

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 16 2022

FOR THE NINTH CIRCUIT

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

TAMI BOROWICK,

Plaintiff-Appellant,

v.

KILOLO KIJAKAZI, Acting Commissioner
of Social Security,

Defendant-Appellee.

No. 21-36022

D.C. No. 2:21-cv-00328-BAT

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Brian A. Tsuchida, Magistrate Judge, Presiding

Argued and Submitted December 7, 2022
San Francisco, California

Before: BRESS and VANDYKE, Circuit Judges, and RESTANI,** Judge.

Tami Borowick appeals the district court's order affirming an
Administrative Law Judge's ("ALJ") denial of Social Security disability benefits.

We have jurisdiction under 28 U.S.C. § 1291. We review the district court's

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Jane A. Restani, Judge for the United States Court of International Trade, sitting by designation.

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) (quoting *Luther v. Berryhill*, 891 F.3d 872, 875 (9th Cir. 2018)). Substantial evidence “means—and means only—such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (citation omitted). We affirm.

First, substantial evidence supports the ALJ’s discounting of Borowick’s subjective symptom testimony. When there is no evidence of malingering, an ALJ may “reject the claimant’s testimony about the severity of her symptoms only by offering specific, clear and convincing reasons for doing so.” *Smith v. Kijakazi*, 14 F.4th 1108, 1112 (9th Cir. 2021) (quoting *Garrison v. Colvin*, 759 F.3d 995, 1014–15 (9th Cir. 2014)). In considering the severity of Borowick’s symptoms, the ALJ found that Borowick’s testimony concerning the intensity, persistence, and limiting effects of her symptoms to be “not entirely consistent with the medical evidence.” The ALJ found Borowick’s fatigue had improved with CPAP therapy and rheumatological treatment, and that her lung x-rays were unremarkable. The ALJ determined that Borowick’s exercise routine to be inconsistent with her assertion of minimal stamina and found her severe cognitive symptoms to be inconsistent with her results on cognitive tests.

Second, the ALJ did not err in discounting Borowick's treating physicians' opinions. The ALJ applied 20 C.F.R. § 404.1520c(a), which clearly states that no medical opinions will be given "any specific evidentiary weight" at the outset of evaluating a medical opinion. Rather, an ALJ must determine the persuasiveness of an opinion based on the most important factors of supportability and consistency and "explain how [he or she] considered the supportability and consistency factors for a medical source's medical opinions." 20 C.F.R. § 404.1520c(b)(2). The ALJ found Borowick's treating physician's opinions to be unpersuasive. The ALJ determined that most of the substance of the medical opinions was based on Borowick's self-reporting of symptoms, which he previously found to be not entirely consistent with the record.

We must uphold the ALJ's finding that Borowick's symptoms were only partially consistent with the record and that Borowick's doctors' opinions were unpersuasive. Even if the evidence could be construed differently, the ALJ provided an interpretation of the evidence that a reasonable mind could accept, satisfying substantial evidence review. *See Biestek*, 139 S. Ct. at 1154.

AFFIRMED.