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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

WANDA E. BROUGHTON, ) Case No. CV 10-7842 RNB  
Plaintiff, )  
vs. ) ORDER AFFIRMING DECISION OF  
MICHAEL J. ASTRUE, ) COMMISSIONER  
Commissioner of Social Security, )  
Defendant. )

The Court now rules as follows with respect to the one disputed issue listed in the Joint Stipulation, which is directed to the adverse credibility determination of the Administrative Law Judge (“ALJ”).<sup>1</sup>

An ALJ’s assessment of pain severity and claimant credibility is entitled to “great weight.” See Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman

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<sup>1</sup> As the Court advised the parties in its Case Management Order, the decision in this case is being made on the basis of the pleadings, the administrative record (“AR”), and the Joint Stipulation (“Jt Stip”) filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g).

1 v. Heckler, 779 F.2d 528, 531 (9th Cir. 1986). Under the “Cotton standard,” where  
2 the claimant has produced objective medical evidence of an impairment which could  
3 reasonably be expected to produce some degree of pain and/or other symptoms, and  
4 the record is devoid of any affirmative evidence of malingering, the ALJ may reject  
5 the claimant’s testimony regarding the severity of the claimant’s pain and/or other  
6 symptoms only if the ALJ makes specific findings stating clear and convincing  
7 reasons for doing so. See Cotton v. Bowen, 799 F.2d 1403, 1407 (9th Cir. 1986); see  
8 also Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir. 1996); Dodrill v. Shalala, 12  
9 F.3d 915, 918 (9th Cir. 1993); Bunnell v. Sullivan, 947 F.2d 341, 343 (9th Cir. 1991).

10 Here, one of the ALJ’s findings was that plaintiff’s medically determinable  
11 impairments could reasonably be expected to cause the alleged symptoms; however,  
12 plaintiff’s statements concerning the intensity, persistence and limiting effects of  
13 these symptoms were not credible to the extent they were inconsistent with the ALJ’s  
14 assessment of plaintiff’s residual functional capacity. (See AR 20.) The disputed  
15 issue raised by plaintiff is directed to this finding.

16 As a preliminary matter, the Court notes that the ALJ did not find that plaintiff  
17 had a medically determinable mental impairment, let alone a severe medically  
18 determinable mental impairment. (See AR 19.) Plaintiff has not challenged the  
19 ALJ’s failure to find that she suffered from a medically determinable mental  
20 impairment. Since plaintiff’s testimony in itself was not sufficient to establish the  
21 existence of a **medically determinable** mental impairment, the Cotton standard does  
22 not even apply to plaintiff’s subjective mental complaints. See Bunnell, 947 F.2d at  
23 347-48 (noting that the impairment giving rise to the application of the Cotton  
24 standard must be medically ascertained). In rejecting plaintiff’s subjective mental  
25 complaints, the ALJ noted that, although plaintiff alleged that she had depression, she  
26 had never sought any mental health treatment of any kind and never been diagnosed  
27 with any mental impairment. (See AR 21.) The ALJ further noted that plaintiff had  
28 a normal mental status examination when evaluated by the psychiatric examiner. (See

1 id. at 22, citing AR 218-19.) The Court finds that these reasons were sufficiently  
2 specific to permit the Court to conclude that the ALJ did not arbitrarily discredit  
3 plaintiff's subjective mental complaints.

4 The ALJ did find that plaintiff suffered from severe medically determinable  
5 physical impairments, and specifically hypertension, history of heart disease, lumbar  
6 strain, and left knee strain. (See AR 19.) It is plaintiff's subjective testimony  
7 regarding the limiting effects of those medically determinable physical impairments  
8 to which the Cotton standard applies. For the reasons discussed hereafter, the Court  
9 finds that reversal is not warranted based on the ALJ's alleged failure to properly  
10 evaluate plaintiff's subjective testimony regarding the limiting effects of her  
11 medically determinable physical impairments.

12 With respect to plaintiff's allegations relating to her cardiac condition,  
13 including her testimony that she had had numerous heart attacks, the ALJ noted that  
14 plaintiff had had limited medical treatment for her cardiac condition and that the  
15 record did not show any recent hospitalization or diagnosis of any specific heart  
16 condition or that plaintiff had been referred to any specialists for evaluation of heart  
17 problems. (See AR 20-21.) Plaintiff does not dispute the ALJ's characterization of  
18 the record. The Court finds that the limited and lack of recent medical treatment for  
19 her cardiac condition constituted a legally sufficient reason on which the ALJ could  
20 properly rely in support of his adverse credibility determination. See, e.g., Burch v.  
21 Barnhart, 400 F.3d 676, 681 (9th Cir. 2005) (ALJ may properly rely on lack of  
22 consistent treatment); Tidwell v. Apfel, 161 F.3d 599, 602 (9th Cir. 1998) (ALJ may  
23 properly rely on lack of treatment); Orteza v. Shalala, 50 F.3d 748, 750 (9th Cir.  
24 1995) (ALJ may properly rely on failure to pursue treatment); Flaten v. Secretary of  
25 Health & Human Svcs., 44 F.3d 1453, 1464 (9th Cir. 1995) (ALJ may properly rely  
26 on minimal medical treatment for back pain); Bunnell, 947 F.2d at 346 (ALJ may  
27 properly rely on plaintiff's unexplained or inadequately explained failure to seek  
28 treatment).

1 With respect to plaintiff's hypertension diagnosis, the ALJ noted that the  
2 medical evidence did not show that plaintiff had any complications from this  
3 condition and that plaintiff continued to smoke despite having been previously  
4 advised to stop smoking. (See AR 21, citing AR 183, 245, 265.) An ALJ may  
5 properly rely on a plaintiff's unexplained or inadequately explained failure to follow  
6 a prescribed course of treatment. See Bunnell, 947 F.2d at 346; Fair v. Bowen, 885  
7 F.2d 597, 603-04 (9th Cir. 1989). Thus, plaintiff's failure to follow to comply with  
8 the advice to stop smoking arguably also constituted a legally sufficient reason on  
9 which the ALJ could properly rely in support of his adverse credibility determination.  
10 See, e.g., Cantrell v. Astrue, 2012 WL 984289, at \* 13 (D. Or. Mar. 22, 2012); Reeves  
11 v. Astrue, 2012 WL 1032778, at \*6 (W.D. Wa. Mar. 6, 2012); Bybee v. Astrue, 2011  
12 WL 6703568, at \*8 (E.D. Cal. Dec. 21, 2011).

13 The ALJ also noted that plaintiff's allegations of body swelling and of inability  
14 to lift her left arm were inconsistent with the objective medical evidence, including  
15 the evidence of how plaintiff presented on examination. (See AR 21, citing inter alia  
16 AR 267.) Plaintiff does not dispute this characterization of the record, but rather  
17 contends that lack of support in the objective medical evidence was not a legally  
18 sufficient reason to reject plaintiff's testimony. (See Jt Stip at 7-8.) Contrary to  
19 plaintiff's contention, it was not improper for the ALJ to rely on inconsistencies  
20 between plaintiff's subjective complaints and objective medical evidence in the  
21 record. See, e.g., Burch, 400 F.3d at 681 ("Although lack of medical evidence cannot  
22 form the sole basis for discounting pain testimony, it is a factor that the ALJ can  
23 consider in his credibility analysis."); Morgan v. Comm'r of Soc. Sec., 169 F.3d 595,  
24 600 (9th Cir. 1999) (ALJ may properly rely on conflict between claimant's testimony  
25 of subjective complaints and objective medical evidence in the record); Tidwell, 161  
26 F.3d at 602 (ALJ may properly rely on weak objective support for the claimant's  
27 subjective complaints); Orteza, 50 F.3d at 750 (ALJ may properly rely on lack of  
28 objective evidence to support claimant's subjective complaints); Nyman, 779 F.2d at

1 531 (noting that “a claimant’s self-serving statements may be disregarded to the  
2 extent they are unsupported by objective findings”).

3 With respect to plaintiff’s testimony that she had not been able to see out of her  
4 right eye since 1984 (which plaintiff had listed in her disability report as one of the  
5 conditions that limited her ability to work (see AR 131)), the ALJ noted that, on  
6 examination, plaintiff had tested 20/70 in both eyes without glasses and had been able  
7 to move around the doctor’s office without any help. (See AR 21, citing AR 273.)  
8 The ALJ further noted that plaintiff had not seen an ophthalmologist for her vision  
9 problem “in a while” despite being unable to see out of her right eye since 1984 and  
10 despite not wearing glasses in the last 10 years. Finally, the ALJ noted that the record  
11 showed plaintiff had been able to work in various simple jobs since 1989 despite  
12 having issues in her vision. (See AR 21, citing AR 132.) Again, plaintiff does not  
13 dispute this characterization of the record. Under Ninth Circuit jurisprudence, the  
14 inconsistency between plaintiff’s statement that her vision problem limited her ability  
15 to work and plaintiff’s work record constituted a legally sufficient reason on which  
16 the ALJ could properly rely in support of his adverse credibility determination. See  
17 Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002) (ALJ may properly rely on  
18 inconsistencies either in claimant’s testimony or between claimant’s testimony and  
19 claimant’s conduct, claimant’s daily activities, and claimant’s work record).

20 The ALJ also noted that plaintiff’s testimony, including her testimony  
21 regarding how she required her sister’s help with getting dressed and into the bathtub  
22 (see AR 46, 51-52), was inconsistent with plaintiff’s previous statement that she had  
23 no problems with personal care and was able to prepare simple meals and perform  
24 housework, such as cleaning and doing the laundry. (See AR 21-22, citing AR 139-  
25 40.) The Court finds that this reason also constituted a legally sufficient reason,  
26 supported by the evidence of record, on which the ALJ could properly rely in support  
27 of his adverse credibility determination. See, e.g., Thomas, 278 F.3d at 958-59;  
28 Morgan, 169 F.3d at 600 (ALJ may properly rely on contradictions between

1 claimant's reported limitations and claimant's daily activities); Curry v. Sullivan, 925  
2 F.2d 1127, 1130 (9th Cir. 1991) (ability to take care of personal needs, prepare easy  
3 meals, do light housework and shop for some groceries "may be seen as inconsistent  
4 with the presence of a condition which would preclude all work activity"); see also  
5 Fair, 885 F.2d at 604 n.5 (ordinary techniques of credibility evaluation apply in social  
6 security cases).

7 Finally, the ALJ noted that the record did not contain any opinions from  
8 treating or examining physicians indicating that plaintiff was disabled or had  
9 limitations greater than those determined by the ALJ. (See AR 22.) Again, plaintiff  
10 does not dispute this characterization of the record. The Court finds that this reason  
11 also constituted a legally sufficient reason on which the ALJ could properly rely in  
12 support of his finding that plaintiff had failed to meet her burden of proving that she  
13 suffered from a disabling impairment. See Matthews v. Shalala, 10 F.3d 678, 680  
14 (9th Cir. 1993).

15 In conclusion, the Court finds that the ALJ's adverse credibility determination  
16 with respect to plaintiff's subjective testimony regarding the limiting effects of her  
17 medically determinable physical impairments was supported by substantial evidence  
18 and was sufficiently specific to permit the Court to conclude that the ALJ did not  
19 arbitrarily discredit that subjective testimony. See Thomas, 278 F.3d at 958; see also  
20 Fair, 885 F.2d at 604 ("Where, as here, the ALJ has made specific findings justifying  
21 a decision to disbelieve an allegation of excess pain, and those findings are supported  
22 by substantial evidence in the record, our role is not to second-guess that decision.").

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24 IT THEREFORE IS ORDERED that Judgment be entered affirming the  
25 decision of the Commissioner and dismissing this action with prejudice.

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27 DATED: May 8, 2012

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ROBERT N. BLOCK  
UNITED STATES MAGISTRATE JUDGE