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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARK L. BOISJOLIE,

Plaintiff - Appellant,

v.

CAROLYN W. COLVIN, Commissioner
of Social Security,

Defendant - Appellee.

No. 13-35894

D.C. No. 2:12-cv-00334-JLQ

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Justin L. Quackenbush, District Judge, Presiding

Submitted August 18, 2014**

Before: D. NELSON, LEAVY, and THOMAS, Circuit Judges.

Mark L. Boisjolie appeals the district court's judgment affirming the Commissioner of Social Security's decision denying his application for disability insurance benefits under Title II of the Social Security Act. Boisjolie contends that

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Appellant's unopposed motion to submit this case on the briefs is **GRANTED**.

an administrative law judge (“ALJ”) erred in giving limited weight to the opinion of examining psychologist Frank Rosekrans, Ph.D., and little weight to advanced registered nurse practitioner Debra L. Miller. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We review the district court’s order de novo. *Andrews v. Shalala*, 53 F.3d 1035, 1039 n.1 (9th Cir. 1995). We may set aside the denial of benefits only if it is not supported by substantial evidence or is based on legal error. 42 U.S.C. § 405(g); *Andrews*, 53 F.3d at 1039.

The ALJ properly rejected Dr. Rosekrans’s unsupported opinion that Boisjolie had certain “marked” and “moderate” limitations affecting his ability to work. *See Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009); *Burkhart v. Bowen*, 856 F.2d 1335, 1339 (9th Cir. 1988) (permitting ALJ to reject medical opinion not supported by objective findings). These limitations were unsupported by Dr. Rosekrans’s own observations regarding Boisjolie’s mental status exam findings, were inconsistent with other evidence in the record, and were contradicted by three non-examining experts’ opinions. *See Andrews*, 53 F.3d at 1041 (explaining that non-examining source’s report may serve as substantial evidence and may be used to reject an examining physician’s opinion, if it is consistent with and supported by other evidence in the record).

The ALJ also properly rejected Ms. Miller's unsupported opinion that Boisjolie had the residual functional capacity to perform sedentary work. *See Bray*, 554 F.3d at 1228; *Burkhart*, 856 F.2d at 1339. Moreover, Ms. Miller's opinion was inconsistent with the medical record, including the opinion of one expert who conducted his own examination of Boisjolie and concluded that he could perform light work, and the opinions of three experts who agreed after thoroughly reviewing the record. *See Andrews*, 53 F.3d at 1041.

AFFIRMED.