

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 20 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DAVID W. DEVILLEZ,

Plaintiff - Appellant,

v.

FRANK BISIGNANO, Commissioner of
Social Security,

Defendant - Appellee.

No. 25-176

D.C. No.

3:24-cv-01075-SK

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Sallie Kim, Magistrate Judge, Presiding

Submitted November 17, 2025**
San Francisco, California

Before: BOGGS, BRESS, and MENDOZA, Circuit Judges.***

David Devillez appeals the district court's judgment affirming the denial of

* 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 Danny J. Boggs, United States Circuit Judge for the Court of Appeals, Sixth Circuit, sitting by designation.

his application for disability-insurance benefits under the Social Security Act.

“We review a district court’s judgment de novo and set aside a denial of benefits only if it is not supported by substantial evidence or is based on legal error.”

Smartt v. Kijakazi, 53 F.4th 489, 494 (9th Cir. 2022) (citation modified). The substantial-evidence standard requires “more than a mere scintilla” of evidence but does not demand a preponderance. *Kitchen v. Kijakazi*, 82 F.4th 732, 738 (9th Cir. 2023). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. Devillez argues that the Administrative Law Judge (“ALJ”) erred by discounting his testimony about his depression symptoms. He contends that the ALJ wrongly concluded that his depression is not a severe impairment and that she compounded that error by asking incomplete hypothetical questions to the vocational expert at his hearing.

The ALJ acknowledged that Devillez had testified about experiencing depression symptoms. However, she stressed that “a finding of a severe impairment cannot be based entirely upon subjective symptoms alone.” Rather, “there needs to be findings of objective medical signs and laboratory findings showing significant limitations in basic work-like activities *persisting for at least 12 continuous months*.” After noting that Devillez admitted to not pursuing any treatment for his depression and that his reported symptoms were later “negative for depression,” the ALJ found that his depression “did not cause more than

minimal limitation in the claimant's ability to perform basic mental work activities and was therefore non-severe."

An ALJ cannot "reject a claimant's subjective complaints based solely on a lack of medical evidence to fully corroborate the alleged severity of pain." *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). But "[w]hen objective medical evidence in the record is *inconsistent* with the claimant's subjective testimony, the ALJ may indeed weigh it as undercutting such testimony." *Smartt*, 53 F.4th at 498. "Contradiction with the medical record is a sufficient basis for rejecting the claimant's subjective testimony." *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008). Devillez's medical records show that he denied symptoms of depression, anxiety, and suicidality. By noting those inconsistencies in the record and Devillez's lack of mental-health treatment, the ALJ identified substantial evidence supporting her conclusion that Devillez's depression was non-severe.

2. Devillez also argues that the ALJ did not appropriately consider the severity of his depression in her residual functional capacity ("RFC") assessment, and thus wrongly concluded that he could return to his past work as a director of operations. This argument is premised on the theory that the ALJ improperly minimized Devillez's depression and thus fails twice over. First, we have already concluded that the ALJ's severity evaluation was supported by substantial

evidence. Second, an ALJ “must consider limitations and restrictions imposed by all of an individual’s impairments, even those that are not ‘severe’” when assessing RFC. *Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017) (citation omitted). An RFC assessment thus should be “exactly the same regardless of whether certain impairments are considered ‘severe’ or not.” *Id.* Devillez does not explain why this particular RFC falls short of that requirement. Broadly alleging that the ALJ posed incomplete hypotheticals is not enough when that theory is rooted in an already-rejected severity argument.

We conclude that substantial evidence supports the ALJ’s findings that Devillez’s depression is non-severe and that he could return to his past work.

AFFIRMED.