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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 JAMES VORHIES,

9 Plaintiff,

10 v.

11 CAROLYN COLVIN, Acting  
12 Commissioner of Social Security,

13 Defendant.

CASE NO. C14-5559 BHS

ORDER ADOPTING REPORT AND  
RECOMMENDATION

14 This matter comes before the Court on the Report and Recommendation (“R&R”)  
15 of the Honorable David W. Christel, United States Magistrate Judge (Dkt. 17), and  
16 Plaintiff James Vorhies’s (“Vorhies”) objections to the R&R (Dkt. 18).

17 On May 6, 2015, Judge Christel issued the R&R recommending that the Court  
18 affirm the Administrative Law Judge’s (“ALJ”) decision that Vorhies was not disabled.  
19 Dkt. 17. On May 20, 2015, Vorhies filed objections. Dkt. 18. On May 26, 2015, the  
20 Government responded. Dkt. 19. Vorhies did not file a reply.

21 Federal Rule of Civil Procedure 72(b) governs objections to a magistrate judge’s  
22 recommended disposition. Rule 72(b) provides as follows:

1           The district judge must determine de novo any part of the magistrate  
2 judge's disposition that has been properly objected to. The district judge  
3 may accept, reject, or modify the recommended disposition; receive further  
4 evidence; or return the matter to the magistrate judge with instructions.

5 Fed. R. Civ. P. 72(b)(3).

6           Vorhies raises three objections to Judge Christel's recommended disposition.

7 First, Vorhies argues that Judge Christel improperly determined that the ALJ provided  
8 clear and convincing reasons for rejecting Vorhies's testimony. Dkt. 18 at 6–9. The ALJ  
9 rejected Vorhies's testimony because it was inconsistent with the medical records and not  
10 supported by objective medical evidence.<sup>1</sup> AR 76. As Judge Christel thoroughly  
11 discussed, the ALJ's conclusion was supported by substantial evidence. *See* Dkt. 17 at  
12 4–9. Although Vorhies recounts additional facts in the record, the interpretation of  
13 evidence is within the ALJ's purview. *See Thomas v. Barnhart*, 278 F.3d 947, 954 (9th  
14 Cir. 2002) (“Where the evidence is susceptible to more than one rational interpretation,  
15 one of which supports the ALJ's decision, the ALJ's conclusion must be upheld.”). The  
16 Court therefore agrees with Judge Christel that the ALJ provided clear and convincing  
17 reasons for discounting Vorhies's testimony.

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19           <sup>1</sup> The ALJ also rejected Vorhies's testimony because it was inconsistent with his daily  
20 activities. AR 73, 80–81, 83. Judge Christel determined that the ALJ erred in citing Vorhies's  
21 daily activities as a basis for rejecting his testimony, but that this error was harmless. Dkt. 17 at  
22 12–13. Vorhies does not object to Judge Christel's conclusion on this issue. *See* Dkt. 18.  
Because substantial medical evidence undermines Vorhies's testimony and supports the ALJ's  
ultimate conclusion, the Court agrees with Judge Christel that the ALJ committed harmless error.  
*See Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (“[A]n error is harmless so long as  
there remains substantial evidence supporting the ALJ's decision and the error does not negate  
the validity of the ALJ's ultimate conclusion.” (internal quotation marks omitted)).

1           Second, Vorhies contends that Judge Christel erroneously concluded that the ALJ  
2 provided germane reasons for discrediting the testimony of Vorhies’s occupational  
3 therapist, Christina Casady (“Ms. Casady”). Dkt. 18 at 4. The ALJ accorded no weight  
4 to Ms. Casady’s opinion because she based her findings primarily on Vorhies’s  
5 subjective statements regarding his limitations, and the ALJ did not find Vorhies to be  
6 credible. AR 83 & n.12, 469. As an occupational therapist, Ms. Casady’s opinion is not  
7 considered an “acceptable medical source” under the Social Security Act. *See* 20 C.F.R.  
8 § 404.1513(d). Thus, the ALJ’s evaluation of Ms. Casady’s opinion is subject to the  
9 same standards as other lay witnesses. *Turner v. Comm’r of Soc. Sec.*, 613 F.3d 1217,  
10 1224 (9th Cir. 2010). The ALJ provided a germane reason for rejecting Ms. Casady’s  
11 opinion. *See Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009).  
12 Accordingly, the Court agrees with Judge Christel that the ALJ did not err.

13           Third, Vorhies contends that Judge Christel erroneously determined that the ALJ  
14 provided germane reasons for rejecting lay witness testimony. Dkt. 18 at 10. The Court  
15 disagrees. The ALJ provided two germane reasons for rejecting the lay witness  
16 testimony: (1) it was inconsistent with medical records; and (2) it was primarily based on  
17 Vorhies’s testimony, which the ALJ determined was not credible. AR 84–85. Because  
18 the ALJ provided germane reasons for rejecting the lay witness testimony, the ALJ did  
19 not err. *See Valentine*, 574 F.3d at 694; *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir.  
20 2001).

21           The Court having considered the R&R, Vorhies’s objections, and the remaining  
22 record, does hereby find and order as follows:

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(1) The R&R is **ADOPTED**; and

(2) This action is **DISMISSED**.

Dated this 30th day of June, 2015.



BENJAMIN H. SETTLE  
United States District Judge