

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

AUDREY R. PALMER,

Plaintiff,

v.

NANCY A. BERRYHILL,¹ Acting
Commissioner of Social Security
Administration,

Defendant.

Case No. 2:16-cv-02312-CWH

ORDER

This case involves review of an administrative action by the Commissioner of Social Security (“Commissioner”) denying Plaintiff Audrey Palmer’s (“Plaintiff”) application for supplemental security income. The Court has reviewed Plaintiff’s motion to remand (ECF No. 17), filed February 27, 2017, the Commissioner’s cross-motion to affirm (ECF No. 20), filed March 30, 2017, and Plaintiff’s Reply (ECF No. 21), filed April 10, 2017.

A. BACKGROUND

1. Procedural History

On January 15, 2013, Plaintiff applied for supplemental security income alleging an onset date of December 5, 2012. AR 160-167.² Plaintiff’s claim was denied initially on October 29, 2013, AR 101-105, and on reconsideration on March 17, 2014. AR 113-117. A hearing was held before an Administrative Law Judge (“ALJ”) on February 17, 2015. AR 42-66. On April 24,

¹ Nancy A Berryhill is now the Acting Commissioner of Social Security, and pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, she has been substituted for Acting Commissioner Carolyn W. Colvin as the defendant in this suit. *See* Section 205(g) of the Social Security Act, 42 U.S.C. 405(g).

² AR refers to the Administrative Record in this matter. (Notice of Manual Filing (ECF No. 12).)

1 2015, the ALJ issued an unfavorable decision, indicating that Plaintiff was not disabled. AR 23-
2 36. On August 16, 2016, the ALJ's decision became the Commissioner's final decision when the
3 Appeals Council denied review. AR 1-7. Plaintiff, on October 3, 2016, commenced this action
4 for judicial review under 42 U.S.C. §§ 405(g). See ECF No. 1.

5 **2. The ALJ Decision**

6 The ALJ followed the five-step sequential evaluation process set forth in 20 C.F.R. §§
7 404.1520 and 416.920. AR 23-25. At step one, the ALJ found that Plaintiff had not engaged in
8 substantial gainful activity from the application date of December 5, 2012. AR 25. At step two,
9 the ALJ found that Plaintiff had medically determinable "severe" impairments: hepatitis C;
10 obesity with chronic low back pain; history of gout; history of asthma. Also, the claimant has the
11 following severe mental impairments: major depressive disorder; and anxiety disorder. *Id.* At
12 step three, the ALJ found that Plaintiff did not have an impairment or combination of
13 impairments that met or medically equaled a listed impairment in 20 CFR Part 404, Subpart P,
14 Appendix 1. *Id.* At step four, the ALJ found that the claimant had the residual functional
15 capacity to perform light work as defined in 20 CFR 416.967(b) except: inability to perform more
16 than occasional postural movements; avoid concentrated exposure to pulmonary irritants and
17 hazards in the work environment; and has a moderate limitation for understanding, remembering,
18 and carrying out detailed instructions, but can perform simple repetitive tasks that involve no
19 more than occasional routine interactions with the public or coworkers. AR 27. The ALJ also
20 noted that Plaintiff is not capable of performing past relevant work. AR 34. The ALJ noted that
21 the claimant was born on March 11, 1963 and was 49 years old, which is defined as a younger
22 individual age 18-49, on the date the application was filed. AR 35. The claimant subsequently
23 changed age category to closely approaching advanced age. *Id.* She noted that claimant has at
24 least a high school education and is able to communicate in English. *Id.* The ALJ noted that
25 transferability of job skills is not material to the determination of disability because using the
26 Medical-Vocational Rules as a framework support a finding that the claimant is "not disabled,"
27 whether or not the claimant has transferable job skills. *Id.* At step five, the ALJ determined that
28 considering claimant's age, education, work experience, and residual functional capacity, there

1 are jobs that exist in significant numbers in the national economy that the claimant can perform.
2 AR 35. Accordingly, the ALJ concluded that Plaintiff was not under a disability since December
3 5, 2012, the date of the application. AR 36.

4 **B. DISCUSSION**

5 **1. Standard of Review**

6 Administrative decisions in social security disability benefits cases are reviewed under 42
7 U.S.C. § 405(g). *See Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002). Section 405(g)
8 states: “Any individual, after any final decision of the Commissioner of Social Security made
9 after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a
10 review of such decision by a civil action . . . brought in the district court of the United States for
11 the judicial district in which the plaintiff resides.” The court may enter “upon the pleadings and
12 transcripts of the record, a judgment affirming, modifying, or reversing the decision of the
13 Commissioner of Social Security, with or without remanding the cause for a rehearing.” *Id.* The
14 Ninth Circuit reviews a decision affirming, modifying, or reversing a decision of the
15 Commissioner de novo. *See Batson v. Commissioner*, 359 F.3d 1190, 1193 (9th Cir. 2004).

16 The Commissioner’s findings of fact are conclusive if supported by substantial evidence.
17 *See* 42 U.S.C. § 405(g); *Ukolov v. Barnhart*, 420 F.3d 1002 (9th Cir. 2005). However, the
18 Commissioner’s findings may be set aside if they are based on legal error or not supported by
19 substantial evidence. *See Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir.
20 2006); *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). The Ninth Circuit defines
21 substantial evidence as “more than a mere scintilla but less than a preponderance; it is such
22 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
23 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995); *see also Bayliss v. Barnhart*, 427 F.3d
24 1211, 1214 n.1 (9th Cir. 2005). In determining whether the Commissioner’s findings are
25 supported by substantial evidence, the court “must review the administrative record as a whole,
26 weighing both the evidence that supports and the evidence that detracts from the Commissioner’s
27 conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *see also Smolen v. Chater*, 80
28 F.3d 1273, 1279 (9th Cir. 1996).

1 Under the substantial evidence test, findings must be upheld if supported by inferences
2 reasonably drawn from the record. *Batson*, 359 F.3d at 1193. When the evidence will support
3 more than one rational interpretation, the court must defer to the Commissioner’s interpretation.
4 *See Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005); *Flaten v. Sec’y of Health and Human*
5 *Serv.*, 44 F.3d 1453, 1457 (9th Cir. 1995). Consequently, the issue before the court is not whether
6 the Commissioner could reasonably have reached a different conclusion, but whether the final
7 decision is supported by substantial evidence. It is incumbent on the ALJ to make specific
8 findings so that the court does not speculate as to the basis of the findings when determining if the
9 Commissioner’s decision is supported by substantial evidence. Mere cursory findings of fact
10 without explicit statements as to what portions of the evidence were accepted or rejected are not
11 sufficient. *Lewin v. Schweiker*, 654 F.2d 631, 634 (9th Cir. 1981). The ALJ’s findings “should
12 be as comprehensive and analytical as feasible, and where appropriate, should include a statement
13 of subordinate factual foundations on which the ultimate factual conclusions are based.” *Id.*

14 **2. Disability Evaluation Process**

15 The individual seeking disability benefits has the initial burden of proving disability.
16 *Roberts v. Shalala*, 66 F.3d 179, 182 (9th Cir 1995). To meet this burden, the individual must
17 demonstrate the “inability to engage in any substantial gainful activity by reason of any medically
18 determinable physical or mental impairment which can be expected . . . to last for a continuous
19 period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). More specifically, the individual
20 must provide “specific medical evidence” in support of her claim for disability. 20 C.F.R. §
21 404.1514. If the individual establishes an inability to perform her prior work, then the burden
22 shifts to the Commissioner to show that the individual can perform other substantial gainful work
23 that exists in the national economy. *Batson*, 157 F.3d at 721.

24 The ALJ follows a five-step sequential evaluation process in determining whether an
25 individual is disabled. *See* 20 C.F.R. § 404.1520; *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987). If
26 at any step the ALJ determines that he can make a finding of disability or nondisability, a
27 determination will be made and no further evaluation is required. *See* 20 C.F.R. §
28 404.1520(a)(4); *Barnhart v. Thomas*, 540 U.S. 20, 24 (2003). Step one requires the ALJ to

1 determine whether the individual is engaged in substantial gainful activity (“SGA”). 20 C.F.R. §
2 404.1520(b). SGA is defined as work activity that is both substantial and gainful; it involves
3 doing significant physical or mental activities usually for pay or profit. *Id.* § 404.1572(a)-(b). If
4 the individual is engaged in SGA, then a finding of not disabled is made. If the individual is not
5 engaged in SGA, then the analysis proceeds to the step two.

6 Step two addresses whether the individual has a medically determinable impairment that
7 is severe or a combination of impairments that significantly limits her from performing basic
8 work activities. *Id.* § 404.1520(c). An impairment or combination of impairments is not severe
9 when medical and other evidence establishes only a slight abnormality or a combination of slight
10 abnormalities that would have no more than a minimal effect on the individual’s ability to work.
11 *Id.* § 404.1521; *see also* Social Security Rulings (“SSRs”) 85-28, 96-3p, and 96-4p.³ If the
12 individual does not have a severe medically determinable impairment or combination of
13 impairments, then a finding of not disabled is made. If the individual has a severe medically
14 determinable impairment or combination of impairments, then the analysis proceeds to step three.

15 Step three requires the ALJ to determine whether the individual’s impairments or
16 combination of impairments meet or medically equal the criteria of an impairment listed in 20
17 C.F.R. Part 404, Subpart P, Appendix 1. 20 C.F.R. §§ 404.1520(d), 404.1525, and 404.1526. If
18 the individual’s impairment or combination of impairments meet or equal the criteria of a listing
19 and the duration requirement (20 C.F.R. § 404.1509), then a finding of disabled is made. 20
20 C.F.R. § 404.1520(h). If the individual’s impairment or combination of impairments does not
21 meet or equal the criteria of a listing or meet the duration requirement, then the analysis proceeds
22 to step four.

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25 ³ SSRs constitute the SSA’s official interpretation of the statute and regulations. *See Bray*
26 *v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1224 (9th Cir. 2009); *see also* 20 C.F.R. §
27 402.35(b)(1). They are entitled to some deference as long as they are consistent with the Social
28 Security Act and regulations. *Bray*, 554 F.3d at 1223 (finding ALJ erred in disregarding SSR 82-
41).

1 Before moving to step four, however, the ALJ must first determine the individual's
2 residual functional capacity ("RFC"), which is a function-by-function assessment of the
3 individual's ability to do physical and mental work-related activities on a sustained basis despite
4 limitations from impairments. See 20 C.F.R. § 404.1520(e); see also SSR 96-8p. In making this
5 finding, the ALJ must consider all the relevant evidence, such as all symptoms and the extent to
6 which the symptoms can reasonably be accepted as consistent with the objective medical
7 evidence and other evidence. 20 C.F.R. § 404.1529; see also SSRs 96-4p and 96-7p. To the
8 extent that statements about the intensity, persistence, or functionally limiting effects of pain or
9 other symptoms are not substantiated by objective medical evidence, the ALJ must make a
10 finding on the credibility of the individual's statements based on a consideration of the entire case
11 record. The ALJ must also consider opinion evidence in accordance with the requirements of 20
12 C.F.R. § 404.1527 and SSRs 96-2p, 96-5p, 96-6p, and 06-3p.

13 Step four requires the ALJ to determine whether the individual has the RFC to perform
14 her past relevant work ("PRW"). 20 C.F.R. § 404.1520(f). PRW means work performed either
15 as the individual actually performed it or as it is generally performed in the national economy
16 within the last 15 years or 15 years prior to the date that disability must be established. In
17 addition, the work must have lasted long enough for the individual to learn the job and performed
18 at SGA. 20 C.F.R. §§ 404.1560(b) and 404.1565. If the individual has the RFC to perform her
19 past work, then a finding of not disabled is made. If the individual is unable to perform any PRW
20 or does not have any PRW, then the analysis proceeds to step five.

21 The fifth and final step requires the ALJ to determine whether the individual is able to do
22 any other work considering her RFC, age, education, and work experience. 20 C.F.R. §
23 404.1520(g). If she is able to do other work, then a finding of not disabled is made. Although the
24 individual generally continues to have the burden of proving disability at this step, a limited
25 burden of going forward with the evidence shifts to the Commissioner. The Commissioner is
26 responsible for providing evidence that demonstrates that other work exists in significant numbers
27 in the national economy that the individual can do. *Yuckert*, 482 U.S. at 141-42.

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1 **3. Analysis**

2 Plaintiff moves to remand this matter because the ALJ’s RFC determination lacks support
3 of substantial evidence, and the ALJ’s credibility finding lacks support by substantial evidence.
4 The Commissioner opposes the motion, arguing the ALJ correctly assessed Plaintiff’s RFC and
5 credibility.

6 *a. The ALJ’s RFC Determination*

7 1. Mental RFC

8 Plaintiff first challenges the ALJ’s assessment of Plaintiff’s mental RFC, arguing that the
9 ALJ failed to discuss the weight to be afforded to the consultative examination on August 28,
10 2012. Based upon this examination, Drs. Spears-Howell and Connolly diagnosed Plaintiff with
11 several mental problems, but specifically, a GAF (Global Assessment of Functioning) of 30,
12 indicative of serious impairment in judgment and mood, and that Plaintiff could not manage her
13 potential benefits in her own interest. Plaintiff argues that these two findings were not discussed
14 in the ALJ’s decision, and that she was required to provide specific and legitimate reasons for
15 rejecting those limitations.

16 The Commissioner responds that the ALJ need not discuss every piece of evidence.
17 Moreover, the ALJ need not give weight to an opinion expressed prior to Plaintiff’s application
18 for disability. Drs. Spears-Howell and Connolly’s diagnosis occurred in August, 2012, prior to
19 Plaintiff’s claimed disability onset date of December 5, 2012. Additionally, the Commissioner
20 responds that the ALJ discussed the opinion in the decision, and summarized the relevant
21 objective findings in reaching the RFC.

22 Here, the ALJ extensively reviewed and summarized the relevant opinions and findings of
23 counselor and psychologist consultative examiners Drs. Spears-Howell and Connolly. AR 28-29,
24 AR 296-301. The ALJ need not, in interpreting the evidence and developing the record, discuss
25 every piece of evidence. *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006, 1010 (9th Cir. 2003)
26 (internal quotation marks omitted). The ALJ also reviewed and summarized other psychological
27 evidence of Plaintiff’s mental illness. AR 29-33. The ALJ gave “substantial weight” to
28 consultative examiner Dr. Goldstein, who concluded that Plaintiff was not as limited as she

1 claimed. AR 33. The ALJ may give weight to the examining doctor, whose opinion alone
2 constitutes substantial evidence based upon his own independent examination of Plaintiff. *See*
3 *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001). Dr. Goldstein found that Plaintiff
4 could interact appropriately with the public, coworkers and supervisors, and could perform one-
5 to-two step instructions and manage her own funds. She demonstrated good hygiene and normal
6 motor skills. The ALJ found that Dr. Goldstein’s opinion was generally consistent with the other
7 record evidence and was thus worthy of substantial weight. The mental residual functional
8 capacity assessment of the State agency medical consultants, Drs. Leaf and Kaspar, found that
9 claimant is capable of performing simple, routine tasks with limited social interaction. AR 34.
10 The ALJ accorded substantial weight to these opinions because the medical consultants’ opinions
11 are consistent with the records as a whole. *Id.* The Court therefore concludes that in reaching the
12 mental aspects of the RFC, the ALJ did not err in considering the consultative opinions of Drs.
13 Spears-Howell and Connolly but giving more weight to those of the other consultative doctors in
14 deciding that Plaintiff “has a moderate limitation for understanding, remembering, and carrying
15 out detailed instructions, but can perform simple repetitive tasks that involve no more than
16 occasional routine interactions with the public or coworkers.”

17 2. Physical RFC

18 Plaintiff next challenges the ALJ’s determination that there was no durational foundation
19 to support standing and walking limitation. AR 34. Plaintiff argues that it is not unreasonable for
20 an obese person to have a standing and walking limitation, and that Dr. Kamal’s opinion that
21 Plaintiff was limited to standing and walking 4 hours in an 8 hour day was supported by his
22 examination which revealed slow gait and station due to left leg insecurity and ambulation with a
23 single point cane. Additionally, Plaintiff argues Dr. Kamal’s examination revealed decreased
24 motor strength on the left side, tenderness to palpation, and decreased range of motion in the
25 lumbar spine. Thus, Dr. Kamal’s opinion was supported and the rejection of his opinion
26 regarding Plaintiff’s walking ability is error.

27 The Commissioner responds that the existence of obesity is not per se disabling, there
28 must be proof of the severity of the impairment, and speculation of what limitations could result

1 from obesity does not satisfy Plaintiff's burden to establish the limitations of the impairment.
2 Moreover, the Commissioner argues the ALJ properly assessed the record as a whole, and came
3 to a proper conclusion.

4 It is the responsibility of the ALJ, not a physician, to determine residual functional
5 capacity. *Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001). Here, the ALJ explained that
6 she gave little weight to Dr. Kamal's opinion because he did not review other medical reports
7 which the ALJ had the opportunity to review, and the opinion is not consistent with the record in
8 its entirety, e.g., generally unremarkable physical examinations and negative x-ray findings. The
9 ALJ said that Dr. Kamal's opinion mostly relies upon the subjective complaints of the claimant,
10 and that there were no subsequent treatment notes to support the gait difficulties or pain alleged.
11 The ALJ found that Dr. Kamal's opinion was based upon limited examination, an incomplete
12 medical records review, and no evidence of longitudinal treatment history through the hearing
13 level and therefore was given only limited weight. The ALJ indicated that Dr. Kamal provided
14 no record foundation for the stand or walk limitations that are consistent with the overall record
15 of objective medical evidence or credible subjective complaints. Accordingly, the ALJ found no
16 durational foundation for Dr. Kamal's stated stand or walk restriction. AR 34.

17 The ALJ gave substantial weight to the assessment of State agency medical consultant Dr.
18 Wheeler, who found that claimant can occasionally lift and or carry 20 pounds, frequently lift or
19 carry 10 pounds, stand and or walk for 6 hours in an 8-hour workday, sit for 6 hours in an 8-hour
20 workday, and occasionally climb, balance, stoop, kneel, crouch and crawl. State agency medical
21 consultants and other program physicians are "highly qualified" physicians who are also experts
22 in Social Security disability evaluation. *See* 20 C.F.R. 416.927(e)(2)(I). The ALJ considered the
23 claimant's obesity to be a severe impairment in arriving at the RFC. AR 33. The ALJ found that
24 Dr. Wheeler's opinion was consistent with the record as a whole.⁴ AR 34. Accordingly, the ALJ
25 did not err in finding that the RFC is supported by the medical evidence of record, the limited and

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27 ⁴ The ALJ noted that one State agency medical consultant, Dr. Tella, found that the
28 claimant had non-severe physical impairments, but the ALJ gave more weight to the combination
of Plaintiff's physical impairments as described in the RFC.

1 conservative treatment, the limited objective findings of musculoskeletal impact due to her
2 combination of physical impairments, and the claimant's ability to perform extensive activities of
3 daily living. *Id.*

4 3. Plaintiff's Credibility

5 Regarding credibility, the ALJ found that Plaintiff's allegations were less than fully
6 credible, and then explained that conclusion. AR 33. Plaintiff argues that the ALJ failed to
7 articulate legally sufficient reasons to discount Plaintiff's subjective complaints. Specifically, she
8 argues that the ALJ failed to cite any evidence that more aggressive treatment was appropriate or
9 available, and that Plaintiff should not be discredited for failing to pursue other treatment options
10 where none exists. Second, Plaintiff argues that the ALJ improperly discounted Plaintiff's
11 subjective complaints because of gaps in treatment, and sought no explanation for those gaps in
12 treatment, thereby failing to fully and fairly develop the record. Third, Plaintiff argues that the
13 ALJ improperly discounted Plaintiff's symptom testimony due to the extent of her daily activities,
14 failing to adequately explain how Plaintiff's activities translate into the ability to perform full-
15 time work on a sustained basis. Finally, Plaintiff argues that the ALJ erred in finding that there
16 was a lack of objective findings to support Plaintiff's subjective complaints, and clearly failed to
17 grasp the concept of "excess pain." The Commissioner responds that the ALJ properly assessed
18 Plaintiff's credibility and gave numerous good reasons why Plaintiff was not credible.

19 The Commissioner's regulations prohibit granting disability benefits based solely on a
20 claimant's subjective complaints. *See* 20 C.F.R. § 404.1529(a) ("statements about your pain or
21 other symptoms will not alone establish that you are disabled"). "An ALJ cannot be required to
22 believe every allegation of [disability], or else disability benefits would be available for the
23 asking, a result plainly contrary to [the Social Security Act]." *Fair v. Bowen*, 885 F.2d 597, 603
24 (9th Cir. 1989). If the ALJ rejects the claimant's complaints, the ALJ must provide "specific,
25 cogent reasons for the disbelief." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995) (quoting
26 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir.1990)).

27 The ALJ must state why the testimony is unpersuasive and must point to what specific
28 testimony or evidence undermines the claimant's testimony. *Morgan v. Comm'r of Soc. Sec.*

1 *Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Lester*, 81 F.3d at 834. Absent affirmative evidence
2 that the claimant is malingering, the ALJ's reasons for rejecting the claimant's testimony must be
3 clear and convincing. *Valentine v. Comm'r Social Sec. Admin.*, 574 F.3d 685, 693 (9th Cir. 2009)
4 (quoting *Morgan*, 169 F.3d at 599). The ALJ "may not reject a claimant's subjective complaints
5 based solely on a lack of medical evidence to fully corroborate the alleged severity of pain."
6 *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005) (citation omitted). This is because the lack
7 of an objective medical basis is just one factor in evaluating the credibility of a claimant's
8 testimony and complaints. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc).

9 The Ninth Circuit has upheld an ALJ's finding that a claimant's testimony is not credible
10 when the ALJ cited specific instances in the record supporting this determination. *See, e.g.*,
11 *Parra v. Astrue*, 481 F.3d 742, 750 (9th Cir. 2007) (upholding ALJ's credibility determination
12 when he pointed out numerous lab results that contradicted his subjective complaints). *See also*,
13 *Batson v. Comm'r of Soc Sec. Admin.*, 359 F.3d 1190, 1196 (9th Cir. 2003) (ALJ's credibility
14 determination upheld because the ALJ cited specific testimony from a doctor which contradicted
15 the claimant's allegations). But the Ninth Circuit has also found general findings insufficient.
16 *See Robbins v. Social Sec. Admin.*, 466 F.3d 880, 884-85 (9th Cir. 2006) (ALJ required to provide
17 a "narrative discussion" and state specific evidence in the record supporting an adverse credibility
18 finding). If "evidence can support either affirming or reversing the ALJ's decision," this Court
19 may not substitute its judgment for that of the ALJ's. *Id.* at 882.

20 In making a credibility determination regarding pain, the ALJ may consider: "the nature,
21 location, onset, duration, frequency, radiation, and intensity of any pain; precipitating and
22 aggravating factors (e.g., movement, activity, environmental conditions); type, dosage,
23 effectiveness, and adverse side effects of any pain medication; treatment, other than medication,
24 for relief of pain; functional restrictions; the claimant's daily activities; and "ordinary techniques
25 of credibility evaluation." *Bunnell*, 947 F.2d at 346 (citing SSR 88-13).

26 The ALJ commented that Plaintiff's doctor noted her "poor effort," negatively impacted
27 her credibility. AR 33. Dr. Prince suspected that Plaintiff's physical examination was impacted
28 by Plaintiff's "poor effort." *Id.* Poor effort may indicate malingering, or that symptoms are not

1 as severe as claimed. *See Tonapetyan*, 242 F.3d at 1149. But Dr. Prince’s observation appears to
2 be an isolated incident—Drs. Spear-Howell and Connolly found Plaintiff to be cooperative,
3 motivated and engaged, and Dr. Kamal found her to be cooperative throughout the exam. The
4 Court is not persuaded that there is affirmative evidence that Plaintiff was malingering.
5 Accordingly, the ALJ’s reasons for rejecting the claimant’s testimony must be clear and
6 convincing. *Valentine*, 574 F.3d at 693.

7 Here, after a thorough review of the record, the ALJ discussed how she established by
8 clear and convincing evidence that all of Plaintiff’s complaints were not credible. First, the ALJ
9 determined that the objective medical evidence was inconsistent with Plaintiff’s subjective
10 complaints. AR 25-34. For example, as discussed, regarding Plaintiff’s claims regarding walking
11 limitations, she gave little weight to Dr. Kamal’s opinion because of a lack of objective medical
12 evidence, and instead relied on Dr. Wheeler’s opinion. Plaintiff denied musculoskeletal
13 symptoms in December 2012. AR 33. Dr. Shelin found Plaintiff moved all of her extremities
14 without difficulty. *Id.* Dr. Suhany observed she had a stable gait. AR 30. The objective medical
15 evidence was inconsistent with, and therefore did not support Plaintiff’s claims.

16 Regarding Plaintiff’s mental impairments, the ALJ noted that Dr. Shelin found Plaintiff
17 was alert and oriented to person, place, time, and situation with normal speech. AR 33. Plaintiff
18 experienced no episodes of decompensation. AR 26. Upon examination, Plaintiff’s thoughts
19 were goal-oriented, she had good insight and judgment. AR 30-31. Plaintiff repeatedly denied
20 hallucinations or delusions. AR 30. When she was taking her medication, Plaintiff had no
21 suicidal ideations. AR 30. The ALJ indicated that Plaintiff’s impairments were treated
22 effectively. AR 25. *See Warre v. Comm’r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir.
23 2006) (“Impairments that can be controlled effectively with medication are not disabling for the
24 purposes of determining eligibility for [disability] benefits.”). For example, the ALJ noted that
25 Plaintiff reported medications are effective and stated things were working out and she felt better.
26 AR 30.

27 The ALJ also indicated that Plaintiff’s effective treatment was merely routine and
28 conservative with medication and “relatively infrequent trips to the doctor for the allegedly

1 disabling symptoms.” AR 25, 28, 30-34. Minimal and routine treatment is sufficient to discount
2 a claimant’s testimony regarding the severity of impairments. *Parra*, 481 F.3d at 750-51. For
3 example, the ALJ noted that Plaintiff reported in January 2013 that she had not taken any
4 medications since October, 2012, which she had received prior to moving to Las Vegas. AR 29.
5 In August 2014, Plaintiff had not taken any medication “for the past month” because she had run
6 out and the record does not reflect that she requested refills until one month later. AR 32. The
7 ALJ noted that Plaintiff repeatedly declined counseling services. AR 30-31. Further, the ALJ
8 noted that Plaintiff’s visits to medical practitioners were relatively infrequent, despite her
9 complaints. AR 25, 28, 30-34. Contrary to Plaintiff’s claims that no more aggressive treatment
10 options were available to her, more frequent trips to the doctor, continuous medical treatment, and
11 counseling were all available. Were Plaintiff’s impairments as debilitating as she claimed, she
12 would likely have sought out more treatment. Impairments which are amenable to control are not
13 disabling for the purposes of obtaining disability benefits. 20 C.F.R. § 416.927(c)(3)(iv)-(v).

14 The ALJ also noted that Plaintiff’s daily activities undermined her claims of disability
15 AR 26, 28, 33, and this is a valid reason to find her not credible. *See* 20 C.F.R. § 416.929(a) (“In
16 determining whether [a claimant] is disabled, we consider . . . activities of daily living”). Here,
17 the ALJ explained that, on a typical day, Plaintiff performed household chores, such as laundering
18 clothing; prepared meals; and took care of her own personal care, spoke with her friends or
19 visited them and played cards. AR 26. *See Burch*, 400 F.3d at 680 (“the ALJ explained that [the
20 claimant’s] daily activities suggest that she is quite functional”). She interacts with her friend and
21 attends church “every Sunday and Bible study on Wednesday,” attends doctors’ appointments,
22 and shopped in stores. AR 26, 28. Plaintiff could pay bills, count change, handle a savings
23 account, and use a checkbook. AR 26. The ALJ indicated that some of the physical and mental
24 abilities and social interactions required in order to perform these activities are the same as those
25 necessary for obtaining and maintaining employment, and that Plaintiff’s ability to participate in
26 such activities diminishes the credibility of Plaintiff’s allegations of functional limitations. AR
27 33. The ALJ’s discussion of Plaintiff’s daily activities was a valid reason upon which to base the
28 adverse credibility finding. *See Curry v. Sullivan*, 925 F.2d 1127, 1130 (9th Cir. 1990)

1 (plaintiff's testimony about daily activities, including taking care of personal needs, preparing
2 easy meals, doing light housework and shopping for groceries, may be seen as inconsistent with
3 the presence of a disabling condition).

4 Accordingly, the ALJ discussed the evidence in the record, and set forth valid reasons,
5 supported by clear and convincing evidence, to discount Plaintiff's credibility.

6 **C. CONCLUSION**

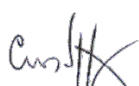
7 Viewing the evidence as a whole, the Court finds that the ALJ's determination that
8 Plaintiff is not disabled is supported by substantial evidence.

9 IT IS HEREBY ORDERED that Plaintiff's Motion to Remand (ECF No. 17) is DENIED.

10 IT IS FURTHER ORDERED that the Commissioner's cross-motion to affirm (ECF No.
11 20) is GRANTED.

12 IT IS FURTHER ORDERED that the clerk of court must enter judgment accordingly and
13 close this case.

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15 DATED: May 29, 2018

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19 C.W. HOFFMAN, JR.
20 UNITED STATES MAGISTRATE JUDGE
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