

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

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 28, 2021

SEAN F. McAVOY, CLERK

MICHAEL B.,

Plaintiff,

v.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 4:20-CV-05121-JTR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 13, 15. Attorney Victoria Chhagan represents Michael B. (Plaintiff); Special Assistant United States Attorney Joseph Langkamer represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. 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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ORDER GRANTING DEFENDANT'S MOTION . . . - 1

1 **JURISDICTION**

2 Plaintiff filed an application for Disability Insurance Benefits on January 23,
3 2018, alleging disability since December 12, 2016, due to lower back pain,
4 bilateral knee pain, tailbone, bilateral leg swelling and pain, diabetes, problems
5 with breathing, bilateral hip pain, sleeping disorder with extreme daytime fatigue,
6 obesity, and chronic pain disorder. Tr. 70-71. The application was denied initially
7 and upon reconsideration. Tr. 98-104, 106-12. Administrative Law Judge (ALJ)
8 Marie Palachuk held a hearing on October 7, 2019, Tr. 39-68, and issued an
9 unfavorable decision on October 22, 2019, Tr. 16-26. Plaintiff requested review
10 from the Appeals Council. Tr. 168-70. The Appeals Council denied the request for
11 review on May 28, 2020. Tr. 1-6. The ALJ’s October 2019 decision became the
12 final decision of the Commissioner, which is appealable to the district court
13 pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on July
14 27, 2020. ECF No. 1.

15 **STATEMENT OF FACTS**

16 Plaintiff was born in 1972 and was 44 years old as of the alleged onset date.
17 Tr. 24. He has a high school education with some college, and worked primarily as
18 a lube technician and department manager. Tr. 61, 238. He testified that he stopped
19 working in December 2016 due to pain and an inability to make it through a shift
20 of work. Tr. 44.

21 **STANDARD OF REVIEW**

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

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

14 **SEQUENTIAL EVALUATION PROCESS**

15 The Commissioner has established a five-step sequential evaluation process
16 for determining whether a person is disabled. 20 C.F.R. § 404.1520(a); *Bowen v.*
17 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four the claimant
18 bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d
19 at 1098-1099. This burden is met once a claimant establishes that a physical or
20 mental impairment prevents the claimant from engaging in past relevant work. 20
21 C.F.R. § 404.1520(a)(4). If a claimant cannot perform past relevant work, the ALJ
22 proceeds to step five, and the burden shifts to the Commissioner to show (1) the
23 claimant can make an adjustment to other work; and (2) the claimant can perform
24 specific jobs that exist in the national economy. *Batson v. Comm'r of Soc. Sec.*
25 *Admin.*, 359 F.3d 1190, 1193-94 (9th Cir. 2004). If a claimant cannot make an
26 adjustment to other work in the national economy, the claimant will be found
27 disabled. 20 C.F.R. § 404.1520(a)(4)(v).

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1 **ADMINISTRATIVE FINDINGS**

2 On October 22, 2019, the ALJ issued a decision finding Plaintiff was not
3 disabled as defined in the Social Security Act.

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

6 At step two, the ALJ determined Plaintiff had the following severe
7 impairments: lumbar sprain, bilateral hip tendinitis, bilateral knee tendinitis,
8 supramorbid obesity, right shoulder acromioclavicular osteoarthritis, and cervical
9 degenerative disc disease. *Id.*

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

13 The ALJ assessed Plaintiff’s Residual Functional Capacity (RFC) and found
14 he could perform work at the light exertional level, except:

15 Standing and walking is limited to 2 hours per day. He needs the
16 ability to alternate sitting and standing approximately every 60
17 minutes. Posturals are at occasional, except he can never climb
18 ladders, ropes or scaffolds. The claimant needs the use of a cane to
19 ambulate away from the workstation. He can never reach overhead
20 with the right upper extremity. He must avoid concentrated exposure
21 to extreme heat, humidity, and respiratory irritants. Finally, he can
22 have no more than moderate exposure to hazards.

23 Tr. 19-20.

24 At step four, the ALJ found Plaintiff was unable to perform his past relevant
25 work as a department manager or lubrication servicer. Tr. 24.

26 At step five, the ALJ determined that, based on the testimony of the
27 vocational expert, and considering Plaintiff’s age, education, work experience, and
28 RFC, there were jobs that existed in significant numbers in the national economy

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1 that Plaintiff was capable of performing, including the jobs of mail clerk, storage
2 rental clerk, and office helper. Tr. 25-26.

3 The ALJ thus concluded Plaintiff was not under a disability within the
4 meaning of the Social Security Act at any time from the alleged onset date through
5 the date of the decision. Tr. 26.

6 ISSUES

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

10 Plaintiff contends the ALJ erred by (1) improperly rejecting Plaintiff's
11 testimony; and (2) not providing sufficient reasons for rejecting the opinion of his
12 treating physician, Dr. Suzanne Staudinger.

13 DISCUSSION

14 1. Plaintiff's symptom testimony

15 Plaintiff alleges the ALJ erred in rejecting his symptom testimony without
16 providing adequate reasons. ECF No. 13 at 3-12.

17 It is the province of the ALJ to make determinations regarding a claimant's
18 subjective statements. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).
19 However, the ALJ's findings must be supported by specific cogent reasons.
20 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative
21 evidence of malingering, the ALJ's reasons for rejecting a claimant's testimony
22 must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281
23 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General
24 findings are insufficient: rather the ALJ must identify what testimony is not
25 credible and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d
26 at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

27 The ALJ found Plaintiff's medically determinable impairments could
28 reasonably be expected to cause the alleged symptoms; however, she found

1 Plaintiff's statements concerning the intensity, persistence and limiting effects of
2 his symptoms were not entirely consistent with the medical evidence and other
3 evidence in the record. Tr. 20. The ALJ found Plaintiff's allegations were
4 inconsistent with the mild imaging and minimal objective findings, unsupported by
5 Plaintiff's lack of treatment through a significant portion of the relevant period and
6 his lack of follow through with treatment recommendations, and inconsistent with
7 the consultative exam findings and his activities of daily living. Tr. 22-23.

8 The Court finds the ALJ offered sufficient reasons for discounting Plaintiff's
9 subjective reports. Unexplained or inadequately explained reasons for failing to
10 seek medical treatment or follow a prescribed course of treatment can cast doubt
11 on a claimant's subjective complaints. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.
12 1989). The ALJ noted that, despite alleging onset of disability in December 2016,
13 Plaintiff did not receive treatment for his conditions until May 2018. Tr. 21. The
14 ALJ also noted Plaintiff's failure to follow through with orthopedic and bariatric
15 referrals. Tr. 22. Plaintiff argues the ALJ erred in rejecting his testimony on this
16 basis, as there were justifications for not being seen by these specialists, including
17 insurance and location issues and the orthopedic referral not being able to
18 accommodate Plaintiff's size. ECF No. 13 at 6-8. However, the ALJ did note
19 Plaintiff's explanation regarding insurance and availability, but instead relied on
20 the contemporaneous treatment records that indicated Plaintiff chose to stop
21 pursuing weight loss surgery. Tr. 22, 459. The ALJ's interpretation of the record is
22 reasonable. Furthermore, though one orthopedist canceled an appointment due to
23 being unable to accommodate Plaintiff's size, the record reflects his primary care
24 provider gave him another referral to another orthopedist. Tr. 363-65. There is
25 nothing in the record to indicate Plaintiff ever followed through with this referral.
26 Plaintiff has offered no explanation for his failure to obtain any treatment for the
27 first year and a half of the relevant period. Therefore, the ALJ's finding is
28 supported by substantial evidence.

1 Although it cannot serve as the sole ground for rejecting a claimant's
2 symptom statements, objective medical evidence is a "relevant factor in
3 determining the severity of the claimant's pain and its disabling effects." *Rollins v.*
4 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The ALJ found Plaintiff's
5 allegations to be inconsistent with the mild imaging results and the minimal
6 objective findings in the longitudinal medical record. Tr. 22. The Court finds the
7 ALJ's interpretation of the record is reasonable. While there are some objective
8 findings in Plaintiff's treatment records that are supportive of his allegations,
9 "when the evidence is susceptible to more than one rational interpretation, we must
10 uphold the ALJ's findings if they are supported by inferences reasonably drawn
11 from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). The ALJ
12 reasonably summarized the records, pointing to the largely unremarkable findings
13 throughout the record and the mild findings on imaging in finding Plaintiff's
14 allegations to be unsupported. Tr. 21-22.

15 **2. Dr. Staudinger**

16 Plaintiff contends the ALJ erred by improperly rejecting the opinion from
17 his treating physician, Dr. Suzanne Staudinger. ECF No. 13 at 12-19.

18 For claims filed on or after March 27, 2017, new regulations apply that
19 change the framework for how an ALJ must weigh medical opinion evidence.
20 *Revisions to Rules Regarding the Evaluation of Medical Evidence*, 2017 WL
21 168819, 82 Fed. Reg. 5844 (Jan. 18, 2017); 20 C.F.R. § 404.1520c. The new
22 regulations provide the ALJ will no longer give any specific evidentiary weight to
23 medical opinions or prior administrative medical findings, including those from
24 treating medical sources. 20 C.F.R. § 404.1520c(a). Instead, the ALJ will consider
25 the persuasiveness of each medical opinion and prior administrative medical
26 finding, regardless of whether the medical source is an Acceptable Medical Source.
27 20 C.F.R. § 404.1520c(c). The ALJ is required to consider multiple factors,
28 including supportability, consistency, the source's relationship with the claimant,

1 any specialization of the source, and other factors (such as the source’s familiarity
2 with other evidence in the file or an understanding of Social Security’s disability
3 program). *Id.* The regulations make clear that the supportability and consistency of
4 the opinion are the most important factors, and the ALJ must articulate how they
5 considered those factors in determining the persuasiveness of each medical opinion
6 or prior administrative medical finding. 20 C.F.R. § 404.1520a(b). The ALJ may
7 explain how they considered the other factors, but is not required to do so, except
8 in cases where two or more opinions are equally well-supported and consistent
9 with the record. *Id.*

10 Supportability and consistency are further explained in the regulations:

11 (1) *Supportability.* The more relevant the objective medical evidence
12 and supporting explanations presented by a medical source are to
13 support his or her medical opinion(s) or prior administrative medical
14 finding(s), the more persuasive the medical opinions or prior
15 administrative medical finding(s) will be.

16 (2) *Consistency.* The more consistent a medical opinion(s) or prior
17 administrative medical finding(s) is with the evidence from other
18 medical sources and nonmedical sources in the claim, the more
19 persuasive the medical opinion(s) or prior administrative medical
20 finding(s) will be.

20 20 C.F.R. § 404.1520c(c).¹

23 ¹ The parties disagree over whether Ninth Circuit case law continues to be
24 controlling in light of the amended regulations, specifically whether an ALJ is still
25 required to provide specific and legitimate reasons for discounting a contradicted
26 opinion from a treating or examining physician. ECF No. 13 at 13; ECF No. 15 at
27 14-17. The Court finds resolution of this question unnecessary to the disposition of
28 this case.

1 Plaintiff's treating physician, Dr. Suzanne Staudinger, completed a medical
2 source statement on September 4, 2019. Tr. 483-84. She noted Plaintiff's diagnoses
3 included osteoarthritis in multiple joints, obesity, and hypertension. Tr. 483. She
4 noted his symptoms included pain in the knees, hip, shoulder, low back, and
5 tailbone, and that he could walk for only 10-15 minutes, could not sit in a normal
6 chair comfortably, and needed to change position frequently. *Id.* Dr. Staudinger
7 opined Plaintiff needed to lie down intermittently during the day for 20-30 minutes
8 due to pain. *Id.* She stated full time work would cause him to deteriorate due to
9 additional pain, and that he would be likely to miss work four or more days per
10 month if attempting to work full time. Tr. 483-84. She finally stated that those
11 limitations had existed for three years. Tr. 484.

12 The ALJ found this opinion was not persuasive, noting many of the limits
13 were clearly based on Plaintiff's self-reports, the opinion was inconsistent with the
14 minimal objective abnormalities described in the treatment notes, and that the
15 opinion was contradicted by other medical opinions of record. Tr. 24. The ALJ
16 further found there was no basis for Dr. Staudinger to relate the limits back three
17 years when she had first evaluated Plaintiff in August 2018, and finally the ALJ
18 found some of the limits to be speculative and not supported by the longitudinal
19 record. *Id.*

20 Plaintiff argues the ALJ's rationale is not supported by specific enough
21 explanations and is based on a flawed reading of the medical record. He further
22 asserts the prospective and retrospective assessments are within Dr. Staudinger's
23 area of expertise, and the ALJ found no problem with such opinions from the
24 consultative examiner or the state agency reviewing doctors. Finally, Plaintiff
25 argues the ALJ improperly relied on inconsistency with the other opinions, as the
26 state agency reviewers do not constitute substantial evidence on their own and had
27 not reviewed all of the evidence that was available to Dr. Staudinger, and the ALJ
28 ///

1 failed to fully adopt all elements of Dr. Opara’s opinion.² ECF No. 13 at 12-19.
2 Defendant argues the ALJ reasonably found the opinion to be unsupported by the
3 treatment notes and at odds with Dr. Opara and the state agency doctors. ECF No.
4 15 at 14-21.

5 The Court finds the ALJ did not err. The revised rules require the ALJ to
6 consider the supportability and consistency of an opinion. The ALJ reasonably
7 found Dr. Staudinger’s records lacked support for the limitations assessed, noting
8 the minimal objective abnormalities and Dr. Staudinger’s recitation in the opinion
9 of Plaintiff’s subjective complaints. Tr. 24; *compare* Tr. 396, 449, 464 *with* Tr.
10 483. The ALJ also reasonably found Dr. Staudinger did not provide a basis for her
11 opinion that Plaintiff had been so limited for three years and offered no
12 explanatory support for her prediction regarding missed days. Tr. 24. The ALJ
13 must consider the amount of objective medical evidence and supporting
14 explanations presented by the source. 20 C.F.R. 404.1520c(c). The ALJ also
15 reasonably noted the differing opinions from other sources and offered sufficient
16 explanation for her reliance on the other opinions.

17 CONCLUSION

18 Having reviewed the record and the ALJ’s findings, the Court finds the
19 ALJ’s decision is supported by substantial evidence and free of legal error and is
20 affirmed. Therefore, **IT IS HEREBY ORDERED:**

21 _____
22 ² To the extent Plaintiff implies the ALJ erred in her discussion of Dr.
23 Opara, the Court finds no harmful error. Dr. Opara stated Plaintiff was limited to
24 standing and walking less than two hours, while the RFC allows for two hours. Tr.
25 19, 355. However, the discussion with the vocational expert indicated that the
26 hypothetical worker would be able to alternate between sitting and standing every
27 60 minutes as needed. Tr. 62. The Court therefore finds the discrepancy between
28 the opinion and the RFC to be harmless.

1 1. Defendant’s Motion for Summary Judgment, **ECF No. 15**, is
2 **GRANTED.**

3 2. Plaintiff’s Motion for Summary Judgment, **ECF No. 13**, is **DENIED.**

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

7 **IT IS SO ORDERED.**

8 DATED June 28, 2021.

A handwritten signature in black ink, appearing to be 'M' or 'MR', written over a horizontal line.

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JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE