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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CADE E. GANT, Plaintiff-Appellant, v. MARTIN J. O'MALLEY, Commissioner of Social Security, Defendant-Appellee.	No. 24-989 D.C. No. 3:23-cv-08059-SPL MEMORANDUM[*]

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

Submitted October 24, 2024[**]
Phoenix, Arizona

Before: M. SMITH, BADE, and FORREST, Circuit Judges.

Cade E. Gant appeals from the district court's decision affirming the Commissioner of Social Security's denial of his application for benefits under the Social Security Act. We have jurisdiction under 28 U.S.C. § 1291. We review 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).

district court's order de novo and reverse only if the Administrative Law Judge's (ALJ) decision was not supported by substantial evidence or was based on legal error. *Larson v. Saul*, 967 F.3d 914, 922 (9th Cir. 2020). We affirm.

1. ***Evaluation of Medical Evidence.*** Gant argues that the ALJ erred in discounting the opinions of Doctors Higgins, House, and Patrick. Under the pre-March 2017 regulations that apply to Gant's claim, an ALJ must provide "clear and convincing reasons" supported by substantial evidence to reject the uncontested opinion of an examining or treating physician. *Farlow v. Kijakazi*, 53 F.4th 485, 488 (9th Cir. 2022). As to all three physicians, the ALJ provided legally sufficient reasons for discounting the opinion of each physician and her reasons are supported by substantial record evidence. *See* 20 C.F.R. § 416.927(c); *Lester v. Chater*, 81 F.3d 821, 831 (9th Cir. 1995) (discussing standards for evaluating medical opinion evidence).

The ALJ assigned "little weight" to Dr. Higgins' opinion that Gant had extreme limitations in areas of mental functioning because it is inconsistent with the medical record, including "intelligence testing show[ing] that [Gant] had a full-scale IQ score of 75, with low-average scores in other areas." Additionally, the ALJ rejected Dr. Higgins' opinion that Gant was extremely limited in his ability to concentrate, persist, maintain pace, and adapt or manage oneself, because it was inconsistent with Gant's reported daily activities. These are legitimate bases for

rejecting a medical opinion and are based on a reasonable interpretation of the record evidence. *See Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999) (affirming the ALJ's rejection of a medical opinion that was inconsistent with the claimant's testimony and objective medical evidence in the record).

Gant's argument regarding Dr. House fails because the ALJ properly addressed Dr. House's testimony in assessing Gant's Residual Functional Capacity (RFC). The ALJ incorporated Dr. House's recommendation that Gant must not be exposed to hazards, such as moving machinery or unprotected heights. This is further supported by the ALJ's statement that Dr. House's "opinion supports the conclusion regarding the restrictions found in this decision." *See Kitchen v. Kijakazi*, 82 F.4th 732, 740 (9th Cir. 2023) (affirming the ALJ's decision to incorporate the physician's assessment into the RFC).

Finally, the ALJ gave "little weight" to Dr. Patrick's opinion because it is inconsistent with his own mental-status examination, a treating provider's report, and Gant's activities. These are specific and legitimate reasons for discounting Dr. Patrick's opinion that are supported by substantial evidence. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (affirming an ALJ's decision to discount a doctor's opinion if it is inconsistent with the doctor's own clinical findings). Thus, we conclude that the ALJ's decision to reject Dr. Patrick's opinion is supported by substantial evidence.

2. ***Evaluation of Gant's Testimony.*** When medical evidence establishes that the claimant has a medically determinable impairment that could reasonably be expected to produce the symptoms alleged by the claimant, the ALJ can reject the claimant's testimony regarding the severity of his symptoms only for "clear and convincing reasons." *Smartt v. Kijakazi*, 53 F.4th 489, 497 (9th Cir. 2022) (quoting *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1160 (9th Cir. 2008)). "Contradiction with the medical record is a sufficient basis for rejecting the claimant's subjective testimony." *Id.* at 499 (quoting *Carmickle*, 533 F.3d at 1161).

Here, the ALJ rejected Gant's subjective testimony "about the intensity, persistence, and limiting effects of his symptoms" as inconsistent with his medical records, high school records, and reported activities. Specifically, the ALJ determined that Gant's medical records from 2017 to 2022 reported that he had normal mental status and was cooperative, well-groomed, pleasant, and displayed a working memory, understandable speech, and eye contact. The ALJ also rejected Gant's testimony that he could not focus for extended periods of time because it contradicted his high school records, which noted that he had "many strengths, such as the ability to focus on a particular subject for prolonged periods," take directions from his teachers, and work with his peers. The ALJ credited Gant's teachers' report that his skills as a student would translate well to employment. We find no error in the ALJ's consideration of the record evidence or its treatment of Gant's symptom

testimony. *See* 20 C.F.R. § 416.929(c)(1) (the ALJ may "consider all of the available evidence from [claimant's] medical sources and nonmedical sources about how [his] symptoms affect [him]").

Finally, the ALJ determined that Gant's symptom testimony is inconsistent with his reported daily activities. We conclude that the ALJ gave clear and convincing reasons supported by substantial evidence to discredit Gant's subjective symptom testimony. *Smartt*, 53 F.4th at 494–95; *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002) ("If the ALJ's credibility finding is supported by substantial evidence in the record, we may not engage in second-guessing."); *Ahearn v. Saul*, 988 F.3d 1111, 1117 (9th Cir. 2021) (affirming an ALJ's decision to reject a claimant's testimony when the testimony is inconsistent with the claimant's ability to play video games and watch television for sustained periods).

3. ***Evaluation of Lay Evidence.*** Gant argues that the ALJ erroneously failed to consider his mother's symptom testimony. An ALJ must take into account lay witness testimony "unless . . . she expressly determines to disregard such testimony and gives reasons germane to each witness for doing so." *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001).

Any error in the ALJ's treatment of this evidence is harmless because her testimony is not meaningfully different from Gant's testimony. *See Molina v. Astrue*, 674 F.3d 1104, 1117 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R.

§ 404.1502(a) ("Where lay witness testimony does not describe any limitations not already described by the claimant, and the ALJ's well-supported reasons for rejecting the claimant's testimony apply equally well to the lay witness testimony, it would be inconsistent with our prior harmless error precedent to deem the ALJ's failure to discuss the lay witness testimony to be prejudicial per se.").

4. ***Step-Five Determination.*** Finally, Gant argues that the ALJ erred at Step Five by posing hypothetical questions to the vocational expert that failed to account for the limitations indicated by Dr. Higgins, Dr. House, Dr. Patrick, Gant's testimony, and Gant's mother's testimony. However, as discussed above, we conclude that the ALJ did not err in discrediting this evidence, and the ALJ does not err in omitting rejected evidence from the RFC determination. *See Kitchen*, 82 F.4th at 742. Accordingly, we conclude that the ALJ did not err at Step Five by relying on her RFC determination and the vocational expert testimony based on that determination. *See id.*

AFFIRMED.