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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON  
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9 AYLAROSE M.<sup>1</sup>,

10 Plaintiff,

11 v.

12 COMMISSIONER OF SOCIAL  
13 SECURITY ADMINISTRATION,  
14 Defendant.

No. 1:22-CV-03056-SAB

**ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT; GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

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17 Before the Court are Cross-Motions for Summary Judgment. ECF Nos. 11,  
18 13. The motions were heard without oral argument. Plaintiff is represented by D.  
19 James Tree; Defendant is represented by Lars Nelson and Brian M. Donovan.

20 Plaintiff brings this action seeking judicial review of the Commissioner of  
21 Social Security's final decision denying her application for disability insurance  
22 benefits (DIB) under Title II and her application for supplemental security income  
23 (SSI) under Title XVI of the Social Security Act, 42 U.S.C. §§ 1382. After  
24 reviewing the administrative record and briefs filed by the parties, the Court is now  
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26 <sup>1</sup>Pursuant to the recommendation of the Committee on Court Administration and  
27 Case Management of the Judicial Conference of the United States, Plaintiff's name  
28 is partially redacted.

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1 fully informed. For the reasons set forth below, the Court denies Plaintiff’s Motion  
2 for Summary Judgment, ECF No. 11, and grants Defendant’s Motion for Summary  
3 Judgment, ECF No. 13.

4 **I. Jurisdiction**

5 On November 29, 2017, Plaintiff filed applications for disability insurance  
6 benefits and supplemental security income with onset of November 19, 2017.  
7 Plaintiff’s applications were denied initially and on reconsideration. On December  
8 14, 2020, a telephonic hearing was held. Plaintiff appeared and testified before an  
9 ALJ, with the assistance of her counsel, Shane Smith. Jeffrey Tittelfitz, vocational  
10 expert, also participated. The ALJ found that Plaintiff was not disabled.

11 Plaintiff requested review by the Appeals Council and the Appeals Council  
12 denied the request on March 2, 2022. The Appeals Council’s denial of review  
13 makes the ALJ’s decision the “final decision” of the Commissioner of Social  
14 Security, which this Court is permitted to review. 42 U.S.C. §§ 405(g),  
15 1383(c)(1)(3).

16 Plaintiff filed a timely appeal with the United States District Court for the  
17 Eastern District of Washington on March 14, 2022. ECF No. 1. The matter is  
18 before this Court pursuant to 42 U.S.C. § 405(g).

19 **II. Five-Step Sequential Evaluation Process**

20 The Social Security Act defines disability as the “inability to engage in any  
21 substantial gainful activity by reason of any medically determinable physical or  
22 mental impairment which can be expected to result in death or which has lasted or  
23 can be expected to last for a continuous period of not less than twelve months.” 42  
24 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be  
25 under a disability only if their impairments are of such severity that the claimant is  
26 not only unable to do their previous work, but cannot, considering claimant’s age,  
27 education, and work experiences, engage in any other substantial gainful work that  
28 exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). The

1 Commissioner has established a five-step sequential evaluation process to  
2 determine whether a person is disabled in the statute. See 20 C.F.R. §§  
3 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v).

4 **Step One:** Is the claimant engaged in substantial gainful activities? 20  
5 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). Substantial gainful activity is work  
6 done for pay and requires compensation above the statutory minimum. *Keyes v.*  
7 *Sullivan*, 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is engaged in  
8 substantial activity, benefits are denied. 20 C.F.R. § 404.1520(b), 416.920(b). If  
9 the claimant is not, the ALJ proceeds to step two.

10 **Step Two:** Does the claimant have a medically-severe impairment or  
11 combination of impairments? 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). A  
12 severe impairment is one that lasted or must be expected to last for at least 12  
13 months and must be proven through objective medical evidence. *Id.* §§ 404.1509,  
14 416.909. If the claimant does not have a severe impairment or combination of  
15 impairments, the disability claim is denied. *Id.* § 404.1520(a)(4)(ii),  
16 416.920(a)(4)(ii). If the impairment is severe, the evaluation proceeds to the third  
17 step.

18 **Step Three:** Does the claimant's impairment meet or equal one of the listed  
19 impairments acknowledged by the Commissioner to be so severe as to preclude  
20 substantial gainful activity? 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If  
21 the impairment meets or equals one of the listed impairments, the claimant is  
22 conclusively presumed to be disabled. 20 C.F.R. §§ 404.1520(d), 416.920(d). If the  
23 impairment is not one conclusively presumed to be disabling, the evaluation  
24 proceeds to the fourth step.

25 Before considering to the fourth step, the ALJ must first determine the  
26 claimant's residual functional capacity. An individual's residual functional  
27 capacity is their ability to do physical and mental work activities on a sustained  
28 basis despite limitations from their impairments. 20 C.F.R. §§ 404.1545(a)(1),

1 416.945(a)(1). The residual functional capacity is relevant to both the fourth and  
2 fifth steps of the analysis.

3 **Step Four:** Does the impairment prevent the claimant from performing work  
4 they have performed in the past? 20 C.F.R. §§ 404.1520(a)(4)(iv),  
5 416.920(a)(4)(iv). If the claimant is able to perform their previous work, they are  
6 not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f). If the claimant cannot perform  
7 this work, the evaluation proceeds to the fifth and final step.

8 **Step Five:** Is the claimant able to perform other work in the national  
9 economy in view of their age, education, and work experience? 20 C.F.R. §§  
10 404.1520(a)(4)(v), 416.920(a)(4)(v). The initial burden of proof rests upon the  
11 claimant to establish a prima facie case of entitlement to disability benefits. *Tackett*  
12 *v. Apfel*, 108 F.3d 1094, 1098 (9th Cir. 1999). This burden is met once a claimant  
13 establishes that a physical or mental impairment prevents him from engaging in her  
14 previous occupation. *Id.* At step five, the burden shifts to the Commissioner to  
15 show that the claimant can perform other substantial gainful activity. *Id.*

### 16 **III. Standard of Review**

17 The Commissioner's determination will be set aside only when the ALJ's  
18 findings are based on legal error or are not supported by substantial evidence in the  
19 record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992) (citing  
20 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"  
21 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance,"  
22 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). Substantial  
23 evidence is "such relevant evidence as a reasonable mind might accept as adequate  
24 to support a conclusion." *Richardson*, 402 U.S. at 401.

25 A decision supported by substantial evidence will be set aside if the proper  
26 legal standards were not applied in weighing the evidence and making the decision.  
27 *Browner v. Sec'y of Health & Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988).  
28 An ALJ is allowed "inconsequential" errors as long as they are immaterial to the

1 ultimate nondisability determination. *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d  
2 1050, 1055 (9th Cir. 2006). The Court must uphold the ALJ’s denial of benefits if  
3 the evidence is susceptible to more than one rational interpretation, one of which  
4 supports the decision of the administrative law judge. *Batson v. Barnhart*, 359 F.3d  
5 1190, 1193 (9th Cir. 2004). It “must consider the entire record as a whole,  
6 weighing both the evidence that supports and the evidence that detracts from the  
7 Commissioner’s conclusion, and may not affirm simply by isolating a specific  
8 quantum of supporting evidence.” *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir.  
9 2017) (quotation omitted). “If the evidence can support either outcome, the court  
10 may not substitute its judgment for that of the ALJ.” *Matney*, 981 F.2d at 1019.

#### 11 **IV. Statement of Facts**

12 The facts have been presented in the administrative record, the ALJ’s  
13 decision, and the briefs to this Court. Only the most relevant facts are summarized  
14 herein.

15 At the time of the hearing, Plaintiff was 30 years old. She has been  
16 diagnosed with rheumatoid arthritis. This has mostly affected her right knee. She  
17 also reports pain in her shoulders, hips, and back.

18 Plaintiff obtained her GED when she was 16 and has some college credits.  
19 She has past employment in the fast-food industry. She has four children, ages 8-  
20 13. Her children live part-time with their father. Plaintiff experiences anxiety when  
21 in the public. She also suffers from depression.

#### 22 **V. The ALJ’s Findings**

23 The ALJ issued an opinion affirming denial of benefits. AR 15-28. At step  
24 one, the ALJ found that Plaintiff engaged in substantial gainful activity during the  
25 following periods, November 2017 to September 2018. AR 17. Consequently, the  
26 ALJ concluded that the first date in which she could be considered disabled is  
27 October 1, 2018.

28 At step two, the ALJ identified the following severe impairments:

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1 degenerative joint disease of the right knee, internal derangement; obesity;  
2 rheumatoid arthritis; anxiety disorder; and depression. AR 18. The ALJ found that  
3 PTSD, alleged bipolar disorder, and sleep disorder were not medically  
4 determinable impairments. AR 18.

5 At step three, the ALJ found that Plaintiff did not have an impairment or  
6 combination of impairments that meets or medically equals the severity of one of  
7 the listed impairments. AR 19. Ultimately, the ALJ concluded that Plaintiff has a  
8 residual function capacity (“RFC”) to perform:

9 residual functional capacity to perform less than a full range of light  
10 work as defined in 20 CFR 404.1567(b) and 416.967(b). She is able to  
11 lift and/or carry twenty pounds occasionally and ten pounds  
12 frequently. The claimant can stand and/or walk for four hours and sit  
13 for six hours in an eight-hour workday. The claimant can occasionally  
14 climb ramps and stairs, but never ladders, ropes or scaffolds. She can  
15 occasionally stoop, kneel, crouch and crawl. The claimant should  
16 avoid concentrated exposure to extreme cold and vibrations and avoid  
17 all exposure to workplace hazards such as dangerous moving  
18 machinery and heights. She is able to limited to simple, one to three  
19 step tasks and is limited to occasional, superficial interaction with  
20 coworkers and the public. The claimant should not work perform  
21 tandem tasks or tasks requiring teamwork.

22 AR 21.

23 At step four, the ALJ found that Plaintiff was unable to perform any past  
24 relevant work as an order clerk. AR 26.

25 In the alternative, the ALJ found there were other jobs that existed in  
26 significant numbers in the national economy that Plaintiff could also perform,  
27 including marker, food assembler, and packing line worker. AR 27.

## 28 **VI. Issues**

1. Whether the ALJ properly evaluated Plaintiff’s symptom testimony.
3. Whether the ALJ properly evaluated the medical opinions.
4. Whether the ALJ properly applied the Step-Five analysis.

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## VII. Discussion

### 1. Plaintiff's Symptom Testimony

The ALJ found that Plaintiff's medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely consistent with the medical evidence and other evidence in the record

An ALJ's assessment of a claimant's credibility is entitled to "great weight." *Anderson v. Sullivan*, 914 F.2d 1121, 1124 (9th Cir.1990). When there is no evidence of malingering, the ALJ must give "specific, clear and convincing reasons" for rejecting a claimant's subjective symptom testimony. *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citation omitted). If the ALJ's credibility finding is supported by substantial evidence in the record, the reviewing court "may not engage in second-guessing." *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002).

In recognition of the fact that an individual's symptoms can sometimes suggest a greater level of severity of impairment than can be shown by the objective medical evidence alone, 20 C.F.R. §§ 404.1529(c) and 416.929(c) describe the kinds of evidence, including the factors below, that the ALJ must consider in addition to the objective medical evidence when assessing the credibility of an individual's statements:

1. The individual's daily activities;
2. The location, duration, frequency, and intensity of the individual's pain or other symptoms;
3. Factors that precipitate and aggravate the symptoms;
4. The type, dosage, effectiveness, and side effects of any medication the individual takes or has taken to alleviate pain or other symptoms;
5. Treatment, other than medication, the individual receives or has received for relief of pain or other symptoms;
6. Any measures other than treatment the individual uses or has used to relieve pain or other symptoms (e.g., lying flat on his or her back, standing for 15 to 20



1 minutes every hour, or sleeping on a board); and 7. Any other factors  
2 concerning the individual's functional limitations and restrictions due  
3 to pain or other symptoms.

4 SSR 96-7P, 1996 WL 374186.

5 The ALJ found that Plaintiff's statements concerning the intensity,  
6 persistence, and limiting effects of her symptoms were inconsistent with the record  
7 because the examinations have remained fairly normal aside from her right knee, a  
8 nd she has not sought any consistent treatment for her pain complaints. The ALJ  
9 noted there were no available medical records after January 2019 except for a well-  
10 women examination in March 2020.

11 The ALJ noted that Plaintiff was only using ibuprofen as needed for pain  
12 and the lack of treatment, even though she was given the opportunity to do so after  
13 a motor vehicle accident. The ALJ also noted that Plaintiff is not taking any  
14 anxiety or depression medication and has not participated in counseling. The ALJ  
15 also noted that the record also indicates that Plaintiff is capable of taking care of  
16 her personal needs.

17 The ALJ noted that Plaintiff continued to engage in substantial gainful  
18 employment even after her alleged onset of disability. The ALJ also noted that the  
19 reasons given by Plaintiff as to why she stopped working did not reflect that it was  
20 solely due to her impairments. The ALJ noted the record was not clear if she was  
21 prevented from working due to her impairments or other reasons.

22 These reasons provide a clear and convincing basis to find that Plaintiff's  
23 symptom testimony was not supported by the record. Thus, the ALJ's evaluation of  
24 Plaintiff's credibility is supported by substantial evidence and was not in error.

### 25 **3. Evaluation of the Medical Opinions**

26 The only challenge to the ALJ's evaluation of a medical opinion is that of  
27 Dr. Metoyer. The ALJ found the following opinions persuasive: Dr. Guillermo  
28 Rubio; Dr. Vincent Gollogly, and Dr. Drenguis. Plaintiff is not challenging the



1 ALJ's reliance on these opinions.

2 Dr. Rubio found that Plaintiff could perform a range of light exertion, could  
3 lift and/or carry twenty pounds occasionally and ten pounds frequently, could stand  
4 and/or walk for four hours and sit for about six hours in an eight-hour workday,  
5 could occasionally stoop, kneel, crouch, crawl and climb ramps and stairs,  
6 but should never climb ladders, ropes or scaffolds, and should avoid concentrated  
7 exposure to extreme cold, vibration and hazard.

8 Dr. Gollogly concluded that Plaintiff retained the capacity to carry out  
9 simple instructions, maintain concentration persistence and pace for up to two  
10 hours continuously, maintain adequate attendance and complete a normal workday  
11 and workweek within normal tolerances of a competitive workplace, as well as the  
12 capacity to interact with others on an occasional and superficial basis and could  
13 accept instructions from a supervisor, but would have occasional difficulties  
14 adapting to change though she could adapt to normal, routine changes in a  
15 competitive workplace within normal tolerances.

16 Dr. Drenguis found that could stand and/or walk for four hours, sit for six  
17 hours and lift or carry up to twenty pounds occasionally and ten pounds frequently  
18 and frequently balance and occasionally climb, stoop, kneel, crouch and  
19 crawl.

20 In evaluating medical opinion evidence, the ALJ considers the  
21 persuasiveness of each medical opinion and prior administrative medical finding  
22 from medical sources. 20 C.F.R. § 416.920c(a) and (b). The ALJ is required to  
23 consider multiple factors, including supportability, consistency, the source's  
24 relationship with the claimant, any specialization of the source, and other factors  
25 (such as the source's familiarity with other evidence in the file or an understanding  
26 of Social Security's disability program). 20 C.F.R. § 416.920c(c)(1)-(5).  
27 Supportability and consistency of an opinion are the most important factors, and  
28 the ALJ must articulate how they considered those factors in determining the

1 persuasiveness of each medical opinion or prior administrative medical finding. 20  
2 C.F.R. § 416.920c(b)(2). The ALJ may explain how they considered the other  
3 factors, but is not required to do so, except in cases where two or more opinions  
4 are equally well-supported and consistent with the record. *Id.*

5 Supportability and consistency are further explained in the regulations:

6 (1) Supportability.

7 The more relevant the objective medical evidence and supporting  
8 explanations presented by a medical source are to support his or her medical  
9 opinion(s) or prior administrative medical finding(s), the more persuasive the  
10 medical opinions or prior administrative medical finding(s) will be.

11 (2) Consistency.

12 The more consistent a medical opinion(s) or prior administrative medical  
13 finding(s) is with the evidence from other medical sources and nonmedical sources  
14 in the claim, the more persuasive the medical opinion(s) or prior administrative  
15 medical finding(s) will be.

16 **a. Dr. Metoyer**

17 The ALJ found that Dr. Metoyer's opinion was only somewhat persuasive,  
18 noting they were generally vague and noted Dr. Metoyer's findings from his  
19 examination were limited. That said, the ALJ believed the restrictions on the RFC  
20 limiting Plaintiff to simple, one to three step tasks with only occasional, superficial  
21 interaction with coworkers and the public, and not including tasks performed in  
22 tandem with others or tasks requiring teamwork were consistent with Dr.  
23 Metoyer's opinion.

24 The ALJ's evaluation of Dr. Metoyer's opinion is supported by substantial  
25 evidence. The ALJ adequately explained why Dr. Metoyer's opinion was not  
26 supported and not consistent with the record.

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1 **VIII. Conclusion**

2 Substantial evidence supports the ALJ's finding that Plaintiff is not disabled.

3 Accordingly, **IT IS HEREBY ORDERED:**

4 1. Plaintiff's Motion for Summary Judgment, ECF No. 11, is **DENIED.**

5 2. Defendant's Motion for Summary Judgment, ECF No. 13 is

6 **GRANTED.**

7 3. The decision of the Commissioner is **AFFIRMED.**

8 4. Judgment shall be entered in favor of Defendant and against Plaintiff.

9 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
10 file this Order, provide copies to counsel, and **close** the file.

11 **DATED** this 21st day of February 2023.



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16

A handwritten signature in blue ink that reads "Stanley A. Bastian".

17 Stanley A. Bastian  
18 Chief United States District Judge