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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BEVERLY M. MCCOLLOCH, Plaintiff - Appellant, v. FRANK BISIGNANO, Commissioner of Social Security, Defendant - Appellee.	No. 25-77 D.C. No. 2:24-cv-00367-GJL MEMORANDUM[*]

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

Argued and Submitted July 8, 2026
Portland, Oregon

Before: GRABER, BERZON, and SUNG, Circuit Judges

Beverly Marie McColloch appeals a district court order affirming the denial of disability benefits from December 1, 2002 through June 15, 2015.[1] "We review a district court's judgment de novo and set aside a denial of benefits only if it is not

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[1] Because McColloch filed her claim before March 27, 2017, the new regulations pertaining to the consideration of medical opinions do not apply. *E.g.*, 20 C.F.R. § 404.1520c.

supported by substantial evidence or is based on legal error." *Stiffler v. O'Malley*, 102 F.4th 1102, 1106 (9th Cir. 2024) (citation modified). "Substantial evidence is more than a mere scintilla, and means only such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020) (citation modified). "If the evidence is susceptible to more than one rational interpretation, it is the ALJ's conclusion that must be upheld." *Id.* (citation modified). "We may affirm the ALJ's decision even if the ALJ made an error, so long as the error was harmless, meaning it was inconsequential to the ultimate nondisability determination." *Id*. (citation modified). We affirm.

1. We review de novo an ALJ's compliance with a federal court's remand order. *Stacy v. Colvin*, 825 F.3d 563, 568 (9th Cir. 2016). The district court's October 2022 remand order required the ALJ to "reassess all of the evidence" after he reconsidered Dr. Robert Crist's medical opinion.

The ALJ did so: He held an administrative hearing, in which he admitted anew all medical evidence previously considered by the agency. There was no error in assessing most of the evidence as he had earlier. The October 2022 order required a new assessment, not a new conclusion. The ALJ did not violate the rule of mandate. *See Stacy*, 825 F.3d at 568–69.

2. An ALJ must articulate "specific, clear, and convincing reasons" to

reject a claimant's testimony about the severity of her symptoms. *Smartt v. Kijakazi*, 53 F.4th 489, 494 (9th Cir. 2022) (citation modified). That standard "requires an ALJ to show his work" and asks "whether the ALJ's rationale is clear enough that it has the power to convince." *Id*. at 499.

The ALJ offered at least four reasons for discounting McColloch's subjective testimony. First, the ALJ pointed to specific medical evidence indicating that, contrary to McColloch's subjective testimony, her symptoms, particularly her back and neck pain, improved at various points between 2002 and 2015. Second, the ALJ identified several instances in which McColloch misrepresented her treatment history. Third, the ALJ noted McColloch's "lack of consistent treatment," including long periods during which McColloch did not see her doctors. *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005). Fourth, McColloch offered conflicting explanations for why she left her job: one medical, the other not. *See Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001) (concluding the ALJ did not err in discounting the claimant's subjective pain testimony because he gave inconsistent explanations for leaving his job). Those reasons are sufficiently "specific, clear, and convincing" to warrant discounting McColloch's subjective testimony. *Smartt*, 53 F.4th at 494 (citation modified).

3. Because "the ALJ provided clear and convincing reasons for rejecting [McColloch's] own subjective complaints," *Valentine v. Comm'r Soc. Sec. Admin.*,

574 F.3d 685, 694 (9th Cir. 2009), including the inconsistency between McColloch's testimony and the medical evidence, and because the lay testimony provided by Penny Zimmer, Brenda Perkins, and Deborah Kay McColloch "was similar to such complaints, it follows that the ALJ also gave germane reasons for rejecting [their] testimony," *id*.

4. "The ALJ must consider all medical opinion evidence." *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (citing 20 C.F.R. § 404.1527(b)). "To reject either a treating or an examining physician's opinion, an ALJ must provide clear and convincing reasons, if the opinion is uncontradicted by other evidence, or specific and legitimate reasons otherwise, and the reasons must be supported by substantial evidence." *Woods v. Kijakazi*, 32 F.4th 785, 789 (9th Cir. 2022) (citation modified).

Dr. Howard Andrew Coren, MD. The ALJ agreed with Dr. Coren that McColloch "likely needed some period off work following her [motor vehicle accident] in March 2003." But McColloch does not identify any specific errors in the ALJ's reasoning that McColloch's improvement in the months thereafter "support[] a conclusion [that] she was capable of returning to some form of gainful employment within a year of her alleged onset date."

Timothy Morford, LMP. "[O]nly licensed physicians and certain other qualified specialists are considered '[a]cceptable medical sources.'" *Molina v.*

Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012) (quoting 20 C.F.R. § 404.1513(a)). The list of such specialists excludes massage practitioners. 20 C.F.R. § 404.1513(a) (2011) (effective April 17, 2007, the date of McColloch's application). Because Morford is a licensed massage practitioner, the ALJ was not required to consider his medical opinion as arising from "an acceptable medical source." To the extent that the ALJ erred by failing to discuss Morford's opinion as arising from a non-acceptable medical source, any error was harmless. The relevant aspects of Morford's evaluation either recount McColloch's subjective reports of limitations which, as discussed above, the ALJ properly discounted, or mention limitations that the ALJ incorporated into McColloch's residual functional capacity.

Dr. John M. Blair, MD. The ALJ gave "minimal weight" to Dr. Blair's September 2003 opinion that McColloch would be unable to work for up to three months. The ALJ did so, at least in part, because of McColloch's work history before her alleged disability onset date. Assuming, without deciding, that such reliance on pre-disability work was an illegitimate reason to reject Dr. Blair's opinion, the time period encompassed by Dr. Blair's assessment — the March 2003 car accident through December 2003, three months after his September 2003 opinion — was short of the minimum 12 months required for a disability finding. *See* 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). So, any error in the ALJ's

assessment of Dr. Blair's opinion would, on its own, be "inconsequential to the ultimate nondisability determination," and therefore harmless. *Ford*, 950 F.3d at 1154 (citation modified).

Dr. Alexander D. Serra, MD. McColloch insists that the ALJ "failed to acknowledge all of Dr. Serra's significant findings and failed to apprehend that these findings support the opinions of McColloch's treatment providers" and McColloch's testimony. But the ALJ explicitly cited Dr. Serra's 2003 report, even though he did not mention Dr. Serra by name. Alongside Dr. Serra's 2003 report, the ALJ considered contemporaneous medical evidence that, like Dr. Serra's notes in the record, also identified McColloch's lumbar spine issues at L4-5 and L5-S1. Accordingly, the ALJ did not err in his evaluation of Dr. Serra's findings.

Dr. Douglas Lindahl, DO. The ALJ did not err in disregarding Dr. Lindahl's December 2006 opinion noting McColloch's "debilitating pain." The ALJ described the opinion as "equivocal, conclusory, and contradicted by [Dr. Lindahl's] opinion six months later," which noted that McColloch was "doing better" after physical therapy, was "not having near[ly] the amount of spasms that she used to," and was "in no acute distress." In any event, where a "treating doctor's opinion is contradicted by another doctor, the ALJ may discount the treating physician's opinion by giving specific and legitimate reasons" for doing so. *Id.* (citation modified). The ALJ cited several examining physicians' opinions,

including those of Dr. Robert Hoskins, MD, and Dr. Gary Gaffield, DO, which concluded that McColloch could sit for at least two hours at a time. The ALJ's assessment of Dr. Lindahl's opinions was adequate, as the ALJ provided "specific and legitimate reasons" for discounting them that were "supported by substantial evidence in the record." *Id.*

Dr. Robert Crist, MD. The ALJ gave significant weight to most of Dr. Crist's conclusions, but discounted Dr. Crist's determination that McColloch would need to change positions occasionally while seated. Even if the ALJ erred in so doing, any such error "was inconsequential to the ultimate nondisability determination." *Id*. (citation modified). The ALJ's colloquy with the vocational expert ("VE") indicated that two of the three jobs the VE identified would be consistent with the "need to alter positions on occasion." That conclusion, in turn, accords with Dr. Crist's opinion that the claimant "could probably sit for 4–5 hours without too many restrictions but would probably have to alter position and change position during that period." To the extent the ALJ's partial rejection of Dr. Crist's opinion was erroneous, the error was harmless.

Dr. Garrett W. Duckworth, MD and Mike Myers, PA-C. An ALJ may disregard a medical opinion that "is brief, conclusory, and inadequately supported by clinical findings." *Britton v. Colvin*, 787 F.3d 1011, 1012 (9th Cir. 2015) (per curiam) (citation omitted). It is not clear that Dr. Duckworth's and P.A. Myers'

check-box opinions were based on "significant experience" or "supported by numerous records" and therefore "entitled to weight that an otherwise unsupported and unexplained check-box form would not merit." *Garrison v. Colvin*, 759 F.3d 995, 1013 (9th Cir. 2014). The ALJ did not err in his assessment of these opinions.

Dr. Keith J. Krueger, PhD. The ALJ cited several medical examinations inconsistent with Dr. Krueger's assessed limitations on McColloch's "social functioning" and "adaptation," as well as evidence that psychiatric medication reduced her symptoms. The ALJ thus identified "specific and legitimate reasons," supported by substantial evidence, to discount Dr. Krueger's opinion. *See Woods*, 32 F.4th at 789 (citation modified).

Dr. Darius Ghazi, MD. McColloch does not point to any specific error regarding the ALJ's assessment of Dr. Ghazi's medical opinion.

5. For the foregoing reasons, we conclude that substantial evidence supports the ALJ's assessment of McColloch's residual functional capacity, and the ALJ's hypothetical questions to the VE at Step Five of the sequential evaluation process.

AFFIRMED.