected the opinions of Plaintiff's medical providers; (2) whether
7 the ALJ erred in rejecting Plaintiff's subjective complaints; and
8 (3) whether the hypothetical posed to the vocational expert at step
9 five accurately reflected all of Plaintiff's limitations. ECF No. 12
10 at 5. The Court addresses each issue in turn and, for the reasons
11 that follow, affirms the ALJ's decision.

12 **A. Medical Providers' Opinions**

13 Plaintiff first argues that "the ALJ improperly rejected the
14 opinions of his treating and examining providers, including [ARNP] Ang
15 and [ARNP] Roberts." ECF No. 12 at 7. For purposes of Plaintiff's
16 claim, advanced nurses, such as ARNP Ang and ARNP Roberts, are not
17 considered "acceptable medical sources" but are instead "other
18 sources" whose opinions are generally entitled to less weight than
19 that of a physician.⁷ An ALJ need only give "germane reasons,"
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21 ⁴ *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983) (citing 42
U.S.C. § 405(g)).

22 ⁵ *Desrosiers v. Sec'y of Health & Human Servs.*, 846 F.2d 573, 576
(9th Cir. 1988) (citations and internal quotation marks omitted).

23 ⁶ The applicable five-step disability determination process is set
24 forth in the ALJ's decision, AR 20-21, and the Court presumes the
parties are well acquainted with that standard process. As such,
the Court does not restate the five-step process in this order.

25 ⁷ See *Huff v. Astrue*, 275 F. App'x 713, 716 (9th Cir. 2008). But see
26 20 C.F.R. § 404.1502 (adding licensed advanced practice nurse to
the list of "acceptable medical sources" for claims filed on or
after March 27, 2017).

1 supported by substantial evidence, to discredit other-source
2 opinions.⁸

3
4 **1. The ALJ provided germane reasons, supported by substantial
evidence, for rejecting ARNP Ang's opinion.**

5 As relevant here, in June 2015, Desiree Ang, ARNP – Plaintiff's
6 treating provider who was overseeing his degenerative disc disease –
7 filled out a checkbox medical questionnaire. AR 279. ARNP Ang checked
8 a box that stated, "I do not believe that this patient is capable of
9 performing any type of work on a reasonably continuous, sustained
10 basis." AR 759. In addressing this opinion, the ALJ stated as
11 follows:

12 I give this opinion no weight because Mrs. Ang did not
13 provide an explanation for the claimant's limitation or a
14 function-by-function analysis of the claimant's impairments
15 (SSR 96-8p). Moreover, Ms. Ang is not [an] acceptable
16 medical source with the expertise necessary to render such
an opinion. In addition, I find the opinions of the
medical expert to be the most informed, consistent with the
medical evidence of record, and consistent with the record
as a whole.

17 AR 30.

18 In her decision, the ALJ correctly noted that ARNP Ang's opinion
19 regarding Plaintiff's inability to work was unsupported by any
20 explanation or a function-by-function analysis.⁹ Plaintiff points to
21 a series of treatment notes that – he argues – support ARNP Ang's
22 opinion that he is unable to perform any work activity on a consistent
23 basis. ECF No. 12 at 10. For instance, Plaintiff quotes ARNP Ang as

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⁸ *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

25 ⁹ *See Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th
26 Cir. 2004) (citations omitted). (holding that an ALJ may discount
medical-source opinions that are conclusory, brief, and unsupported
by the record as a whole or by objective medical findings).

1 stating, "His gait was antalgic, he had diminished sensation, positive
2 straight leg raise, and difficulty with heel-toe walking." ECF No. 12
3 at 9. The record shows, however, that ARNP Ang actually reported as
4 follows: "*Mild* difficulty with heel and toe walking, favoring the
5 left. Gait is *slightly* antalgic, *but steady*." AR 575 (emphasis
6 added).

7 Further, although some of ARNP Ang's treatment notes arguably
8 could have supported her opinion, others were inconsistent with such
9 an opinion.¹⁰ And ARNP Ang did not indicate which particular
10 treatment notes or test results she was relying upon in arriving at
11 her June 2015 opinion. Moreover, the ALJ acted within her discretion
12 in deciding to give more weight to the opinion of the medical expert,
13 who was an orthopedic surgeon and therefore more highly trained than
14 an ARNP in the field of orthopedic medicine.¹¹

15 The ALJ provided germane reasons, supported by substantial
16 evidence, for rejecting ARNP Ang's opinion. The ALJ did not err in
17 assigning it no weight.

18
19 **2. The ALJ provided germane reasons, supported by substantial
evidence, for discounting ARNP Roberts' opinion.**

20 In October 2013, Jason Roberts, ARNP, completed an assessment in
21 which he opined that Plaintiff was limited to sedentary work. AR 587.
22 The ALJ gave this opinion little weight because "even though it is
23 consistent with the medical evidence supporting the claimant's
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25 ¹⁰ See, e.g., AR 700 ("Plaintiff's current medication regimen has been
26 moderately sufficient in keeping his symptoms down to a more
manageable level.").

¹¹ See *Gomez v. Chater*, 74 F.3d 967, 970-71 (9th Cir. 1996).

1 sedentary residual functional capacity, Mr. Roberts did not provide an
2 explanation for the claimant's limitation and a function-by-function
3 analysis of the claimant's impairments." AR 29.

4 As with ARNP Ang's opinion, the ALJ provided a germane reason,
5 supported by substantial evidence, for discounting ARNP Roberts'
6 opinion.¹² The ALJ did not err by giving it little weight. Even
7 more, Plaintiff does not show how the ultimate outcome would have been
8 different if the ALJ gave greater weight to ARNP Roberts' opinion.
9 Indeed, the ALJ's RFC findings arguably included all the functional
10 limitations opined by ARNP Roberts.¹³

11 **B. Plaintiff's Subjective Complaints¹⁴**

12 In making an adverse credibility determination regarding a
13 claimant, an ALJ may consider, among other things, (1) the claimant's
14 reputation for truthfulness; (2) inconsistencies in the claimant's
15 testimony or between his testimony and his conduct; (3) the claimant's
16 daily living activities; (4) the claimant's work record; and (5) the
17 nature, severity, and effect of the claimant's condition.¹⁵ Here –
18 contrary to Plaintiff's second argument, see ECF No. 12 at 11 – the
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20 ¹² See *Batson*, 359 F.3d at 1195 (citations omitted). (holding that an
21 ALJ may discount medical-source opinions that are conclusory,
22 brief, and unsupported by the record as a whole or by objective
23 medical findings).

24 ¹³ Compare AR 25 (ALJ limiting RFC to sedentary work with restrictions
25 on activities such as stooping, kneeling, and crouching) with
26 AR 586 (ARNP Roberts indicating "moderate" limitations in areas
such as walking, reaching, and crouching).

¹⁴ The standard for analyzing a claimant's symptom testimony is set
forth in the ALJ's decision, see AR 25, and the Court presumes the
parties are familiar with that standard. As such, the Court does
not restate it here.

¹⁵ *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002).

1 ALJ provided specific, clear and convincing reasons for rejecting
2 portions of Plaintiff's symptom testimony.¹⁶

3 The ALJ had good reason to question Plaintiff's reputation for
4 truthfulness. As the ALJ noted, Plaintiff admitted to frequently
5 lying about being out of work. He also admitted that he did not
6 inform the different government agencies about his surgeries in order
7 to continue collecting unemployment benefits. AR 27. In her decision,
8 the ALJ said the following:

9 In addition, his receipt of unemployment benefits further
10 erode the consistency of the claimant's allegations. In
11 the third quarter of 2013, the claimant received and
12 exhausted unemployment benefits (7D, 6F). In order to
13 receive unemployment benefits, the claimant had to certify
14 he was "able to, available for, and actively seeking full
15 time work." The claimant offered no persuasive explanation
16 at his hearing for this major inconsistency in his claims.

17 AR. 26.

18 The ALJ articulated even more inconsistencies between
19 Plaintiff's testimony, the record, and his daily living activities.
20 For instance, the ALJ found that Plaintiff "is able to go grocery
21 shopping without the need for assistance. He cooks and prepares meals
22 independently." AR 26.

23 Plaintiff argues that the ALJ's analysis "is not an accurate
24 depiction" of his activities. ECF No. 12 at 12. As support, Plaintiff
25 points out that he "testified he did *not* cook and would instead have a
26 protein shake that lasted him all day." ECF No. 12 at 12 (emphasis in
original). He also testified that grocery shopping "was done only
when his children were there to carry the groceries because he could

¹⁶ Cf. *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014)

1 not." ECF No. 12 at 12. Plaintiff's arguments, however, only
2 highlight the inconsistencies that were of concern to the ALJ. After
3 all, Plaintiff had recently reported being able to grocery shop and
4 cook meals unaided.¹⁷

5 The ALJ stated clear and convincing reasons that were supported
6 by substantial evidence in finding Plaintiff's subjective complaints
7 were not entirely credible. Thus, she did not err by discounting
8 Plaintiff's symptom testimony.

9 **C. The ALJ's Hypothetical to the Vocational Expert**

10 In January 2014, Patrick B. Reilly, Ph.D. performed a
11 psychological examination of Plaintiff. AR 592-97. Plaintiff's last
12 argument is that the ALJ's hypothetical at step five "failed to
13 account for limitations set forth by [ARNP] Ang and Dr. Reilly." ECF
14 No. 12 at 15. As a preliminary matter, as discussed above, the Court
15 already found the ALJ did not err by omitting the limitations set
16 forth by ARNP Ang.

17 As to Dr. Reilly's report, Plaintiff cherry-picks particular
18 portions and ignores important aspects of Dr. Reilly's opinion.
19 Plaintiff includes a quote in which Dr. Reilly stated that "there does
20 appear to be a moderate degree of decompensation in a work like
21 setting related to interpersonal interactions, task persistence, self-
22 regulations, self-management, task accomplishment and generalized
23 organizational skills." ECF No. 12 at 15 (citing AR 596). Plaintiff

24 ¹⁷ In a 2014 mental evaluation of Plaintiff, Patrick B. Reilly, Ph.D.
25 stated as follows: "With regard to grocery shopping, the claimant
26 reports being able to independently achieve the task without the
need for assistance. In terms of cooking, he reports cooking and
preparing meals independently." AR 595.

1 also relies on a quote stating that Plaintiff's "prognosis was poor
2 for the next 12 months and his persistent symptoms brought into doubt
3 the likelihood of a full recovery." ECF No. 12 at 15 (citing AR 596).
4 Plaintiff uses these statements out of context to argue that the ALJ
5 "did not include any associated limitations on interpersonal
6 interactions, task persistence, or other limitations outlined by
7 Dr. Reilly in the hypothetical to the vocational expert." ECF No. 12
8 at 15.

9 Dr. Reilly's report, however, did not set forth any such
10 limitations. In the "Functional Assessment" portion of the report,
11 Dr. Reilly gave the following opinion:

12 Sustained concentration and persistence: The claimant's
13 attention and concentration characteristics appear to be
14 *within normal limits* based on performance data related to
serial sequences, mental rotation, and execution in multi-
step directions.

15 Social interaction: The claimant's social interaction
16 characteristics appear to be *within normal limits* based on
17 performance data related to general appearance, attitude,
general behavior, and the ability to follow conversation
appropriately.

18 Adaptation: The claimant's adaptive characteristics and
19 abilities appear to be *within normal limits* based on
20 report, history, and evidence of activities of daily
living, social functioning, task persistence, and pacing of
living skills.

21 AR 597.

22 Thus, the ALJ met her burden at step five and did not err by
23 omitting any additional limitations as to interpersonal interactions
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1 or task persistence in the hypothetical posed to the vocational
2 expert.¹⁸

3 **IV. Conclusion**

4 In summary, substantial evidence in the record as a whole
5 supports the ALJ's determination.¹⁹ The ALJ provided germane reasons,
6 supported by substantial evidence, for rejecting the opinions of ARNP
7 Ang and ARNP Roberts.²⁰ Similarly, the ALJ provided clear and
8 convincing reasons, supported by substantial evidence, for discounting
9 Plaintiff's subjective symptom testimony.²¹ And, when posing the
10 hypothetical to the vocational expert, the ALJ was not required to
11 include additional limitations based on Dr. Reilly's report.

12 Accordingly, **IT IS HEREBY ORDERED:**

13 **1.** Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is
14 **DENIED.**

15 **2.** Defendant's Motion for Summary Judgment, **ECF No. 13**, is
16 **GRANTED.**

17 **3.** For the foregoing reasons, the Commissioner's final
18 decision is **AFFIRMED.**

19 **4.** The Clerk's Office is directed to enter **JUDGMENT** for
20 Defendant.

21
22 ¹⁸ See *Shaibi v. Berryhill*, 870 F.3d 874, 880 (9th Cir. 2017) (holding
23 that an ALJ's interpretation need only be rational to be upheld);
24 see also *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1222-23 (9th
25 Cir. 2010) (holding that the hypothetical posed to a vocational
26 expert need only be consistent with credibly assessed limitations).

¹⁹ See *Molina*, 674 F.3d at 1121.

²⁰ See *id.* at 1111. *C.f.* *Haagenson v. Colvin*, 656 Fed. App'x 800, 802
(9th Cir. 2016) (holding that ALJ's dismissal of opinions of nurse
and counselor solely because they were "other sources" was
reversible error).

²¹ See *Thomas*, 278 F.3d at 959.

