

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 26 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GREGORY E. WALKER,

Plaintiff-Appellant,

v.

NANCY A. BERRYHILL, Acting
Commissioner Social Security,

Defendant-Appellee.

No. 16-16715

D.C. No.

2:14-cv-00480-JCM-PAL

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted December 6, 2017**
San Francisco, California

Before: RAWLINSON and OWENS, Circuit Judges, and RICE,*** Chief District
Judge.

* 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 Thomas O. Rice, Chief United States District Judge
for the Eastern District of Washington, sitting by designation.

Gregory E. Walker appeals the district court's order affirming the Social Security Administration's denial of his application for disability benefits. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review the district court's order de novo and may reverse the agency's denial of benefits only if the ALJ's decision is not supported by substantial evidence or contains legal error. *Garrison v. Colvin*, 759 F.3d 995, 1009-10 (9th Cir. 2014). We affirm.

Walker argues the ALJ erred in failing to explain why the Residual Functional Capacity (RFC) departed from the "accepted" or "adopted" finding that Walker was limited to one- and two-step tasks, as opined by the reviewing provider Sally Skewis, Ph.D. Notably, Walker does not challenge the weight given to any medical opinion or the ALJ's finding that Walker was not entirely credible.

A review of the ALJ's decision demonstrates the ALJ did not accept or adopt the limitation to one- and two-step tasks, although the ALJ adopted a separate portion of Dr. Skewis's opinion. As such, Walker's argument is based on a false premise and thus fails. Walker does not otherwise argue the RFC determination was not supported by substantial evidence. Accordingly, Walker has waived any additional argument that the RFC was not supported by substantial evidence. *Maldonado v. Morales*, 556 F.3d 1037, 1048 n.4 (9th Cir. 2009) ("Arguments made in passing and inadequately briefed are waived.").

Moreover, the ALJ found Walker was not eligible for benefits because Walker was non-compliant with his treatment regimen without providing a good reason. This is an independent basis for denying Walker's application. 20 C.F.R. § 404.1530(b). Walker never challenged this finding and thus waives the argument. *Maldonado*, 556 F.3d at 1048 n.4. As a result, any purported error in Walker's assigned RFC would be harmless.

AFFIRMED.