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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Susan M. Schreffler,

No. CV-13-08051-PCT-NVW

10 Plaintiff,

ORDER

11 v.

12 Carolyn W. Colvin, Acting Commissioner
13 of Social Security

14 Defendant.
15

16 Plaintiff Susan M. Schreffler seeks review under 42 U.S.C. § 405(g) of the final
17 decision of the Commissioner of Social Security (“the Commissioner”), which denied her
18 disability insurance benefits and supplemental security income under sections 216(i),
19 223(d), and 1614(a)(3)(A) of the Social Security Act. Because the decision of the
20 Administrative Law Judge (“ALJ”) is supported by substantial evidence and is not based
21 on legal error, the Commissioner’s decision will be affirmed.

22 **I. BACKGROUND**

23 **A. Factual Background**

24 Schreffler was born in November 1962 and was thirty-five years old on the alleged
25 disability onset date. She has at least a high school education and is able to communicate
26 in English. She previously worked as a laborer and utility worker at a coal-fired power
27 plant. She alleges both psychological and physical medical problems, including
28 schizoaffective disorder, hypertension, diabetes, heart murmur, osteoporosis, sleep apnea,
osteoarthritis, peripheral neuropathy, and a disc protrusion at lumbar level L5-S1.

1 Schreffler has had years of psychological treatment for substance abuse issues, which
2 include use of alcohol and methamphetamine.

3 **B. Procedural History**

4 Schreffler applied for disability insurance benefits on February 27, 2008, and for
5 supplemental security income on February 29, 2008, alleging disability beginning May 6,
6 1998. On June 7, 2011, she appeared with her attorney and testified at a hearing before
7 the ALJ.

8 On July 19, 2011, the ALJ issued a decision that Schreffler was not disabled
9 within the meaning of the Social Security Act. The Appeals Council denied Schreffler's
10 request for review of the hearing decision, making the ALJ's decision the
11 Commissioner's final decision. On March 13, 2013, Schreffler sought review by this
12 Court.

13 **II. STANDARD OF REVIEW**

14 The district court reviews only those issues raised by the party challenging the
15 ALJ's decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The court
16 may set aside the Commissioner's disability determination only if the determination is
17 not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d
18 625, 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, less than a
19 preponderance, and relevant evidence that a reasonable person might accept as adequate
20 to support a conclusion considering the record as a whole. *Id.* In determining whether
21 substantial evidence supports a decision, the court must consider the record as a whole
22 and may not affirm simply by isolating a "specific quantum of supporting evidence." *Id.*
23 As a general rule, "[w]here the evidence is susceptible to more than one rational
24 interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be
25 upheld." *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

26 **III. FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

27 To determine whether a claimant is disabled for purposes of the Social Security
28 Act, the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears

1 the burden of proof on the first four steps, but at step five, the burden shifts to the
2 Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).

3 At the first step, the ALJ determines whether the claimant is engaging in
4 substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not
5 disabled and the inquiry ends. *Id.* At step two, the ALJ determines whether the claimant
6 has a “severe” medically determinable physical or mental impairment.
7 § 404.1520(a)(4)(ii). If not, the claimant is not disabled and the inquiry ends. *Id.* At step
8 three, the ALJ considers whether the claimant’s impairment or combination of
9 impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P
10 of 20 C.F.R. Pt. 404. § 404.1520(a)(4)(iii). If so, the claimant is automatically found to
11 be disabled. *Id.* If not, the ALJ proceeds to step four. At step four, the ALJ assesses the
12 claimant’s residual functional capacity and determines whether the claimant is still
13 capable of performing past relevant work. § 404.1520(a)(4)(iv). If so, the claimant is not
14 disabled and the inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final step,
15 where he determines whether the claimant can perform any other work based on the
16 claimant’s residual functional capacity, age, education, and work experience.
17 § 404.1520(a)(4)(v). If so, the claimant is not disabled. *Id.* If not, the claimant is
18 disabled. *Id.*

19 At step one, the ALJ found that Schreffler meets the insured status requirements of
20 the Social Security Act through December 31, 2004, and that she has not engaged in
21 substantial gainful activity since May 6, 1998. To obtain disability insurance benefits,
22 Schreffler must prove disability before December 31, 2004. To obtain supplemental
23 security income, she must prove disability from February 2008 through July 19, 2011.

24 At step two, the ALJ found that Schreffler has the following severe combination of
25 impairments: polysubstance dependence, anxiety disorder not otherwise specified, and
26 mood disorder not otherwise specified. At step three, the ALJ determined that Schreffler
27 does not have an impairment or combination of impairments that meets or medically
28 equals an impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404.

1 At step four, the ALJ found that, based on all of her impairments, including the
2 substance abuse disorders, Schreffler:

3 has the residual functional capacity to perform light work as
4 defined in 20 CFR 404.1567(b) and 416.967(b) with the
5 following limitations/restrictions:

- 6 • The claimant is limited to simple and repetitive tasks
- 7 • The claimant must avoid work related hazards
- 8 • The claimant must avoid jobs requiring frequent
9 interacting with the public, supervisors, and co-
10 workers
- 11 • The claimant would miss more than four days [of]
work each month due to substance abuse

12 The ALJ further found that Schreffler is unable to perform past relevant work. At step
13 five, the ALJ concluded that, considering Schreffler's age, education, work experience,
14 and residual functional capacity based on all of the impairments, including the substance
15 use disorders, there are no jobs that exist in significant numbers in the national economy
16 that Schreffler can perform.

17 The ALJ made additional findings regarding whether Schreffler would be found
18 disabled if she stopped substance use. He found that, if Schreffler stopped the substance
19 use, the remaining limitations (anxiety and mood disorders) would cause more than a
20 minimal impact on the claimant's ability to perform basic work activities; therefore, she
21 would continue to have a severe impairment or combination of impairments. If she
22 stopped the substance use, she would not have an impairment or combination of
23 impairments that meets or medically equals any of the impairments listed in 20 C.F.R.
24 Part 404, Subpart P, Appendix 1. If she stopped the substance use, she would have the
25 residual functional capacity to perform light work as defined in 20 C.F.R. §§ 404.1567(b)
26 and 416.967(b) except limited to simple and repetitive tasks and only occasional
27 interaction with supervisors, co-workers, and the public. With that residual functional
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1 capacity, there would be jobs that exist in significant numbers in the national economy
2 that Schreffler could perform.

3 The ALJ concluded that because Schreffler would not be disabled if she stopped
4 the substance use, her substance use disorder is a contributing factor material to the
5 determination of disability, and therefore she has not been disabled within the meaning of
6 the Social Security Act at any time from the alleged onset date through the date of his
7 decision.

8 **IV. ANALYSIS**

9 Schreffler does not dispute the ALJ's assessment that alcohol materially
10 contributes to her psychological issues of record for most of the period in question. The
11 only issue Schreffler raises on appeal is whether the ALJ committed legal error by failing
12 to consider her physical impairments. The ALJ's hearing decision shows that he fully
13 considered her alleged physical impairments and sufficiently explained why he did not
14 find them to be severe.

15 Under Social Security Rules,

16 No symptom or combination of symptoms can be the basis
17 for a finding of disability, no matter how genuine the
18 individual's complaints may appear to be, unless there are
19 medical signs and laboratory findings demonstrating the
existence of a medically determinable physical or mental
impairment.

20 SSR 96-4p; SSR 96-7p. In evaluating the credibility of a claimant's testimony regarding
21 subjective pain or other symptoms, the ALJ is required to engage in a two-step analysis:
22 (1) determine whether the claimant presented objective medical evidence of an
23 impairment that could reasonably be expected to produce some degree of the pain or
24 other symptoms alleged; and, if so with no evidence of malingering, (2) reject the
25 claimant's testimony about the severity of the symptoms only by giving specific, clear,
26 and convincing reasons for the rejection. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir.
27 2009).

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1 Schreffler contends that she has the following documented physical problems:
2 hypertension, coronary artery disease, irritable bowel syndrome, peripheral neuropathy,
3 osteoarthritis, obstructive sleep apnea, and lumbar spondylosis with radiculopathy
4 (lumbar disc protrusion). She asserts that the ALJ “misinterpreted the physical problems
5 of the claimant because he has apparently not reviewed and not cited the objective
6 findings of peripheral neuropathy or lumbar disc protrusion.” In support of that assertion,
7 she cites a March 2, 2010 report stating that an electrodiagnostic study reveals evidence
8 of peripheral neuropathy in bilateral lower extremities and recommending follow-up with
9 the referring physician. She does not cite the September 13, 2010 treatment notes that
10 state that she had not started on gabapentin even though it was ordered in February 2010
11 to treat pain related to peripheral neuropathy. Schreffler also cites an April 8, 2010 report
12 stating that a CT scan shows “small central subligamentous disc protrusion L5-S1.” She
13 does not cite any evidence of physical impairment before December 31, 2004, to support
14 her claim for disability insurance benefits.

15 The ALJ was not required to refer specifically to each of Schreffler’s medical
16 records. He stated that Schreffler had sought “very intermittent treatment” for physical
17 impairments, “especially knee pain, back pain, and neck pain.” The ALJ identified
18 specific medical evidence supporting his finding that Schreffler’s physical impairments
19 are not medically determinable or are not severe:

- 20 • February 19, 2008: X-ray of Schreffler’s left knee was normal.
- 21 • May 30, 2008: Schreffler reported back, neck, and hand pain, and
22 worsening of back pain the past two years, but reported the last time she
23 had imaging of her back was fifteen years prior. The physical examination
24 was normal.
- 25 • June 30, 2008, and July 9, 2008: During treatment for injury to her toe,
26 right hand, and left ear, Schreffler did not report any back or other
27 musculoskeletal pain.

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- January 31, 2009: Schreffler sought treatment at the emergency room for chest pain, headaches, and panic attacks. She did not report any musculoskeletal complaints, multiple diagnostic tests revealed mild to no abnormal results, and the physician noted a completely normal exam.
- February 5, 2009: Schreffler sought treatment for chest pain, shortness of breath, and general malaise. She did not report any musculoskeletal complaints, and the physician noted a completely normal exam. The physician also wrote: “She claims that she had stopped using methamphetamine and alcohol for a long time and then she had used heavy alcohol for 2 days as well as she also used methamphetamine.”
- Continued intermittent treatment through March 12, 2009: Schreffler complained of chest pain, dizziness, headaches, alcohol-induced injuries, numbness, and burning sensation while urinating. Physical examinations were “mostly normal.”
- March 2009: Colonoscopy revealed severe sigmoid diverticulitis. June 2010 CT revealed diverticulosis without diverticulitis.
- April 11, 2009: Schreffler ambulated without difficulty and was able to get on and off the examination table without difficulty. The “mostly normal” objective examination did not corroborate her subjective complaints except for slight difficulty tandem walking and slightly decreased grip strength bilaterally.
- April 8, 2010: An MRI of the brain revealed normal results.
- August 10, 2010: Schreffler sought treatment for chest pain, shortness of breath, and other symptoms that she thought was a heart attack. She denied back pain, joint pain, joint swelling, muscle cramps, muscle weakness, stiffness, or arthritis.

- 1 • January 1, 2011: Schreffler sought treatment at the emergency room for
2 substance abuse. She did not report any physical complaints, and the
3 physician noted a completely normal physical examination.

4 The ALJ noted Schreffler “testified at the hearing that she suffers from severe and
5 debilitating back pain, headaches, trouble breathing, and sleep apnea” and “has very
6 limited ability to sit, stand, and walk.” Although the ALJ concluded that Schreffler had
7 not presented objective medical evidence of a physical impairment that could reasonably
8 be expected to produce some degree of the pain or other symptoms alleged, he provided
9 specific, clear, and convincing reasons for finding Schreffler’s statements concerning the
10 intensity, persistence, and limiting effects of her symptoms not credible to the extent they
11 are inconsistent with the residual functional capacity assessment. He expressly
12 considered the following:

13 the claimant’s own lack of subjective complaints; the absence
14 of medically determinable impairments which can reasonably
15 be expected to produce her symptoms; the absence of
16 longitudinal records showing regular contact with physicians;
17 the claimant’s receipt of only routine and conservative
18 treatment without reasonable or credible explanation; the
19 claimant’s lack of attempts to obtain relief from pain and
20 other symptoms; the claimant’s failure to try even prescribed
21 treatment modalities for relief; the lack of consistency of
22 claimant’s subjective complaints throughout the medical
23 record; the claimant’s inconsistent work history and earnings
24 record even prior to the alleged onset of disability; and the
25 presence of acknowledged daily activities at a level
26 fundamentally inconsistent with allegations of disabling
27 symptoms.

28 These are specific, clear, and convincing reasons for finding Schreffler’s testimony about
the severity of her symptoms not entirely credible.

IT IS THEREFORE ORDERED that the final decision of the Commissioner of
Social Security is affirmed. The Clerk shall enter judgment accordingly and shall
terminate this case.

Dated this 17th day of January, 2014



Neil V. Wake
United States District Judge