

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 18 2019

FOR THE NINTH CIRCUIT

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

MICHAEL J DELEGANS,

Plaintiff-Appellant,

v.

NANCY A. BERRYHILL, Commissioner of
Social Security,

Defendant-Appellee.

No. 17-36035

D.C. No. 2:16-cv-00070-RHW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Robert H. Whaley, District Judge, Presiding

Submitted March 4, 2019**
Seattle, Washington

Before: GOULD and PAEZ, Circuit Judges, and BASHANT,*** District Judge.

Michael Delegans appeals the district court's order affirming the
Commissioner of Social Security's denial of his application for disability insurance

* 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 Cynthia A. Bashant, United States District Judge for the Southern District of California, sitting by designation.

benefits and supplemental security income under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401-433, §§ 1381-1383(c). Delegans alleged disability due to gastrointestinal conditions; back, right hand, and knee pain; and mental impairments including bipolar disorder and depression. Delegans applied for social security benefits in February 2009 and again in August 2011. After hearing the consolidated claims on remand from this court, the administrative law judge (“ALJ”) issued an unfavorable decision. The district court affirmed. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The ALJ gave “clear and convincing” reasons supported by “specific findings” for discounting Delegans’s testimony on the intensity and limiting effects of his mental and physical impairments. *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993). First, the ALJ discredited Delegans’s testimony about the severity and limiting effects of his physical impairments because that testimony conflicted with the treatment notes and objective medical evidence in the record. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001). Second, the ALJ explained that Delegans’s activities of daily living were inconsistent with his allegations of total disability. *Molina v. Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012). Third, the ALJ observed that Delegans’s testimony was internally inconsistent. *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996).

Any challenge to the ALJ's rejection of Delegans's symptom testimony about his mental limitations is meritless. The ALJ gave specific and convincing reasons to reject Delegans's testimony about his mental limitations. Delegans reported problems being around others. But that conflicted with treatment notes and reports of his daily living activities. *Tonapetyan*, 242 F.3d at 1148. The ALJ also noted that Delegans voluntarily discontinued taking medication for his mental health conditions. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).

2. The ALJ provided specific and legitimate reasons for rejecting the opinions of Drs. Kenderdine, Halley, Widlan, Leung, Pellicer, Burdge, Jackson, and Birger. For each source, the ALJ concluded that the expressed limitations conflicted with the treatment notes and objective imaging in the record and the ALJ gave examples of contradictory record evidence. An ALJ “may discredit treating physicians’ opinions that are conclusory, brief, and unsupported by the record as a whole . . . or by objective medical findings.” *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). The ALJ also properly discredited certain opinions that appeared to rely primarily on Delegans's self-reported symptoms. Reliance on the claimant's subjective reports is a valid reason to discount a provider's opinion where, as here, the claimant is not credible and the opinion is based “to a large extent” on the self-reports. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). Finally, the ALJ also properly discredited certain opinions that lacked

explanation or clinical findings to support the conclusions and opined limitations.

See Batson, 359 F.3d at 1195.

3. Delegans objects to the ALJ's decision to give "great" or "significant" weight to multiple other doctors in the record including Dr. McKnight, Dr. St. Louis, and Dr. Thompson. Delegans argues that the ALJ erred by failing to acknowledge that the opinions of non-examining physicians are generally entitled to less weight than treating and examining physicians. But Delegans is mistaken. The ALJ said that she considered the opinions in accord with the requirements of 20 C.F.R. § 404.1527, the same regulation Delegans claims that she overlooked. The ALJ supported her reliance on each non-examining physician based on the record.

4. Delegans recites medical records and asserts, without explanation, that "all of this evidence is consistent with the opinions" of the discounted medical source opinions. But the ALJ thoroughly considered those records in making her determination. Delegans does no more than "argue[] that the ALJ could have come to a different conclusion in weighing" the medical evidence. *See Shaibi v. Berryhill*, 870 F.3d 874, 880 (9th Cir. 2017). "We must uphold the ALJ's decision where the evidence is susceptible to more than one rational interpretation." *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989).

5. The ALJ did not err in rejecting the “other source” testimony of Delegans’s licensed clinical social worker, Russel Anderson, and Delegans’s girlfriend, Karie Tucker. An ALJ must give reasons “germane to” each lay testimony before discounting it. *Dodrill*, 12 F.3d at 919. Anderson opined that Delegans is limited in his ability to stand, walk, sit, or kneel for any length of time by chronic pain associated with medical problems, and that he is unable to perform his usual line of work in heavy labor. The ALJ credited Anderson’s opinion that Delegans could not perform his past work but gave no weight to Anderson’s opinions regarding Delegans’s physical limitations because these opinions are not within Anderson’s area of expertise. Because the ALJ gave a germane reason for rejecting Anderson’s testimony, the ALJ properly rejected it. Any error by the ALJ in overlooking Anderson’s observations about Delegans’s mental health symptoms and diagnoses, was harmless because, as noted above, Delegans voluntarily stopped taking his medication and consistently reported feeling well off medication after 2011. *See Molina*, 674 F.3d at 1115.

At the second hearing, Tucker testified that Delegans was in and out of the bathroom twenty times per day on an average day, for a total of six hours, and forty times on a bad day. She also testified that Delegans does not socialize much because he becomes uncomfortable with many people in the room, his mood fluctuates, and he has a bad memory. The ALJ concluded that Tucker’s statements

supported that Delegans has limitations but generally reflected the same allegations made by Delegans, which the ALJ properly determined were not entirely credible. *See Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009).

6. The ALJ did not err in assessing Delegans's residual functional capacity ("RFC"). Delegans contends that the assessed RFC is incomplete because it does not account for the limitations described by the eight medical providers and two other sources rejected by the ALJ. This argument fails, however, because the ALJ did not err in her treatment of the disputed medical experts or other sources.

7. Delegans contends that the ALJ did not identify jobs available in significant numbers that Delegans could perform despite his functional limitations. But this argument merely restates Delegans's rejected challenge to the RFC finding. *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175–76 (9th Cir. 2008).

AFFIRMED.