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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTHUR ANDY, Plaintiff-Appellant, v. KILOLO KIJAKAZI, Acting Commissioner of Social Security, Defendant-Appellee.	No. 22-35934 D.C. No. 1:20-cv-03203-JAG MEMORANDUM[*]

Appeal from the United States District Court
for the Eastern District of Washington
James A. Goeke, Magistrate Judge, Presiding

Submitted October 3, 2023[**]
Seattle, Washington

Before: WARDLAW and M. SMITH, Circuit Judges, and HINKLE,[***] District Judge.

Arthur Andy ("Andy") appeals the district court's decision upholding an

[*] 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 Robert L. Hinkle, United States District Judge for the Northern District of Florida, sitting by designation.

administrative law judge's ("ALJ") denial of his application for Supplemental Security Income. We "will disturb the denial of benefits only if the decision contains legal error or is not supported by substantial evidence." *Terry v. Saul*, 998 F.3d 1010, 1012 (9th Cir. 2021). We have jurisdiction under 8 U.S.C. § 1291, and we affirm.

1. The ALJ properly weighed the medical opinions of examining physician Dr. Drenguis and non-examining physicians Dr. Hurley and Dr. Baylor in determining that Andy does not have a forward reaching limitation. In 2017, the agency revised its regulations to eliminate the "three-tiered hierarchy" of medical opinions based on a doctor's relationship with the claimant. *See Woods v. Kijakazi*, 32 F.4th 785, 788–89 (9th Cir. 2022). Under the revised regulations, which apply to all claims filed on or after March 27, 2017, an ALJ must "not defer or give any specific evidentiary weight, including controlling weight, to any medical opinion," but must instead weigh various factors to evaluate the persuasiveness of each medical opinion. *See* 20 C.F.R. § 416.920c(a). "The most important factors that the agency considers when evaluating the persuasiveness of medical opinions are supportability and consistency." *Woods*, 32 F.4th at 791 (internal quotation marks omitted).

Andy filed his application on March 26, 2018. Therefore, the ALJ properly applied the new regulations in analyzing Andy's claim. After reviewing Andy's

medical records and the doctors' opinions, the ALJ determined that Dr. Drenguis's opinion lacked supportability because his physical examination "findings indicated some limitation in shoulder movement, but not to the extent that [Andy] would have difficulty reaching forward." For example, although he concluded that Andy was limited in both overhead and forward reaching, Dr. Drenguis's exam showed that Andy could extend his arm outward and encountered difficulty only when he attempted to raise his arm farther above his head. As for the consistency of Dr. Drenguis's opinion, the ALJ found that "the record otherwise does not contain consistent evidence" regarding Andy's shoulder pain, because Andy's medical records showed only "two instances of complaints about his shoulder" and "only moderate limitation and generally normal use of his upper extremities."

In contrast, the ALJ found that Dr. Hurley's and Dr. Baylor's conclusions that Andy did not have a forward reaching limitation were supported by "findings by the consultative examiner and findings in the treatment notes," and that their opinions were "consistent with the later treatment notes" which "showed generally normal strength and movement of [Andy's] extremities." Furthermore, because we review the ALJ's decision for substantial evidence, even if the medical opinion "evidence is susceptible to more than one rational interpretation, it is the ALJ's conclusion that must be upheld." *Shaibi v. Berryhill*, 883 F.3d 1102, 1108 (9th Cir. 2017) (internal citation and quotation marks omitted). Therefore, because the ALJ considered the

most important factors of supportability and consistency, and because "considering the record as a whole, a reasonable person" could find that the evidence supported the ALJ's conclusion, the ALJ's determination that Andy did not have a forward reaching limitation was supported by substantial evidence. *Terry*, 998 F.3d at 1012.

Moreover, neither the ALJ nor the district court committed legal error by concluding that Andy does not have a forward reaching limitation. The ALJ's reasoning was not "impermissibly vague" because, although the ALJ's analysis of the supportability and consistency of Dr. Drenguis's opinion is summarized in one sentence, at other points throughout his decision the ALJ clearly articulated why Andy's complaints about his right shoulder were not supported by the record. *See Kaufmann v. Kijakazi*, 32 F.4th 843, 851 (9th Cir. 2022) (finding substantial evidence supported the ALJ's decision where "[l]ooking to *all* the pages of the ALJ's decision . . . the ALJ had, in fact, explained" the basis of its ruling). Nor did the ALJ improperly rely on his own interpretation of the medical opinion evidence, because the ALJ adopted the findings of Dr. Hurley and Dr. Baylor in determining Andy's residual functional capacity. Lastly, although "[w]e consider the district court's decision, [] the statutory scheme mandates a full review of the facts by our court and an independent determination as to whether the [ALJ's] findings are supported by substantial evidence." *Stone v. Heckler*, 761 F.2d 530, 532 (9th Cir. 1985). Therefore, even if we agreed with Andy's argument that the district court

engaged in a "post hoc rationalization" of the ALJ's decision, this would not warrant remand because the ALJ's finding that Andy does not have a forward reaching limitation is supported by substantial evidence.

2. Substantial evidence supports the ALJ's conclusion at step five that there are a significant number of jobs in the national economy that Andy can perform. "[W]ork exists in the national economy when it exists in significant numbers either in the region where [the claimant] live[s] or in several other regions of the country." 20 C.F.R. § 416.966(a). In *Gutierrez v. Comm'r of Soc. Sec.*, 740 F.3d 519, 529 (9th Cir. 2014), we held "that 25,000 jobs . . . signifies a significant number of jobs in several regions of the country" for purposes of step five.

Here, the vocational expert testified that there are 28,100 jobs in the national economy that an individual of Andy's age, education, work experience, and residual functional capacity can perform, if that individual does not have a forward reaching limitation. Because substantial evidence supports the ALJ's determination that Andy does not have a forward reaching limitation, and because the existence of 28,100 jobs nationwide constitutes "a significant number of jobs in several regions of the country" under *Gutierrez*, substantial evidence supports the ALJ's step five conclusion that Andy is not disabled within the meaning of the Social Security Act. *See id.*

AFFIRMED.