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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BROOKE A. BURNS, Plaintiff - Appellant, v. FRANK BISIGNANO, Commissioner of Social Security, Defendant - Appellee.	No. 24-4199 D.C. No. 3:23-cv-05678-GJL MEMORANDUM[*]

Appeal from the United States District Court
for the Western District of Washington
Grady J. Leupold, Magistrate Judge, Presiding

Submitted July 11, 2025[**]
Seattle, Washington

Before: PAEZ and SANCHEZ, Circuit Judges, and SELNA, District Judge.[***]

Brooke Anne Burns ("Burns") appeals the district court's decision affirming the administrative law judge's ("ALJ's") denial of her application for supplemental

[*] 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 James V. Selna, United States District Judge for the Central District of California, sitting by designation.

security income and disability insurance benefits. "We review the district court's order affirming the ALJ's denial of social security benefits *de novo* . . . and reverse only if the ALJ's decision was not supported by substantial evidence in the record as a whole or if the ALJ applied the wrong legal standard." *Smith v. Kijakazi*, 14 F.4th 1108, 1111 (9th Cir. 2021) (internal citation omitted). We affirm.

1. Although the ALJ incorrectly stated that the August 2018 order was the Commissioner's "final decision," the ALJ made independent findings at all five steps of the disability analysis for the entire period at issue, beginning with the alleged disability onset date of August 1, 2015. Thus, any error in the ALJ's res judicata analysis was harmless. *See Ahearn v. Saul*, 988 F.3d 1111, 1118 (9th Cir. 2021) (holding that any error in the ALJ's res judicata analysis was harmless because "the ALJ performed an independent evaluation of the evidence in the record, including the old evidence as well as the new evidence offered by [claimant].").

2. The ALJ gave specific and legitimate reasons for discounting the medical opinions of the physicians.[1] "[T]he ALJ is responsible for translating and

[1] Because Burns filed her claim before March 27, 2017, the Commissioner's revised regulations concerning the evaluation of medical evidence based on supportability and consistency factors do not apply here. *See Cross v. O'Malley*, 89 F.4th 1211, 1214 (9th Cir. 2024). Therefore, the ALJ must provide "specific and legitimate" reasons before discounting evidence from treating physicians. *See Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020). This is true even though Burns filed an additional Title XVI claim in 2019, which was later consolidated with her

incorporating clinical findings into a succinct [residual functional capacity ('RFC')]." *Rounds v. Comm'r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015). Here, the RFC's limitations on Burns's concentration, memory, social interaction, and adaptability reflect the limitations observed by Dr. Loreli Thompson, Dr. Kimberly Wheeler, and Dr. Melinda C. Losee. *See Turner v. Comm'r Soc. Sec. Admin.*, 613 F.3d 1217, 1222-23 (9th Cir. 2010) (holding that the ALJ did not err "because the ALJ did not reject any of [the doctor's] conclusions" but rather "incorporated [the doctor's] observations into [the claimant's] residual functional capacity").

The ALJ gave specific and legitimate reasons for discounting the opinion of Dr. Charles M. May because his opinion was "inconsistent with the evidence of the positive effect of the medication he prescribed to treat the claimant's rheumatoid arthritis."[2] Additionally, the ALJ described that notes from May 2018 revealed that Burns's arthritis "was much improved and that [she] was feeling well," and Burns had various "normal physical exams with normal strength and normal range

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Title II claim filed in 2015. *See* HALLEX I-5-3-30 (directing ALJs to use prior regulations for both claims when there is a consolidation of a Title II claim with a filing date before March 27, 2017, and a Title XVI claim filed on or after March 27, 2017).

[2] Because the ALJ's reasoning related to the weight he assigned Dr. May's opinion rather than the RFC more generally, it was reasonable for the ALJ to focus on Burns's improvement with hydroxychloroquine around and within twelve months of the date Dr. May offered his opinion. 20 C.F.R. § 404.1527.

of motion."[3] *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005) (stating that an appropriate reason to reject a doctor's opinion is if it is not supported by clinical evidence); *Ford*, 950 F.3d at 1154 ("A conflict between a treating physician's medical opinion and his own notes is a 'clear and convincing reason for not relying on the doctor's opinion,' and therefore is also a specific and legitimate reason for rejecting it."). Nor did the ALJ err in assigning more weight to Dr. Gordon Hale's opinion than to that of Dr. May. Where an ALJ provides valid reasons to discredit an examining physician's opinion, the ALJ may find a non-examining physician's opinion that is more consistent with the medical record is entitled to more weight. *Ford*, 950 F.3d at 1154-56; *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

Likewise, the ALJ did not err in assigning little weight to Dr. Terilee Wingate's one marked limitation in August 2017 and December 2021 opinion because those opinions were inconsistent with exams in the record and unsupported by Dr. Wingate's own mental status exam of Burns. *See Andrews*, 53 F.3d at 1041 (noting that inconsistency with independent clinical findings in the record is an appropriate reason to reject a contradicted opinion of a treating

[3] Dr. May, as Burns's treating rheumatologist, based his opinion on Burns's rheumatoid arthritis, not on fibromyalgia. The ALJ thus reasonably focused on Burns's rheumatoid arthritis when evaluating Dr. May's opinion, and the ALJ properly considered Burns's fibromyalgia symptoms when assessing the RFC.

physician); *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002) ("The ALJ need not accept the opinion of any physician . . . if that opinion is brief, conclusory, and inadequately supported by clinical findings.").

The ALJ also did not err in assigning little weight to the 2016 opinions of Dr. Michael L. Brown and Dr. Michael Regets because they were "inconsistent with the evidence available at the hearing level." *See Thomas*, 278 F.3d at 957. Indeed, the RFC is actually more restrictive than the opinions of Dr. Brown and Dr. Regets. *See Johnson v. Shalala*, 60 F.3d 1428, 1436 n.9 (9th Cir. 1995) (stating that there is no harm in the "overinclusion of debilitating factors").

Lastly, the ALJ's failure to evaluate the 2020 opinions of Dr. Leslie Postovoit and Dr. Regets was harmless because the RFC's limitations align with and are even more restrictive than the limitations opined by Dr. Postovoit and Dr. Regets. *See Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) ("[W]e have adhered to the general principle that an ALJ's error is harmless where it is 'inconsequential to the ultimate nondisability determination.'" (citation omitted)).

3. The ALJ provided "clear and convincing reasons" for discounting the severity of Burns's symptom testimony. *Garrison v. Colvin*, 759 F.3d 995, 1014-15 (9th Cir. 2014). The ALJ found the severity of Burns's physical symptoms inconsistent with the medical record and noted that Burns's physical pain significantly improved with medication. *See Smartt v. Kijakazi*, 53 F.4th 489, 499

(9th Cir. 2022) ("Contradiction with the medical record is a sufficient basis for rejecting the claimant's subjective testimony." (citation and quotation marks omitted)); *Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (affirming the ALJ's rejection of claimant's symptom testimony given that the claimant "responded favorably to conservative treatment" like medication). The ALJ also found Burns's alleged severe symptoms inconsistent with reports of her daily activities. *See Ghanim v. Colvin*, 763 F.3d 1154, 1165 (9th Cir. 2014) ("Engaging in daily activities that are incompatible with the severity of symptoms alleged can support an adverse credibility determination."). The ALJ found that the medical record indicated that Burns's mental impairments were not as severe as alleged, and Burns "reported a huge relief in her depression and anxiety since starting to take Ketamine" in late 2022. *See Warre ex rel. E.T. IV v. Comm'r, Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) ("Impairments that can be controlled effectively with medication are not disabling for the purpose of determining eligibility for SSI benefits."). Notably, the ALJ did not fully discount Burns's testimony and accounted for her physical and mental limitations in the RFC determination. *See Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1163 (9th Cir. 2008).

4. The ALJ reviewed and considered the statements of Burns's significant other and daughter but gave them "only partial weight" because they "both

generally corroborated the claimant's allegations." Because the ALJ gave clear and convincing reasons for discounting Burns's subjective symptom claims, those reasons apply with equal force to discounting the lay witness testimony, which contained similar claims regarding Burns's symptoms. *Valentine v. Comm'r, Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009) (holding that when the ALJ provided clear and convincing reasons to reject a claimant's testimony, and the lay witness testimony was similar to that of the claimant, "it follows that the ALJ also gave germane reasons for rejecting" the lay witness testimony); *Molina*, 674 F.3d at 1117 (finding no error when ALJ rejects "lay witness testimony [that] 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"). The ALJ's failure to discuss notes from facilitator Tara Stevens and interviewer S. Johnson does not warrant reversal. Neither Stevens nor Johnson evaluated Burns's limitations, and their observations are similar to the other evidence in the record. Thus, this evidence was "neither significant nor probative." *Vincent v. Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984).[4]

[4] We reject Burns's challenge to the ALJ's RFC determination because it "simply restates" her previous arguments. *See Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175-76 (9th Cir. 2008) (rejecting a step five argument that "simply restates" arguments about medical evidence and testimony); *Kitchen v. Kijakazi*, 82 F.4th 732, 742 (9th Cir. 2023) (holding that claimant's argument about an incomplete hypothetical was "a restatement of his contention that the ALJ should have credited" other evidence).

AFFIRMED.