

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DOROTHY YVONNE LAMBERT,

Plaintiff,

v.

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

Defendant.

Civ. No. 3:16-cv-00512-MC

OPINION AND ORDER

MCSHANE, Judge:

Plaintiff Dorothy Yvonne Lambert brings this action for judicial review of the Commissioner’s decision denying her application for supplemental security income (“SSI”). This court has jurisdiction under 42 U.S.C. §§ 405(g) and 1383(c)(3).

On September 14, 2012, Lambert filed an application for SSI. After a hearing, the administrative law judge (“ALJ”) determined Lambert was not disabled under the Social Security Act. Tr. 30.¹ Lambert argues the ALJ erred in finding her less-than credible and in rejecting the opinion of Kaitlin Haws, Lambert’s treating nurse practitioner (“NP”). Because the Commissioner’s decision is based on proper legal standards and supported by substantial evidence, the Commissioner’s decision is AFFIRMED.

¹ “Tr” refers to the Transcript of Social Security Administrative Record provided by the Commissioner.

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 in the record. 42 U.S.C. § 405(g); *Batson v. Comm'r of 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, we review the administrative record as a whole, weighing both the evidence that supports and that which detracts from the ALJ's conclusion. *Davis v. Heckler*, 868 F.2d 323, 326 (9th Cir. 1989). "If the evidence can reasonably support either affirming or reversing, 'the reviewing court may not substitute its judgment' for that of the Commissioner." *Gutierrez v. Comm'r of Soc. Sec. Admin.*, 740 F.3d 519, 523 (9th Cir. 2014) (quoting *Reddick v. Chater*, 157 F.3d 715, 720-21 (9th Cir. 1996)).

DISCUSSION

The Social Security Administration utilizes a five-step sequential evaluation to determine whether a claimant is disabled. 20 C.F.R. §§ 404.1520 & 416.920 (2012). The initial burden of proof rests upon the claimant to meet the first four steps. If the claimant satisfies his burden with respect to the first four steps, the burden shifts to the Commissioner for step five. 20 C.F.R. § 404.1520. At step five, the Commissioner must show that the claimant is capable of making an adjustment to other work after considering the claimant's residual functional capacity (RFC), age, education, and work experience. *Id.* If the Commissioner fails to meet this burden, then the claimant is disabled. 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). If, however, the Commissioner proves that the claimant is able to perform other work existing in significant

numbers in the national economy, the claimant is not disabled. *Bustamante v. Massanari*, 262 F.3d 949, 953-54 (9th Cir. 2001).

The ALJ concluded Lambert suffered from severe impairments of carpal tunnel syndrome, chronic obstructive pulmonary disorder (“COPD”), and bipolar disorder. Tr. 23. At the hearing, Lambert testified her COPD posed the most severe limitations in her ability to work full-time, but that severe depression left her unable to get out of bed for several days at a time a couple of times each month. The ALJ found Lambert less-than fully credible regarding the extent of her self-reported limitations and, after weighing the medical evidence and opinions, concluded Lambert possessed the RFC to perform light work while sitting up to 8 hours in an 8 hour work day and standing and walking for 2 hours in that day. The vocational expert opined someone with Lambert’s RFC as constructed by the ALJ could perform several jobs existing in significant numbers in the national economy. Therefore, the ALJ concluded Lambert was not disabled under the act.

As noted above, Lambert argues the ALJ erred in finding her less-than fully credible and in rejecting the opinion of her treating NP. I turn first to the ALJ’s adverse credibility finding.

At the September 10, 2014 hearing, Lambert testified to severe limitations. For example, Lambert testified she could not walk the five blocks from the bus stop to the clinic. Tr. 42. On days when she did not have to go to the clinic to get methadone, Lambert would “hang out around the apartment” because she could no longer walk. Tr. 43 (“I try doing—I tried walking and I just can’t. Like a block my back is just hurting so bad, and I can’t breathe right. So, I cut that out. So, I pretty much don’t do anything.”). Lambert testified her COPD was her most serious condition as she was “short of breath all the time.” Tr. 47.

Lambert stated she suffered from “crippling” migraine headaches a couple times a week that last a day or two. Tr. 49-50. When medicine did not relieve the migraines, Lambert had to lie down in a dark room with a washcloth on her forehead. Tr. 50. Most of the time, medicine did not relieve the migraines. Tr. 51. Lambert also was bedridden for a couple of days at a time due to severe depression. Tr. 51. These bouts of depression occurred once or twice each month, lasting on average four days per occurrence. Tr. 51.

The ALJ is not “required to believe every allegation of disabling pain, or else disability benefits would be available for the asking, a result plainly contrary to 42 U.S.C. § 423(d)(5)(A).” *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (quoting *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.1989)). The ALJ “may consider a wide range of factors in assessing credibility.” *Ghanim v. Colvin*, 12-35804, 2014 WL 4056530, at *7 (9th Cir. Aug. 18, 2014). These factors can include “ordinary techniques of credibility evaluation,” *id.*, as well as:

(1) whether the claimant engages in daily activities inconsistent with the alleged symptoms; (2) whether the claimant takes medication or undergoes other treatment for the symptoms; (3) whether the claimant fails to follow, without adequate explanation, a prescribed course of treatment; and (4) whether the alleged symptoms are consistent with the medical evidence.

Lingenfelter v. Astrue, 504 F.3d 1028, 1040 (9th Cir.2007). The ALJ in this case supported his credibility determination with references to several of the above factors.

The ALJ noted that despite Lambert’s claim at the hearing that she could not walk five blocks, treatment notes from seven months earlier reported Lambert lost 15 pounds by walking an hour each day. Tr. 23. Despite complaining of severe limitations from COPD, the ALJ noted the records demonstrated Lambert continued smoking cigarettes. And while Lambert testified severe migraines left her bedridden for eight days every month, the ALJ noted the record contained only intermittent complaints of headaches from Lambert to treatment providers. Tr. 24 (“There are no consistent complaints of headaches, and in recent treatment notes from CODA,

there is no reference to any significant health problems, including headaches, which suggests that those conditions aren't as severe as the claimant testified at the hearing.”). The ALJ also contrasted Lambert's testimony with her activities of daily living (i.e., Lambert lived alone, kept up with housework and groceries, attended group meetings at CODA, and took public transportation). Tr. 24-25.

It is important to view the ALJ's finding in relation to the severity of Lambert's alleged limitations. Lambert testified she could not get out of bed for eight days per month due to debilitating depression. Despite these complaints, the ALJ noted Lambert never sought mental health treatment other than through her group CODA sessions. Tr. 27. An ALJ may look to an unexplained failure to seek or follow a prescribed course of treatment in determining a claimant's credibility. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). Additionally, two years before the hearing, Lambert noted her depression was “under good control” and medication relieved the symptoms from her bipolar disorder. Tr. 27. The ALJ noted that seven months before the hearing, Lambert was tapering off her bipolar medicine. And in the months just before the hearing, Lambert reported interest in taking vocational classes and finding a job.

Here, the ALJ reasonably concluded Lambert's significant self-reported limitations would be supported by more references to debilitating depression in the medical record. Other than Lambert's own testimony, there is scant evidence of the severe depression she testified to. Lambert points to a few treatment notes (at Tr. 446, 481) mentioning depression. At one of those meetings, Lambert complained her anti-depressant was not working and that “I'm depressed.” Tr. 446. The ALJ, however, did not find Lambert did not suffer from depression. Instead, the ALJ reasonably concluded Lambert's migraines did not impact her to the degree she testified to. Tr. 24. That conclusion, amply supported by the record, is entitled to deference. Although

Lambert argues another interpretation of the record is reasonable, that is not a legitimate reason for overturning the ALJ's conclusions. *Gutierrez*, 740 F.3d at 523 (quoting *Reddick*, 157 F.3d at 720-21) (“If the evidence can reasonably support either affirming or reversing, ‘the reviewing court may not substitute its judgment’ for that of the Commissioner.”)).

Lambert also argues the ALJ improperly rejected the opinion of her treating NP. The NP, who treated Lambert on many occasions, agreed with the statement that “It is highly likely that the combination of Ms. Lambert’s conditions would interfere with her being on task at 80%. Her attention and concentration would be compromised by her discomfort due to her medical challenges.” Tr. 452. The ALJ gave this opinion little weight because it was “inconsistent with the overall progress notes and treatment records from all sources” Tr. 28.

A nurse practitioner’s opinion is an “other source.” 20 C.F.R. § 404.1513(d). The ALJ may reject “other source” opinions if the ALJ provides germane reasons for doing so. *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996). The ALJ pointed to Lambert’s psychological evaluation, where she was oriented, with intact memory, repeating 3/3 words after a five minute delay. Tr. 244. Lambert “had no difficulty in following the conversation.” Tr. 244. At that exam, the psychologist noted “She likes to read and do needlepoint. She reads for a couple of hours at a time” but sometimes had problems concentrating. Tr. 245. The psychologist noted Lambert “is able to reason and to understand. Memory and concentration were generally within normal limits on the mental status exam.” Tr. 246. This contrast with the opinion of the “other source” is a germane reason for rejecting the opinion of the NP.² In addition to the notes from the examining psychologist, the ALJ pointed to Lambert’s own statements that she read every day, could pay

² Although the psychologist noted Lambert “reportedly stays in bed a couple days per week,” Tr. 245, as discussed above the ALJ did not err in finding Lambert’s self-reports less-than fully credible.

attention for “quite a while,” and could follow written instructions with no problems. Tr. 25. The ALJ provided germane reasons for assigning little weight to the NP’s opinion.

CONCLUSION

The ALJ’s decision is free of legal error and supported by substantial evidence. The Commissioner’s final decision is therefore AFFIRMED.

IT IS SO ORDERED.

DATED this 31st day of July, 2017.

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