NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KAROL SHADOWVINE BOGLE, Plaintiff - Appellant, v. MARTIN J. O'MALLEY, Commissioner of Social Security, Defendant - Appellee.	No. 23-3440 D.C. No. 2:22-cv-01593-TLF MEMORANDUM[*]

Appeal from the United States District Court
for the Western District of Washington
Theresa Lauren Fricke, Magistrate Judge, Presiding

Submitted October 24, 2024[**]
San Francisco, California

Before: OWENS, SUNG, and SANCHEZ, Circuit Judges.

Claimant Karol Bogle appeals from the district court's decision affirming the Commissioner of Social Security's denial of her application for disability insurance benefits. We have jurisdiction under 28 U.S.C. § 1291, 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).

We review the district court's order de novo and "set aside a denial of benefits only if it is not supported by substantial evidence or is based on legal error." *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006). The "threshold" for substantial evidence is "not high." *Biestek v. Berryhill*, 587 U.S. 97, 103 (2019). Under this deferential standard, "[w]here the evidence is susceptible to more than one rational interpretation, the [Administrative Law Judge's (ALJ)] decision must be affirmed." *Smartt v. Kijakazi*, 53 F.4th 489, 494 (9th Cir. 2022) (citation omitted).

1. Bogle argues that the ALJ's decision at step five was not supported by substantial evidence. At step five, the ALJ must determine whether "the claimant can perform a significant number of other jobs in the national economy." *Ford v. Saul*, 950 F.3d 1141, 1149 (9th Cir. 2020) (citation omitted); *see also* 20 C.F.R. § 404.1520(a)(4)(v). The ALJ heard testimony from a vocational expert (VE) with forty-three years of experience who identified three jobs existing in significant numbers in the national economy that Bogle can perform: janitor, hand packager, and auto detailer. An ALJ "is entitled to rely on a VE's testimony to support a finding that the claimant can perform occupations that exist in significant numbers in the national economy." *Kilpatrick v. Kijakazi*, 35 F.4th 1187, 1192 (9th Cir. 2022).

Even though "a VE's testimony is one type of job information that is

regarded as inherently reliable" and "there is no need for an ALJ to assess its reliability," the ALJ here nevertheless assessed the record and concluded that the VE's testimony had sufficient indicia of reliability. *Buck v. Berryhill*, 869 F.3d 1040, 1051 (9th Cir. 2017). The VE's testimony was not "so feeble, or contradicted, that it [failed] to clear the substantial-evidence bar." *Biestek*, 587 U.S. at 105.

2. Bogle argues that the VE's testimony about the level of skill required to be a janitor, hand packager, or auto detailer was incorrect, and therefore remand is required. Bogle primarily relies on her counsel's post-hearing submission of materials alleging that each job requires more skill than the level identified by the VE. When a claimant and VE present inconsistent evidence, "the ALJ may have a duty to address such a conflict. That duty arises only where the purportedly inconsistent evidence is both significant and probative, as opposed to meritless or immaterial." *Wischmann v. Kijakazi*, 68 F.4th 498, 505 (9th Cir. 2023) (internal citations and quotation marks omitted). Where, as here, the claimant's inconsistent evidence is based on a different methodology, comes from a different data source, contains unexplained values, and was prepared by an attorney with "no identified expertise" in vocational calculation, it is not probative. *Id.* at 507 (citation omitted); *see also Kilpatrick*, 35 F.4th at 1194.

AFFIRMED.