

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

Mar 17, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ERICA A.,

Plaintiff,

v.

KILOLO KIJAKAZI,
ACTING COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

No. 4:21-CV-05037-ACE

ORDER GRANTING
DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

ECF Nos. 24, 25

BEFORE THE COURT are cross-motions for summary judgment. ECF Nos. 24, 25. Attorney Chad Hatfield represents Erica A. (Plaintiff); Special Assistant United States Attorney Jeffrey Staples represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

JURISDICTION

Plaintiff filed claims for benefits (Period of Disability; Disability Insurance Benefits; and Supplemental Security Income) on September 8, 2017, alleging disability beginning September 1, 2009. The claims were denied initially and upon reconsideration. Administrative Law Judge (ALJ) Kim held a hearing on February 12, 2020, and issued an unfavorable decision on March 6, 2020. Tr. 19-31. The

1 Appeals Council denied review on January 7, 2021. Tr. 1-6. Plaintiff appealed
2 this final decision of the Commissioner on March 15, 2021. ECF No. 1.

3 STANDARD OF REVIEW

4 The ALJ is responsible for determining credibility, resolving conflicts in
5 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
6 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
7 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
8 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
9 only if it is not supported by substantial evidence or if it is based on legal error.
10 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
11 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
12 1098. Put another way, substantial evidence is such relevant evidence as a
13 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
14 *Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305
15 U.S. 197, 229 (1938)). If the evidence is susceptible to more than one rational
16 interpretation, the Court may not substitute its judgment for that of the ALJ.
17 *Tackett*, 180 F.3d at 1098; *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595,
18 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or
19 if conflicting evidence supports a finding of either disability or non-disability, the
20 ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-30
21 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be
22 set aside if the proper legal standards were not applied in weighing the evidence
23 and making the decision. *Brawner v. Sec'y of Health and Human Services*, 839
24 F.2d 432, 433 (9th Cir. 1988).

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SEQUENTIAL EVALUATION PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). In steps one through four, the claimant bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d at 1098-99. This burden is met once a claimant establishes that a physical or mental impairment prevents the claimant from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show (1) the claimant can make an adjustment to other work and (2) the claimant can perform other work that exists in significant numbers in the national economy. *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012). If a claimant cannot make an adjustment to other work in the national economy, the claimant will be found disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

ADMINISTRATIVE FINDINGS

On March 6, 2020, the ALJ issued a decision finding Plaintiff was not disabled as defined in the Social Security Act.

At step one, the ALJ found Plaintiff had not engaged in substantial gainful activity since September 1, 2009, the alleged onset date. Tr. 22.

At step two, the ALJ determined that prior to the December 31, 2013, date last insured, Plaintiff had no severe impairments. The ALJ determined that since the filing of Plaintiff’s application, Plaintiff had the following severe impairments: methamphetamine abuse; cannabis use disorder; bipolar disorder; intermittent explosive disorder; and generalized anxiety disorder. Tr. 22-23.

At step three, the ALJ found Plaintiff’s mental impairments, including her substance abuse disorder, meet the criteria of section 12.04 of 20 CFR Part 404, Subpart P, Appendix 1. The ALJ determined, however, if Plaintiff stopped the substance use, she would not have an impairment or combination of impairments

1 that meets or medically equals any of the impairments listed in 20 CFR Part 404,
2 Subpart P, Appendix 1. Tr. 23-25.

3 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and
4 determined that if Plaintiff stopped the substance use, she could perform work at
5 all exertional levels, except she must avoid all exposure to unprotected heights,
6 subject to the following limitations: performing simple, routine tasks with a
7 reasoning of 3 or less; work involving no interaction with the public although she
8 could be in the presence of the public; and work involving only occasional and
9 superficial interaction with coworkers. Tr. 26.

10 At step four, the ALJ found if Plaintiff stopped the substance use, she would
11 be unable perform past relevant work. Tr. 29.

12 At step five, the ALJ determined there are jobs that exist in significant
13 numbers in the national economy that Plaintiff can perform if she stopped the
14 substance use. Tr. 30.

15 The ALJ thus concluded Plaintiff was not disabled. Tr. 31.

16 ISSUES

17 The question presented is whether substantial evidence supports the ALJ's
18 decision denying benefits and, if so, whether that decision is based on proper legal
19 standards.

20 Plaintiff raises the following issues for review: (A) whether the ALJ erred by
21 finding no severe impairments at step two for purposes of her DIB application; (B)
22 whether the ALJ properly conducted a step three analysis; (C) whether the ALJ
23 erred by discounting her subjective complaints; and (D) whether the ALJ erred by
24 conducting an improper step five analysis. ECF No. 24 at 8.

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1 **DISCUSSION**

2 **A. Step Two**

3 For purposes of Plaintiff’s DIB claim, the ALJ found at step two that
4 Plaintiff did not have a severe impairment or combination of impairments prior to
5 the date last insured. Tr. 22. Plaintiff contends this was error, averring that the
6 ALJ erroneously discounted the severity of bipolar disorder, anxiety, and migraine
7 headaches. ECF No. 24 at 10-15. As discussed below, the Court concludes the
8 ALJ did not err at step two.

9 At step two, a claimant must make a threshold showing her medically
10 determinable impairments significantly limit her ability to perform basic work
11 activities. *See Bowen*, 482 U.S. at 145; 20 C.F.R. §§ 404.1520(c), 416.920(c). In
12 finding Plaintiff’s mental impairments non-severe, the ALJ relied on the absence
13 of “evidence of mental health treatment prior to the December 31, 2013 date last
14 insured,” noting Plaintiff’s “treatment prior to this date was limited to emergency
15 room visits for short lasting physical complaints, and a pregnancy in early 2012.”
16 Tr. 23. The ALJ thus concluded “[t]he lack of any significant mental health
17 treatment evident in the record prior to the December 31, 2013 date last insured
18 indicates that her mental impairments prior to that time was only a slight
19 abnormality having no more than a minimal effect on her ability to work. As such,
20 the undersigned finds that they were nonsevere impairments prior to the date last
21 insured.” Tr. 23.

22 Substantial evidence supports this finding. Indeed, Plaintiff’s arguments to
23 the contrary are belied by her own admissions and testimony. *See* Tr. 40
24 (admitting records for mental health treatment post-date the date last insured); Tr.
25 44 (testifying to “little [mental health] symptoms maybe once or twice a month” in
26 2012 and 2013). While Plaintiff points to diagnoses of anxiety and bipolar
27 disorder, and a singular mental status examination in 2014, *see* ECF No. 24 at 13-
28 14 (citing Tr. 341-42, 446, 628, 691), the medical record evidence on which she

1 relies is not sufficient to show these mental impairments significantly limited her
2 ability to perform basic work activities. The ALJ accordingly reasonably found
3 Plaintiff’s mental impairments non-severe during the DIB period.

4 Plaintiff also challenges the ALJ’s rejection of migraine headaches as non-
5 severe during the DIB period. ECF No. 24 at 14-15. In support, however, Plaintiff
6 points only to evidence significantly post-dating the date last insured and does not
7 suggest the ALJ overlooked a medical opinion that has retrospective applicability.
8 While the Court is mindful the ALJ does not have the expertise to evaluate what
9 clinical findings are necessary to corroborate Plaintiff’s claims, particularly when
10 the cause of migraines is generally unknown, *see Day v. Weinberger*, 522 F.2d
11 1154, 1156 (9th Cir. 1975) (recognizing that an ALJ is “not qualified as a medical
12 expert”); *Johnson v. Saul*, No. 2:18-cv-226-EFC, 2019 WL 4747701, at *4 (E.D.
13 Cal. Sept. 30, 2019) (noting that “the cause of migraine headaches is generally
14 unknown”); *Groff v. Comm’r of Soc. Sec.*, No. 7:05-CV-54, 2008 WL 4104689, at
15 *8 (N.D.N.Y. Sept. 3, 2008) (citing *The Merck Manual* 1376 (17th ed. 1999)), the
16 medical record evidence on which she relies is not sufficient to show migraine
17 headaches significantly limited her ability to perform basic work activities. The
18 ALJ accordingly did not err by failing to assess Plaintiff’s migraine headaches as
19 non-severe.

20 The ALJ accordingly did not err by finding no severe impairments at step
21 two with respect to Plaintiff’s DIB claim.

22 **B. Step Three**

23 At step three, the ALJ found that Plaintiff’s “mental impairments, including
24 her substance abuse disorder,” met the requirements of Listing 12.04 and were
25 therefore disabling. Tr. 23-24; 20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.04.
26 The ALJ then properly assessed whether Plaintiff would still be found disabled if
27 she stopped the substance abuse, and concluded she would not be. Tr. 24-31; *see*
28 *Bustamante v. Massanari*, 262 F.3d 949, 955 (9th Cir. 2001).

1 Plaintiff contends the ALJ erred by “citing no records outside October 2019”
2 and by failing to perform a longitudinal evaluation. ECF No. 24 at 16. However,
3 as noted by the Commissioner, *see* ECF No. 25 at 6, the ALJ reasonably relied on,
4 among other things, a self-function report completed in March 2018 – during a
5 period of sobriety. Tr. 25-26; *see* Tr. 243-50. Plaintiff, who bears of the burden of
6 proving that substance abuse “was not a contributing factor material to [her]
7 disability,” *Parra v. Astrue*, 481 F.3d 742, 747-48 (9th Cir. 2007), has thus failed
8 to show the ALJ erred by concluding otherwise.

9 **C. Subjective Complaints**

10 Plaintiff contends the ALJ erred by not properly assessing Plaintiff’s
11 symptom complaints. ECF No. 24 at 17-20. Where, as here, the ALJ determines a
12 claimant has presented objective medical evidence establishing underlying
13 impairments that could cause the symptoms alleged, and there is no affirmative
14 evidence of malingering, the ALJ can only discount the claimant’s testimony as to
15 symptom severity by providing “specific, clear, and convincing” reasons supported
16 by substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017).

17 The ALJ indicated Plaintiff testified “experiencing periods of high energy
18 one day and then barricading herself in her room the next” and experiencing “these
19 exacerbations approximately four days per week”; “her mental impairments have
20 caused her to be less social due to difficulty interacting with others”; and “daily
21 activities, such as grocery shopping or interactions with her children, can trigger
22 her anxiety.” Tr. 27.

23 Among other grounds, the ALJ discounted Plaintiff’s testimony as
24 inconsistent with her improvement with medication and mental health treatment.
25 Tr. 27-28. Substantial evidence supports this finding. *See* Tr. 304-307 (October 3,
26 2017, treatment note indicating Plaintiff “is working” and “is well controlled with
27 her medications”); Tr. 300-303 (December 7, 2017, treatment note indicating
28 Plaintiff “is working” and is “well controlled with her medications”); Tr. 356 (June

1 25, 2018, treatment note indicating Plaintiff has “normal mood and effect” and
2 “speech is normal and behavior is normal”); Tr. 1443 (August 23, 2018, treatment
3 note indicating Plaintiff “is well controlled with her medications”). The ALJ thus
4 reasonably relied on Plaintiff’s response to treatment to discount her testimony.
5 *See Wellington v. Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017) (“[E]vidence of
6 medical treatment successfully relieving symptoms can undermine a claim of
7 disability.”) (citing 20 C.F.R. §§ 404.1520a(c)(1), 416.920a(c)(1)); *Morgan*, 169
8 F.3d at 599.

9 Because the ALJ gave at least one valid reason for discounting Plaintiff’s
10 testimony, the Court need not address the balance of the ALJ’s stated reasons for
11 discounting Plaintiff’s testimony. Any inclusion of erroneous reasons was
12 inconsequential and therefore harmless. *See Carmickle v. Comm’r, Soc. Sec.*
13 *Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008).

14 **D. Step Five**

15 Plaintiff argues the ALJ erred at step five by relying on an incomplete
16 hypothetical to the vocational expert. ECF No. 24 at 20. This argument is
17 foreclosed because, as discussed above, the ALJ properly evaluated the medical
18 evidence and reasonably discounted Plaintiff’s testimony. This restatement of
19 Plaintiff’s argument fails to establish error at step five. *Stubbs-Danielson v.*
20 *Astrue*, 539 F.3d 1169, 1175-76 (9th Cir. 2008).

21 **CONCLUSION**

22 Having reviewed the record and the ALJ’s findings, the Court finds the
23 ALJ’s decision is supported by substantial evidence and free of error.

24 Therefore, **IT IS HEREBY ORDERED:**

25 1. Plaintiff’s Motion for Summary Judgment, **ECF No. 24**, is
26 **DENIED.**

27 2. Defendant’s Motion for Summary Judgment, **ECF No. 25**, is
28 **GRANTED.**

1 The District Court Executive is directed to file this Order and provide a copy
2 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant
3 and the file shall be **CLOSED**.

4 **IT IS SO ORDERED.**

5 DATED March 17, 2023.



Alexander C. Ekstrom

ALEXANDER C. EKSTROM

UNITED STATES MAGISTRATE JUDGE

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