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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANNETTE I. WHITE,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security
Administration,

Defendant.

NO: 13-CV-0057-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment (ECF Nos. 12, 13). Plaintiff is represented by D. James Tree. Defendant is represented by David J. Burdett. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

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1 **JURISDICTION**

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);
3 1383(c)(3).

4 **STANDARD OF REVIEW**

5 A district court’s review of a final decision of the Commissioner of Social
6 Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is
7 limited: the Commissioner’s decision will be disturbed “only if it is not supported
8 by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153,
9 1158 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). “Substantial evidence” means
10 relevant evidence that “a reasonable mind might accept as adequate to support a
11 conclusion.” *Id.*, at 1159 (quotation and citation omitted). Stated differently,
12 substantial evidence equates to “more than a mere scintilla[,] but less than a
13 preponderance.” *Id.* (quotation and citation omitted). In determining whether this
14 standard has been satisfied, a reviewing court must consider the entire record as a
15 whole rather than searching for supporting evidence in isolation. *Id.*

16 In reviewing a denial of benefits, a district court may not substitute its
17 judgment for that of the Commissioner. If the evidence in the record “is
18 susceptible to more than one rational interpretation, [the court] must uphold the
19 ALJ’s findings if they are supported by inferences reasonably drawn from the
20 record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”
2 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]
3 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).
4 The party appealing the ALJ’s decision generally bears the burden of establishing
5 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

6 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

7 A claimant must satisfy two conditions to be considered “disabled” within
8 the meaning of the Social Security Act. First, the claimant must be “unable to
9 engage in any substantial gainful activity by reason of any medically determinable
10 physical or mental impairment which can be expected to result in death or which
11 has lasted or can be expected to last for a continuous period of not less than twelve
12 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be
13 “of such severity that he is not only unable to do his previous work[,] but cannot,
14 considering his age, education, and work experience, engage in any other kind of
15 substantial gainful work which exists in the national economy.” 42 U.S.C.
16 § 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R.
19 § 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s
20 work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in

1 “substantial gainful activity,” the Commissioner must find that the claimant is not
2 disabled. 20 C.F.R. § 416.920(b).

3 If the claimant is not engaged in substantial gainful activities, the analysis
4 proceeds to step two. At this step, the Commissioner considers the severity of the
5 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
6 “any impairment or combination of impairments which significantly limits [his or
7 her] physical or mental ability to do basic work activities,” the analysis proceeds to
8 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy
9 this severity threshold, however, the Commissioner must find that the claimant is
10 not disabled. *Id.*

11 At step three, the Commissioner compares the claimant’s impairment to
12 several impairments recognized by the Commissioner to be so severe as to
13 preclude a person from engaging in substantial gainful activity. 20 C.F.R.
14 § 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
15 enumerated impairments, the Commissioner must find the claimant disabled and
16 award benefits. 20 C.F.R. § 416.920(d).

17 If the severity of the claimant’s impairment does meet or exceed the severity
18 of the enumerated impairments, the Commissioner must pause to assess the
19 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),
20 defined generally as the claimant’s ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations (20 C.F.R.

2 § 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's
4 RFC, the claimant is capable of performing work that he or she has performed in
5 the past ("past relevant work"). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
6 capable of performing past relevant work, the Commissioner must find that the
7 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
8 performing such work, the analysis proceeds to step five.

9 At step five, the Commissioner considers whether, in view of the claimant's
10 RFC, the claimant is capable of performing other work in the national economy.
11 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
12 must also consider vocational factors such as the claimant's age, education and
13 work experience. *Id.* If the claimant is capable of adjusting to other work, the
14 Commissioner must find that the claimant is not disabled. 20 C.F.R.
15 § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the
16 analysis concludes with a finding that the claimant is disabled and is therefore
17 entitled to benefits. *Id.*

18 The claimant bears the burden of proof at steps one through four above.
19 *Lockwood v. Comm'r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If
20 the analysis proceeds to step five, the burden shifts to the Commissioner to

1 establish that (1) the claimant is capable of performing other work; and (2) such
2 work “exists in significant numbers in the national economy.” 20 C.F.R.
3 § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

4 **ALJ’S FINDINGS**

5 Plaintiff applied for supplemental security income (SSI) benefits on
6 November 6, 2009, alleging an onset date of September 1, 2007. Tr. 138-41. Her
7 claim was denied initially and on reconsideration. Tr. 88-91, 97-99. Plaintiff
8 appeared (by video) for a hearing before an administrative law judge on August 4,
9 2011. Tr. 21, 41-85. The ALJ issued a decision on August 19, 2011, finding that
10 Plaintiff was not disabled under the Act. Tr. 21-32.

11 At step one, the ALJ found that Plaintiff had not engaged in substantial
12 gainful activity since November 6, 2009, the amended application date. Tr. 23, 21.
13 At step two, the ALJ found that Plaintiff had severe impairments, but at step three
14 the ALJ found that Plaintiff did not have an impairment or combination of
15 impairments that met or equaled the listing of impairment. Tr. 23-25. The ALJ
16 determined Plaintiff had the RFC to:

17 perform less than a full range of light work as defined in 20 CFR
18 416.967(b). She can lift 10 pounds frequently and 20 pounds
19 occasionally. In an 8-hour day, she can sit for about 6 hours and can
20 walk and/or stand for about 6 hours. She cannot climb ladders, ropes,
or scaffolding. She can balance and stoop frequently. She can kneel,
crouch, and crawl occasionally. She can climb ramps and stairs
occasionally. She can handle, finger, and feel frequently with both
upper extremities; she has no limitations in reaching. She should

1 avoid all exposure to industrial vibrations and even moderate
2 exposure to mild vibrations. She should avoid moderate exposure to
3 hazards. She can understand, remember, and carryout simple, routine,
4 repetitive tasks. She should not work in a job with production rate for
5 pace; instead, the job should require meeting goals. She can have only
6 occasional, superficial contact with the public. She cannot sustain
7 attention and concentration for extended periods but can maintain
8 attention and concentration for the two hour intervals generally
9 required between regularly scheduled breaks.

6 Tr. 25-25. At step four, the ALJ found that Plaintiff had no past relevant work. Tr.
7 30. At step five the ALJ found Plaintiff could perform jobs that exist in significant
8 numbers in the national economy in representative occupations such as a
9 housekeeping/cleaner, pricer/marker, and laundry worker. Tr. 31. Since the ALJ
10 found that, considering Plaintiff's age, education, work experience, and RFC, the
11 Plaintiff was capable of making a successful adjustment to other work that exists in
12 significant numbers in the national economy, a finding of not disabled was made.
13 Tr. 31-32.

14 Plaintiff requested review by the Appeals Council, Tr. 17, which was denied
15 on December 4, 2012, Tr. 1-6, making the ALJ's decision the Commissioner's
16 final decision that is subject to judicial review. 42 U.S.C. §§ 405(g), 1383(c)(3);
17 20 C.F.R. §§ 416.1481, 422.210.

18 ISSUES

19 Plaintiff seeks judicial review of the Commissioner's final decision denying
20 her supplemental security income under Title XVI of the Social Security Act.

1 Plaintiff has identified three issues for review. First, whether the ALJ improperly
2 rejected the opinions of Plaintiff’s treating and examining medical providers. ECF
3 No. 12 at 9. Second, whether the ALJ improperly rejected Plaintiff’s subjective
4 complaints. *Id.* at 10. Third, whether the ALJ failed to identify the jobs Plaintiff
5 could perform in light of her specific functional limitations. *Id.*

6 DISCUSSION

7 A. Opinions of Plaintiff’s Medical Providers

8 Plaintiff contends the ALJ improperly rejected the opinions of her
9 examining medical providers, including those of Dr. Duris, Dr. Toews, and Mr.
10 Moen. ECF No. 12 at 12.

11 A treating physician’s opinions are entitled to substantial weight in social
12 security proceedings. *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
13 (9th Cir. 2009). If a treating or examining physician’s opinion is uncontradicted,
14 an ALJ may reject it only by offering “clear and convincing reasons that are
15 supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th
16 Cir. 2005). “However, the ALJ need not accept the opinion of any physician,
17 including a treating physician, if that opinion is brief, conclusory and inadequately
18 supported by clinical findings.” *Bray*, 554 F.3d at 1228 (quotation and citation
19 omitted). “If a treating or examining doctor's opinion is contradicted by another
20 doctor's opinion, an ALJ may only reject it by providing specific and legitimate

1 reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d
2 at 1216 (citing *Lester v. Chater*, 81 F.3d 821, 830-831 (9th Cir. 1995)).

3 Plaintiff contends that on April 26, 2011, Dr. Mark Duris, Ph.D., completed
4 a psychological assessment and noted that depression and intrusive recollections of
5 trauma would markedly interfere with her work activities. Tr. 386. Dr. Duris
6 diagnosed her with mood disorder, post-traumatic stress disorder, and adult
7 antisocial behavior. Tr. 386. Dr. Duris found marked or severe limitations in her
8 ability to: communicate and perform effectively in a work setting with limited
9 public contact, communicate and perform effectively in a work setting with public
10 contact, and maintain appropriate behavior in a work setting. Tr. 387. Dr. Duris
11 found moderate limitations in her ability to: understand, remember, and persist in
12 tasks following complex instructions; learn new tasks; and perform routine tasks
13 without undue supervision. Tr. 387. However, Dr. Duris also found that
14 medication has been shown to assist in relieving these symptoms, and he estimated
15 that Plaintiff would only be impaired for 6 months. Tr. 388.

16 The ALJ gave little weight to Dr. Duris’ opinion because he did not provide
17 objective findings that were entirely consistent with his opinion. Tr. 30 (“the
18 opinions are not consistent with the overall record and do not contain evaluations
19 with objective findings that show such severe limitations”). The ALJ also
20 observed that even “Dr. Duris noted that some of the claimant’s reported

1 symptoms were inconsistent with his observations and findings and that the
2 claimant was likely engaging in negative impression management. *Id.*, Tr. 383-84.
3 These are specific and legitimate reasons for not giving Dr. Duris' controverted
4 conclusions controlling weight.

5 Plaintiff also contends the ALJ summarily rejected Mr. Moen's assessment
6 without providing adequate reasons. ECF No. 12 at 13. Mr. Moen, MSW, found
7 that Plaintiff had marked depression and many moderate limitations in work
8 related functions. Tr. 374, 377. Like Dr. Duris' opinion, the ALJ gave little
9 weight to Mr. Moen's opinion because he did not provide objective findings that
10 were entirely consistent with his opinion. Tr. 30 ("the opinions are not consistent
11 with the overall record and do not contain evaluations with objective findings that
12 show such severe limitations"). The ALJ also rejected Mr. Moen's GAF scoring
13 because "[t]he scores are largely predicated on subjective reports and reflect few
14 specific functional limitations because they include consideration of multiple
15 factors not correlated with impairment related occupational difficulties." Tr. 30,
16 376. The ALJ did not err in rejecting the unsupported checkbox form filled out by
17 Mr. Moen, a non-medical source (a social worker). Tr. 372-79.

18 Next, Plaintiff contends that the ALJ gave significant weight to the May 1,
19 2010 opinion of Dr. Toews, but "failed to incorporate [Dr. Toews'] opinion that
20 from the time of his evaluation, she would continue to be unable to work for at

1 least another 6-9 months even with proper psychosocial treatment.” ECF No. 12 at

2 15. Here, the ALJ made the following findings:

3 The undersigned gives some weight to the medical opinion of
4 consultative examiner, Jay Toews, Ed.D. He concluded that the
5 claimant was cognitively intact; could remember multi-step
6 instructions; and could interact with coworkers and supervisors. With
7 continued abstinence and some psychosocial support, she would be
8 able to resume full time employment in 6-9 months. [Tr. 333-36] Dr.
9 Toews examined the claimant and his opinion is generally consistent
10 his objective findings. However, I included more restrictive mental
11 limitations in the residual functional capacity above in order to take
12 into consideration some of claimant medically unsupported subjective
13 complaints.

14 Tr. 29. Plaintiff does not explain how this finding is erroneous or not supported by
15 substantial evidence. No harmful error has been shown.

16 The ALJ’s findings are supported by substantial evidence in the record.

17 **B. Plaintiff’s Subjective Complaints**

18 Plaintiff next contends that the ALJ improperly discredited Plaintiff’s
19 subjective complaints. ECF No. 12 at 16-17. Evaluating the credibility of a
20 claimant’s testimony regarding subjective symptoms requires the ALJ to engage in
a two-step analysis. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir.
2007). “First, the ALJ must determine whether the claimant has presented
objective medical evidence of an underlying impairment which could reasonably
be expected to produce the pain or other symptoms alleged.” *Id.* at 1036 (internal
citations and quotation marks omitted). A claimant must prove the existence of

1 physical or mental impairment with “medical evidence consisting of signs,
2 symptoms, and laboratory findings.” 20 C.F.R. § 404.1508. A claimant’s
3 statements about his or her symptoms alone will not suffice. 20 C.F.R. §§
4 404.1508; 404.1527. The claimant is not required to show that her impairment
5 “could reasonably be expected to cause the severity of the symptom she has
6 alleged; she need only show that it could reasonably have caused some degree of
7 the symptom.” *Lingenfelter*, 504 F.3d at 1036 (quoting *Smolen v. Chater*, 80 F.3d
8 1273, 1282 (9th Cir. 1996)). Nor may the ALJ discredit the subjective testimony
9 as to the severity of the symptoms “merely because they are unsupported by
10 objective medical evidence.” *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.1998).
11 On the other hand, “the medical evidence is still a relevant factor in determining
12 the severity” of the claimant’s limitations. *Rollins v. Massanari*, 261 F.3d 853,
13 856 (9th Cir. 2001).

14 In the event that an ALJ finds the claimant’s subjective assessment
15 unreliable, however, “the ALJ must make a credibility determination with findings
16 sufficiently specific to permit [a reviewing] court to conclude that the ALJ did not
17 arbitrarily discredit claimant's testimony.” *Thomas v. Barnhart*, 278 F.3d 947, 958
18 (9th Cir. 2002). In making such a determination, the ALJ may consider, *inter alia*:
19 (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the claimant’s
20 testimony or between his testimony and his conduct; (3) the claimant’s daily living

1 activities; (4) the claimant's work record; and (5) testimony from physicians or
2 third parties concerning the nature, severity, and effect of the claimant's condition.

3 *Id.* The ALJ may also consider a claimant's "unexplained or inadequately
4 explained failure to seek treatment or to follow a prescribed course of treatment."
5 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008). If there is no evidence
6 of malingering, the ALJ's reasons for discrediting the claimant's testimony must
7 be "specific, clear and convincing." *Chaudhry v. Astrue*, 688 F.3d 661, 672 (9th
8 Cir. 2012) (quotation and citation omitted). The ALJ "must specifically identify
9 the testimony she or he finds not to be credible and must explain what evidence
10 undermines the testimony." *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir.
11 2001).

12 Here, most significantly, the ALJ noted evidence suggesting malingering,
13 Tr. 28, 383-84, which is sufficient by itself to discount Plaintiff's credibility. But
14 there is more. The ALJ also noted Plaintiff's extensive criminal history, and her
15 failure to consistently follow prescribed treatment despite reporting that it
16 improved her symptoms. Tr. 28, 334, 383, 411, 429. The ALJ also pointed to
17 Plaintiff's daily activities, such as her stated ability to attend to her personal care,
18 prepare meals, shop for groceries, use public transportation, do laundry and other
19 household chores, as consistent with the residual functional capacity she was found
20 to have. Tr. 28, 328, 334-35, 174-181. The ALJ concluded:

1 [T]he undersigned finds that the claimant's medically determinable
2 impairments could reasonably be expected to cause some of the
3 alleged symptoms. However, the claimant's statements concerning the
intensity, persistence and limiting effects of these symptoms are not
credible for the reasons below.

4 *In order to give appropriate consideration to the claimant's*
5 *allegations, the undersigned included various limitations in the*
6 *residual functional capacity assessment above that are based on the*
7 *claimant's subjective report; the objective medical evidence shows*
8 *fewer limitations. Regardless, as discussed [] below, the claimant is*
9 *still not precluded from all work.*

10 Tr. 26 (emphasis and bold in original, citation omitted). The ALJ fully evaluated
11 all the objective medical evidence and made detailed and specific findings.
12 Substantial evidence supports those findings.

13 **C. Available Jobs Considering Plaintiff's RFC**

14 Plaintiff contends that the ALJ findings at step five were erroneous because
15 the vocational testimony on which she relied was without evidentiary value as it
16 was provided in response to an incomplete hypothetical. ECF No. 12 at 18.
17 Specifically, Plaintiff contends the ALJ's hypothetical failed to account for the
18 marked limitations identified by Dr. Duris and the moderate limitations identified
19 by Mr. Moen. *Id.* at 19. As indicated above, the Court has rejected Plaintiff's
20 challenge to the ALJ's findings regarding Dr. Duris and Mr. Moen.

Plaintiff also contends that the ALJ's RFC failed to account for the
osteoarthritic changes in her hands as well as the effects of carpal tunnel. ECF No.

1 12 at 18. These two medical conditions, Plaintiff reasons, would cause significant
2 interference in her ability to handle, grip, and manipulate objects. *Id.* Plaintiff has
3 not otherwise supported this argument with any citation to the record. Accordingly,
4 the Court can decline to further address this issue. *See Carmickle v. Comm’r, Soc.*
5 *Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (declining to address
6 plaintiffs argument “because [plaintiff] failed to argue this issue with any
7 specificity in his briefing.”). Nonetheless, the Court will briefly address Plaintiff’s
8 contention.

9 The ALJ noted Plaintiff alleged pain in her . . . hands, and imaging studies
10 revealed only minimal abnormalities in . . . one finger of the right hand. Tr. 23-24.

11 The ALJ proceeded to the step two analysis:

12 Regardless, looking at the evidence in the light most favorable to
13 claimant, I will go ahead and find that "neck pain," "back pain,"
14 bilateral carpal tunnel syndrome, right hand arthritis, and bilateral
15 bunions are severe impairments.

16 Tr. 24. While finding that Plaintiff’s impairments do not meet or equal a listing of
17 impairment, the ALJ found, “The objective medical evidence does not show the
18 inability to perform fine and gross movements effectively.” *Id.* The ALJ
19 supported this broad statement with detailed findings and citations to the objective
20 medical evidence. Tr. 27.

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1 Plaintiff has failed to show that the ALJ's underlying findings are
2 unsupported by substantial evidence and thus, the ALJ's RFC finding is not
3 erroneous.

4 A district court may not substitute its judgment for that of the
5 Commissioner. If the evidence "is susceptible to more than one rational
6 interpretation, [the court] must uphold the ALJ's findings if they are supported by
7 inferences reasonably drawn from the record." *Molina*, 674 F.3d at 1111.

8 Substantial evidence in the record supports the ALJ's findings.

9 **ACCORDINGLY, IT IS HEREBY ORDERED:**

10 1. Plaintiff's Motion for Summary Judgment (ECF No. 12) is **DENIED**.

11 2. Defendant's Motion for Summary Judgment (ECF No. 13) is

12 **GRANTED.**

13 The District Court Executive is hereby directed to file this Order, enter
14 Judgment for Defendant, provide copies to counsel, and **CLOSE** this file.

15 **DATED** March 21, 2014.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge