

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 12 2022

FOR THE NINTH CIRCUIT

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

GORDON SCOTT DE MELLO,

Plaintiff-Appellant,

v.

KILOLO KIJAKAZI, Acting Commissioner
of Social Security,

Defendant-Appellee.

No. 22-35111

D.C. No. 6:20-cv-01207-CL

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Mark D. Clarke, Magistrate Judge, Presiding

Submitted December 8, 2022**
Seattle, Washington

Before: O'SCANNLAIN, McKEOWN, and MILLER, Circuit Judges.

Gordon De Mello appeals from the district court's decision affirming the
Commissioner of Social Security's ("Commissioner") denial of disability benefits.

We review the agency's findings for substantial evidence, which is "such relevant

* 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).

evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019). We affirm.

Contrary to De Mello’s argument, the Administrative Law Judge (“ALJ”) provided sufficiently “specific, clear and convincing” reasons for rejecting De Mello’s testimony about the severity of his pain and symptoms. *See Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014). Looking to the entirety of the ALJ decision reveals sufficient reasoning. *See Kaufmann v. Kijakazi*, 32 F.4th 843, 851 (9th Cir. 2022). The ALJ specified that De Mello’s testimony about his back pain, the headaches related to his cervical spine, and his wrist and thumb impairments was contrary to “the objective medical evidence showing stable back pain on Percocet” and “hand/wrist symptom relief with injections and surgery.” The ALJ further explained that De Mello’s fishing activity undercut his allegations about his “problems handling and fingering with both of his hands,” and that the treatment notes stating that he appeared “well-developed, well-nourished, in no apparent distress, and alert and oriented” undermined his allegations of chronic pain and exhaustion.

Additionally, despite De Mello’s claim to the contrary, the ALJ permissibly rejected the testimony of De Mello’s wife, which overlapped with De Mello’s own testimony. The ALJ explained that the “record as a whole . . . does not support any additional or greater limitations that Mrs. De Mello’s statements might suggest.”

Further, Mrs. De Mello's testimony regarding De Mello's limitations "did not describe any limitations beyond those" De Mello himself described, which the ALJ "rejected based on well-supported, clear and convincing reasons." *See Molina v. Astrue*, 674 F.3d 1104, 1122 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R. § 404.1502(a). In any event, any claimed error was harmless because, given the similarity between Ms. De Mello's report and De Mello's testimony, "the lay testimony did not alter the ultimate nondisability determination." *Id.*

Finally, De Mello's argument that the ALJ's residual functional capacity ("RFC") findings and vocational expert hypotheticals failed to include the limitations established in his and his wife's testimony is unavailing. De Mello does not identify any particular limitation the ALJ failed to include, and the ALJ considered "the total limiting effects caused by medically determinable impairments and the claimant's subjective experiences of pain" when determining the RFC. *See Garrison v. Colvin*, 759 F.3d 995, 1011 (9th Cir. 2014). The hypothetical questions the ALJ posed to the vocational expert also included all of De Mello's "limitations and restrictions." *See Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009). Accordingly, substantial evidence supports the ALJ's RFC determination, and the ALJ did not err with respect to the vocational expert hypotheticals.

AFFIRMED.