

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

**Dirk N. vanMerkestyn v. Commissioner of Social Security
Administration**

vanMerkestyn v. Commissioner · No. CV-25-00503-PHX-KML · Decided March 30, 2026

OPINION

Dirk N vanMerkestyn v. Commissioner of Social Security Administration

PER CURIAM.

1 WO 2 3 4 5

6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

8 9 Dirk N vanMerkestyn, No. CV-25-00503-PHX-KML 10 Plaintiff, ORDER 11 v. 12
Commissioner of Social Security Administration, 13 Defendant. 14 15 Plaintiff Dirk N.
vanMerkestyn filed this case after an administrative law judge 16 (“ALJ”) denied his application
for Social Security Disability Insurance benefits. The case 17 was referred to a magistrate judge
who prepared a Report and Recommendation (“R&R”) 18 recommending the ALJ’s decision be
affirmed. (Doc. 23.) VanMerkestyn filed objections. 19 (Doc. 23.) Upon de novo review of the
portions of the R&R to which vanMerkestyn 20 objects, the R&R is adopted. 21 The R&R
provides a comprehensive recital of the background facts regarding 22 vanMerkestyn’s work and
medical histories. Neither party objected to that background, 23 and it is adopted. In brief,
vanMerkestyn applied for disability benefits based on 24 depression, social anxiety, and
headaches. After a hearing where vanMerkestyn testified, 25 the ALJ concluded “[t]he medical
evidence of record does not sustain the claimant’s 26 allegations of disabling symptoms and
limitations.” (Doc. 14-3 at 27.) The R&R concluded 27 the ALJ did not err. VanMerkestyn’s
objections to the R&R focus on two alleged errors by 28 the ALJ. First, the ALJ did not provide
adequate reasons for rejecting vanMerkestyn’s 1 symptom testimony. Second, the ALJ did not
provide adequate reasons for rejecting 2 assessments from one of vanMerkestyn’s providers,
David Jones, LCSW. 3 I. Symptom Testimony 4 At the hearing before the ALJ, vanMerkestyn
testified he was fired from his job in

5 November 2020 “due to missing days, due to headaches and depression.” (Doc. 14-3 at
6 45.) When asked for his “mental health diagnoses,” vanMerkestyn stated he has “severe 7
depression, and extreme anxiety.” (Doc. 14-3 at 45.) VanMerkestyn has had depression for 8 “as
long as [he] can remember” and when he was younger, he had “a little more ability to 9 rebound
from situations” such that his depression was better. (Doc. 14-3 at 48.) But “over 10 the years,”
his depression increased possibly due to him “losing [his] job over and over 11 again.” (Doc. 14-3
at 49.) 12 When asked about his headaches, vanMerkestyn stated the frequency has “been less 13

since [he] stopped working, but at least a small one once a week.” (Doc. 14-3 at 48.) 14 VanMerkestyn treats his headaches through “[s]leep and/or taking some Advil.” (Doc. 14- 15 3 at 48.) He previously underwent extensive exams to identify the cause of his headaches, 16 but they were inconclusive. (Doc. 14-3 at 53-54.) 17 When asked about his daily activities, vanMerkestyn described his ability to 18 function is “like a rollercoaster.” (Doc. 14-3 at 55.) He can do all of his own personal 19 grooming, although he goes days without showering. (Doc. 14-3 at 50.) He spends most of 20 his time lying in bed watching videos. (Doc. 14-3 at 49, 54.) But he also performs 21 household chores including laundry, taking care of two dogs, performing minor 22 maintenance on two vehicles, and preparing meals for himself and his mother multiple 23 nights per week. (Doc. 14-3 at 50.) VanMerkestyn goes shopping with his mother or by 24 himself, and sometimes visits his sister in Mesa. (Doc. 14-3 at 51.) 25 The ALJ concluded other evidence in the record established vanMerkestyn’s 26 limitations were not as severe as reflected in his testimony. The ALJ pointed to the exact 27 evidence he believed conflicted with vanMerkestyn’s testimony: 28 While the record does reflect medical diagnoses of major depressive disorder and anxiety disorder requiring prescription 1 medication, the record also reflects the claimant is able to drive, do laundry, go shopping, and travel at times. The records 2 indicate he is learning computer programming and is working on designs on a 3D printer. His mental status exams are 3 consistently normal except for a depressed or irritable mood at times. Since the alleged onset date, the claimant reported he 4 had started working on a new design upgrade for his computer, was able to sell a motorcycle, was able to help his niece with a 5 door project, was working on a project for a printing machine with his friend and was “making progress on one of the cars”. 6 He reported having “increased energy and drive” with consistent counseling and medication. 7 8 (Doc. 14-3 at 23) (record citations omitted). VanMerkestyn argues this explanation was 9 not sufficient. (Doc. 23 at 3.) 10 “[A]n ALJ can reject the claimant’s testimony about the severity of [his] symptoms 11 only by offering specific, clear, and convincing reasons for doing so.” *Smartt v. Kijakazi*, 12 53 F.4th 489, 494 (9th Cir. 2022) (simplified). One permissible reason is evidence “the 13 claimant engages in daily activities inconsistent with the alleged symptoms.” *Id.* at 499 14 (simplified). Thus, the extent of a claimant’s daily activities “may be grounds for 15 discrediting the claimant’s testimony to the extent they contradict claims of a totally 16 debilitating impairment.” *Id.* (simplified). Here, vanMerkestyn testified he spent most of 17 his time in bed but other evidence in the record, including portions of his testimony, 18 indicated he “was able to engage[] in a somewhat normal level of daily activity and 19 interaction despite [his] limitations.” *Id.* 20 The ALJ pointed to evidence that vanMerkestyn performs a wide variety of daily 21 tasks (laundry, shopping, cooking), travels, studies, engages in hobbies, and sold a 22 motorcycle. It is true that “[a] claimant does not need to be utterly incapacitated in order to 23 be disabled.” *Revels v. Berryhill*, 874 F.3d 648, 667 (9th Cir. 2017) (simplified). But “[i]t 24 is not the court’s role to second-guess an ALJ’s reasonable interpretation of a claimant’s 25 testimony.” *Smartt*, 53 F.4th at 500. VanMerkestyn does not point to any evidence in the 26 record undermining the extent to

which he can engage in all of his claimed daily activities. 27 Cf. *Revels v. Berryhill*, 874 F.3d 648, 668 (9th Cir. 2017) (ALJ erred by relying on daily 28 activities when report stated claimant “could complete only some of the tasks in a single 1 day and regularly needed to take breaks”). And those daily activities were inconsistent with 2 vanMerkestyn’s professed need to spend all day in bed. The ALJ gave sufficient reasons 3 for rejecting vanMerkestyn’s testimony. 4 II. Treating Counselor 5 The second alleged error in the R&R involves the ALJ’s rejection of assessments 6 by David Jones, LCSW. VanMerkestyn saw Jones from June 2022 through September 7 2023. (Doc. 14-3 at 22.) Jones completed two assessments the ALJ discussed at length. 8 The first assessment was from November 2022 and the other from September 2023. (Docs. 9 14-9 at 178-181; 15 at 68-71.) Both of those forms are mostly check-box forms identifying 10 the extent of vanMerkestyn’s limitations. Each form also includes brief “Additional 11 Comments” from Jones. The additional comments to the November 2022 assessment state: 12 Headaches are not fully treatable with medications. Significantly impairs his ability to function. Feelings of 13 depression compound his problem. He stays home. Thoughts snowball. Worry of letting down workers. 14 15 (Doc. 14-9 at 181.) The additional comments to the September 2023 assessment state: 16 Frequent debilitating headaches would interfere with required attendance. Rumination would significantly impair his ability 17 to accomplish results. Missing work results in more depression. A great accumulation of symptoms. 18 19 (Doc. 15 at 71.) 20 The ALJ identified these assessments and concluded he was “not persuaded” 21 because they were mostly check-box forms, the September 2023 assessment was 22 completed by Jones and vanMerkestyn working together, and the assessments conflicted 23 with Jones’s own treatment notes, “the findings from the claimant’s mental consultative 24 examination,” and vanMerkestyn’s daily activities. (Doc. 14-3 at 26.) VanMerkestyn 25 argues the ALJ did not provide sufficient explanation for rejecting the assessments but, 26 reviewing the issue de novo, the ALJ’s decision was adequately explained and supported. 27 VanMerkestyn argues the ALJ overlooked the additional comments Jones provided 28 on each form, failed to differentiate between “unrelated normal cognitive examinations 1 findings” and the other findings of “vanMerkestyn’s mood disorders, i.e. abnormal mood 2 and/or affect[,]” and he “failed to explain how any [daily] activity was inconsistent with a 3 specific assessed limitation.” (Doc. 23 at 7.) 4 The parties agree Jones’s assessments should be treated as medical opinions. (Docs. 5 16 at 19; 20 at 8.) The most important factors in evaluating the persuasiveness of medical 6 opinions are “supportability” and “consistency.” 20 C.F.R. § 404.1520c(a). Supportability 7 is “the extent to which a medical source supports the medical opinion by explaining the 8 relevant . . . objective medical evidence.” *Woods v. Kijakazi*, 32 F.4th 785, 791-92 (9th Cir. 9 2022) (simplified). Consistency is “the extent to which a medical opinion is consistent . . . 10 with the evidence from other medical sources and nonmedical sources in the claim.” *Id.* at 11 792 (simplified). The ALJ must “articulate . . . how persuasive” he finds “all of the medical 12 opinions” from each medical source, 20 C.F.R. § 404.1520c(b), and “explain how [he] 13 considered the supportability and consistency factors” in reaching these findings. 20

C.F.R. 14 § 404.1520c(b)(2). The ALJ “cannot reject an examining or treating doctor’s opinion as 15 unsupported or inconsistent without providing an explanation supported by substantial 16 evidence.” Woods, 32 F.4th at 792. 17 Beginning with supportability, Jones did not explain the basis for his ratings on each 18 form. For example, in the November 2022 assessment Jones checked the box indicating 19 vanMerkestyn had “severe limits” in seven areas, including the ability to “[m]aintain 20 socially appropriate behavior and to adhere to basic standards of neatness and cleanliness.” 21 (Doc. 14-9 at 179.) The comments at the end of the form do not explain this limitation. In 22 the September 2023 form, Jones checked the “none” box for that same area, indicating 23 vanMerkestyn had “no evidence of limitation.” (Doc. 15 at 68.) Yet the comments at the 24 end of the September 2023 form are very similar to the comments on the previous form, 25 with no explanation (or support in the record) for the dramatic change in ratings. The ALJ 26 was justified in discounting Jones’s assessments reflected “in a checkbox form with little 27 to no explanation.” Kitchen v. Kijakazi, 82 F.4th 732, 740-41 (9th Cir. 2023). 28 The ALJ also reasoned Jones’s assessments were “not supported by his own 1 treatment notes.” (Doc. 14-3 at 26.) The ALJ did not elaborate but, having reviewed the 2 treatment notes, the assessments conflict with the notes at various points. Cf. Howard ex 3 rel. Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003) (“In interpreting the evidence 4 and developing the record, the ALJ does not need to discuss every piece of evidence.”) 5 (simplified). One assessment stated vanMerkestyn would have “severe” limitations in, 6 among other areas, asking simple questions or requesting assistance. (Doc. 14-9 at 179.) 7 There is no explanation in the treatment notes for such a limitation. Instead, the treatment 8 notes reflect relatively sophisticated thinking, including the ability to assess past, present, 9 and future situations. (Doc. 15 at 128.) The ALJ did not err in concluding the severe 10 limitations in the assessments conflict with Jones’s treatment notes. 11 In terms of the consistency requirement, the ALJ cited to the assessments conflicting 12 with vanMerkestyn’s “mental consultative examination” and his daily activities. According 13 to vanMerkestyn, that was error because the consultative examiner addressed only 14 vanMerkestyn’s cognitive abilities but Jones addressed the “limitations from . . . mood 15 disorders.” (Doc. 23 at 7.) It is not entirely clear what this means in this context. Jones’s 16 assessments do not appear limited to vanMerkestyn’s mood disorders. For example, they 17 included ratings that vanMerkestyn had “moderate” or “moderately severe” limits in three 18 areas involving the ability to “understand, remember, and apply information.” (Doc. 14-9 19 at 178.) The consultative examiner provided ratings on very similar, if not identical, topics. 20 (Doc. 149-9 at 73.) The ALJ was correct that Jones’s assessments were inconsistent with 21 the ratings from the consultative examiner. 22 The ALJ also reasoned Jones’s assessments conflicted with vanMerkestyn’s daily 23 activities. Similar to the analysis regarding vanMerkestyn’s testimony, the daily activities 24 vanMerkestyn was able to pursue could be viewed as undercutting the severe restrictions 25 reflected in Jones’s assessments. To the extent vanMerkestyn believes his daily activities 26 do not conflict with Jones’s assessments, that was an issue for the ALJ, not this court. 27 Lambert v. Saul, 980 F.3d 1266, 1277

(9th Cir. 2020) (ALJ must “determine credibility, 28 resolve conflicts in the testimony, and resolve ambiguities in the record”) (simplified). 1 The ALJ provided sufficient reasons for discounting vanMerkestyn’s testimony and 2|| for discounting the Jones’s assessments. 3 Accordingly, 4 IT IS ORDERED the Report and Recommendation (Doc. 22) is ADOPTED in 5 || part as set forth above. 6 IT IS FURTHER ORDERED affirming the decision of the ALJ. The Clerk of 7|| Court shall enter final judgment consistent with this Order and close this case. 8 Dated this 30th day of March, 2026. 9 4, fy Vo MN. \ %, il AA Ata Ye OC ft □□ Honorable Krissa M. Lanham 12 United States District Judge 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 _7-