

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 8 2022

FOR THE NINTH CIRCUIT

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

DANNY JOHNSON,

Plaintiff-Appellant,

v.

KILOLO KIJAKAZI, Acting Commissioner  
of Social Security,

Defendant-Appellee.

No. 22-15066

D.C. No. 2:20-cv-01225-SMB

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Susan M. Brnovich, District Judge, Presiding

Submitted December 6, 2022\*\*  
Phoenix, Arizona

Before: WARDLAW and BUMATAY, Circuit Judges, and SCHREIER,\*\* District  
Court Judge.

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\* 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 Karen E. Schreier, Judge for the United States District  
Court for the District of Arizona, sitting by designation.

Danny Johnson appeals from the district court's order affirming the Commissioner of Social Security's denial of disability insurance benefits for the closed period of June 22, 2013 through May 31, 2017. "We review the district court's order affirming the [Administrative Law Judge]'s denial of social security benefits de novo and will disturb the denial of benefits only if the decision contains legal error or is not supported by substantial evidence." *Lambert v. Saul*, 980 F.3d 1266, 1270 (9th Cir. 2020) (simplified). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The Administrative Law Judge (ALJ) gave "specific and legitimate reasons," *Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020) (simplified), to discount the medical opinion evidence of Drs. Woodward, Stewart, and Shah.

Dr. Woodward diagnosed Johnson with depressive disorder and opined that Johnson had multiple mental limitations. The ALJ accepted Dr. Woodward's diagnosis but assigned no weight to the specific limitations because they were speculative and against the weight of evidence. As the ALJ noted, Dr. Woodward only opined that Johnson "*may* have difficulty remembering detailed instructions . . . [or] maintaining attention and concentration for extended periods." The ALJ also cited evidence conflicting with Dr. Woodward's conclusions, including reports from Johnson's treatment providers at a rehabilitation center that indicated that Johnson retained normal mental status and presented "congruent affect, appropriate

appearance, unremarkable behavior, and good insight.” Where there is conflicting evidence in the record, the ALJ is entitled to resolve that conflict. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). These were sufficient reasons to discount Dr. Woodward’s opinion.

Dr. Stewart opined that Johnson had “moderately severe” or “severe” limitations in many forms of mental functioning and opined that Johnson’s “pain level as well as pain medication have significantly impacted his cognitive and emotional functioning over the last 2 years,” which created challenges “maintaining concentration, focus and working memory.” The ALJ, however, properly noted that the treatment record and other medical observations close to the time when Dr. Stewart assessed Johnson were inconsistent with Dr. Stewart’s opinion.<sup>1</sup> For example, other providers noted Johnson retained appropriate mood, pleasant affect, full orientation, intact memory, good eye contact, normal speech, intact judgment and insight, and no distress. The ALJ also referenced Johnson’s ability to perform daily activities and start his own business.

Dr. Shah’s evaluation recommended limiting Johnson to twenty hours of work per week and lifting no more than fifty pounds. Dr. Shah also opined that Johnson would have mild to moderate mental limitations and be absent from work more than

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<sup>1</sup> The ALJ also discounted Dr. Stewart’s opinion because the assessment reflected a treatment period of one day (September 1, 2015). The ALJ may have erred in this finding, so we do not rely on it.

four days per month. Substantial evidence supports the ALJ's decision to assign Dr. Shah's opinion little weight. The ALJ noted that examining physician Dr. Patel opined that Johnson could perform sedentary to light activity, and Dr. Stevens opined that Johnson could return to work provided he was not required to lift more than forty pounds. And Johnson's surgeon, Dr. Crowder, opined that Johnson could return to light duty work because he could sit and do office work. The ALJ was entitled to resolve this conflicting record evidence. *See id.*

2. We reject Johnson's argument that the ALJ improperly discounted his testimony regarding the severity of his medical impairments. To reject a claimant's testimony about subjective pain or symptoms, an ALJ must provide "specific, clear and convincing reasons" for doing so. *Garrison v. Colvin*, 759 F.3d 995, 1014–15 (9th Cir. 2014) (citation omitted). At Johnson's two hearings before the ALJ, he testified that he suffered from constant lower back pain, he alleged a pain level of 8 out of 10, and he claimed that during the closed period he was treated with high doses of narcotics so that he "didn't know what was up or down at the time."

The ALJ noted that Johnson is independent and can manage his "personal hygiene, household chores, driving, volunteering, and caregiving." Johnson was able to attend his son's football games, spend time with his significant other, and travel to visit family in Arkansas. The ALJ found that Johnson's allegations of mental impairments were inconsistent with neurocognitive evaluations and mental

status exams which reflected normal functioning. A physical exam performed in October 2013 indicated “5 out of 5” strength in Johnson’s lower extremities. The ALJ acknowledged that Johnson’s back pain caused him limitations, but noted improvements due to surgery, treatment, and medication. These are sufficiently specific, clear, and convincing reasons to discount Johnson’s testimony about the severity of his impairments.

3. Because we hold that the ALJ did not err in discounting medical expert opinion evidence and Johnson’s testimony, we reject Johnson’s final argument that the ALJ posed improper hypotheticals to the vocational expert.

**AFFIRMED.**