

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

Mar 31, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LISA V. K.,

Plaintiff,

v.

KILOLO KIJAKAZI,  
ACTING COMMISSIONER OF  
SOCIAL SECURITY,<sup>1</sup>

Defendant.

No. 1:20-CV-03144-JAG

ORDER GRANTING  
DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT

**BEFORE THE COURT** are cross-motions for summary judgment. ECF No. 18, 21. Attorney Kathryn Higgs represents Lisa V. K. (Plaintiff); Special Assistant United States Attorney Benjamin Groebner represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 7. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

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<sup>1</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

ORDER GRANTING DEFENDANT'S MOTION . . . - 1

1 **JURISDICTION**

2 Plaintiff filed an application for Supplemental Security Income on  
3 September 14, 2018, alleging disability beginning January 1, 2003, due to bipolar  
4 disorder, schizoaffective disorder, and chronic low back pain. Tr. 66-67. The  
5 application was denied initially and upon reconsideration. Tr. 97-100, 108-14.  
6 Administrative Law Judge (ALJ) Mary Gallagher Dilley held a hearing on  
7 November 20, 2019, Tr. 31-64, and issued an unfavorable decision on December  
8 20, 2019. Tr. 15-25. Plaintiff requested review by the Appeals Council and the  
9 Appeals Council denied the request on August 12, 2020. Tr. 1-5. The ALJ’s  
10 November 2019 decision became the final decision of the Commissioner, which is  
11 appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this  
12 action for judicial review on September 14, 2020. ECF No. 1.

13 **STATEMENT OF FACTS**

14 Plaintiff was born in 1960 and was 58 years old when she filed her  
15 application. Tr. 24. She has a high school education with some additional courses.  
16 Tr. 38, 326. She has a minimal work history, having worked only briefly at her  
17 brother’s restaurant and for three weeks in a fast-food restaurant. Tr. 39-41, 177,  
18 326. She has alleged she is unable to work due to a combination of physical and  
19 mental issues. Tr. 42.

20 **STANDARD OF REVIEW**

21 The ALJ is responsible for determining credibility, resolving conflicts in  
22 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
23 1039 (9th Cir. 1995). The ALJ’s determinations of law are reviewed *de novo*, with  
24 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
25 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
26 only if it is not supported by substantial evidence or if it is based on legal error.  
27 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
28 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at

1 1098. Put another way, substantial evidence is such relevant evidence as a  
2 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*  
3 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one  
4 rational interpretation, the Court may not substitute its judgment for that of the  
5 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,  
6 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the  
7 administrative findings, or if conflicting evidence supports a finding of either  
8 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*  
9 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision  
10 supported by substantial evidence will be set aside if the proper legal standards  
11 were not applied in weighing the evidence and making the decision. *Browner v.*  
12 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

### 13 SEQUENTIAL EVALUATION PROCESS

14 The Commissioner has established a five-step sequential evaluation process  
15 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*  
16 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant  
17 bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d  
18 at 1098-1099. This burden is met once a claimant establishes that a physical or  
19 mental impairment prevents the claimant from engaging in past relevant work. 20  
20 C.F.R. § 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ  
21 proceeds to step five, and the burden shifts to the Commissioner to show (1) the  
22 claimant can make an adjustment to other work; and (2) the claimant can perform  
23 specific jobs that exist in the national economy. *Batson v. Comm'r of Soc. Sec.*  
24 *Admin.*, 359 F.3d 1190, 1193-94 (9th Cir. 2004). If a claimant cannot make an  
25 adjustment to other work in the national economy, the claimant will be found  
26 disabled. 20 C.F.R. § 416.920(a)(4)(v).

1 **ADMINISTRATIVE DECISION**

2 On December 20, 2019, the ALJ issued a decision finding Plaintiff was not  
3 disabled as defined in the Social Security Act. Tr. 15-25.

4 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
5 activity since the application date. Tr. 18.

6 At step two, the ALJ determined Plaintiff had the following severe  
7 impairments: degenerative disc disease, bipolar disorder, mild degenerative  
8 osteoarthopathy, and mild right knee degenerative joint disease. *Id.*

9 At step three, the ALJ found Plaintiff did not have an impairment or  
10 combination of impairments that met or medically equaled the severity of one of  
11 the listed impairments. Tr. 18-19.

12 The ALJ assessed Plaintiff’s Residual Functional Capacity (RFC) and found  
13 she could perform medium work, with the following additional limitations:

14 She is able to lift and carry 50 pounds occasionally and 25  
15 pounds frequently. She can stand and/or walk about 6 hours in  
16 an 8-hour workday with normal breaks. She can sit for about 6  
17 hours in an 8-hour workday with normal breaks. She can  
18 frequently climb ramps, stairs, ladders, ropes, and scaffolds. She  
19 can frequently stoop. She can perform simple, routine, repetitive  
20 tasks. She can have superficial contact with the public. She can  
have superficial contact with coworkers meaning no teamwork.

21 Tr. 20.

22 At step four, the ALJ found Plaintiff had no past relevant work. Tr. 24.

23 At step five, the ALJ determined that, based on the testimony of the  
24 vocational expert, and considering Plaintiff’s age, education, work experience, and  
25 RFC, Plaintiff could perform jobs that existed in significant numbers in the  
26 national economy, including the jobs of laundry worker, industrial cleaner, and  
27 kitchen helper. Tr. 24-25.

1 The ALJ thus concluded Plaintiff was not under a disability within the  
2 meaning of the Social Security Act at any time from the application date through  
3 the date of the decision. Tr. 25.

#### 4 ISSUES

5 The question presented is whether substantial evidence supports the ALJ's  
6 decision denying benefits and, if so, whether that decision is based on proper legal  
7 standards.

8 Plaintiff contends the ALJ erred by (1) failing to find schizophrenia to be a  
9 severe impairment at step 2; (2) improperly assessing Plaintiff's subjective  
10 statements; (3) improperly rejecting medical opinion evidence; and (4) improperly  
11 determining Plaintiff's residual functional capacity.

#### 12 DISCUSSION

##### 13 1. Plaintiff's Symptom Statements

14 Plaintiff alleges the ALJ erred in rejecting her symptom testimony without  
15 providing adequate reasons. ECF No. 18 at 10-14.

16 It is the province of the ALJ to make determinations regarding a claimant's  
17 subjective reports. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).  
18 However, the ALJ's findings must be supported by specific cogent reasons.  
19 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative  
20 evidence of malingering, the ALJ's reasons for rejecting a claimant's testimony  
21 must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281  
22 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).

23 The ALJ found Plaintiff's medically determinable impairments could  
24 reasonably be expected to cause the alleged symptoms; however, she found  
25 Plaintiff's statements concerning the intensity, persistence and limiting effects of  
26 her symptoms were not entirely consistent with the medical evidence and other  
27 evidence in the record. Tr. 21. Specifically, the ALJ found Plaintiff's allegations to  
28 be undermined by minimal treatment, improvement with medication, and largely

1 normal exam findings, along with finding evidence that Plaintiff primarily engaged  
2 in mental health treatment in order to obtain housing and noting that she endorsed  
3 a full range of daily activities and had stopped working for reasons unrelated to her  
4 disability. Tr. 21-23.

5 Plaintiff argues the ALJ's rationale is not supported by substantial evidence  
6 and asserts that she never alleged a complete inability to work, but rather that she  
7 could do no more than sedentary work. ECF No. 18 at 11-13. She argues the record  
8 contains objective findings supportive of her allegations, and that her activities and  
9 work history are not inconsistent with her claim of disability. *Id.* at 13-14.

10 Defendant argues the ALJ reasonably found the record unresponsive of the degree  
11 of limitations Plaintiff alleged, noting normal physical and mental exam findings  
12 and that the record largely showed her conditions were stable or improved with  
13 medication. ECF No. 21 at 4-8.

14 The Court finds the ALJ did not err. An ALJ may consider evidence of the  
15 type and effectiveness of treatments received in assessing the reliability of a  
16 claimant's symptom allegations. Social Security Ruling 16-3p. The ALJ found that  
17 the record showed Plaintiff's conditions were largely controlled and improved with  
18 medication. Tr. 21-22. This was a reasonable interpretation of the records, which  
19 document Plaintiff's reports that treatment provided adequate relief, that her pain  
20 was controlled, and that her medications were adequate for her to maintain  
21 functioning. Tr. 339-40, 343-44, 390-92, 1178. While she occasionally reported  
22 increased symptoms, the ALJ's interpretation of the record is reasonable.

23 Although it cannot serve as the sole ground for rejecting a claimant's  
24 symptom statements, objective medical evidence is a "relevant factor in  
25 determining the severity of the claimant's pain and its disabling effects." *Rollins v.*  
26 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The ALJ reasonably found the  
27 objective findings throughout the record to not be supportive of the extent of  
28 Plaintiff's alleged limitations.

1 While the ALJ offered other reasons that are not supported by substantial  
2 evidence, any such error was harmless. *See Carmickle v. Comm'r Soc. Sec. Admin.*,  
3 533 F.3d 1155, 1163 (9th Cir. 2008) (upholding an adverse credibility finding  
4 where the ALJ provided four reasons to discredit the claimant, two of which were  
5 invalid).

## 6 **2. Medical Opinion Evidence**

7 Plaintiff argues the ALJ improperly weighed the medical opinion evidence.  
8 ECF No. 18 at 15-16.

9 For claims filed on or after March 27, 2017, new regulations apply that  
10 change the framework for how an ALJ must weigh medical opinion evidence.  
11 Revisions to Rules Regarding the Evaluation of Medical Evidence, 2017 WL  
12 168819, 82 Fed. Reg. 5844 (Jan. 18, 2017); 20 C.F.R. § 416.920c. The new  
13 regulations provide the ALJ will no longer give any specific evidentiary weight to  
14 medical opinions or prior administrative medical findings, including those from  
15 treating medical sources. 20 C.F.R. § 416.920c(a). Instead, the ALJ will consider  
16 the persuasiveness of each medical opinion and prior administrative medical  
17 finding, regardless of whether the medical source is an Acceptable Medical Source.  
18 20 C.F.R. § 416.920c(c). The ALJ is required to consider multiple factors,  
19 including supportability, consistency, the source's relationship with the claimant,  
20 any specialization of the source, and other factors (such as the source's familiarity  
21 with other evidence in the file or an understanding of Social Security's disability  
22 program). *Id.* The regulations make clear that the supportability and consistency of  
23 an opinion are the most important factors, and the ALJ must articulate how they  
24 considered those factors in determining the persuasiveness of each medical opinion  
25 or prior administrative medical finding. 20 C.F.R. § 416.920c(b). The ALJ may  
26 explain how they considered the other factors, but is not required to do so, except  
27 in cases where two or more opinions are equally well-supported and consistent  
28 with the record. *Id.*

1 Supportability and consistency are further explained in the regulations:

- 2
- 3 (1) Supportability. The more relevant the objective medical  
4 evidence and supporting explanations presented by a  
5 medical source are to support his or her medical opinion(s)  
6 or prior administrative medical finding(s), the more  
7 persuasive the medical opinions or prior administrative  
8 medical finding(s) will be.
- 9 (2) Consistency. The more consistent a medical opinion(s) or  
10 prior administrative medical finding(s) is with the  
11 evidence from other medical sources and nonmedical  
12 sources in the claim, the more persuasive the medical  
13 opinion(s) or prior administrative medical finding(s) will  
14 be.

15 20 C.F.R. § 416.920c(c).

16 Plaintiff argues the ALJ improperly found the state agency opinions to be  
17 persuasive, despite these sources only reviewing some of the medical records, and  
18 instead should have found the treating and examining sources to be more  
19 persuasive, as they were consistent with each other and indicated more severe  
20 impairments than found by the ALJ. ECF No. 18 at 15-16. Defendant argues the  
21 ALJ reasonably considered the supportability and consistency factors in assessing  
22 each of the medical opinions, and notes that Plaintiff did not specifically challenge  
23 the ALJ's rationale for each of the persuasiveness evaluations. ECF No. 21 at 9-13.

24 The Court finds the ALJ did not err. In assessing the opinions from Dr.  
25 Genthe, Dr. Harmon, and PA-C Diaz, the ALJ considered the consistency and  
26 supportability of each of the opinions. Tr. 23-24. The ALJ reasonably found Dr.  
27 Genthe's opinion to be unsupported by his own exam findings, which were largely  
28 within normal limits. Tr. 329-30. The ALJ found Dr. Harmon's opinion  
unpersuasive for similar reasons, as Dr. Harmon only reviewed Dr. Genthe's  
opinion. Tr. 1045. The ALJ noted Mr. Diaz documented normal physical exam



1 findings the day he opined Plaintiff was limited to sedentary work. Tr. 336-37.  
2 While Plaintiff argues the ALJ should have found these opinions more persuasive,  
3 she does not specifically challenge the ALJ's rationale. "When the evidence is  
4 susceptible to more than one rational interpretation, we must uphold the ALJ's  
5 findings if they are supported by inferences reasonably drawn from the record."  
6 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

### 7 **3. Schizophrenia**

8 Plaintiff argues the ALJ erred in failing to find schizophrenia to be a severe  
9 impairment at step two.

10 At step two of the sequential evaluation process, the ALJ must determine  
11 whether the claimant has any medically determinable severe impairments.  
12 20 C.F.R. § 416.920(a)(ii). An impairment is "not severe" if it does not  
13 "significantly limit" the ability to conduct "basic work activities." 20 C.F.R.  
14 § 416.922(a). Basic work activities are "abilities and aptitudes necessary to do  
15 most jobs." 20 C.F.R. § 416.922(b). "An impairment or combination of  
16 impairments can be found not severe only if the evidence establishes a slight  
17 abnormality that has no more than a minimal effect on an individual's ability to  
18 work." *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (internal quotation  
19 marks omitted). The claimant bears the burden of demonstrating that an  
20 impairment is medically determinable and severe. *Valentine v. Comm'r Soc. Sec.*  
21 *Admin.*, 574 F.3d 685, 689 (9th Cir. 2009).

22 Plaintiff argues the record establishes that she suffers from schizophrenia,  
23 and that the ALJ erred in failing to mention the diagnosis or include it as a severe  
24 impairment at step two. She asserts the ALJ thus formulated an RFC that does not  
25 fully account for all of her limitations. ECF No. 18 at 6-10. Plaintiff further argues  
26 that the ALJ failed to discuss schizophrenia at step three, and asserts that the record  
27 establishes that her condition meets Listing 12.03. *Id.* at 9. Defendant argues that  
28 schizophrenia is not a medically determinable impairment. ECF No. 21 at 2-3. In

1 the alternative, Defendant argues that any error was harmless, as the ALJ offered  
2 sufficient reasons for disregarding Dr. Genthe's opinion (which was the only  
3 medical opinion that included any more significant limitations), and that the ALJ's  
4 assessment of the Paragraph B criteria were supported. *Id.* at 3-4.

5 The Court finds any error on the part of the ALJ in failing to discuss  
6 schizophrenia at Step 2 or Step 3 was harmless. Step 2 was resolved in Plaintiff's  
7 favor, with the ALJ finding bipolar disorder to be a severe impairment. Tr. 18. The  
8 ALJ made Step 3 findings regarding the Paragraph B criteria that apply to all of the  
9 mental listings. Tr. 18-19. The ALJ limited Plaintiff to no more than simple,  
10 routine, repetitive tasks and no more than superficial contact with the public or  
11 coworkers. Tr. 20. As discussed above, the ALJ gave adequate reasons for finding  
12 Dr. Genthe's opinion not to be persuasive. Plaintiff fails to identify any credited  
13 limitation associated with schizophrenia that was not considered by the ALJ and  
14 incorporated into the RFC. *See Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d  
15 1050, 1055 (9th Cir. 2006); *Burch v. Barnhart*, 400 F.3d 676, 682 (9th Cir. 2005).  
16 Therefore, any error in not identifying schizophrenia as a severe impairment was  
17 harmless at most.

#### 18 **4. RFC and Step Five**

19 Plaintiff argues that the ALJ erred in her step five determination because the  
20 testimony of the vocational expert was premised on an incomplete hypothetical  
21 stemming from an inaccurate residual functional capacity determination. ECF  
22 No. 18 at 16-20. Plaintiff's argument is based on successfully showing that the  
23 ALJ erred in her treatment of the symptom statements and medical opinions. *Id.*  
24 Because the Court finds that the ALJ did not harmfully err in her treatment of  
25 Plaintiff's symptom statements and the medical opinions, Plaintiff's argument is  
26 without merit.

1 **CONCLUSION**

2 Having reviewed the record and the ALJ’s findings, the Court finds the  
3 ALJ’s decision is supported by substantial evidence and free of legal error.

4 Therefore, **IT IS HEREBY ORDERED:**

5 1. Defendant’s Motion for Summary Judgment, **ECF No. 21**, is  
6 **GRANTED.**

7 2. Plaintiff’s Motion for Summary Judgment, **ECF No. 18**, is **DENIED.**

8 The District Court Executive is directed to file this Order and provide a copy  
9 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant  
10 and the file shall be **CLOSED.**

11 DATED March 31, 2022.



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JAMES A. GOEKE  
UNITED STATES MAGISTRATE JUDGE