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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

PAULA F. GONZALEZ,)	Case No. EDCV 11-1639-MLG
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	
_____)	

Plaintiff Paula Gonzalez seeks judicial review of the Social Security Commissioner's denial of her application for disability insurance benefits ("DIB") and Social Security Disability Insurance ("SSDI") benefits. For the reasons set forth below, the decision of the Commissioner is affirmed and the action is dismissed with prejudice.

I. Facts and Procedural Background

Plaintiff was born on June 7, 1958. (Administrative Record ("AR") at 65.) She earned a GED and has work experience as a care giver and real estate agent. (AR at 171, 173.) Plaintiff filed her applications for benefits on January 23, 2009, alleging disability

1 beginning January 31, 2008, due to hepatitis and affective mood
2 disorder. (AR at 65, 66.) Her application was denied initially on
3 May 14, 2009 and upon reconsideration on September 9, 2009. (AR at
4 79-82, 86-91.) An administrative hearing was held on October 19,
5 2010, before Administrative Law Judge ("ALJ") Sharilyn Hopson.
6 Plaintiff, represented by a non-attorney representative, testified
7 as did vocational and medical experts. (AR at 27-64.)

8 ALJ Hopson issued an unfavorable decision on November 22,
9 2010. (AR at 8-17.) The ALJ found that Plaintiff suffered from the
10 following severe impairments: degenerative disc disorder in L5-S1
11 of the lumbar spine; early osteoarthritis of the right hip;
12 previous cruciate ligament repair; early osteoarthritis of the
13 right knee; hepatitis C; status-post surgery of the left knee; and
14 depression. (AR at 10.) However, these severe impairments did not
15 meet the requirements of a listed impairment found in 20 C.F.R.
16 Part 404, Subpart P, Appendix 1. (Id.)

17 The ALJ found that Plaintiff retained the residual functional
18 capacity ("RFC") to perform medium work as defined in 20 C.F.R.
19 404.1567(c) and 416.967(c) as follows: "the claimant can lift
20 and/or carry 50 pounds occasionally and 25 pounds frequently; she
21 can stand, walk, and/or sit for 6 hours in an 8-hour workday, with
22 normal breaks such as every 2 hours with a sit or stand option (she
23 should be allowed to change positions with no anticipated loss of
24 productivity time); she can only occasionally push and/or pull with
25 her left leg, but no limitations with her right leg; the claimant
26 can occasionally bend, kneel, crouch, crawl and stoop; she can
27 climb stairs but she cannot climb ladders, work at heights or
28 balance; the claimant can do simple and repetitive tasks; she could

1 have occasional public contact; but she is precluded from tasks
2 that are fast-paced work or requiring hypervigilance." (AR at 11.)
3 The ALJ concluded that although Plaintiff could not perform any
4 past relevant work, there were jobs in the national economy which
5 Plaintiff could perform, such as office helper, hand packager, and
6 a small products assembler II. (AR at 16.) Therefore, she found
7 that Plaintiff was not disabled under the Social Security Act. (AR
8 at 17.)

9 The Appeals Council denied review on August 25, 2011 (AR at 1-
10 3), and Plaintiff commenced this action for judicial review. On
11 April 10, 2012, the parties filed a Joint Stipulation ("Joint
12 Stip.") of disputed facts and issues, including the following
13 claims of error: (1) the ALJ erred in evaluating Plaintiff's
14 credibility and subjective testimony; and (2) the ALJ failed to
15 properly consider the lay testimony. (Joint Stip. at 2.) Plaintiff
16 asks the Court to reverse and order an award of benefits, or in the
17 alternative, remand for further administrative proceedings. (Joint
18 Stip. at 17.) The Commissioner requests that the ALJ's decision be
19 affirmed. (Id.)

21 **II. Standard of Review**

22 Under 42 U.S.C. § 405(g), a district court may review the
23 Commissioner's decision to deny benefits. The Commissioner's
24 decision must be upheld unless "the ALJ's findings are based on
25 legal error or are not supported by substantial evidence in the
26 record as a whole." *Tackett v. Apfel*, 180 F.3d 1094 (9th Cir.
27 1999); *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).
28 Substantial evidence means more than a scintilla, but less than a

1 preponderance; it is evidence that a reasonable person might accept
2 as adequate to support a conclusion. *Lingenfelter v. Astrue*, 504
3 F.3d 1028, 1035 (9th Cir. 2007)(citing *Robbins v. Soc. Sec. Admin.*,
4 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
5 substantial evidence supports a finding, the reviewing court "must
6 review the administrative record as a whole, weighing both the
7 evidence that supports and the evidence that detracts from the
8 Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715, 720
9 (9th Cir. 1996). "If the evidence can support either affirming
10 or reversing the ALJ's conclusion," the reviewing court "may not
11 substitute its judgment for that of the ALJ." *Robbins*, 466 F.3d at
12 882.

14 **III. Discussion**

15 **A. The ALJ Properly Evaluated Plaintiff's Subjective Symptom** 16 **Testimony**

17 Plaintiff contends that the ALJ failed to provide clear and
18 convincing reasons for discrediting her subjective symptom
19 testimony. (Joint Stip. at 3.) Plaintiff testified at the
20 administrative hearing to the following symptoms and functional
21 limitations: she suffers from pain due to problems with the discs
22 in her neck and back; she has hepatitis C, which makes her
23 lethargic; she suffers from depression and has twice attempted
24 suicide; she has nuts and bolts in her knee that have fallen apart
25 and she needs similar surgery in her other knee; and she can sit
26 and/or stand for about 20 minutes before having to change
27 positions. (AR at 31-33, 49-53.)

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1 To determine whether a claimant's testimony about subjective
2 pain or symptoms is credible, an ALJ must engage in a two-step
3 analysis. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)
4 (citing *Lingenfelter* 504 F.3d at 1035-36). First, the ALJ must
5 determine whether the claimant has presented objective medical
6 evidence of an underlying impairment which could reasonably be
7 expected to produce the alleged pain or other symptoms.
8 *Lingenfelter*, 504 F.3d at 1036. "[O]nce the claimant produces
9 objective medical evidence of an underlying impairment, an
10 adjudicator may not reject a claimant's subjective complaints based
11 solely on a lack of objective medical evidence to fully corroborate
12 the alleged severity of pain." *Bunnell v. Sullivan*, 947 F.2d 341,
13 345 (9th Cir. 1991) (en banc). To the extent that an individual's
14 claims of functional limitations and restrictions due to alleged
15 pain is reasonably consistent with the objective medical evidence
16 and other evidence in the case, the claimant's allegations will be
17 credited. SSR 96-7p, 1996 WL 374186 at *2 (explaining 20 C.F.R. §§
18 404.1529(c)(4), 416.929(c)(4)).¹

19 Unless there is affirmative evidence showing that the claimant
20 is malingering, the ALJ must provide specific, clear and convincing
21 reasons for discrediting a claimant's complaints. *Robbins*, 466 F.3d
22 at 883. "General findings are insufficient; rather, the ALJ must
23 identify what testimony is not credible and what evidence
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25 ¹ "The Secretary issues Social Security Rulings to clarify the
26 Secretary's regulations and policy Although SSRs are not
27 published in the federal register and do not have the force of law,
28 [the Ninth Circuit] nevertheless give[s] deference to the
Secretary's interpretation of its regulations." *Bunnell*, 947 F.2d
at 346 n.3.

1 undermines the claimant's complaints." *Reddick*, 157 F.3d at 722
2 (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996)). The
3 ALJ must consider a claimant's work record, observations of medical
4 providers and third parties with knowledge of the claimant's
5 limitations, aggravating factors, functional restrictions caused
6 by symptoms, effects of medication, and the claimant's daily
7 activities. *Smolen v. Chater*, 80 F.3d 1273, 1283-84 & n.8 (9th Cir.
8 1996). The ALJ may also consider an unexplained failure to seek
9 treatment or follow a prescribed course of treatment and employ
10 other ordinary techniques of credibility evaluation. *Id.* (citations
11 omitted).

12 Here, the ALJ concluded that Plaintiff's medically
13 determinable impairments "could reasonably be expected to cause the
14 alleged symptoms." (AR at 13.) However, the ALJ rejected
15 Plaintiff's description of her symptoms "to the extent they [were]
16 inconsistent" with the ALJ's assessment that Plaintiff retained the
17 RFC to perform medium work with certain limitations. (*Id.*) Because
18 there was no evidence of malingering, the ALJ was therefore
19 required to provide specific, clear and convincing reasons for
20 rejecting Plaintiff's subjective allegations of pain and functional
21 limitations.

22 The ALJ provided three reasons for rejecting Plaintiff's
23 testimony, each of which is substantially supported by the record.
24 First, the ALJ found that Plaintiff was not fully credible because
25 she admitted that she stopped working as a real estate agent
26 because of the economy, not because she was no longer able to work
27 due to her alleged impairments. Plaintiff also stated that after
28 losing her job as a real estate agent, she subsequently looked for

1 employment. (AR at 12, 30-31, 167.) See *Bruton v. Massanari*, 268
2 F.3d 824, 826 (9th Cir. 2001) (holding that ALJ properly considered
3 fact that claimant stopped working because he was laid off, not
4 because of a medical disability).

5 The ALJ also noted that Plaintiff admitted that she had not
6 had any psychiatric treatment nor was she taking any medication.
7 (AR at 12, citing AR at 47.) An ALJ may properly rely on
8 "unexplained or inadequately explained failure to seek treatment or
9 to follow a course of treatment" in assessing credibility. See
10 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008); *Fair v.*
11 *Bowen*, 885 F.2d 597, 604 (9th Cir. 1989) (finding that claimant's
12 allegations of persistent, severe pain and discomfort belied by
13 "minimal conservative treatment"); see also *Flaten v. Secretary*, 44
14 F.3d 1456, 1464 (9th Cir. 1995) (ALJ permitted to draw rational
15 inferences from treatment history).

16 Finally, the ALJ noted that Plaintiff's ability to perform
17 various activities of daily living was at odds with her claims of
18 disabling pain. (AR at 13.) The ALJ noted that Plaintiff could run
19 errands, drive, manage her personal care, wash dishes, prepare her
20 own meals, do laundry, vacuum, load the dishwasher, and shop for
21 groceries. (AR at 12-12.) Although a claimant "does not need to be
22 'utterly incapacitated' in order to be disabled," *Vertigan v.*
23 *Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001), the ability to perform
24 certain activities of daily life can support a finding that the
25 claimant's reports of his or her impairment are not fully credible.
26 See *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th
27 Cir. 2009); *Curry v. Sullivan*, 925 F.2d 1127, 1130 (9th Cir. 1990)
28 (finding that the claimant's ability to "take care of her personal

1 needs, prepare easy meals, do light housework and shop for some
2 groceries ... may be seen as inconsistent with the presence of a
3 condition which would preclude all work activity") (citing *Fair*,
4 885 F.2d at 604).

5 The ALJ made specific findings articulating clear and
6 convincing reasons for his rejection of Plaintiff's subjective
7 testimony. *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). It
8 is the responsibility of the ALJ to determine credibility and
9 resolve conflicts or ambiguities in the evidence. *Magallanes v.*
10 *Brown*, 881 F.2d 747, 750 (9th Cir. 1989). A reviewing court may not
11 second-guess the ALJ's credibility determination when it is
12 supported by substantial evidence in the record, as here. See *Fair*,
13 885 F.2d at 604. It was reasonable for the ALJ to rely on the
14 reasons stated above, each of which is fully supported by the
15 record, in rejecting the credibility of Plaintiff's subjective
16 complaints. In sum, the ALJ reasonably and properly discredited
17 Plaintiff's subjective testimony regarding the severity of her
18 symptoms as not being wholly credible.

19 **B. The ALJ Properly Considered the Lay Witness's Statements**

20 Plaintiff contends that the ALJ improperly discounted the
21 statements of lay witness Bill Snyder. (Joint Stip. at 15.) On
22 February 14, 2008, Mr. Snyder, a friend of Plaintiff, completed a
23 Third Party Function Report, detailing his observations of
24 Plaintiff's abilities and daily activities. (AR at 184-191.) The
25 ALJ found that Mr. Snyder was not fully credible for the following
26 reasons: (1) the report merely "mirrors" Plaintiff's function
27 report and allegations; (2) Mr. Snyder is not a medical
28 professional and therefore "is not competent to make a diagnosis or

1 argue the severity of the claimant's symptoms in her relationship
2 to her ability to work;" and (3) as Plaintiff's friend, "he has the
3 camaraderie and pecuniary motivation to be helpful to the claimant
4 so she can receive benefits." (AR at 13.)

5 A lay witness can provide testimony about Plaintiff's symptoms
6 and limitations. See *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th
7 Cir. 1996). "Lay testimony as to a claimant's symptoms is competent
8 evidence that an ALJ must take into account, unless he or she
9 expressly determines to disregard such testimony and gives reasons
10 germane to each witness for doing so." *Lewis v. Apfel*, 236 F.3d
11 503, 511 (9th Cir. 2001); see also *Dodrill v. Shalala*, 12 F.3d 915,
12 918-19 (9th Cir. 1993). Appropriate reasons include testimony
13 unsupported by the medical record or other evidence and
14 inconsistent testimony. *Lewis*, 236 F.3d at 512.

15 Although the ALJ has a duty to consider lay witness testimony,
16 the ALJ is not required to address each witness "on an
17 individualized witness-by-witness basis," and may reject lay
18 testimony predicated upon reports of a claimant properly found not
19 credible. *Molina v. Astrue*, --- F.3d ---, 2012 WL 1071637 at *7
20 (9th Cir. April 2, 2012) (citing *Valentine v. Astrue*, 574 F.3d 685,
21 694 (9th Cir. 2009)). An ALJ's omission of lay testimony is
22 harmless when it is "inconsequential to the ultimate nondisability
23 determination." *Id.* at *13 (citing *Carmickle v. Comm'r, Soc. Sec.*,
24 533 F.3d 1155, 1162 (9th Cir. 2008)).

25 As discussed in detail above, the ALJ properly discredited
26 Plaintiff's testimony. Mr. Snyder's report provides essentially the
27 same information regarding Plaintiff's alleged symptoms and
28 limitations as Plaintiff's testimony and does not describe any

1 limitations beyond those Plaintiff herself described. (See AR at
2 184-191.) Accordingly, the ALJ properly rejected the lay witness
3 report under the standards established in *Molina*. 2012 WL 1071637,
4 at *7; see also *Valentine*, 574 F.3d at 694 (holding that because
5 "the ALJ provided clear and convincing reasons for rejecting [the
6 claimant's] own subjective complaints, and because [the lay
7 witness's] testimony was similar to such complaints, it follows
8 that the ALJ also gave germane reasons for rejecting [the lay
9 witness's] testimony"). Furthermore, to establish reversible error,
10 Plaintiff must specifically show that Mr. Snyder's testimony, if
11 credited, would alter the ultimate nondisability determination. *Id.*
12 at *9. (citing *Robbins v. Barnhart*, 466 F.3d 880, 885 (9th Cir.
13 2005) (reaffirming that an ALJ's decision will be reversed when
14 omitted lay testimony, if credited, leads to a different disability
15 conclusion)). Plaintiff has not made any such showing.

16 In addition, unlike lay testimony, there is no controlling
17 precedent requiring an ALJ to explicitly address written
18 statements, such as the Third Party Function Report in this case.
19 Indeed, it is clear that an ALJ is not required to discuss all
20 evidence in the record in detail. *Howard v. Barnhart*, 341 F.3d
21 1006, 1012 (9th Cir. 2003). Accordingly, Plaintiff's claim is
22 without merit.

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1 **IV. Conclusion**

2 For the reasons stated above, the decision of the Social
3 Security Commissioner is **AFFIRMED** and the action is **DISMISSED** with
4 prejudice.

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6 Dated: April 25, 2012

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10 Marc L. Goldman
11 United States Magistrate Judge
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