

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 29 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LINDA M. RAYMENT,

Plaintiff-Appellant,

v.

NANCY A. BERRYHILL, Acting
Commissioner Social Security,

Defendant-Appellee.

No. 17-35015

D.C. No. 3:15-cv-05904-JRC

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
J. Richard Creatura, Magistrate Judge, Presiding

Submitted October 25, 2018**

Before: GOODWIN, FARRIS, and LEAVY, Circuit Judges

Linda M. Rayment appeals the district court's judgment affirming the Commissioner of Social Security's decision denying Rayment's application for disability insurance benefits under Title II of the Social Security Act. We review *de novo*, *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017), and we affirm.

* 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 Administrative Law Judge (ALJ) reasonably gave “little weight” to Dr. Allen’s September 2007 opinion because it contained only recommendations for returning to work and failed to identify specific functional limitations. *See Rounds v. Comm’r Soc. Sec. Admin.*, 807 F.3d 996, 1005-06 (9th Cir. 2015) (explaining that the ALJ need not consider a recommendation in the absence of specific and identified functional limitations).

The ALJ reasonably gave “little weight” to Dr. Lang’s opinions that Rayment was unable to work or was limited to part-time work because these opinions were inconsistent with Dr. Lang’s own treatment notes encouraging Rayment to return to work, the treatment record showing only mild back impairments, and Rayment’s activities, including spending time at the casino. *See Ghanim v. Colvin*, 763 F.3d 1154, 1161-62 (9th Cir. 2014) (conflict with the treatment record and the claimant’s activities are specific and legitimate reasons to reject a treating physician’s opinion); *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (inconsistency with the physician’s own treatment notes is a specific and legitimate reason to reject their opinion).

To the extent that the ALJ rejected Mr. Mertens and Ms. Lang’s opinion regarding Rayment’s ability to walk and sit, the ALJ provided germane reasons: lack of support by clinical observations, evidence of Rayment’s secondary gain motive, and inconsistency with Rayment’s activities. *See Revels v. Berryhill*, 874

F.3d 648, 665 (9th Cir. 2017) (explaining that germane reasons are required to reject a physical therapist's opinion); *Rounds*, 807 F.3d at 1007 (evidence of secondary gain motive); *Ghanim*, 763 F.3d at 1162 (inconsistency with claimant's activities); *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (lack of support by clinical findings).

The ALJ reasonably rejected Ms. Scheuffele's opinion because it relied on findings that post-dated Rayment's date last insured, and the opinion was inconsistent with evidence during the relevant period. *See Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1224 (9th Cir. 2010) (concluding that the ALJ properly rejected a medical opinion from a non-acceptable source because it post-dated the relevant period for establishing disability).

The ALJ gave clear and convincing reasons for discrediting Rayment's testimony as to the extent of her limitations. *See Molina*, 674 F.3d at 1112 (requiring clear and convincing reasons to discredit claimant testimony). First, the ALJ reasonably concluded that Rayment's testimony was unsupported by the objective medical evidence, which showed only mild back impairments and mild limitations in range of motion. *See Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005) (explaining that the ALJ may not rely solely on lack of supporting objective evidence to discredit claimant testimony but may include it as a factor). Second, the ALJ reasonably concluded that Rayment's activities, including going to the

casino three times per week for two hours and walking with friends, were inconsistent with the extent of her alleged limitations. *See Molina*, 674 F.3d at 1113 (inconsistency with activities is a proper reason to discredit claimant testimony). Any error in relying on additional reasons was harmless because the ALJ properly provided clear and convincing reasons to discredit Rayment's testimony. *See Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009).

The ALJ provided germane reasons to reject the lay testimony of Rayment's husband: inconsistency with Rayment's activities, inconsistency with clinical observations, and internal inconsistencies in his testimony. *See Molina*, 674 F.3d at 1114 (germane reasons required to reject lay testimony); *Valentine v. Comm'r, Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009) (internal inconsistency); *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008) (inconsistency with activities); *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005) (inconsistency with medical evidence).

Substantial evidence supports the ALJ's assessment of the Residual Functional Capacity (RFC), and the ALJ properly included all limitations in the hypothetical to the vocational expert. *See Bayliss*, 427 F.3d at 1217 (deferring to the ALJ when substantial evidence supports the assessment of the RFC and hypothetical to the vocational expert).

We do not consider any additional issues that Rayment failed to specifically argue in her opening brief. *See Carmickle*, 533 F.3d at 1161 n.2 (explaining that this court will not consider issues that are not specifically and distinctly raised in the opening brief).

AFFIRMED.