

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MELISSA C.,¹

Case No. 2:20-cv-01070-SB

Plaintiff,

OPINION AND ORDER

v.

KILOLO KIJAKAZI, Acting Commissioner of
Social Security,²

Defendant.

BECKERMAN, U.S. Magistrate Judge.

Melissa C. (“Plaintiff”) brings this appeal challenging the Commissioner of the Social Security Administration’s (“Commissioner”) denial of her application for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI of the Social Security Act. The Court has jurisdiction to hear Plaintiff’s appeal pursuant to [42 U.S.C. §](#)

¹ In the interest of privacy, this opinion uses only the first name and the initial of the last name of the non-governmental party in this case. Where applicable, this opinion uses the same designation for a non-governmental party’s immediate family member.

² Kilolo Kijakazi became the acting Commissioner of the Social Security Administration on or about July 9, 2021 and is substituted for Andrew Saul as the defendant. *See* [FED. R. CIV. P. 25\(d\)\(1\)](#).

Feb. 10, 2012). Furthermore, “when an ALJ provides clear and convincing reasons for rejecting the credibility of a claimant’s own subjective complaints, and the lay-witness testimony is similar to the claimant’s complaints, it follows that the ALJ gives ‘germane reasons for rejecting’ the lay testimony.” *Williams v. Astrue*, 493 F. App’x 866, 869 (9th Cir. 2012) (quoting *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009)).

B. Analysis

Plaintiff argues that the ALJ failed to provide germane reasons for discounting the lay witness testimony provided by Plaintiff’s friend, Christy G. (*See* Pl.’s Opening Br. at 9.)

The ALJ addressed Christy G.’s third-party function report, noting her comments that “the claimant cannot stand or sit for long periods and experiences brain fo[g] and memory loss that prevents her from working.” (Tr. 22, 263-70.) The ALJ discounted these observations on the ground that they were “vague and do not indicate what degree of ability the claimant would retain.” (Tr. 22.) In addition, the ALJ afforded Christy G.’s opinion little weight because she “is not a medical professional trained to assess specific functional limitations.” (*Id.*)

Vagueness is a germane reason to discount a third-party function report, and Christy G.’s report that Plaintiff cannot stand or sit for “long periods” was vague. *See Quiralte v. Comm’r Soc. Sec.*, No. 1:19-cv-01547-HBK (SS), 2021 WL 4705240, at *7 (E.D. Cal. Oct. 8, 2021) (finding that a third party’s report that the claimant cannot walk “too far” provided little guidance because “far” is entirely subjective, and holding that “[i]n finding [the third party’s] testimony to be vague, the ALJ provided a germane reason to discount it”).

In any event, Christy G. opined on Plaintiff’s leg weakness, pain, memory issues, and dealing with other people. As explained above, substantial evidence supports the ALJ’s discounting of Plaintiff’s symptom testimony regarding both her physical and mental impairments. Accordingly, even if the ALJ erred in discounting Christy G.’s testimony, any error

was harmless because Christy G. described the same limitations as Plaintiff which the ALJ discounted for clear and convincing reasons. *See Blacksher v. Berryhill*, 762 F. App'x 372, 377 (9th Cir. 2019) (“Ms. Blacksher’s testimony was substantially similar to that of her son. Because the ALJ provided clear and convincing reasons for discounting Blacksher’s statements, ‘it follows that the ALJ also gave germane reasons for rejecting’ Ms. Blacksher’s similar testimony, and so any error was harmless.”).

III. PLAINTIFF’S RFC

For the same reasons discussed above, Plaintiff argues that the RFC failed to reflect all of her physical and mental limitations. (Pl.’s Opening Br. at 10.) The ALJ is responsible for resolving conflicts in the medical testimony and translating the claimant’s impairments into concrete functional limitations. *See Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174-75 (9th Cir. 2008) (affirming the ALJ’s translation of moderate functional limitations into the claimant’s RFC). “Only limitations supported by substantial evidence must be incorporated into the RFC and, by extension, the dispositive hypothetical question posed to the VE.” *Leroy M. v. Comm’r, Soc. Sec. Admin.*, No. 6:18-cv-0632-HZ, 2019 WL 4276996, at *6 (D. Or. Sept. 10, 2019) (quoting *Rhinehart v. Colvin*, No. 2:15-cv-01704-AC, 2016 WL 7235680, at *12 (D. Or. Dec. 12, 2016) and citing *Osenbrock v. Apfel*, 240 F.3d 1157, 1163-65 (9th Cir. 2001)). For the reasons discussed above, the ALJ properly weighed the evidence and incorporated Plaintiff’s credible limitations into the RFC. *See Sam B. v. Comm’r of Soc. Sec.*, No. 2:19-CV-00354-DWC, 2019 WL 5541347, at *4 (W.D. Wash. Oct. 28, 2019) (“[T]he RFC assessment and the hypothetical questions posed to the VE were properly based on the credible functional limitations contained in the record, and thus both the RFC assessment and the hypothetical question posed to the VE were proper.”); *Diane M. v. Comm’r of Soc. Sec.*, No. 3:17-cv-01971-BR, 2018 WL 6440889, at *8 (D. Or. Dec. 6, 2018) (“[T]he Court concludes the ALJ did not err

when he assessed Plaintiff's RFC and he accounted for all credible limitations in his assessment."'). Accordingly, the Court concludes the ALJ did not err in formulating Plaintiff's RFC. *See Timothy S. v. Comm'r Soc. Sec.*, No. 6:20-cv-01371-JR, 2021 WL 3559452, at *4 (D. Or. Aug. 11, 2021) ("The ALJ weighed the evidence and translated into the RFC all of plaintiff's limitations that were supported by substantial evidence and posed hypothetical questions to the VE consistent with that RFC. Accordingly, the Court concludes the ALJ did not err in formulating plaintiff's RFC that accounted for all of plaintiff's credible limitations[.]").

CONCLUSION

Based on the foregoing reasons, the Court AFFIRMS the Commissioner's decision because it is free of harmful legal error and supported by substantial evidence in the record.

IT IS SO ORDERED.

DATED this 13th day of October, 2021.



HON. STACIE F. BECKERMAN
United States Magistrate Judge