

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

WENDY KIM PITTMAN,

Plaintiff,

v.

NANCY A. BERRYHILL,
Acting Commissioner of the Social Security
Administration,

Defendant.

Civ. No. 6:16-cv-00488-MC

OPINION AND ORDER

MCSHANE, Judge:

Plaintiff Wendy Kim Pittman seeks judicial review of the Commissioner’s decision denying her application for Disability Insurance Benefits and Supplemental Security Income under Titles II and XVI of the Social Security Act. This Court has jurisdiction under 42 U.S.C. §§ 405(g) and 1383(c)(3).

Ms. Pittman applied for Disability Insurance Benefits and Supplemental Security Income on May 1, 2012, alleging disability beginning April 29, 2012. Tr. 16. She applied for a hearing after her applications were denied initially and on reconsideration. Tr. 16, 88-91, 93-95. After the hearing, the Administrative Law Judge (ALJ) issued a written decision finding that Ms. Pittman is not disabled. Tr. 13-34. The Appeals Council denied Ms. Pittman’s request for review of the

hearing decision on January 19, 2016, making the ALJ's decision final. Tr. 1-4. Ms. Pittman argues that the ALJ erred by failing (1) to credit the opinion of examining psychologist, Dr. Wahl; (2) to give proper consideration to the opinion of treating psychiatrist, Dr. Martin; (3) to give clear and convincing reasons for not crediting Ms. Pittman's testimony; and (4) to give proper consideration to Ms. Pittman's husband's lay witness testimony. Additionally, Ms. Pittman claims that the Commissioner failed to prove that Ms. Pittman retains the ability to perform "other work." For the reasons stated below, the Commissioner's decision is AFFIRMED.

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 *Sandgate 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

A claimant is disabled if she cannot “engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . . has lasted or can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). The Social Security Administration (SSA) uses 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 but shifts to the Commissioner for step five if claimant satisfies her burden with respect to the first four steps. 20 C.F.R. § 404.1520.

At step one, the SSA considers whether the claimant is currently engaged in substantial gainful activity; if she is, the claimant is not disabled. 20 C.F.R. § 404.1520(a)(4). At step two, the SSA considers the medical severity of the claimant’s impairment. *Id.* The agency will find the claimant not disabled if the impairment is not severe enough. *Id.* At step three, the claimant will be found disabled if her impairment is of sufficient duration and it meets or equals a list of impairments. *Id.* If the impairment does not meet these requirements, then the claimant’s residual functional capacity (RFC) is determined. *Id.* The claimant’s RFC is an assessment of the greatest level of work that she can do based on an analysis of the effects of all limitations evident in her record on the physical, mental, sensory, and other requirements of work. 20 C.F.R. § 404.1545(a)(1). At step four, the SSA looks at the claimant’s past work and RFC. 20 C.F.R. § 404.1520(a)(4). If the claimant is able to do her past work the claimant is not disabled. *Id.*

At step five, the Commissioner bears the burden of demonstrating that although the claimant is unable to do past relevant work she is capable of making an adjustment to other work. *Id.* To make that determination, the SSA considers the claimant’s vocational factors: her RFC, age, education, and work experience. *Id.* If the Commissioner proves that the claimant is

able to perform other work existing in significant numbers in the national economy, then the claimant is not disabled. *Id.*

At step one, the ALJ found that Ms. Pittman had not engaged in substantial gainful activity since the claimed disability date. Tr. 18. At step two, the ALJ found that Ms. Pittman's "partial complex seizures; cognitive disorder, not otherwise specified; major depressive disorder; borderline intellectual functioning; and generalized anxiety disorder" qualified as severe impairments under 20 C.F.R. §404.1520(c). Tr. 18. At step three, the ALJ found that Ms. Pittman's impairments did not meet or equal any listed impairment. Tr. 18. Between steps three and four, the ALJ found Ms. Pittman had the RFC "to perform a full range of work at all exertional levels" with nonexertional exceptions. Tr. 20. At step four, the ALJ found that Ms. Pittman was unable to perform her past relevant work. Tr. 27. At step five, the ALJ found that Ms. Pittman was not disabled because there were jobs existing in significant numbers in the national economy that she could perform. Tr. 27. In doing so, the ALJ considered Ms. Pittman's age, education, work experience, and RFC. Tr. 27.

I. Medical Opinions

Ms. Pittman contends that the ALJ wrongly discounted the opinions of both an examining psychologist, Dr. James Wahl, and the treating psychiatrist, Dr. James Martin. An ALJ must provide clear and convincing reasons supported by substantial evidence in order to reject an uncontradicted opinion of a treating or examining physician. *Ghanim v. Colvin*, 763 F.3d 1154, 1160-61 (9th Cir. 2014). That said, the ALJ is responsible for resolving ambiguities in the medical evidence. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008)(citing *Andrews v. Shalala*, 53 F.3d 1035, 1039-40 (9th Cir. 1995)). The ALJ can resolve ambiguities in medical evidence and meet the burden for rejecting a physician's opinion "by setting out a detailed and

thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings.” *Cotton v. Bowen*, 799 F.2d 1403, 1408 (9th Cir. 1986)(citing *Swanson v. Secretary*, 763 F.2d 1061, 1065 (9th Cir. 1985)). The ALJ met that burden here.

a. Dr. Wahl’s Opinion

Ms. Pittman argues that the ALJ improperly rejected the opinion of her examining psychologist, Dr. Wahl. Dr. Wahl evaluated Ms. Pittman once, on October 11, 2012. Tr. 256-65. The ALJ gave significant weight to Dr. Wahl’s objective test results, but only some weight to Dr. Wahl’s opinion. Tr. 24. Ultimately, she found his single evaluation of Ms. Pittman to be less consistent with the evidence of record than that of Dr. Martin, the treating psychiatrist. Tr. 25. Ms. Pittman asserts that the ALJ did not actually give significant weight to the objective test results, because Dr. Wahl’s tests document Ms. Pittman’s markedly impaired concentration and pace, which the ALJ discounted. In making this argument, Ms. Pittman relies on Dr. Wahl’s opinion regarding the tests. Ms. Pittman further argues that the ALJ was incorrect to rely on Ms. Pittman’s activities as a basis for rejecting Dr. Wahl’s opinion.

Ms. Pittman has conflated Dr. Wahl’s tests with Dr. Wahl’s opinion. While Dr. Wahl’s opinion regards the objective test results, it is still an opinion. Because Dr. Wahl’s opinion that the tests “suggest significantly impaired general cognitive functioning” is not a part of the objective test results, the ALJ’s claim that she gave significant weight to the objective test results is unharmed by Dr. Wahl’s assessment of those results.

I find that the ALJ’s use of Ms. Pittman’s daily activities is substantial evidence supporting the ALJ’s clear and convincing reasons for giving only some weight to Dr. Wahl’s opinion. The ALJ determined that Ms. Pittman’s daily activities contradict Dr. Wahl’s opinion and that Ms. Pittman’s independence in “driving, going to the store, and attending appointments

without being accompanied” refute Ms. Pittman’s allegations of needing constant supervision. Tr. 24-25.

Ms. Pittman disagrees with the ALJ’s interpretation of Ms. Pittman’s daily activities, arguing that the Commissioner’s claim that I must uphold the Commissioner’s conclusion where evidence supports multiple rational interpretations attempts to replace the clear and convincing standard with a rational basis standard. Ms. Pittman conflates two separate issues, which use different standards. The ALJ’s findings regarding Ms. Pittman’s daily activities, if rational, are entitled to deference. *Tommasetti*, 533 F.3d at 1038. The ALJ is only required to meet the clear and convincing standard for her reasons to reject Dr. Wahl’s opinion. When I give the ALJ’s rational findings regarding Ms. Pittman’s daily activities the deference to which they are entitled, they, along with Dr. Martin’s records, provide the necessary clear and convincing reasons to reject Dr. Wahl’s opinion.

b. Dr. Martin’s Opinion

Ms. Pittman argues that the ALJ failed to give proper weight to the treating psychiatrist, Dr. Martin, who noted that Ms. Pittman had numerous moderate limitations that reduced her ability to work. Tr. 501. The ALJ gave little weight to Dr. Martin’s Mental Residual Capacity Questionnaire, completed May 8, 2013. Tr. 26. She did so based on Ms. Pittman’s regular and punctual attendance at appointments, the inconsistency of his opinion with his notes, the opinion’s reliance on self-reporting, and Ms. Pittman’s social behavior exemplified in her doctor-patient relationships. *Id.* Ms. Pittman asserts that Dr. Martin’s opinion was not inconsistent with his treatment notes, that Ms. Pittman’s slow processing speed shows that she would have difficulty staying on schedule, that the record indicates Ms. Pittman cannot accept confrontation

or constructive criticism, and that the ALJ did not fully account for Ms. Pittman's difficulty with criticism.

Dr. Martin's opinion that Ms. Pittman's symptoms would make working full-time, eight-hour days five days a week difficult was inconsistent with his treatment notes. Dr. Martin's notes show improvement with medication management and counseling. Tr. 269, 271, 273, 531, 533, 535. Further, his notes show that Dr. Martin believed Ms. Pittman functioned within normal cognitive range. Tr. 531. Inconsistency between a doctor's opinion and his notes is adequate reason for an ALJ to reject the doctor's testimony. *Tommasetti, supra*, 533 F.3d at 1041. The ALJ acted within her authority when she rejected Dr. Martin's testimony based on the inconsistency between his notes and his opinion.

Dr. Martin's treatment notes do not support his opinion that Ms. Pittman would not maintain attendance.¹ As the ALJ points out, his notes do not document any missed appointments. Tr. 26. For that reason, it is unclear on what grounds Dr. Martin based his opinion. Ms. Pittman reasons that Dr. Martin's opinion is supported by her extremely low processing speed, which indicates that she would struggle to perform her activities on schedule. The ALJ appears to have distinguished between Ms. Pittman's ability to show up on time and her ability to perform her activities on schedule. Tr. at 26. While there is no evidence to support the belief that Ms. Pittman could not show up on time, Ms. Pittman cites to Dr. Wahl's testimony as support for the section of the question addressing her ability to perform on schedule. However, neither doctor makes this connection nor is it clear from the record that it exists.

¹ As Ms. Pittman points out, the ALJ appears to be referring to the MRFC form's question #7, which relates to patient's "ability to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances." Tr. 504. Dr. Martin checked the "Moderately Limited" box. *Id.*

Additionally, Dr. Martin's opinion that Ms. Pittman has moderate social limitations² is not supported by his treatment notes. Ms. Pittman did not report to Dr. Martin any significant social conflict during the relevant period, and the record reveals no doctor-patient conflicts. Going to her ability to accept instructions and respond appropriately to criticism, Dr. Martin noted that Ms. Pittman has "marked feelings of inadequacy and inferiority going back into childhood." Tr. 310. The ALJ acknowledged that Ms. Pittman had a history of not receiving criticism well and addressed it by limiting her to "unskilled, low stress work" to "eliminate a significant amount of work-related stress and potential for conflict." Tr. 23.

Ms. Pittman attacks this restriction in that it fails to address Ms. Pittman's ability to stay on task. The question is not whether this restriction addresses all of Ms. Pittman's limitations, but whether the ALJ gave appropriate weight to Dr. Martin's testimony and properly accounted for it. The restriction does address Ms. Pittman's history of not receiving criticism well. The ALJ has met her burden of clear and convincing reasons based on substantial evidence in her rejection of parts of Dr. Martin's testimony.

II. Wendy Pittman's Testimony

The ALJ properly rejected Ms. Pittman's testimony regarding her limitations. To reject a claimant's testimony, the ALJ must provide specific, clear, and convincing reasons. *Burrell v. Colvin*, 775 F.3d 1133, 1137 (9th Cir. 2014). 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)). To assess credibility, the ALJ "may consider a range of factors. *Ghanim*, 763 F.3d at 1163. These factors include: (1) "ordinary techniques of

² The MRFC's questions #12 and #14 respectively refer to "the ability to interact with the general public" and to "accept instructions and to respond appropriately to criticism from supervisors." Tr. 405.

credibility evaluation,” like whether the claimant has a reputation for lying, contradicts her prior statements, or is not candid; (2) whether the claimant’s daily activities are inconsistent with the alleged symptoms; and (3) whether the claimant fails to follow, without adequate explanation, a prescribed course of treatment. *Id.* Where substantial evidence in the record supports the ALJ’s credibility finding, the court “may not engage in second-guessing.” *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002).

Here, the ALJ met her burden for rejecting Ms. Pittman’s testimony by referencing the factors above, specifically Ms. Pittman’s contradictory statements and the fact that her daily activities are inconsistent with her alleged symptoms. Regarding claimant’s contradictory statements, the ALJ points to Ms. Pittman’s statements that she does the grocery shopping, Tr. 160, and that her husband does the grocery shopping, Tr. 53. With regards to Ms. Pittman’s daily activities as being inconsistent with her alleged symptoms, the ALJ points to a series of activities. Ms. Pittman alleges balance issues, but claims to ride a bike, walk the dogs, walk on the beach, and walk as her mode of transportation. Tr. 23. Ms. Pittman alleges that she needs constant reminders because of issues with short-term memory, but says she drives herself unaccompanied and goes out by herself daily. *Id.* The record shows she attends most of her appointments alone. *Id.* I find the ALJ discredited Ms. Pittman’s testimony by providing specific, clear, and convincing reasons supported by substantial evidence in the record.

III. Mr. Pittman’s Lay Witness Testimony

The ALJ properly rejected the lay witness testimony of John Pittman, Ms. Pittman’s husband. Lay witness testimony is competent, must be accounted for, and “cannot be disregarded without comment.” *Molina v. Astrue*, 674 F.3d 1104, 1114 (9th Cir. 2012)(quoting *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996)). An ALJ must offer reasons germane to the witness to discount the witness’s testimony. *Id.* The ALJ provided germane reasons for rejecting Mr. Pittman’s testimony. Tr. 24. The ALJ pointed out that while Mr. Pittman says Ms. Pittman shakes and has sleep apnea, there is no evidence in the record that Ms. Pittman has sought treatment for hypoglycemia or that she has sleep apnea. *Id.* The ALJ points to Mr. Pittman’s statement Ms. Pittman “goes nowhere really,” as being contrary to both the function report and Ms. Pittman’s own testimony. *Id.* The inconsistencies between Mr. Pittman’s

testimony and the record the ALJ cites to discount Mr. Pittman are germane. The ALJ's decision was proper.

IV. Commissioner's Burden to Prove Ability to Work

At step five, the ALJ has the burden of identifying "specific jobs existing in substantial numbers in the national economy that claimant can perform despite her identified limitations." *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir. 1995). For a sufficiently complex claim, the ALJ may enlist testimony from a vocational expert (VE) or other specialist to help identify potential suitable employment opportunities for the claimant. 20 C.F.R. § 404.1566(e). In posing hypotheticals to the VE, the ALJ must include properly supported limitations and exclude those limitations not supported by substantial evidence. *Robbins v. SSA*, 466 F.3d 880, 886 (9th Cir. 2006).

I find the ALJ's hypothetical to the VE included properly supported limitations and excluded those not supported by substantial evidence. Ms. Pittman asserts that fully crediting the opinions of Dr. Wahl and Dr. Martin would mean that the ALJ's hypothetical question to the VE was incomplete. Because Dr. Wahl's and Dr. Martin's testimony have not been fully credited the ALJ's hypothetical to the VE was complete and the Commissioner met her step five burden.

CONCLUSION

Because the ALJ based her decision on the proper legal standards and supported her findings with substantial evidence in the record and met her step five burden of proving Ms. Pittman's ability to work, the Commissioner's final decision denying Ms. Pittman Disability Insurance Benefits and Supplemental Security Income is AFFIRMED.

IT IS SO ORDERED.

DATED this 7 day of April, 2017.



Michael J. McShane
United States District Judge