NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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U.S. COURT OF APPEALS

ANGELA JONES, Plaintiff-Appellant, v. KILOLO KIJAKAZI, Acting Commissioner of Social Security, Defendant-Appellee.	No. 21-16950 D.C. No. 2:20-cv-01193-SPL MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Steven Paul Logan, District Judge, Presiding

Argued and Submitted September 1, 2022
San Francisco, California

Before: W. FLETCHER, BYBEE, and VANDYKE, Circuit Judges.
Dissent by Judge VANDYKE

Claimant Angela Jones ("Jones") appeals from the district court's ruling affirming the Commissioner of Social Security's denial of her application for disability benefits. Jones contends that the Administrative Law Judge ("ALJ")

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

improperly discounted (1) her testimony about the severity of her symptoms and her description of her daily activities, (2) the statements of her mother and daughter, and (3) the opinions of her two treating physicians.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We "review the district court's order affirming the ALJ's denial of social security benefits de novo and will disturb the denial of benefits only if the decision contains legal error or is not supported by substantial evidence." *Lambert v. Saul*, 980 F.3d 1266, 1270 (9th Cir. 2020) (quoting *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008)).

Jones suffers from degenerative disc disease, Lyme disease, MTHFR gene mutation, and diabetes. She applied for Supplemental Security Income benefits in 2016, claiming she qualified as "disabled" under 42 U.S.C. § 423(d)(1)(A). In 2019, following a hearing, the ALJ denied Jones benefits. Applying the five-step sequential evaluation mandated by 20 C.F.R § 416.920, the ALJ found Jones was not disabled because she has the capacity to perform light work.

At steps two and five, the ALJ mischaracterized the contents of a function report completed by Jones on May 25, 2016, and a psychological evaluation by a non-treating psychologist conducted on June 22, 2016. Purporting to rely on these reports, the ALJ wrote that Jones can engage, without limitation, in a long list of daily activities and chores: "[T]he claimant . . . takes care of her daughter, helps

her with homework, takes care of her pet, prepares meals, cleans table tops, dusts, cleans bathroom sinks, rinses dishes, does laundry, drives, goes out alone, shops, plants flowers, spends time with her boyfriend . . . ." However, the ALJ omits important qualifying information contained in Jones's report. Importantly, the ALJ does not mention that Jones suffers from swelling and burning in her feet, back, and neck when engaging in these simple activities. Jones wrote in the function report:

> I have a parasite in my blood stream that[] hinders my hea[l]th everyday, with swelling of[] my feet and hands, with redness and burning[,] can[']t wear shoes. . . . I can[']t lift anything over 5 pound[s]. I can[] only stand for about 12 min. before my back[,] neck, [and] feet hurt.
>
> I wake up[,] take my meds, wait for 20 to 30 mins before I can really start moving around. Make my daughter lunch[,] take her to school, come home, ice back and neck, treat my feet with lotions and creams for the burning. See my chiro about 3 to[] 4 times a week for neck and back pain, sometime[s] pick up things if feeling well. Then pick my daughter up from school, eat[,] and go to bed.

Although Jones reports she can do simple tasks like "plant[ing] flowers in pots," she explains that she periodically has to "sit and take breaks for [her] neck and back." She also explains that her boyfriend and mother have to assist her when she "can not clean" or do any "house chores" because of "all [her] health issues."

Jones's mother and daughter described Jones's limitations in much the same way Jones described them.

The ALJ also characterizes that the non-treating psychologist wrote that Jones "does an exercise routine every day." In fact, the psychologist wrote only that Jones "tries to stretch and exercise" and "most of her activities are limited to her home because of her medical problems."

The ALJ relies on these mischaracterizations to reject the assessment of her two treating physicians and to conclude that "the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely consistent with the medical evidence and other evidence in the record for the reasons explained in this decision." An ALJ can only "reject the claimant's testimony about the severity of her symptoms . . . by offering specific, clear and convincing reasons for doing so." *Garrison v. Colvin*, 759 F.3d 995, 1014–15 (9th Cir. 2014) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996)). "The clear and convincing standard is the most demanding required in Social Security cases." *Id.* at 1015 (quoting *Moore v. Comm'r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)). Additionally, "[t]he ALJ's depiction of the claimant's disability must be accurate, detailed, and supported by the medical record." *Id.* at 1011 (quoting *Tackett v. Apfel*, 180 F.3d 1094, 1101 (9th Cir. 1999)).

We therefore reverse the decision of the district court. We remand with instructions to remand to the agency for further proceedings consistent with this memorandum. On remand, the agency should accurately characterize the manner in which Jones and the non-treating psychologist described her daily activities and then reassess its evaluation of Jones's claimed disability in light of this accurate characterization.

REVERSED AND REMANDED.

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VanDyke, J., dissenting:

I would affirm. This case presents a mix of circumstances that are quite common—indeed, one might say the norm—in social security appeals that our court routinely affirms. The claimant here said she performed certain daily activities, but (as we see in almost every social security case) also provided many caveats explaining how she was nonetheless very limited in what she could do. The ALJ reviewed all the evidence, including claimant's testimony and the objective medical evidence presented, and explicitly concluded that the claimant's self-reported limitations were not supported by the record as a whole, stating that "[a]lthough the claimant is likely to have some pain and limitations, the [medical] records discussed above do not support the extent the claimant has alleged." Ultimately, the ALJ discounted claimant's testimony about the extent of her limitations for two reasons: (1) the objective medical evidence was inconsistent with her self-reported limitations, and (2) she acknowledged that she routinely performed a number of daily activities, which the ALJ listed in its decision.

It is this last part of the ALJ's decision—namely, its reliance on a "long list of daily activities and chores"—that is the driving force for the majority's reversal and remand. That is not a proper basis to reverse.

First, the ALJ's characterization of claimant's daily tasks was not the only—or even the main—reason for its decision. Rather, the ALJ spent pages of its decision limning the objective medical evidence in this case before concluding that it was

inconsistent with claimant's self-reported limitations. This is precisely the sort of weighing of contrasting evidence to which we must give substantial deference. *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) ("Contradiction with the medical record is a sufficient basis for rejecting the claimant's subjective testimony."). Indeed, there is a long list of decisions by our court—applying the same "specific, clear and convincing reasons" standard applied by the majority here—in which we have done just that. *See, e.g.*, *Chaudhry v. Astrue*, 688 F.3d 661, 672–73 (9th Cir. 2012) (affirming ALJ's determination that interpreted and preferred objective medical evidence to subjective testimony); *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) (affirming ALJ's discounting of subjective claims of disabling pain based on objective medical evidence and claimant's daily activities); *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002) (affirming ALJ's decision discounting claimant's testimony after "finding no objective medical evidence to support [claimant's] descriptions of her pain and limitations," and "that [claimant] was able to perform various household chores such as cooking, laundry, washing dishes, and shopping"); *Osenbrock v. Apfel*, 240 F.3d 1157, 1165–66 (9th Cir. 2001) (affirming ALJ's rejection of allegations of disabling pain based on normal physical examinations).

Second, even focusing too narrowly (as the majority does) on only the ALJ's list of claimant's daily activities, there is nothing wrong with that list. It isn't technically inaccurate—claimant herself said she did each of those things, which the

majority doesn't dispute. Instead, the majority concludes that the list is somehow misleading because the ALJ didn't *also* include within the list itself all of claimant's caveats. But as described above, the ALJ elsewhere in its decision expressly discounted those caveats, so it was not improper for the ALJ to exclude them when it was succinctly listing what claimant herself said she could do.

Perhaps the ALJ's decision could have been clearer or better organized. The ALJ listed claimant's daily activities towards the beginning of its decision, but didn't expressly discount claimant's self-identified limitations until later in the decision. But we are not grading the ALJ's opinion-writing prowess. As our court recently reemphasized, under our highly deferential standard of review we must "[l]ook[] to *all* the pages of the ALJ's decision" to avoid "overlooking the ALJ's full explanation" of its decision. *Kaufmann v. Kijakazi*, 32 F.4th 843, 851 (9th Cir. 2022) (emphasis in original). While the majority faults the ALJ for too parsimoniously listing claimant's daily activities, it is the majority's narrow focus on just that list without taking into consideration how the ALJ addressed claimant's limitations testimony elsewhere in its decision that is an improperly stingy application of our substantial evidence standard of review. I therefore respectfully dissent.