

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MAUREEN PHYLLIS KRAJEWSKI,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of the Social Security
Administration,

Defendant.

Civ. No. 3:16-cv-0418-MC

OPINION AND ORDER

MCSHANE, Judge:

Plaintiff Maureen Krajewski brings this action for judicial review of a final decision of the Commissioner of Social Security denying her application for disability insurance benefits (DIB) under Title II of the Social Security Act and Supplemental Security Income (SSI). The Court has jurisdiction under 42 U.S.C. §§ 405(g) and 1383(c)(3). Because the Commissioner's decision is based on proper legal standards and supported by substantial evidence, the Commissioner's decision is AFFIRMED.

PROCEDURAL AND FACTUAL BACKGROUND

Plaintiff filed an application for disability insurance benefits on January 20, 2012, alleging disability beginning May 1, 2009. Tr. 16. The onset date was amended to September 28,

2011. Tr. 21. The claim was denied initially on June 22, 2012 and upon reconsideration on December 10, 2012. *Id.* A hearing was held on May 6, 2014 and on May 29, 2014 the ALJ issued a decision denying plaintiff. Tr. 31. The Appeals Council denied the request for review on January 9, 2016 making the ALJ's decision the final decision of the Commissioner. Tr. 1-4. This appeal followed.

STANDARD OF REVIEW

The reviewing court shall affirm the Commissioner's decision if the decision is based on proper legal standards and the legal findings are supported by substantial evidence on the record. 42 U.S.C. § 405(g); *Batson v. Comm'r for Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). "Substantial evidence is 'more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Hill v. Astrue*, 698 F.3d 1153, 1159 (9th Cir. 2012) (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)). To determine whether substantial evidence exists, this Court reviews the administrative record as a whole, weighing both the evidence that supports and that which detracts from the ALJ's conclusion. *Martinez v. Heckler*, 807 F.2d 771, 772 (9th Cir. 1986).

The Commissioner's findings are upheld if supported by inferences reasonably drawn from the record; if evidence exists to support more than one rational interpretation, the court must defer to the Commissioner's decision. *Batson*, 359 F.3d at 1193; *Aukland v. Massanari*, 257 F.3d 1033, 1034-35 (9th Cir. 2000) (when evidence can rationally be interpreted in more than one way, the court must uphold the Commissioner's decision). A reviewing court, however, "cannot affirm the Commissioner's decision on a ground that the Administration did not invoke in making its decision." *Stout v. Comm'r Soc. Sec. Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006) (citation omitted). A court may not reverse an ALJ's decision on account of an error that is

harmless. *Id.* at 1055–56. “[T]he burden of showing that an error is harmful normally falls upon the party attacking the agency's determination.” *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009).

The ALJ need not discuss all evidence presented, but must explain why significant probative evidence has been rejected. *Stark v. Shalala*, 886 F. Supp. 733, 735 (D. Or. 1995). *See also Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003) (in interpreting the evidence and developing the record, the ALJ need not discuss every piece of evidence).

DISCUSSION

The Social Security Administration uses a five step sequential evaluation to determine whether a claimant is disabled. 20 C.F.R. §§ 404.1520; 416.920. The initial burden of proof rests upon the claimant to meet the first four steps. If claimant satisfies his or her burden with respect to the first four steps, the burden shifts to the Commissioner at step five. 20 C.F.R. § 404.1520. At step five, the Commissioner’s burden is to demonstrate the claimant is capable of making an adjustment to other work after considering the claimant’s residual functional capacity, age, education, and work experience. *Id.*

Here, the ALJ found at step one of the sequential analysis that Plaintiff had not engaged in substantial gainful activity (SGA) since September 28, 2011, the amended alleged onset date. Tr. 18. At step two, the ALJ found Plaintiff suffered from the following severe impairments: alcohol dependence in remission, anxiety, and arthralgias Tr. 19. At step three, the ALJ found that none of Plaintiff’s impairments, alone or in combination, met or medically equaled one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1.

At step four, the ALJ found that Plaintiff has the residual functional capacity to perform a limited range of light work except that she could stand and walk for two hours per day, could perform postures occasionally, could occasionally manipulate with her hands, and should avoid

concentrated exposure to hazards and extreme cold. Tr. 21. Given these restrictions, and relying on the vocational expert's testimony, the ALJ found that Krajewski could perform unskilled light and sedentary jobs that existed in significant numbers in the national economy, such as mail room work, small products assembly, addresser, and account clerk. Tr. 26-27. The ALJ concluded that Krajewski was not disabled from September 28, 2011 through the date of the decision. Tr. 27.

Plaintiff contends that the ALJ's decision to deny Plaintiff's claim for disability is not supported by substantial evidence and contains errors of law. Pl.'s Br. 1-2. Plaintiff argues she does not have the residual functional capacity to perform the work the ALJ described and that (1) the ALJ did not give clear and convincing reasons for discounting plaintiff's report of her symptoms and (2) the ALJ improperly weighted opinions of record. Pl.'s Br. 9-14. Finally, plaintiff argues the ALJ did not properly craft the residual functional capacity and hypothetical to the vocational expert resulting in a five step finding that was supported by substantial evidence. Pl.'s Br. 15-17.

I. Clear and convincing reasons for discounting Plaintiff's report of her symptoms

Plaintiff argues the ALJ did not give clear and convincing reasons for discounting Plaintiff's testimony regarding her subjective account of her pain. Determining whether symptoms are credible involves a two step analysis. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007). The ALJ must first determine whether the claimant has presented objective medical evidence of an underlying impairment that could reasonably be expected to produce the pain or symptoms alleged. *Id.* If there is objective medical evidence, then the ALJ can reject the claimant's testimony only by offering specific, clear and convincing reason for doing so. *Id.*

The ALJ found Krajewski's testimony about the extent of her limitations not credible. Tr. 22. The ALJ is responsible for determining the credibility and resolving ambiguities in the evidence. *Edlund v. Massanari*, 253 F.2d 1152, 1156 (9th Cir. 2001). An ALJ's decision "must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear" the weight the ALJ gave to the testimony and the reasons for that weight. Social Security Ruling (SSR) 96-7p, *available at* 1996 WL 374186, at *2, *4.

Upon review I find that the ALJ has articulated clear and convincing reasons for discounting the credibility of Plaintiff's testimony. The ALJ found that Krajewski exaggerated her symptoms and presented herself inconsistently during medical examinations on multiple occasions. Tr. 22, 24, 25. A psychological consultative examiner said that Krajewski tended to exaggerate her physical symptoms and made vague physical complaints. Tr. 25, 473 Plaintiff's pain behavior was inconsistent with her neurological examination with distractibility; when distracted her neurological examination showed her to be normal. Tr. 500-01, 713. On two occasions her motor examination was inconsistent with some give-way weakness. Her motor examination and coordination examination were inconsistent, and her gait was non-neurological. Tr. 22, 24, 925, 935. The ALJ cited multiple instances in which providers expressed concern that petitioner was exaggerating physical symptoms and mental presentations as well as a concern of possible malingering. These are clear and convincing reasons articulated by the ALJ for discounting the allegations of disabling symptoms. *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1160 (9th Cir. 2008).

In addition, there is no explanation for plaintiff's alleged pain. Tr. 21-22. There is a lack of objective findings to support plaintiff's allegations. Physicians have ruled possible causes to

include ruling out MS for her symptoms. Tr. 936. Plaintiff's only medically determinable severe physical impairment is "arthralgias." Tr. 18.

With regards to Krajewski's mental impairments, the ALJ found that she did not seek regular mental health treatment. Tr. 24. Not seeking "an aggressive treatment program" permits the inference that symptoms were not "as all-disabling" as the claimant reported. *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008). Psychiatric medications stabilized her mood and she showed "marked improvement," and was comfortable with her mental functioning. Tr. 24, 886, 998.

II. Weighing medical evidence

Plaintiff argues the ALJ improperly weighed opinions of record. The ALJ is responsible for resolving conflicts in medical testimony and resolving ambiguities in the evidence. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). The ALJ must explain in the decision the weight given to the opinions of all acceptable medical sources. 20 C.F.R. § 404.1527(e)(2)(ii). For treating source opinions, the ALJ must give "good reasons" for the weight given. SSR 96-2p, available at 1996 WL 374188, at *5. The ALJ may reject contradicted medical opinion by providing "specific and legitimate" reasons, supported by substantial evidence, for doing so. *Morgan v. Comm'r of the Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999). I find that the ALJ provided specific and legitimate reasons for weighing the opinions of record.

The ALJ gave Dr. Kern's narrative report some weight because it was consistent with treatment records that show improvements with medications. Tr. 24. Dr. Kern found the claimant's mood to be stable on medications. He said the claimant was comfortable with her functioning and did not recommend therapy. The ALJ gave Dr. Walker's assessment some weight because it was based on thorough testing. Dr. Walker's conclusions were consistent with

the ability to perform unskilled work. Tr. 25. The ALJ did not reject the evidence, but reasonably incorporated the doctor's assessed limitations in the decision. The jobs the ALJ found Krajewski could perform were unskilled work with basic mental demands consistent with her assessed abilities. Tr. 27.

Plaintiff contends the ALJ erred in summarizing Dr. Orchard's report because her symptoms were not completely controlled. Pl.s Br. 13. The ALJ's treatment of Dr. Orchard's report was appropriate and appropriately weighed. The ALJ articulated specific, clear and convincing reasons for discounting plaintiff's subjective "history" within the report along with plaintiff's credibility. The ALJ reasonably accounted for the lay witness statement of Stephen Krajewski, plaintiff's husband. Tr. 25-26. An ALJ must "take into account" lay witness statements, or else provide germane reasons for disregarding such statements. *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001). Because Mr. Krajewski's testimony mirrored the claimant's allegations, the ALJ reasonably discounted them for the same reasons he discounted plaintiff's allegations. Tr. 26. The ALJ also found that Mr. Krajewski's statements were not consistent with the medical evidence. Tr. 26.

III. RFC and Hypothetical to the Vocational Expert

Krajewski argues the ALJ did not properly craft the residual functional capacity and hypothetical to the vocational expert in Step Five. Pl. Br. 15-17. Plaintiff argues the ALJ did not incorporate any mental health limitations into the residual functioning assessment as noted in Plaintiff's medical records, personal accounts, consultative exam, and third party report in her RFC. A residual capacity assessment must be based on all of the relevant evidence in the case record. C.F.R. § 404.1545. The failure to perform a functional analysis as required by SSR 96-8p constitutes reversible error. *Meyers v. Apfel*, 238 F.3d 617 (5th Cir. 2001). However, an ALJ

must include limitations in the residual functional capacity only if they are supported by substantial evidence. *Osenbrock v. Apfel*, 240 F.3d 1157, 1164-66 (9th Cir. 2001).

Here the ALJ found that Plaintiff had the residual functional capacity to perform light work except: stand and walk two hours total of eight, occasionally climb, crawl, crouch, stoop, kneel, and balance, occasional fine manipulations with the hands, and avoid concentrated exposure to hazards and extreme cold. Tr. 19-20. I find the hypothetical question contained all credible limitations and was supported by substantial evidence.

CONCLUSION

Because substantial evidence exists within the record as a whole to support the Commissioner's decision, this Court AFFIRMS the Commissioner's Decision.

IT IS SO ORDERED.

DATED this 5th day of April, 2017.

 /s/Michael J. McShane
Michael J. McShane
United States District Judge