

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 02, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KATTRA B.,

Plaintiff,

v.

ANDREW M. SAUL,
Commissioner of Social Security,

Defendant.

No. 1:19-CV-03183-RHW

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

(ECF Nos. 11, 15)

Before the Court is Plaintiff's Motion for Summary Judgment and Defendant's Motion for Summary Judgment. ECF Nos. 11 & 15. Plaintiff brings this action seeking judicial review of the Commissioner's denial of her application for disability benefits and disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-434. After reviewing the administrative record and briefs filed by the parties, the Court is now fully informed. For the reasons set forth below, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

ORDER GRANTING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT ~ 1

1 **I. JURISDICTION**

2 The Appeals Council denied Plaintiff’s request for review on June 14, 2019.
3 Tr. 1-6. Plaintiff timely filed the present action seeking judicial review on August
4 9, 2019. ECF No. 1. Under 42 U.S.C. § 405(g), Plaintiff’s claims are properly
5 before this Court.

6 **II. SEQUENTIAL EVALUATION PROCESS**

7 The Social Security Act defines disability as the “inability to engage in any
8 substantial gainful activity by reason of any medically determinable physical or
9 mental impairment which can be expected to result in death or which has lasted or
10 can be expected to last for a continuous period of not less than twelve months.” 42
11 U.S.C. § 423(d)(1)(A).

12 The Commissioner has established a five-step sequential evaluation process
13 for determining whether a claimant is disabled within the meaning of the Act. 20
14 C.F.R. § 404.1520(a)(4); *Lounsbury v. Barnhart*, 468 F.3d 1111, 1114 (9th Cir.
15 2006).

16 At step one, the Commissioner considers the claimant’s work activity. 20
17 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful
18 activity,” the Commissioner must find that the claimant is not disabled. 20 C.F.R.
19 § 416.920(b).

1 If the claimant is not engaged in substantial gainful activity, the analysis
2 proceeds to step two. At this step, the Commissioner considers the severity of the
3 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
4 “any impairment or combination of impairments which significantly limits [his or
5 her] physical or mental ability to do basic work activities,” the analysis proceeds to
6 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy
7 this severity threshold, however, the Commissioner must find that the claimant is
8 not disabled. 20 C.F.R. § 416.920(c).

9 At step three, the Commissioner compares the claimant’s impairment to
10 severe impairments recognized by the Commissioner to be so severe as to preclude
11 a person from engaging in substantial gainful activity. 20 C.F.R.
12 § 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
13 enumerated impairments, the Commissioner must find the claimant disabled and
14 award benefits. 20 C.F.R. § 416.920(d).

15 If the severity of the claimant’s impairment does not meet or exceed the
16 severity of the enumerated impairments, the Commissioner must pause to assess
17 the claimant’s residual functional capacity (“RFC”), defined generally as the
18 claimant’s ability to perform physical and mental work activities on a sustained
19 basis despite his or her limitations. 20 C.F.R. § 416.945(a)(1).

1 At step four, the Commissioner considers whether, in view of the claimant's
2 RFC, the claimant is capable of performing work that he or she has performed in
3 the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
4 capable of performing past relevant work, the Commissioner must find that the
5 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
6 performing such work, the analysis proceeds to step five.

7 At step five, the Commissioner should conclude whether, in view of the
8 claimant's RFC, the claimant is capable of performing other work in the national
9 economy. 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the
10 Commissioner must also consider vocational factors such as the claimant's age,
11 education, and past work experience. *Id.* If the claimant is capable of adjusting to
12 other work, the Commissioner must find that the claimant is not disabled. 20
13 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to other work,
14 the analysis concludes with a finding that the claimant is disabled and is therefore
15 entitled to benefits. *Id.*

16 In steps one through four, the burden of proof rests upon the claimant to
17 establish a prima facie case of entitlement to disability benefits. *Tackett v. Apfel*,
18 180 F.3d 1094, 1098-99 (9th Cir. 1999). This burden is met once the claimant
19 establishes that physical or mental impairments prevent her from engaging in her
20 previous occupations. 20 C.F.R. § 404.1520(a). If the claimant cannot engage in

1 her previous occupations, the ALJ proceeds to step five and the burden shifts to the
2 Commissioner to demonstrate that (1) the claimant is capable of performing other
3 work; and (2) such work exists in “significant numbers in the national economy.”
4 20 C.F.R. § 404.1560(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 388-89 (9th Cir.
5 2012).

6 III. STANDARD OF REVIEW

7 A district court’s review of a final decision of the Commissioner is governed
8 by 42 U.S.C. § 405(g). The scope of review under Section 405(g) is limited, and
9 the Commissioner’s decision will be disturbed “only if it is not supported by
10 substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153,
11 1158-59 (9th Cir. 2012). Substantial evidence means ““more than a mere scintilla
12 but less than a preponderance; it is such relevant evidence as a reasonable mind
13 might accept as adequate to support a conclusion.”” *Sandgathe v. Chater*, 108 F.3d
14 978, 980 (9th Cir. 1997) (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.
15 1995)). In determining whether the Commissioner’s findings are supported by
16 substantial evidence, “a reviewing court must consider the entire record as a whole
17 and may not affirm simply by isolating a specific quantum of supporting
18 evidence.” *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)
19 (quoting *Hammock v. Bowen*, 879 F.2d 498, 501 (9th Cir. 1989)).

1 In reviewing a denial of benefits, a district court may not substitute its
2 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.
3 1992). If the evidence in the record “is susceptible to more than one rational
4 interpretation, [the court] must uphold the ALJ’s findings if they are supported by
5 inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104,
6 1111 (9th Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.
7 2002). Moreover, a district court “may not reverse an ALJ’s decision on account
8 of an error that is harmless.” *Molina*, 674 F.3d at 1111. An error is harmless
9 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
10 *Id.* at 1115. The burden of showing that an error is harmful generally falls upon
11 the party appealing the ALJ’s decision. *Shinseki v. Sanders*, 556 U.S. 396, 409-10
12 (2009).

13 IV. STATEMENT OF FACTS

14 The facts of the case are set forth in detail in the transcript of proceedings
15 and only briefly summarized here. Plaintiff was 46 years old on the alleged
16 disability onset date, May 31, 2014. She completed her GED and has no college,
17 and she is able to communicate in English. Tr. 72-73. Plaintiff also possesses a
18 Commercial Driver’s License, or CDL. Tr. 73. Plaintiff has past relevant work as
19 a bus driver, or shuttle driver, for the organization People to People. Tr. 73-74.
20 Plaintiff stopped working in 2014. Tr. 73.

1 Plaintiff suffers from obesity, diabetes, depression, anxiety, obstructive sleep
2 apnea, and peripheral neuropathy of the feet. Tr. 19.

3 **V. THE ALJ'S FINDINGS**

4 At **step one**, the ALJ found that Plaintiff meets the insured status
5 requirements of the Act through December 31, 2019 and that she has not engaged
6 in substantial gainful activity since the alleged disability onset date. *Id.*

7 At **step two**, the ALJ found that Plaintiff has the following severe
8 impairments: obesity, diabetes, depression, anxiety, obstructive sleep apnea, and
9 peripheral neuropathy of the feet. *Id.*

10 At **step three**, the ALJ found that Plaintiff does not have an impairment or
11 combination of impairments that meet or medically equals the severity of the listed
12 impairments in 20 C.F.R. Section 404, Subpart P, Appendix 1.

13 At **step four**, the ALJ found that Plaintiff has the RFC to perform light
14 work, as defined in 20 C.F.R. § 404.1567(b), with some exceptions. Plaintiff can
15 stand and walk up to four hours in an eight-hour workday and sit up to six hours in
16 an eight-hour workday. Tr. 22. She would need an option between sitting and
17 standing every 30 minutes while remaining at the workstation. *Id.* She could work
18 in a low stress work environment and would only be able to perform simple and
19 routine tasks. Tr. 23. She cannot be subjected to production pace. *Id.* She can
20 never climb ladders, ropes, or scaffolds, but she could occasionally climb ramps

1 and stairs, occasionally balance and stop, rarely crouch, and never kneel or crawl.

2 *Id.* She is limited to frequent bilateral handling and frequent bilateral fingering.

3 *Id.* And Plaintiff is limited to only occasional interaction with the public and
4 coworkers. *Id.*

5 The ALJ found that Plaintiff is not capable of performing past relevant work
6 as a bus driver or shuttle driver. Tr. 29.

7 At **step five**, the ALJ determined that in light of Plaintiff's age, education,
8 work experience, and RFC, there are a significant number of jobs in the national
9 economy that she can perform. Tr. 30. The ALJ heard from vocational expert Jeff
10 Tittelfitz. Tr. 98. Mr. Tittelfitz testified that given Plaintiff's RFC, she could
11 perform the work of a Marker, identified by the Dictionary of Occupational Titles
12 ("DOT") 209.587-034. Tr. 101. This job is light work, Specific Vocational
13 Preparation (SVP) level 2, and unskilled which allows the worker to sit or stand if
14 they prefer and allows the person to set their own pace. Tr. 101. Next, the
15 vocational expert opined that Plaintiff could perform the work of Small Product
16 Assembler II where the same sitting and standing requirements apply and the
17 worker can set her own pace. Tr. 102.

18 Accordingly, the ALJ concluded that Plaintiff has not been under a disability
19 for the relevant period.

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1 **VI. ISSUES FOR REVIEW**

2 Plaintiff argues that (1) the ALJ failed to provide clear and convincing
3 reasons for rejecting Plaintiff’s subjective testimony; (2) the ALJ improperly
4 weighed the medical opinion evidence; (3) the ALJ reversibly erred when
5 discounting lay witness testimony; and (4) the ALJ reversibly erred by not properly
6 analyzing whether significant jobs exists that Plaintiff can perform in the national
7 economy at step five.

8 **VII. DISCUSSION**

9 **A. The ALJ did not err by discounting Plaintiff’s subjective symptom**
10 **complaints.**

11 An ALJ engages in a two-step analysis to determine whether a claimant’s
12 testimony regarding subjective symptoms is credible. *Tommasetti v. Astrue*, 533
13 F.3d 1035, 1039 (9th Cir. 2008). First, the claimant must produce objective
14 medical evidence of an underlying impairment or impairments that could
15 reasonably be expected to produce some degree of the symptoms alleged. *Id.*
16 Second, if the claimant meets this threshold, and there is no affirmative evidence
17 suggesting malingering, “the ALJ can reject the claimant’s testimony about the
18 severity of [her] symptoms only by offering specific, clear, and convincing reasons
19 for doing so.” *Id.* Questions of credibility on resolutions of conflict of testimony
20 are to be resolved by the ALJ. *Id.*

1 The ALJ found that Plaintiff’s medically determinable impairments could
2 reasonably cause her alleged symptoms, but rejected her statements concerning
3 intensity, persistence, and limiting effects of these symptoms as inconsistent with
4 the medical and other evidence in the record. Tr. 24.

5 The ALJ discredited Plaintiff’s statement that she used to be an active
6 person and exercised. Tr. 24. The ALJ made this finding by looking to the visit
7 with treating physician Tatiana Antoci, M.D., in April 2014 where Dr. Antoci
8 noted that Plaintiff had only fair dietary compliance and was not exercising. Tr. 24
9 (citing Tr. 398). Plaintiff argues that the ALJ misconstrued Plaintiff’s symptom
10 testimony when he found such testimony was “inconsistent with the claimant’s
11 testimony that she was an active person and exercised.” ECF No. 11, at 5. This
12 inconsistency finding is supported by substantial evidence where the medical
13 history showed that Plaintiff did not comply with exercise and dietary
14 recommendations as of April 2014, but at the hearing in June 2018 she stated “I
15 have been active my whole life, and the last few years no.” Tr. 97, 398. The ALJ
16 also noted other inconsistencies in Plaintiff’s symptom testimony.

17 For instance, the ALJ noted multiple instances in the medical evidence
18 where Plaintiff denied the presence of certain symptoms. *See* Tr. 24-26. In a
19 follow-up with Dr. Antoci in April 2016, Plaintiff denied “infection, paresthesia[],
20 neuropathic pain, and numbness and her exam showed a normal gait and station . .

1 . ." Tr. 26. In a subsequent January 2018 follow-up with Dr. Antoci, Plaintiff
2 again denied paresthesia, neuropathic pain, and numbness. Tr. 26 (citing Tr. 642).
3 Because the ALJ specifically identified the areas of Plaintiff's symptom testimony
4 that he found to be inconsistent with the medical evidence, this Court rejects
5 Plaintiff's argument that the ALJ misunderstood her testimony. Therefore, the
6 ALJ did not err by discounting Plaintiff's subjective symptom testimony.

7 **B. The ALJ did not err when weighing the medical opinion evidence.**

8 This Court rejects Plaintiff's contention that the ALJ improperly weighed
9 the medical opinion evidence.

10 The ALJ is responsible for resolving conflicting medical opinions regarding
11 a claimant's abilities and limitations. 20 C.F.R. § 404.1527. The ALJ may
12 discount a doctor's opinion when the doctor's clinical notes and observations do
13 not support the doctor's assessed limitations. *Bayliss v. Barnhart*, 427 F.3d 1211,
14 1216 (9th Cir. 2005).

15 Ellen Rozenfeld, Psy.D., an impartial medical expert, reviewed Plaintiff's
16 medical records, issued a report, and testified at Plaintiff's hearing. Tr. 27-28. The
17 ALJ accorded great weight to Dr. Rozenfeld's opinion that Plaintiff could perform
18 full-time work with certain limitations. Tr. 28. These limitations included a
19 predictable work setting, occasional interaction with others, no production pace,
20 and simple and routine work. Tr. 28. On cross-examination, Dr. Rozenfeld

1 testified that the objective evidence did not indicate that Plaintiff's emotional flare-
2 ups would cause her to be incapable of performing work. Tr. 87. Dr. Rozenfeld
3 did, however, opine that Plaintiff would only be capable of simple, routine tasks.
4 This limitation differed from the medical opinion of psychological examiner
5 Alexander Patterson, Pys.D., who performed an in-person consultative exam. Tr.
6 86-87.

7 In August 2016, Dr. Patterson observed Plaintiff to have an apathetic and
8 detached presentation with significant psychomotor retardation and slowed speech,
9 with difficulty on memory testing. Tr. 634-38. Dr. Patterson concluded that
10 Plaintiff would not have difficulty performing: simple and repetitive tasks, detailed
11 and complex tasks, accepting instructions from supervisors, interacting with
12 coworkers or the public, performing work activities on a consistent basis without
13 special or additional instruction, or maintaining attendance at work. Tr. 638.
14 However, he opined that she would have difficulty completing a normal workday
15 without interruptions from a psychiatric condition due to chronic severe
16 depression. *Id.* He also opined that she would have difficulty dealing with the
17 usual stress encountered in the workplace. *Id.*

18 In July 2016, William Drenguis, M.D. performed an in-person physical
19 exam of Plaintiff. Tr. 626-31. Dr. Drenguis opined that Plaintiff's maximum
20 standing or walking capacity with normal breaks is at least two hours in an eight-

1 hour workday. Tr. 631. She is limited by her chronic lumbar sprain, peripheral
2 neuropathy in her feet, and degenerative joint disease (“DJD”) of her knees. Tr.
3 631–32. Next, Dr. Drenguis found her maximum sitting capacity was six hours in
4 a normal eight-hour workday. Tr. 632. With respect to her postural activities,
5 Plaintiff “may occasionally climb steps and stairs, ladders, scaffolds, and ropes and
6 occasionally stoop, kneel, crouch, and crawl. She is limited by her chronic lumbar
7 sprain and bilateral DJD of the knees.” *Id.* And her manipulative activities,
8 Plaintiff “may frequently reach overhead, reach forward, handle, finger, and feel.”
9 Tr. 632.

10 Dr. Drenguis also noted:

11 The claimant can make a full fist with either hand to touch her thumb
12 to the tip of each finger. She was able to tie a pair of shoes,
13 manipulate a button, pick up a coin, and [] turn a doorknob with either
14 hand. Grip is 5/5 and bilaterally symmetrical.

15 Tr. 629.

16 The ALJ assigned partial weight to Dr. Drenguis’s opinion. Tr. 29. The
17 ALJ determined that “Dr. Drenguis’ light exertional limitation is consistent with
18 the record[,] but his standing limitation, postural limitations, and manipulative
19 limitations are not consistent with the objective record or his own internal findings
20 (i.e. no upper extremity neuropathy to support manipulative limitations and no x-
rays to support degenerative joint disease of the knees).” *Id.*

1 Next, the ALJ assigned partial weight to the opinion of Robert Bernardez-
2 Fu, M.D. who opined that Plaintiff is capable of light exertional work. Tr. 29. The
3 ALJ found that Dr. Bernardez-Fu's opinion was mostly consistent with the
4 objective medical evidence, but evidence received after his evaluation showed
5 even greater limitation to Plaintiff's activities, i.e. bilateral neuropathy of the feet.
6 Tr. 29.

7 Plaintiff argues that Dr. Drenguis's opinion limited Plaintiff to only
8 sedentary work, and the ALJ committed harmful error in only giving Dr.
9 Drenguis's opinion partial weight. ECF No. 11, at 11-12. The ALJ's weighing of
10 Dr. Drenguis's opinion and the other medical opinion evidence is supported by
11 substantial evidence. The ALJ did not conclude that Plaintiff could perform the
12 full range of light work. Tr. 30. Instead, the ALJ acknowledged that Plaintiff's
13 RFC gave limitations and specifically asked the vocational expert if Plaintiff could
14 perform certain jobs in the national economy based on such limitations. *Id.* The
15 vocational expert concluded she could perform the jobs of Marker, Small Products
16 Assembler II, or Electronics Worker. Tr. 30-31. In the case of Dr. Bernardez-Fu,
17 the ALJ actually found that later received evidence demonstrated a greater level of
18 limitation on Plaintiff. Tr. 29. Contrary to Plaintiff's argument, the ALJ properly
19 considered Dr. Drenguis's opinion and weighed it with the other medical opinion
20 evidence to derive Plaintiff's RFC. The ALJ did not improperly weigh the medical

1 opinion evidence and the ALJ’s rationale for the RFC determination was properly
2 explained.

3 **C. The ALJ did not err by assigning little weight to the laywitness**
4 **statements.**

5 An ALJ must “take into account” lay witness statements, or else provide
6 “arguably germane reasons” for disregarding them. *Lewis v. Apfel*, 236 F.3d 503,
7 511 (9th Cir. 2001). “One reason an ALJ may discount lay testimony is that it
8 conflicts with medical evidence.” *Id.*

9 The ALJ considered and assigned little weight to the statements of Plaintiff’s
10 wife and friends. Tr. 29. He found that these statements largely mirrored
11 Plaintiff’s subjective symptom reports which were not fully consistent with the
12 objective medical evidence. *Id.* This was not error. As noted above, the ALJ
13 granted great weight to Dr. Rozenfeld’s opinion and testimony, who opined that
14 Plaintiff could sustain full-time work with assigned limitations. *See* Tr. 28. The
15 laywitness statements of Plaintiff’s wife and friends were not consistent with the
16 overall medical opinion evidence and Mr. Tittelfitz’s (vocational expert) opinions
17 on Plaintiff’s ability to adjust to alternative work. The ALJ’s determination to
18 discount such laywitness accounts when making its disability determination is
19 supported by substantial evidence.

20 ///

1 **D. The ALJ properly identified jobs which Plaintiff could perform at Step**
2 **Five.**

3 A vocational expert’s “recognized expertise provides the necessary
4 foundation for his or her testimony.” *Bayliss*, 427 F.3d at 1217-18; *see also* 20
5 C.F.R. § 404.1566(e). An “ALJ may rely on a [vocational expert]’s testimony
6 concerning the number of relevant jobs in the national economy, and need not
7 inquire *sua sponte* into the foundation for the expert’s opinion.” *Shaibi v.*
8 *Berryhill*, 883 F.3d 1102, 1110 (9th Cir. 2018). In an attachment to her motion for
9 summary judgment, Plaintiff attempts to refute the vocational expert’s job
10 classifications and numbers of existing jobs, and cites an alternative source for
11 these figures. ECF No. 11 at 18-19. This evidence was not presented to the ALJ
12 and this Court will not consider it here. *Shaibi*, 883 F.3d at 1109 (“[W]hen a
13 claimant fails entirely to challenge a vocational expert’s job numbers during
14 administrative proceedings before the agency, the claimant forfeits such a
15 challenge on appeal, at least when that claimant is represented by counsel.”).
16 Plaintiff has not demonstrated that the ALJ’s reliance on the vocational expert at
17 step five was not unsupported by substantial evidence.

18 Accordingly, **IT IS ORDERED:**

- 19 1. Plaintiff’s Motion for Summary Judgment, **ECF No. 11**, is **DENIED**.
20 2. Defendant’s Motion for Summary Judgment, **ECF No. 15**, is

GRANTED.

1 3. Judgment shall be entered in favor of **Defendant** and the file shall be

2 **CLOSED.**

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
4 Order and forward copies to counsel and **CLOSE** the file.

5 **DATED** this 2nd day of April, 2021.

6 *s/Robert H. Whaley*
7 **ROBERT H. WHALEY**
Senior United States District Judge