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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SAMUEL IAN WEITMAN, Plaintiff-Appellant, v. KILOLO KIJAKAZI, Acting Commissioner of Social Security, Defendant-Appellee.	No. 21-35748 D.C. No. 2:20-cv-01122-MK MEMORANDUM[*]

Appeal from the United States District Court
for the District of Oregon
Mustafa T. Kasubhai, Magistrate Judge, Presiding

Submitted November 10, 2022[**]
Portland, Oregon

Before: CLIFTON and H.A. THOMAS, Circuit Judges, and BAKER,[***] International Trade 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 M. Miller Baker, Judge for the United States Court of International Trade, sitting by designation.

Plaintiff-Appellant Samuel Ian Weitman appeals the district court's order affirming an Administrative Law Judge's ("ALJ") denial of Social Security disability insurance benefits. We have jurisdiction under 28 U.S.C. § 1291. We review the district court's decision de novo and uphold an ALJ's disability determination "unless it is either not supported by substantial evidence or is based upon legal error." *Woods v. Kijakazi*, 32 F.4th 785, 788 (9th Cir. 2022). "Substantial evidence means . . . the evidence must be more than a mere scintilla, but may be less than a preponderance." *Smith v. Kijakazi*, 14 F.4th 1108, 1111 (9th Cir. 2021). We "will not reverse an ALJ's decision where the error was harmless." *Id.* We affirm.

Weitman suffers from obsessive compulsive disorder ("OCD"), anxiety, and depression. In following the five-step sequential analysis to determine whether Weitman was disabled for the purposes of disability insurance benefits, *see Keyser v. Comm'r Soc. Sec. Admin.*, 648 F.3d 721, 724–25 (9th Cir. 2011), the ALJ determined that these impairments, while likely to produce the symptoms he claimed, were not so severe during the insured period as to warrant benefits. In making that determination, the ALJ discounted Weitman's own testimony and that of nonmedical lay witnesses as inconsistent with the medical records. The ALJ's rejection of the testimony and her conclusion that Weitman's impairments were not severe during the insured period were both supported by substantial evidence.

First, the ALJ provided "specific, clear, and convincing reasons" for rejecting Weitman's testimony. *Smith*, 14 F.4th at 1112. The ALJ pointed to testimony that was contradicted by the medical record and evidence that medical treatment rendered Weitman's symptoms less severe than he testified. *See Carmickle v. Comm'r Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) ("Contradiction with the medical record is a sufficient basis for rejecting the claimant's subjective testimony."); *Wellington v. Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017) ("[E]vidence of medical treatment successfully relieving symptoms can undermine a claim of disability.").

Here, the ALJ highlighted Weitman's specific testimony that he was unable "to work because he was too easily overwhelmed without somebody close by that he trusts" and that "his current limitations have been consistent throughout his life, but he used to hide it from his doctors." The ALJ then cited conflicting medical evidence from during and after the insured period,[1] including medical records that stated: (1) that Weitman "denie[d] current anxiety, depression or [suicidal ideation]"; (2) that Weitman's anxiety, depression, and insomnia were "well controlled on this regimen" of medication over a period of years; (3) that Weitman was "[a]lert and oriented to person, place and time[, p]leasant, conversant, . . . [and

[1] "We think it is clear that reports containing observations made after the period for disability are relevant to assess the claimant's disability." *Smith v. Bowen*, 849 F.2d 1222, 1225 (9th Cir. 1988).

w]ell groomed"; and (4) that Weitman displayed "[n]ormal affect, judgment and insight."[2] Based on this evidence, the ALJ reasonably concluded that Weitman's mental health symptoms were not as severe as he testified.[3]

Second, the ALJ provided a sufficient, germane reason for rejecting the lay testimony from Weitman's family and friends and his high school: inconsistency with the medical record. *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005) ("Inconsistency with medical evidence is one such [germane] reason.").[4] Because inconsistency with those medical records was the same clear-and-convincing

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[2] Though none of the evidence the ALJ cited discusses Weitman's OCD specifically, the overlap in his own testimony regarding his symptoms makes any error harmless, as the ALJ would have reached the same conclusions had the OCD been referenced. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (stating harmless error is "inconsequential to the ultimate nondisability determination").

[3] Weitman challenges the ALJ's determination that he was engaged in substantial gainful activity before the insured period, arguing that this finding affected her analysis of the credibility of his testimony. We agree with Weitman that the ALJ was wrong to require him to provide documentation from his employer before she considered other evidence that he required substantial assistance to perform work. But this error does not negate the contradictions with the medical record, which provided a sufficient basis for rejecting Weitman's testimony. *See Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012), *superseded by regulation on other grounds*.

[4] The government argues that we should discard the germaneness standard for rejecting lay witness testimony because of the 2017 changes to the Social Security regulations. *See* 20 C.F.R. § 404.1520c (discussing how the Social Security Administration considers and articulates findings for claims filed on or after March 27, 2017). We need not—and do not—reach the issue because the germaneness standard is satisfied here.

reason given for rejecting Weitman's own testimony, "it follows that the ALJ also gave germane reasons for rejecting the lay witness testimony." *Leon v. Berryhill*, 880 F.3d 1041, 1046 (9th Cir. 2018). Since the ALJ rejected all of the lay testimony for the same germane reason, she was not required to discuss each witness individually. *Molina*, 674 F.3d at 1114.

We note, however, that the ALJ was wrong to discount testimony from Weitman's family and friends simply because she believed them to be "colored by affection for the claimant and a natural tendency to agree with [him]." We have been clear that such "wholesale dismissal" of family witnesses based on a perception of their inherent bias is reversible legal error. *Smolen v. Chater*, 80 F.3d 1273, 1289 (9th Cir. 1996). Nonetheless, this error was harmless because "there remains substantial evidence supporting the ALJ's decision and the error does not negate the validity of the ALJ's ultimate conclusion." *Molina*, 674 F.3d at 1115. Specifically, the ALJ explained that she rejected the statements in part because they "suggest that claimant's conditions and limitations have essentially not changed since his childhood," while the medical records showed that his limitations had improved.

Finally, because the ALJ cited relevant medical evidence and this Court "may not substitute its judgment" for the ALJ's, *Flaten v. Sec'y of Health & Hum. Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995), we do not disturb the ALJ's conclusion

that Weitman's impairments were not severe during the insured period. After identifying the medically determinable mental impairments, the ALJ rated the degree of functional limitation resulting from Weitman's impairments in four functional areas. *See* 20 C.F.R. § 404.1520a(c)(3). This Court has held that if the ALJ rates and assesses the four functional areas, no "more specific findings of the claimant's functional limitations" are required. *Hoopai v. Astrue*, 499 F.3d 1071, 1078 (9th Cir. 2007).

Here, the ALJ listed the four functional areas and assessed that "the claimant's medically determinable mental impairments caused no more than 'mild' limitation in any" of the four areas. The ALJ also cited reasonable medical evidence from the insured period to support her non-severity conclusion as a whole. The ALJ therefore met the minimal *Hoopai* requirement.

In sum, the ALJ's decision to reject the claimant and lay testimony and to conclude that Weitman's impairments were not severe was supported by substantial evidence.

AFFIRMED.