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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CINDY MARIE MINER,

Plaintiff-Appellant,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security

Defendant-Appellee.

No. 15-17244

D.C. No. 2:14-cv-02498-CKD

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Carolyn K. Delaney, Magistrate Judge, Presiding

Submitted November 15, 2017**
San Francisco, California

Before: RAWLINSON and BYBEE, Circuit Judges, and SMITH,*** Chief District
Judge.

Petitioner Cindy Marie Miner appeals the district court's decision affirming

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable William E. Smith, Chief United States District Judge
for the District of Rhode Island, sitting by designation.

the Administrative Law Judge's (ALJ) denial of Miner's application for Supplemental Security Income. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

We review the district court's decision de novo, disturbing the denial of benefits only if the decision "contains legal error or is not supported by substantial evidence." *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (quotation marks omitted). We will uphold the decision to deny benefits if it is "supported by inferences reasonably drawn from the record," *Batson v. Comm'r of the Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004), even "[w]here evidence is susceptible to more than one rational interpretation," *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005).

Miner argues that the ALJ failed to account for her mental impairment, fibromyalgia, and carpal tunnel syndrome in formulating her residual functional capacity (RFC). Miner is right that "[i]f the RFC assessment conflicts with an opinion from a medical source, the adjudicator must explain why the opinion was not adopted." SSR 96-8p, 1996 WL 374184 (July 2, 1996).

However, none of the evidence to which Miner points contradicts the ALJ's RFC formulation. And even where a minor conflict can be willfully read into various parts of the record, such conflict goes only so far as to make the evidence

“susceptible to more than one rational interpretation,” which is not enough for the court to disturb the ALJ’s decision. *Burch*, 400 F.3d at 679; *see also Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002) (“The ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory, and inadequately supported by clinical findings.”).

Miner also argues that the ALJ committed reversible error when she failed to list fibromyalgia as a severe impairment at step two of the SSI determination. This argument is unpersuasive. The ALJ’s failure to list fibromyalgia as a severe impairment at step two is at most harmless error. *See Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (“[T]he step-two inquiry is a de minimis screening device to dispose of groundless claims.”). Even without considering Miner’s fibromyalgia a severe impairment, the ALJ found that other of Miner’s ailments constituted serious impairments, and consequently, in accordance with the governing regulations, moved on to the subsequent evaluation steps. *See Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995) (“Step two: Does the claimant have a ‘severe’ impairment? If so, proceed to step three. If not, then a finding of not disabled is appropriate.” (citing 20 C.F.R. §§ 404.1520)).

Finally, Miner argues that the ALJ improperly discounted Miner’s and Yvonne Clark’s testimony at the disability hearing. There was no error in

discounting Miner's testimony. *See Thomas*, 278 F.3d at 959 ("If the ALJ's credibility finding is supported by substantial evidence in the record, we may not engage in second-guessing."). Substantial evidence supported the ALJ's determination that Miner exaggerated the effect her ailments had on her ability to work. *See id.* (upholding ALJ's negative credibility determination where claimant's testimony at odds with her ability "to perform various household chores such as cooking, laundry, washing dishes, and shopping"). Her conservative treatment regimen and failure to adhere to same also supported the ALJ's credibility determination. *See Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (Claimant's "unexplained, or inadequately explained, failure to seek treatment or follow a prescribed course of treatment . . . can cast doubt on the sincerity of the claimant's pain testimony.").

Although there was no error in discounting Miner's testimony, the Commissioner admits as much in the ALJ's treatment of Clark's third-party testimony. These errors were harmless, however, because the ALJ's "most important[]" reason for discounting Clark's testimony was that the "medical evidence . . . does not support her statements." And this reason was alone sufficient support for the ALJ's credibility determination. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005) ("An ALJ need only give germane reasons for

discrediting the testimony of lay witnesses. Inconsistency with medical evidence is one such reason.” (citation omitted)).

For the foregoing reasons, the district court is **AFFIRMED**.