

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 7 2022

FOR THE NINTH CIRCUIT

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

JACOB MICHAEL SCHOTTHOEFER,

Plaintiff-Appellant,

v.

KILOLO KIJAKAZI, Acting Commissioner
of Social Security,

Defendant-Appellee.

No. 22-35162

D.C. No. 2:20-cv-00993-AC

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
John V. Acosta, Magistrate Judge, Presiding

Submitted December 5, 2022**
San Francisco, California

Before: LUCERO,** BRESS, and VANDYKE, Circuit Judges.

Jacob Schotthoefer appeals the district court's order affirming the Commissioner of Social Security's denial of disability benefits and supplemental

* 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 Carlos F. Lucero, United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

Social Security income. “We review the district court’s order affirming the [Administrative Law Judge’s (ALJ’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) (citation and quotation marks omitted). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. Substantial evidence supports the ALJ’s discounting of Schotthoefer’s subjective symptom testimony. When there is no evidence of malingering, an ALJ may “reject [a] claimant’s testimony about the severity of [his] 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 Schotthoefer’s residual functional capacity in the absence of substance abuse, *see Parra v. Astrue*, 481 F.3d 742, 747 (9th Cir. 2007), the ALJ found Schotthoefer’s testimony concerning the intensity, persistence, and limiting effects of his symptoms to be inconsistent with other evidence in the record showing improvement during periods of sobriety. Moreover, the ALJ found that Schotthoefer’s work activity and activities of daily living undermined his testimony

as to claimed extreme concentration deficits and social isolation. The record supports the ALJ's determination.¹

2. The ALJ properly evaluated the persuasiveness of Counselor Porterfield's medical opinion using the factors listed in 20 C.F.R. § 404.1520c, and the ALJ's discounting of Porterfield's opinion is supported by substantial evidence. *See Woods v. Kijakazi*, 32 F.4th 785, 787, 791–92 (9th Cir. 2022) (explaining that the “specific and legitimate” standard for evaluating medical opinions no longer governs in light of new regulations, but that “an ALJ cannot reject an examining or treating doctor's opinion as unsupported or inconsistent without providing an explanation supported by substantial evidence”). The ALJ reasonably explained that Porterfield's opinion as to Schotthoefer's limitations in the absence of substance abuse was unsupported and inconsistent with other evidence in the record. In particular, the ALJ reasonably relied upon Schotthoefer's attentiveness during group therapy sessions, his improvements during periods of sobriety, and his work and daily living activities to conclude that Porterfield's opinion as to Schotthoefer's marked social limitations was not consistent with the record. Schotthoefer's additional challenges to the ALJ's consideration of Porterfield's opinion likewise lack merit.

¹ Because we conclude that the ALJ provided specific, clear, and convincing reasons for discounting Schotthoefer's subjective symptom testimony, we need not address the Commissioner's argument that Schotthoefer was malingering in his testimony.

3. In assessing the persuasiveness of Dr. Whitehead's consultative medical opinion, the ALJ properly considered the factors listed in 20 C.F.R. § 404.1519p. The ALJ reasonably determined that Dr. Whitehead's opinion regarding Schotthoefer's social limitations in the absence of substance abuse was inconsistent with the rest of the medical record, and that Dr. Whitehead had not sufficiently considered the degree of impairment caused by substance abuse. The ALJ's determination is supported by substantial evidence, including that Schotthoefer had fewer symptoms during periods of sobriety and was able to then engage in work and other productive activities.

4. Schotthoefer's arguments regarding residual functional capacity and vocational hypotheticals are premised on the asserted validity of the discounted subjective symptom testimony and the medical opinions of Counselor Porterfield and Dr. Whitehead. Because the ALJ reasonably discounted that evidence, Schotthoefer's other arguments fail.

AFFIRMED.