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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MATTIE R. HILL,

Plaintiff,

v.

NANCY A. BERRYHILL, Deputy
Commissioner of Operations,
performing duties and functions not
reserved to the Commissioner of
Social Security,¹

Defendant.

Case No. CV 17-04089-DFM

MEMORANDUM OPINION
AND ORDER

Mattie R. Hill (“Plaintiff”) appeals the Social Security Commissioner’s final decision denying her application for Supplemental Security Income (“SSI”). For the reasons discussed below, the Commissioner’s decision is affirmed and this matter is dismissed with prejudice.

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¹ On January 23, 2017, Berryhill became the Acting Social Security Commissioner. Thus, she is automatically substituted as the defendant under Federal Rule of Civil Procedure 25(d).

1 I.

2 BACKGROUND

3 In August 2011, Plaintiff filed an application for SSI alleging disability
4 beginning on December 31, 2010. See Administrative Record (“AR”) 74. After
5 her claim was denied both initially and upon reconsideration, she requested
6 and received a hearing before an Administrative Law Judge (“ALJ”). See id.
7 In December 2012, the ALJ issued an unfavorable decision finding Plaintiff
8 not disabled. See AR 71-83. After the decision became final, Plaintiff re-
9 applied for SSI on April 1, 2014, alleging disability beginning on September 1,
10 2011. See AR 8, 98. Her SSI application was denied on August 1, 2014.
11 See AR 105-09. Plaintiff requested and received a hearing before a new ALJ on
12 March 4, 2016, during which the ALJ heard testimony by Plaintiff, who was
13 represented by counsel, and a vocational expert (“VE”). See AR 42-70, 111-17.
14 On April 8, 2016, the ALJ issued an unfavorable decision. See AR 8-16. The
15 ALJ found that there was no presumption of continued nondisability under
16 Chavez v. Bowen, 844 F.2d 691, 693 (9th Cir. 1988), because new evidence
17 had been admitted since the previous ALJ’s determination, constituting a
18 change in circumstances. See AR 8-9.

19 The ALJ determined that Plaintiff had severe osteoarthritis of the right
20 shoulder, obesity, blurry vision, baker’s cyst, tear of the meniscus of the right
21 knee, and degenerative disc disease. See AR 11. However, she found that
22 Plaintiff’s impairments did not meet or medically equal the severity of a listed
23 impairment. See id. The ALJ found that Plaintiff retained the residual
24 functional capacity to perform light work, except that Plaintiff can carry
25 twenty pounds occasionally and ten pounds frequently; sit, stand, and walk for
26 6 hours in an 8-hour day; reach overhead with the right arm frequently; climb
27 stairs, ramps, ladders, ropes, and scaffolds frequently; and balance, stoop,
28 kneel, crouch, and crawl frequently. See AR 11-12. The ALJ limited Plaintiff

1 to reading ordinary newspaper or book print and determined that Plaintiff
2 cannot have concentrated exposure to fumes, dust, odors, or pulmonary
3 irritants. See AR 12. The ALJ determined that Plaintiff could not perform her
4 past relevant work as a home health aide. See AR 14-15. Based on the VE's
5 testimony, she found that Plaintiff could perform light work that was available
6 in the national economy, such as companion or personal assistant. See AR 15-
7 16. Thus, the ALJ concluded that Plaintiff was not disabled. See AR 16.

8 On April 28, 2017, the Appeals Council denied review of the ALJ's
9 decision, which became the final decision of the Commissioner. See AR 1-4.
10 Plaintiff then sought review by this Court. See Dkt. 1.

11 II.

12 DISCUSSION

13 The parties dispute whether the ALJ properly considered a third-party
14 function report. See Joint Stipulation ("JS") at 3.

15 A. Applicable Law

16 "In determining whether a claimant is disabled, an ALJ must consider
17 lay witness testimony concerning a claimant's ability to work." Bruce v.
18 Astrue, 557 F.3d 1113, 1115 (9th Cir. 2009) (quoting Stout v. Comm'r, Soc.
19 Sec. Admin., 454 F.3d 1050, 1053 (9th Cir. 2006)); see also 20 C.F.R.
20 § 416.913(d) (statements from spouses, parents, other relatives, and friends can
21 be used to show severity of impairments and effect on ability to work).² Such
22 testimony is competent evidence and "cannot be disregarded without

23 ² Where, as here, the ALJ's decision is the final decision of the
24 Commissioner, the reviewing court generally applies the law in effect at the
25 time of the ALJ's decision. See Lowry v. Astrue, 474 F. App'x 801, 805 n.2
26 (2d Cir. 2012) (applying version of regulation in effect at time of ALJ's
27 decision despite subsequent amendment); Garrett ex rel. Moore v. Barnhart,
28 366 F.3d 643, 647 (8th Cir. 2004) ("We apply the rules that were in effect at
the time the Commissioner's decision became final.").

1 comment.” Bruce, 557 F.3d at 1115 (quoting Nguyen v. Chater, 100 F.3d
2 1462, 1467 (9th Cir. 1996)); Robbins v. Soc. Sec. Admin., 466 F.3d 880, 885
3 (9th Cir. 2006) (“[T]he ALJ is required to account for all lay witness testimony
4 in the discussion of his or her findings.”). When rejecting the testimony of a
5 lay witness, an ALJ must give specific reasons germane to that witness. See
6 Valentine v. Comm’r Soc. Sec. Admin., 574 F.3d 685, 694 (9th Cir. 2009).

7 **B. Relevant Facts**

8 Plaintiff’s roommate, Ernest Covington, completed a third-party
9 function report in June 2014. See AR 235-42. In his report, Covington reported
10 that he has known Plaintiff for two years and “periodically” spent time with
11 her. AR 235. Covington reported that Plaintiff has joint pains and arthritis that
12 left Plaintiff’s functions “very limited.” AR 235-36. Covington wrote that
13 before Plaintiff’s conditions began, she could go for long walks, hold a steady
14 job, and function normally. See AR 236. However, it is now difficult for her to
15 sleep, dress, and bathe. See id. Covington also reported that Plaintiff prepares
16 full meals every day, though it takes her “a while,” and that her conditions
17 limit her to indoor chores. AR 237. Covington wrote that Plaintiff travels by
18 walking and using public transportation, that she does not drive because she
19 does not have a car, that she shops for food monthly, and that she attends
20 church services twice a month. See AR 238-39. Covington reported that
21 Plaintiff has difficulty lifting, squatting, bending, standing, reaching, walking,
22 sitting, kneeling, climbing stairs, and using her hands. See AR 240. He
23 reported that Plaintiff could walk one block before requiring rest. See id.
24 Covington also noted that Plaintiff uses a cane “at times, when the joint pain is
25 severe,” and “when she goes out walking.” AR 241.

26 The ALJ gave “little weight” to Covington’s report. AR 14. She noted
27 that she had considered Covington’s report that Plaintiff’s ability to engage in
28 daily activities were limited, that he observed Plaintiff sometimes use her cane,

1 and that Plaintiff could walk for less than a block before resting. See id.
2 However, she found his observations “inconsistent with the medical evidence,
3 including sporadic treatment of the claimant, which is generally conservative.”
4 Id. The ALJ also noted that the “statements by Mr. Covington are highly
5 subjective and lack medically acceptable standards.” Id.

6 **C. Analysis**

7 Plaintiff contends that the ALJ failed to give germane reasons for
8 rejecting Covington’s report, did not indicate whether she accepted or rejected
9 it, and did not summarize enough of Covington’s statements. See JS at 4.

10 The ALJ validly discounted the report because Covington’s statements
11 were inconsistent with the record—particularly with Plaintiff’s conservative
12 treatment record. See AR 14. Inconsistency with medical evidence is a
13 germane reason for discounting lay witness testimony. See Bayliss v. Barnhart,
14 427 F.3d 1211, 1218 (9th Cir. 2005). While Covington described Plaintiff’s
15 daily functions as very limited by her pain, Plaintiff’s medical records reflect
16 that medication and over-the-counter walking aids adequately addressed
17 Plaintiff’s symptoms. While Plaintiff visited medical professionals in 2014 and
18 2015, they were largely routine visits for medication refills. See, e.g., AR 347-
19 50, 403-05. Even when Plaintiff received an MRI of her left knee, see AR 355-
20 56, the pain appeared to be managed with medication alone, see AR 349-50.

21 Further, Covington’s report conflicted with Plaintiff’s positive response
22 to conservative treatment. When presented with more aggressive treatment
23 options, Plaintiff instead opted to continue with her current treatment of
24 medication and walking aids. For example, medical records from July 2014
25 show that Plaintiff declined a steroid injection, so the physician instead
26 prescribed over-the-counter inserts for her foot pain. See AR 346. Additionally,
27 Plaintiff’s doctor suggested physical therapy for her right shoulder pain, yet
28 Plaintiff failed to follow through with treatment. See AR 472. “Impairments

1 that can be controlled effectively with medication are not disabling”
2 Warre v. Comm’r of the Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir.
3 2006). That Plaintiff declined more extensive treatment suggests that Plaintiff’s
4 symptoms were not as debilitating as those alleged by Covington. Rather, they
5 appear to have been controlled by medication alone. Accordingly, the ALJ
6 gave a germane reason for discounting Covington’s report.

7 However, the ALJ erred when discounting Covington’s report because
8 his statements were highly subjective and lacked medically-acceptable
9 standards. See AR 14. “Lay witnesses are not required to have medical
10 training, or to provide exact details of their observations.” Varone v. Colvin,
11 No. 15-2988, 2016 WL 1559055, at *12 (C.D. Cal. Apr. 18, 2016). Covington’s
12 report appears no more subjective than expected of a lay witness’s report. It
13 addresses observable effects of Plaintiff’s illnesses without opining on their
14 medical causes. Nevertheless, any error was harmless. The ALJ gave a
15 germane reason for discounting Covington’s testimony—that it conflicted with
16 Plaintiff’s conservative treatment record. Because “it [is] clear from the record
17 that [the] ALJ’s error was ‘inconsequential to the ultimate nondisability
18 determination,’” the ALJ’s error was harmless. Robbins, 466 F.3d at 885
19 (quoting Stout, 454 F.3d at 1055-56). Similarly, the ALJ’s failure to summarize
20 the entirety of Covington’s report and specifically state whether she accepted
21 or rejected the report were harmless. The ALJ addressed the lay witness report
22 and gave it “little weight.” Her decision not to repeat the entirety of
23 Covington’s report did not affect the outcome of Plaintiff’s claim.

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III.
CONCLUSION

For the reasons stated above, the decision of the Social Security Commissioner is AFFIRMED and the action is DISMISSED with prejudice.

Dated: August 31, 2018


DOUGLAS F. McCORMICK
United States Magistrate Judge