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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES A. MCPHETRIDGE, Plaintiff - Appellant, v. CAROLYN W. COLVIN*, Acting Commissioner of Social Security, Defendant - Appellee.	No. 23-3604 D.C. No. 3:23-cv-05067-SKV MEMORANDUM**

Appeal from the United States District Court
for the Western District of Washington
Sarah Kate Vaughan, Magistrate Judge, Presiding

Submitted December 5, 2024***
Portland, Oregon

Before: CALLAHAN, NGUYEN, and SUNG, Circuit Judges.

Petitioner James McPhetridge appeals from the district court's judgment

* Carolyn W. Colvin is substituted for her predecessor Martin O'Malley, Commissioner of the Social Security Administration, as Acting Commissioner of the Social Security Administration, pursuant to Federal Rule of Appellate Procedure 43(c).

** 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).

affirming Acting Commissioner of Social Security Carolyn Colvin's denial of disability insurance benefits and supplemental security income under Titles II and XVI of the Social Security Act. We have jurisdiction under 28 U.S.C. § 1291. We review the district court's judgment de novo and the underlying decision of the Administrative Law Judge ("ALJ") for substantial evidence, *see Smartt v. Kijakazi*, 53 F.4th 489, 494 (9th Cir. 2022), and affirm.

1. The ALJ did not err in her assessment of medical opinions in the record. First, McPhetridge argues that the ALJ erred by crediting Dr. Fossier's and Dr. Bernardez-Fu's opinions. Contrary to McPhetridge's claim, Dr. Fossier did not limit his evaluation only to whether McPhetridge's pain was casually connected to an on-the-job injury. Instead, Dr. Fossier conducted his evaluation in part to "assist in the evaluation of what diagnosis the worker suffers from." McPhetridge also argues that Dr. Fossier had no definite opinion regarding the cause of pain and was not qualified to assess whether it was caused by fibrous dysplasia. But Dr. Fossier determined that the pain was not caused by certain claimed conditions, and thus his opinion has probative value for the ALJ's determination of the severity of McPhetridge's impairments. As a licensed orthopedic surgeon, Dr. Fossier was qualified to assess whether McPhetridge's pain was related to fibrous dysplasia.

The ALJ also did not err in giving Dr. Bernardez-Fu's opinion more weight than the other doctors' opinions relied on by McPhetridge. Dr. Bernardez-Fu's

findings were more consistent with the record evidence. The "ALJ may discredit a claimant's testimony when the claimant reports participation in everyday activities . . . [that] contradict claims of a totally debilitating impairment." *Molina v. Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012).

While McPhetridge is correct that Dr. Fossier and Dr. Bernardez-Fu's opinions only reviewed evidence from before January 2013, other doctors' opinions address subsequent evidence, and the ALJ considered the entire record in making her decision.

McPhetridge also argues that the ALJ failed to state any legitimate reason for rejecting the postural limitations noted in Dr. Gaffield's opinions. The record, however, does not support McPhetridge's claim. With regard to Dr. Gaffield's first opinion, the ALJ articulated specific and legitimate reasons for rejecting those limitations, such as the assessment being inconsistent with the "reported findings of no tenderness, sensory changes, or restricted range of motion in the knees." While the ALJ generally gave Dr. Gaffield's second opinion "great weight," the ALJ also articulated legitimate reasons for discounting the postural limitations contained therein, such as McPhetridge's documented ability to perform various postures without difficulty.

Lastly, contrary to McPhetridge's argument, the ALJ reasonably explained why the opinions of Nurse Magnuson-Whyte, Dr. Packer, Nurse Armstrong, and

Dr. Palasi, are unpersuasive. For example, as the ALJ noted, Nurse Magnuson-Whyte and Dr. Packer's opinions contain unsubstantiated diagnoses such as fibromyalgia and fecal incontinence, were inconsistent with the opinions of medical sources with more expertise, and were "incongruent with the claimant's robust daily activities."

2. The ALJ did not err in discounting McPhetridge's testimony. The ALJ provided several "specific, clear, and convincing reasons," *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996) (cleaned up), including "significant inconsistencies" between his testimony and "objective medical findings," conservative treatments, and his daily activities.

3. The ALJ did not err in discounting lay witness testimony by McPhetridge's father and brother-in-law. The ALJ provided germane reasons for rejecting their observations, which were contradicted by the record. The ALJ's failure to discuss Social Security Administration interviewer T. Duguay's brief observations from an SSA-3367 form does not warrant reversal. Duguay did not evaluate McPhetridge's limitations, and his observations are similar to other evidence in the record. Therefore, this evidence was "neither significant nor probative." *See Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984).

AFFIRMED.