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DEC 11 2023

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RANDALL DEAN WENDT, Plaintiff-Appellant, v. KILOLO KIJAKAZI, Acting Commissioner of Social Security, Defendant-Appellee.	No. 23-35069 D.C. No. 3:20-cv-02053-MC MEMORANDUM[*]

Appeal from the United States District Court
for the District of Oregon
Michael J. McShane, District Judge, Presiding

Submitted December 7, 2023[**]
Portland, Oregon

Before: NGUYEN and MILLER, Circuit Judges, and MONTALVO,[***] District Judge.

Randall Dean Wendt appeals from the district court's order affirming the

[*] 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 Frank Montalvo, United States District Judge for the Western District of Texas, sitting by designation.

Commissioner of Social Security's denial of his application for disability benefits under the Social Security Act. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We review the district court's decision de novo and may overturn the decision of the administrative law judge (ALJ) only if it is not supported by substantial evidence or was based on legal error. *See Luther v. Berryhill*, 891 F.3d 872, 875 (9th Cir. 2018). "Substantial evidence is 'more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997) (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)). We will affirm even if the evidence is "susceptible to more than one rational interpretation." *Attmore v. Colvin*, 827 F.3d 872, 875 (9th Cir. 2016) (quoting *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R. §§ 404.1502(a), 416.902(a)).

The ALJ followed the Social Security Administration's five-step sequential evaluation to determine if Wendt is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920. At step four, the ALJ found that Wendt has the residual functional capacity (RFC) to perform some of his past work and is thus not disabled.

1. Wendt argues the ALJ did not properly consider all of his alleged impairments when determining his RFC—specifically the limits on his

concentration caused by his back pain and the side effects of his pain medications. The ALJ found that Wendt's only evidence of such limits were self-reported symptoms, that Wendt had not sought treatment for these symptoms, and that there was no medical evidence to support their existence. Those findings are supported by the record, and the ALJ appropriately relied on them. *See Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) (explaining that failing to seek treatment is "powerful evidence regarding the extent" of symptoms). Despite testifying that he lacked the concentration to be productive at work, Wendt had earlier stated that his capacity to pay attention was "not a disability" and that his ability to follow written and spoken instructions was "fine." Although he complained of side effects of other medications, he made no complaints of side effects from gabapentin. Wendt performed well in a mental-status examination and state-agency psychological consultants found that Wendt was not suffering from any mental limitations.

The ALJ further found that one consultative exam discovered evidence of malingering, that Wendt lost his job for reasons unrelated to his alleged disability, and that he continued seek employment as a delivery driver after the alleged onset of his disability. Substantial evidence supports those findings, and the ALJ was permitted to consider them in weighing Wendt's symptom testimony. *See Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002) (approving of ALJ's reliance on claimant's lack of consistent effort during an evaluation); *Bruton v. Massanari*,

268 F.3d 824, 828 (9th Cir. 2001) (approving of ALJ's reliance on claimant's loss of work for reasons unrelated to the alleged disability); *Macri v. Chater*, 93 F.3d 540, 544 (9th Cir. 1996) (approving of ALJ's reliance on claimant's pursuit of comparable work during the relevant time).

Wendt argues that the ALJ was obliged to provide "specific, clear, and convincing reasons" for discrediting his symptom testimony. *Garrison v. Colvin*, 759 F.3d 995, 1010 (9th Cir. 2014). But that is what the ALJ did; although the reasons were not all articulated in one place in the ALJ's opinion, we "[l]ook[] to *all* the pages of the ALJ's decision." *Kaufmann v. Kijakazi*, 32 F.4th 843, 851 (9th Cir. 2022). Upon review of the ALJ's whole decision and the entire record, we conclude that substantial evidence supports the ALJ's RFC determination.

2. Wendt also challenges the ALJ's finding that he could return to past relevant work. At step four, the ALJ must determine whether a claimant can return to past work notwithstanding his limitations. 20 C.F.R. § 404.1520(a)(4)(iv). Wendt insists that changes in technology since the Dictionary of Occupational Titles was last updated mean that he cannot do his past work in the electronics industry because he is no longer sufficiently skilled. The vocational expert's testimony supported the ALJ's determination to the contrary. The expert acknowledged that the electronics industry has changed and that Wendt might not be able to perform all relevant jobs given his limitations. The expert also

explained, however, that Wendt could still be a “circuit layout technician.” Although the expert described that conclusion as a “very close call,” the testimony is nevertheless substantial evidence sufficient to support the ALJ’s conclusions.

AFFIRMED.