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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PHYLLIS SHERI SCHRADER,

Plaintiff,

vs.

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant.

No. CV- 14-3137-JPH

ORDER GRANTING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 18, 22. On April 28, 2015 Plaintiff filed a reply. ECF No. 25. The parties have consented to proceed before a magistrate judge. ECF No. 7. After reviewing the administrative record and the parties’ briefs, the court **grants** defendant’s motion for summary judgment, **ECF No. 22**.

JURISDICTION

Schrader applied for disability insurance benefits (DIB) and supplemental

1 security income (SSI) benefits on August 31, 2010, alleging onset (as amended)
2 beginning November 16, 2010 (Tr. 214-20). Benefits were denied initially and on
3 reconsideration (Tr. 124-26, 128-34, 136-39, 143-44, 146-49, 153-54). ALJ
4 Virginia M. Robinson held a hearing September 14, 2012. Vocational expert Scott
5 Witmer and Schrader, represented by counsel, testified (Tr. 43-69). The ALJ issued
6 an unfavorable decision January 7, 2013 (Tr. 19-33). The Appeals Council denied
7 review July 25, 2014 (Tr. 1-4). The matter is now before the Court pursuant to 42
8 U.S.C. § 405(g). Plaintiff filed this action for judicial review on September 25,
9 2014. ECF No. 1, 4.

10 **STATEMENT OF FACTS**

11 The facts have been presented in the administrative hearing transcript, the
12 ALJ's decision and the parties' briefs. They are briefly summarized here and as
13 necessary to explain the court's decision.

14 Schrader was 54 years old at the amended onset date and 56 at the hearing
15 (Tr. 48-49). She quit school in ninth or tenth grade and has not earned a GED. She
16 has worked as a motel housekeeper, bartender, waitress, food service cashier and
17 agricultural produce sorter and packer (Tr. 52-56, 63-64). She suffers pain in the
18 right shoulder, knees and legs. She has edema in the legs and knees that worsens if
19 she stands very long. She cannot drive due to anxiety. She suffers depression and
fears being alone (Tr. 55-60). Her wrists are weak and she can lift very little

1 weight. She experiences sleep problems (Tr. 291).

2 SEQUENTIAL EVALUATION PROCESS

3 The Social Security Act (the Act) defines disability as the “inability to
4 engage in any substantial gainful activity by reason of any medically determinable
5 physical or mental impairment which can be expected to result in death or which
6 has lasted or can be expected to last for a continuous period of not less than twelve
7 months.” 42 U.S.C. §§ 423 (d)(1)(A), 1382c(a)(3)(A). The Act also provides that a
8 plaintiff shall be determined to be under a disability only if any impairments are of
9 such severity that a plaintiff is not only unable to do previous work but cannot,
10 considering plaintiff’s age, education and work experiences, engage in any other
11 substantial gainful work which exists in the national economy. 42 U.S.C. §§ 423
12 (d)(2)(A), 1382c(a)(3)(B). Thus, the definition of disability consists of both
13 medical and vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
(9th Cir. 2001).

14 The Commissioner has established a five-step sequential evaluation process
15 or determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step
16 one determines if the person is engaged in substantial gainful activities. If so,
17 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the
18 decision maker proceeds to step two, which determines whether plaintiff has a
19 medically severe impairment or combination of impairments. 20 C.F.R. §§

1 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If plaintiff does not have a severe impairment
2 or combination of impairments, the disability claim is denied.

3 If the impairment is severe, the evaluation proceeds to the third step, which
4 compares plaintiff's impairment with a number of listed impairments
5 acknowledged by the Commissioner to be so severe as to preclude substantial
6 gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii); 20 C.F.R.
7 §404 Subpt. P App. 1. If the impairment meets or equals one of the listed
8 impairments, plaintiff is conclusively presumed to be disabled. If the impairment is
9 not one conclusively presumed to be disabling, the evaluation proceeds to the
10 fourth step, which determines whether the impairment prevents plaintiff from
11 performing work which was performed in the past. If a plaintiff is able to perform
12 previous work, that plaintiff is deemed not disabled. 20 C.F.R. §§
13 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, plaintiff's residual capacity
14 (RFC) is considered. If plaintiff cannot perform past relevant work, the fifth and
15 final step in the process determines whether plaintiff is able to perform other work
16 in the national economy in view of plaintiff's residual functional capacity, age,
17 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
18 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

18 The initial burden of proof rests upon plaintiff to establish a *prima facie* case
19 of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir.

1 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
2 met once plaintiff establishes that a physical or mental impairment prevents the
3 performance of previous work. The burden then shifts, at step five, to the
4 Commissioner to show that (1) plaintiff can perform other substantial gainful
5 activity and (2) a “significant number of jobs exist in the national economy” which
6 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

7 **STANDARD OF REVIEW**

8 Congress has provided a limited scope of judicial review of a
9 Commissioner’s decision. 42 U.S.C. § 405(g). A Court must uphold the
10 Commissioner’s decision, made through an ALJ, when the determination is not
11 based on legal error and is supported by substantial evidence. *See Jones v. Heckler*,
12 760 F.2d 993, 995 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.
13 1999). “The [Commissioner’s] determination that a plaintiff is not disabled will be
14 upheld if the findings of fact are supported by substantial evidence.” *Delgado v.*
15 *Heckler*, 722 F.2d 570, 572 (9th Cir. 1983) (citing 42 U.S.C. § 405(g). Substantial
16 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112,
17 1119 n. 10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*,
18 888 F.2d 599, 601-02 (9th Cir. 1989). Substantial evidence “means such evidence
19 as a reasonable mind might accept as adequate to support a conclusion.”
Richardson v. Perales, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch

1 inferences and conclusions as the [Commissioner] may reasonably draw from the
2 evidence” will also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir.
3 1965). On review, the Court considers the record as a whole, not just the evidence
4 supporting the decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20,
5 22 (9th Cir. 1989) (quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980).

6 It is the role of the trier of fact, not this Court, to resolve conflicts in
7 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
8 interpretation, the Court may not substitute its judgment for that of the
9 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th
10 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be
11 set aside if the proper legal standards were not applied in weighing the evidence
12 and making the decision. *Brawner v. Secretary of Health and Human Services*, 839
13 F.2d 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the
14 administrative findings, or if there is conflicting evidence that will support a
15 finding of either disability or nondisability, the finding of the Commissioner is
16 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

16 **ALJ’S FINDINGS**

17 ALJ Robinson found Schrader was insured through June 30, 2014 (Tr. 19,
18 21). At step one, the ALJ found Schrader did not work at SGA levels after onset
19 (Tr. 21). At steps two and three, the ALJ found she suffers from palpitations with a

1 history of coronary bypass, coronary artery disease, hypertension, and
2 hyperlipidemia; wrist pain with positive Tinel's sign and Phalen's sign;
3 adjustment disorder and anxiety disorder, impairments that are severe but do not
4 meet or medically equal a listed impairment (Tr. 21, 23). The ALJ found Schrader
5 less than fully credible (Tr. 27-29). She found Plaintiff is able to perform a range
6 of light work (Tr. 25). At step four, relying on a vocational expert's testimony, the
7 ALJ found Schrader is able to perform her past relevant work as a bartender, food
8 service cashier and motel housekeeper (Tr. 32). Because the ALJ found Schrader
9 can perform past relevant work she found her not disabled (Tr. 33).

10 **ISSUES**

11 Schrader alleges the ALJ erred when she assessed credibility and the
12 medical evidence. She alleges if an RFC for sedentary work was assessed,
13 Schrader would be found disabled pursuant to the Grids. ECF No. 18 at 8. The
14 Commissioner asks the court to affirm, alleging the ALJ applied the correct legal
15 standards and the decision is supported by substantial evidence. ECF No. 22 at 2.

16 **DISCUSSION**

17 *A. Credibility*

18 Schrader challenges the ALJ's credibility assessment. ECF No. 18 at 23-32,
19 25 at 1-7.

To aid in weighing the conflicting medical evidence, the ALJ evaluated

1 Schrader's credibility. Credibility determinations bear on evaluations of medical
2 evidence when an ALJ is presented with conflicting medical opinions or
3 inconsistency between a claimant's subjective complaints and diagnosed condition.
4 *See Webb v. Barnhart*, 433 F.3d 683, 688 (9th Cir. 2005). It is the province of the
5 ALJ to make credibility determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039
6 (9th Cir. 1995). However, the ALJ's findings must be supported by specific cogent
7 reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent
8 affirmative evidence of malingering, the ALJ's reason for rejecting the claimant's
9 testimony must be "clear and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th
10 Cir. 1995). As repeated many times, this has long been the standard.

11 The ALJ's reasons are clear and convincing.

12 The ALJ notes reported activities include preparing multicourse meals daily,
13 attending church and social groups weekly, using public transportation, and at
14 times working [below SGA levels], activities consistent with the assessed RFC and
15 inconsistent with allegedly disabling physical and mental limitations. Schrader has
16 alleged she isolates herself a majority of the time. She also states she is afraid to be
17 alone. The medical evidence does not support Schrader's claim her condition
18 significantly worsened between October 2010 and July 2011. She alleged she
19 became unable to go out alone and could not stand for any length of time, but
physical exams were normal. There is evidence Schrader has not always

1 consistently followed through with medical treatment, including taking medication
2 prescribed for depression, anxiety, GERD and heart disease. Schrader alleges this
3 failure is explained by complaints of side effects but the record shows on multiple
4 occasions she failed or inadequately explained the noncompliance (Tr. 24, 27, 281-
5 85, 294, 298-304, 308, 312, 468, 478, 489, 499, 503-05, 521, 544, 554-55, 711,
6 730, 780-82, 811, 826).

7 Allegations exceed objective findings. Schrader stated she could not work
8 due to a heart condition, but the evidence shows no significant cardiac findings. By
9 March 2009 and August 2010 findings were insignificant, and again in 2012 (Tr.
10 27-28, 405, 414, 417, 642, 644, 660, 662, 665, 724,-28, 796). There is evidence
11 suggesting Plaintiff is motivated by secondary gain, rather than by disability, to
12 obtain benefits (Tr. 27). In August 2010 Dr. Bellum notes Schrader has returned
13 after a long absence. He observes the patient “does appear to be trying to get Social
14 Security Disability and she is hence here requesting all kinds of things to be done,
15 so that she can justify the disability.” (Tr. 510-11). A partial list of requests
16 includes a nerve conduction study, evaluation for peripheral artery disease, and
17 referral to an ENT specialist for sinus dryness (Tr. 511). In 2011, Schrader told an
18 examiner she hoped her daughter would apply for disability so she could help with
19 the rent (Tr. 786). Although Schrader urges a different interpretation, the ALJ’s
view of these statements as evidencing a motive for secondary gain is reasonable.

1 Schrader was diagnosed with “panic attacks” (anxiety) as early as 2001 yet
2 worked thereafter for several years, including in 2010: can “barely do” work as a
3 housekeeper now; in June 2011: she does housekeeping and is going to start work
4 at a warehouse next week; September 2011: working nine hour shifts; October
5 2011: tried to work packing apples but found cannot do that; states she drinks a lot
6 of mountain dew at work (Tr. 479, 801, 805, 814, 816, 819).

7 The ALJ’s reasons are clear, convincing and supported by the record. *Burch*
8 *v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005)(lack of medical evidence is properly
9 considered as long as it is not the sole basis for discounting pain testimony, and
10 daily activities are properly considered); *Tidwell v. Apfel*, 161 F.3d 599, 602 (9th
11 Cir. 1998)(ALJ may certainly consider motivation and the issue of secondary gain
12 in rejecting symptom testimony); *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th
13 Cir. 2002)(proper factors include inconsistencies in claimant’s statements and
14 inconsistencies between statements and conduct); *Fair v. Bowen*, 885 F.2d 597,
15 603 (9th Cir. 1989)(unexplained or inadequately noncompliance with medical
16 treatment is properly considered).

16 *B. Weighing opinion evidence*

17 Schrader alleges the ALJ should have credited two opinions of Venugopal
18 Bellam, M.D., who treated Schrader for at “at least four years.” ECF No. 18 at 10-
19 15, referring to Tr. 59. The Commissioner answers that the ALJ’s reasons for

1 rejecting these contradicted opinions are specific and legitimate. ECF No. 22 at 15-
2 19.

3 In December 2011 Dr. Bellum opined Schrader's coronary artery disease,
4 status post-catheterization, anxiety and depression would reasonably cause pain.
5 Work on a regular and continuous basis would cause her condition to deteriorate.
6 Pain would likely cause her to miss four or more days of work a month. He
7 assessed an RFC for sedentary work (Tr. 30, 745-46). In May 2012, he opined
8 Schrader could lift 20 pounds maximum and ten pounds frequently. She was
9 limited to "seated work" for six months (Tr. 846).

10 The ALJ rejected these contradicted opinions because they are internally
11 inconsistent and inconsistent with Bellam's treatment records (Tr. 30). With
12 respect to the first opinion, the ALJ notes the same report says Schrader does not
13 need to lie down during the day, medication side effects do not limit activities,
14 work is limited to sedentary and she is able to travel by bus (Tr. 30, referring to Tr.
15 745-46). The ALJ notes Bellam's own treatment records show minimal to no
16 objective findings in 2010 related to heart disease and mental impairments. Dr.
17 Bellam is not a cardiologist (Tr. 30, citing Ex. 4F).

18 Dr. Bellam also fails to support assessed limitations with references to any
19 objective medical evidence, as the ALJ accurately points out. With respect to his
later opinion, the assessed limitations are related to some reduced range of motion

1 in the spine and are not expected to exceed six months, meaning even if accepted
2 they would not meet the durational requirement. In this opinion Dr. Bellam does
3 not opine Schrader is unable to work, making it inconsistent with his 2010 opinion
4 (Tr. 30, 745-46, 846).

5 These opinions are contradicted by exam results. Steven Rode, D.O.,
6 examined Schrader in April 2011, between Dr. Bellam's two opinions. Dr. Rode
7 reviewed echocardiogram results and examined Schrader. He opined she was
8 capable of medium exertion work (Tr. 30-31, Ex. 6F).

9 The ALJ's reasons are specific, legitimate and supported by substantial
10 evidence. *See Thomas v. Barnhart*, 278 F. 3d 947, 957 (9th Cir. 2002)(The ALJ
11 need not accept the opinion of any physician, including a treating physician, if that
12 opinion is brief, conclusory, and inadequately supported by clinical findings); 42
13 U.S.C. § 423(d)(1)(A) (impairment must last or be expected to last for at least a
14 twelve-month period).

15 Schrader alleges the ALJ should have credited the limitations assessed by
16 treating cardiologist Abner Preacher, M.D., FACC, in December 2010. ECF No.
17 18 at 15-17. Dr. Preacher opined Schrader is unable to "carry on any useful work"
18 (Tr. 804). However, in February 2012, he noted cardiac test results were
19 "excellent" and she once again is under terrible stress from her home life (Tr. 796-
98). The ALJ gave several reasons for rejecting the contradicted

1 2010 opinion (Tr. 31). It is not based on any objective cardiology findings. Dr.
2 Preacher cites self-reported symptoms (“she hyperventilates she clearly admits”)
3 (Tr. 804), which the ALJ properly found were less than credible.

4 The ALJ notes the record contradicts Dr. Preacher’s
5 opinion. Despite Schrader’s symptoms of anxiety, she chose not to take prescribed
6 medication even though she admitted it helped her anxiety in the past. The record
7 indicates anxiety is caused by a number of situational stressors such as her adult
8 children pawning her household items, and their substance abuse and fighting. She
9 is able to regularly attend church, use public transportation, socialize and perform
10 housekeeping tasks and yardwork, all indicating a greater level of functioning than
11 assessed. (Tr. 31, 281-85, 294, 505, 537, 710, 730, 786, 792, 796, 807, 809). The
12 ALJ is correct that Schrader’s activities are more consistent with Dr. Rode’s exam
13 results than with Dr. Preacher’s opinion.

14 Schrader alleges she stopped taking anxiety medications because of adverse
15 side effects. ECF No. 18 at 16. However in 2009 she inexplicably refused to start
16 antidepressant medication when hospitalized (Tr. 33) and, as noted, there are many
17 unexplained and inadequately failures to take medication as prescribed (Tr. 787,
18 790).

19 The ALJ may properly reject a physician’s contradicted opinion that is
inconsistent with the record as a whole. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir.

1 2007)(citation omitted). Opinions premised on Plaintiff’s subjective complaints
2 and testing within Plaintiff’s control are properly given the same weight as
3 Plaintiff’s own credibility. *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir.
4 2001). Error if any in relying on “the ultimate determination is reserved to the
5 Commissioner” is clearly harmless where, as here, the remaining reasons are
6 specific, legitimate and supported by substantial evidence.

7 *Doyle Hardy, LMHC*

8 Schrader alleges the ALJ should have credited the January 2012 opinion of
9 treating therapist Mr. Hardy. ECF No. 18 at 18-23. He opined Schrader was
10 markedly limited in the ability to complete a normal schedule without interruptions
11 and perform at a consistent pace, and suffered some moderate limitations. He
12 opined she was unable to use public transportation (Tr. 748-50). The
13 Commissioner responds that as a non-acceptable medical source, the ALJ was
14 required to give germane reasons for rejecting his opinion, and she did. ECF No.
15 22 at 22-25.

16 The ALJ opines Schrader’s ability to use city transportation is inconsistent
17 with Mr. Hardy’s opinion. [Hardy clarified Schrader uses public transportation but
18 cannot travel alone. Tr. 750]. She is able to attend and participate in treatment,
19 stressors are largely situational and related to her children and Mr. Hardy relied on

1 Schrader's unreliable self-report (Tr. 29, 785).

2 The ALJ's reasons are germane.

3 The ability to maintain and complete a normal schedule is reflected in the
4 ability to timely and regularly attend treatment and church, and contradicts Mr.
5 Hardy's assessed marked limitation. The record is replete with indications that
6 Schrader's anxiety is situational, including by her own admission, rather than a
7 disabling mental health condition. Schrader said an adult daughter who lived with
8 her had anger management issues that led her to file a police report. She told
9 providers she cannot have "good things" in her house like computers or televisions
10 because her children will pawn them. There are indications Schrader has been
11 highly anxious for several years yet she has been able to work (Tr. 339, 343, 345,
12 347-48, 702-3,705,713, 721, 786). She has stated medication was helpful but
13 many occasions refused psychotropic medication with no or inadequate
14 explanation. She has agreed that a stressful living situation with adult children is
15 likely the primary cause of her anxiety (Tr. 714, 723, 780-81, 784-87). Examining
16 psychologist Jay Toews, ED.D., an acceptable source, reviewed records and
17 administered testing as part of his evaluation. He opined Schrader's GAF in June
18 2011 was 55-62, indicative of moderate to mild symptoms or limitations (Tr. 732).

19 Schrader alleges the ALJ should have weighed the evidence differently, but
the ALJ is responsible for reviewing the evidence and resolving conflicts or

1 ambiguities in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).

2 The ALJ's reasons for rejecting more dire limitations are specific, legitimate and
3 supported by substantial evidence. The ALJ assessed an RFC that is consistent
4 with the record as a whole. There was no harmful error.

5 **CONCLUSION**

6 After review the Court finds the ALJ's decision is supported by substantial
7 evidence and free of legal error.

8 **IT IS ORDERED:**

- 9 1. Defendant's motion for summary judgment, **ECF No. 22**, is **granted**.
- 10 2. Plaintiff's motion for summary judgment, ECF No. 18, is denied.

11 The District Executive is directed to file this Order, provide copies to
12 counsel, enter judgment in favor of defendant, and **CLOSE** the file.

13 DATED this 4th day of May, 2015.

14 *s/James P. Hutton*

15 JAMES P. HUTTON

16 UNITED STATES MAGISTRATE JUDGE