



Rossol v. Berryhill

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

*** KELLI J. ROSSOL,

Plaintiff, vs. NANCY A. BERRYHILL, Acting Commissioner of Social Security,

Defendant.

Case No: 2:18 cv 00859 JCM VCF REPORT & RECOMMENDATION

This matter involves Plaintiff Kelli J. Rossol . decision denying Ro social-security benefits. (ECF No. 1-1). Before the Court is Rossol Motion

to Remand (ECF No. 10). In response, Berryhill filed an opposition and Cross Motion to Affirm (ECF No. 13 & 14) and Rossol replied (ECF No. 15).

I. BACKGROUND This case arises under Title II and Title XVI of the Social Security Act. On November 15, 2010, Kelli Rossol filed her application for a period of disability, disability insurance benefits, and supplemental security income under the Social Security Act, 42 U.S.C. §§ 416, 423. (See Admin. Rec. at 133 - 34). Rossol were denied upon initial determination. Id. at 17 - 27. Rossol

for review on March 8, 2018. Id. at 1. On that date the decision became final. On May 12, 2018, Rossol decision. (ECF No. 1-1).

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II. STANDARD OF REVIEW The Fifth Amendment prohibits the government from depriving persons of property without due process of law. U.S. Const. amend. V. Social security applicants and recipients have a constitutionally protected property interest in social security benefits. Mathews v. Eldridge, 424 U.S. 319 (1976); Gonzalez v. Sullivan, 914 F.2d 1197, 1203 (9th Cir. 1990). Where, as here, the Commissioner of Social Security renders a final decision denying a person benefits, the District



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Court must review the determine whether it accords with the Due Process Clause. Eldridge, 424 U.S. at 340; 42 U.S.C. § 405(g); see also 28 U.S.C. § 636(b) (permitting the District Court to refer matters to a U.S. Magistrate Judge). d. The C determine whether (1) the Commissioner applied the correct legal standards and (2) the decision is ., 359 F.3d 1190, 1193 (9th Cir. 2004); Ukolov v. Barnhart, 420 F.3d 1002 (9th Cir. 2005). . Richardson v. Perales, 402 U.S. 389, 401 (1971); Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995).

Consolidated Edison Co. v. NLRB interpretation. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). This means th decision will be upheld if it has any support in the record. See, e.g., Bowling v. Shalala, 36 F.3d 431, 434

(5th Cir. 1988) (stating that the court may not reweigh evidence, try the case de novo, or overturn the ion if the evidence preponderates against it).

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Discussion: I. Factual Background The ALJ applied the five step sequential analysis pursuant to 20 C.F.R § 404.1520. The ALJ determined that Rossol suffered from a severe combination of impairments including diabetes, seizure disorder, migraine headaches, degenerative disc disease of the cervical and lumbar spine, and left shoulder rotator cuff tear. (AR 22). The ALJ examined relevant medical evidence including opinions and reports of a treating physician Dr. Nouhad Damaj, opinions of Disability Determination Services psychological consultants Jack Araza and Paul Klein, internal medicine consultative examiner Dr. Wenceslao Cabaluna, DDS Medical Consultants - Drs. Larry Pappas and Mindy Lokshin, and records of medical treatment from Nevada Spine Clinic, Horizon View Medical Center, Valley Endocrinology, Highline Medical Center, and visits to physicians. (AR 17 - 27). The ALJ found that Plaintiff would be able to perform her past relevant work as a legal secretary, secretary, and human resources clerk, thus, the ALJ denied her social security benefits. (AR 27). s. Plaintiff states that the ALJ improperly rejected the medical evidence, improperly rejected Plaintiff a lay witness statement. (ECF NO. 10). The Commission argues that the ALJ properly weighed the medical evidence, including evidence that Rossol is not disabled. : is entitled to controlling weight when that opinion is well-supported and not inconsistent with other

substantial evidence in the record. Edlund v. Massanari

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McAllister v. Sullivan, 888 F.2d 599, 602 (9th Cir. 1989).

in 20 C.F.R. § 404.1527(c)(2)(i)-(ii) and (c)(3)-(6) in determining how much weight to give the opinion, including supportability and consistency with the medical record as a whole. When evidence in the



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record contradicts the opinion of a treating physician, the ALJ *mus Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009). Opinions of non-treating or non-examining physicians

c Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002). The ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory, and inadequately supported by clinical findings. *Id.* Here, the ALJ considered but did not give significant weight to treating physician, Dr. Nouhad Damaj. (AR 26). In June 2016, Nouhad Damaj, M.D., provided a checklist opinion on a pre-printed form titled -44). Dr. Damaj opined that Plaintiff could lift and/or carry ten pounds occasionally, five pounds frequently, stand and/or walk for one hour in an 8-hour workday and sit for one hour in an 8-hour workday. Plaintiff was not able to climb ladders, ropes or scaffolds but occasionally climb ramps and stairs, balance, stoop/bend and crouch/squat. She needed to take more than two unscheduled breaks in an 8-hour workday, and she was likely to miss more than four days of work per month. (AR, p. 26).

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ECF No. 10 at p. 11-12). However, the ALJ need not accept any ph weigh and , 359 F.3d 1190, 1194- to the opinion of existence of an impairment *Ukolov*, 420 F.3d at 1004 (same). The ALJ considered Dr. that opinion, finding that the record did not support the degree of limitations. The court finds that the ALJ properly provided specific and valid reasons for discounting the he ALJ noted, a February 2010 EMG/NCV study revealed only mild evidence of cervical radiculopathy on the left side at C5-C6, and a September 2010 CT scan of spine revealed only mild to moderate degenerative disc disease at C5-C6 (AR 24, 242, 333). Similarly, a

September 2010 MRI of her cervical spine revealed multilevel cervical disc disease but no abnormal cord signal or Chiari malformation (AR 24, 243). Further, a June 2015 MRI of her cervical spine revealed no significant central spinal canal stenosis or neural foraminal encroachment (AR 24, 629-30). Likewise, an October 2015 MRI of her lumbar spine revealed no central or neuroforaminal stenosis (AR 25, 631-32, 635). The ALJ found evaluation or te

swelling, no erythema, no atrophy, no joint or muscle tenderness, no muscle spasm, normal movement of

all extremities, and normal sensation, motor function and strength, gait and stance, and reflexes. (AR 24- 26).

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The ALJ s findings were consistent with medical evidence, and they were based upon the record as a whole. (AR 17-27). When presented with contradicting medical evidence, as here, the ALJ is considering and according weight to the medical evidence. *Magallanes v. Bowen*, 881 F.2d 747, 750



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(9th

physicians. : 26). See Thomas, 278 F.3d at 958-59 testimony.

Plaintiff testified that she has no problems with personal care. She can care for her children and a small dog. She does not need special reminders to take care of her personal needs and grooming. She can prepare meals daily. She can do basic housework such as washing dishes, laundry and dusting. When going out, she can go out alone, take walks, run errands, and shop, and is able to drive or have someone drive her. She is also able to handle finances. (AR 26). She testified that she spent time with others and did not need reminders to go places or be accompanied. She went to the movies and visited friends and family. She was able to follow spoken and written instructions fine. Id. at p. 26-27. The ALJ reasonably found that Plaintiff was without assistance for most of the day and was still able to perform a range of daily tasks (AR 27). Molina

extent that they con

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Discounting Edward W. Rossol s Statement as a whole does not support his opinion that Plaintiff is unable to perform any basic work activity. The

ALJ gave little weight to his opinion. (AR 26). An ALJ may consider testimony from lay witnesses submitted on behalf of a claimant. See 20 C.F.R. § 404.1529(c)(3). However, there is no legal basis requiring the ALJ to explicitly discuss or assign weight to their opinions. See SSR 06- between what an adjudicator must consider and what the adjudicator must explain in the disability determination or While the Ninth Circuit says that lay witness testimony cannot be disregarded without comment, Molina, 674 F.3d at 1114, the ALJ is only required to competent lay testimony and need reasons for rejecting testimony from each lay

Id. 26).

The Court finds that the ALJ based his determination on substantial evidence in the record. The ALJ provided clear and specific reasons for rejecting Dr. Damaj , , . Therefore, the Court recommends denying Rossol

ACCORDINGLY, IT IS RECOMMENDED that Rossol 10) be DENIED. /// /// ///

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IT IS FURTHER -Motion to Affirm (ECF No. 13) be GRANTED. IT IS SO RECOMMENDED.



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DATED this 7th day of May, 2019. _____ CAM FERENBACH UNITED
STATES MAGISTRATE JUDGE

