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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
7

8 JAMIE LEE ARMSTRONG,

9 Plaintiff,

10 v.
11

12 CAROLYN W. COLVIN,
13 Commissioner of Social Security,

14 Defendant.
15

No. CV-13-0188-JTR

ORDER GRANTING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT

16 **BEFORE THE COURT** are cross-Motions for Summary Judgment. ECF
17 No. 18, 23. Attorney Dana C. Madsen represents Jamie Lee Armstrong (Plaintiff);
18 Special Assistant United States Attorney Gerald J. Hill represents the
19 Commissioner of Social Security (Defendant). The parties have consented to
20 proceed before a magistrate judge. ECF No. 7. After reviewing the administrative
21 record and briefs filed by the parties, the Court **GRANTS** Defendant’s Motion for
22 Summary Judgment and **DENIES** Plaintiff’s Motion for Summary Judgment.

23 **JURISDICTION**

24 Plaintiff filed applications for Disability Insurance Benefits and
25 Supplemental Security Income (SSI) on July 8, 2010, alleging disability since July
26 9, 2008, due to “epilepsy, seizures and anxiety.” Tr. 145, 150, 172. The
27 applications were denied initially and upon reconsideration. Administrative Law
28 Judge (ALJ) James W. Sherry held a hearing on September 9, 2011, Tr. 44-85, and

1 issued an unfavorable decision on November 1, 2011, Tr. 21-33. The Appeals
2 Council denied review on March 25, 2013. Tr. 1-6. The ALJ's November 2011
3 decision became the final decision of the Commissioner, which is appealable to the
4 district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial
5 review on May 21, 2013. ECF No. 1, 5.

6 **STATEMENT OF FACTS**

7 The facts of the case are set forth in the administrative hearing transcript, the
8 ALJ's decision, and the briefs of the parties. They are only briefly summarized
9 here.

10 Plaintiff was born on February 12, 1966, and was 42 years old on the alleged
11 onset date, July 9, 2008. Tr. 145, 150. Plaintiff completed high school and a year
12 and a half of college to become a medical assistant. Tr. 50. She testified at the
13 administrative hearing she was divorced; had one minor child, age 17, currently
14 living in California; and resided with her boyfriend in a mobile home in Keller,
15 Washington. Tr. 50.

16 Plaintiff indicated she last worked in 2008 as a cardiac medical assistant. Tr.
17 51-52. She testified she stopped working in 2008 because she had emergency gall
18 bladder surgery and was also having seizures. Tr. 52. She has also worked
19 managing a deli, waiting tables, answering phones for a cab company, performing
20 in-home health care for an elderly couple, and providing medical assistance at a
21 clinic. Tr. 52-55.

22 Plaintiff testified she had experienced seizures for the past seven years. Tr.
23 57. She stated from 2008 until the time of the administrative hearing she had
24 "grand mal seizures" up to three times a week and up to five or six times a month.
25 Tr. 57. The seizures typically last from three to five minutes at a time and had
26 lasted as long as 22 minutes. Tr. 58. After a seizure, she feels terrible and will
27 remain in bed for up to a week at a time. Tr. 58. She indicated the last seizure she
28 experienced was three weeks prior to the administrative hearing. Tr. 58.

1 Plaintiff testified she has fallen while experiencing seizures, which has
2 resulted in head trauma and an injury to her right shoulder. Tr. 58-59. She stated
3 she recently had surgery on her right shoulder due to the injury. Tr. 59-60.
4 Following the surgery, she still has difficulty lifting her right arm and experiences
5 numbness in her pinky and ring finger on her right hand. Tr. 60-62. She testified
6 she can only write three or four sentences with her right hand before needing to
7 take a break and her shoulder is constantly throbbing. Tr. 62. She also stated her
8 memory is bad. Tr. 69.

9 Plaintiff testified her balance is off, and, as a result, she will catch her
10 footing and trip. Tr. 63. She indicated she is able to walk across the street from
11 her house and back in one stretch, a distance of less than the length of a football
12 field, but does not like to take long walks because she does not know whether she
13 will have a seizure or fall. Tr. 63-64. She stated she may be able to bend over but
14 does not like to do so because she gets light headed due to low blood pressure. Tr.
15 64. She has no difficulty with squatting, but testified she has problems with
16 standing for long periods of time because she has fainting spells. Tr. 64. Plaintiff
17 indicated if she stands for more than a few minutes, she feels faint. Tr. 65. She
18 testified she fractured her tailbone and has numbness in her back that affects her
19 ability to sit. Tr. 72. As a result, she can only sit for 10 to 15 minutes before
20 needing to stand. Tr. 72. She also stated she has difficulty with sleep. Tr. 65. The
21 longest she had slept in one stretch in the last seven years was three hours. Tr. 65.
22 She additionally experiences headaches two or three times a week which can last
23 up to 24 hours. Tr. 66, 73. Plaintiff indicated she attended counseling two or three
24 times a month for her anxiety. Tr. 67.

25 Plaintiff testified that, with respect to household chores, she was able to
26 vacuum with her left arm and do laundry, but did not do much cooking. Tr. 68-69.
27 She stated she helped care for her boyfriend's nine racehorses by providing oats for
28 the horses. Tr. 71. Her boyfriend did the hay. Tr. 71. She also indicated she

1 would ride a 17-year-old horse around her property, but had not ridden since the
2 summer prior to the administrative hearing. Tr. 71, 75. She no longer drives a car
3 because she was told not to drive due to her seizures. Tr. 72.

4 Plaintiff testified she takes hydrocodone for pain, as needed, and had taken
5 Dilantin for seizures. Tr. 74. She stated she was also taking Soma, a muscle
6 relaxer, at one time, but had been taking more of the drug than she was supposed to
7 take. Tr. 69-70. She indicated she stopped taking the muscle relaxer five months
8 prior to the administrative hearing and had since ceased all medications. Tr. 70,
9 74.

10 **ADMINISTRATIVE DECISION**

11 The ALJ found that Plaintiff had not engaged in substantial gainful activity
12 since July 9, 2008, the alleged onset date. Tr. 23. The ALJ determined, at step
13 two, that Plaintiff had the following severe impairments: seizure disorder; right
14 shoulder degenerative joint disease and calcific tendonitis of the rotator cuff and
15 tear; mild thoracic degenerative disc disease; and anxiety disorder, not otherwise
16 specified. Tr. 23. At step three, the ALJ found Plaintiff's impairments, alone and
17 in combination, did not meet or medically equal one of the listed impairments. Tr.
18 25. The ALJ specifically determined Plaintiff did not meet or equal listings 1.02
19 (major dysfunction of a joint), listing 1.04 (disorders of the spine), listing 11.02
20 (convulsive epilepsy), and listing 11.03 (non-convulsive epilepsy). Tr. 25.

21 The ALJ assessed Plaintiff's RFC and determined she could perform less
22 than a full range of light work. Tr. 26. The ALJ determined Plaintiff had the
23 following limitations: she can occasionally lift up to 20 pounds and frequently lift
24 up to ten pounds; she can stand and walk or sit for up to six hours in an eight-hour
25 day; she can occasionally push or pull and occasionally reach overhead with her
26 right upper extremity; she should never climb ladders, ropes or scaffolds; she can
27 frequently climb ramps or stairs, balance, stoop, crouch, kneel and crawl; she must
28 avoid even moderate exposure to hazards such as moving machinery and

1 unprotected heights; she is capable of performing simple, routine and repetitive
2 tasks involving one to two steps; and she can have only superficial interaction with
3 coworkers and supervisors. Tr. 26-27.

4 At step four, the ALJ found Plaintiff was not able to perform her past
5 relevant work as a fast food services manager, waitress, medical assistant, in home
6 caregiver and telephone operator. Tr. 31. However, at step five, the ALJ
7 concluded that, considering Plaintiff's age, education, work experience and RFC,
8 and based on the testimony of the vocational expert, there were jobs that exist in
9 significant numbers in the national economy that Plaintiff could perform, including
10 the jobs of housekeeper or cleaner, laundry worker and document preparer. Tr. 31-
11 32. The ALJ thus determined that Plaintiff was not under a disability within the
12 meaning of the Social Security Act at any time from July 9, 2008, the alleged onset
13 date, through the date of the ALJ's decision, November 1, 2011. Tr. 32.

14 **STANDARD OF REVIEW**

15 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the Court set
16 out the standard of review:

17 A district court's order upholding the Commissioner's denial of benefits is
18 reviewed de novo. *Harman v. Apfel*, 211 F.3d 1172, 1174 (9th Cir. 2000). The
19 decision of the Commissioner may be reversed only if it is not supported by
20 substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d
21 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a
22 mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way,
23 substantial evidence is such relevant evidence as a reasonable mind might accept
24 as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401
25 (1971). If the evidence is susceptible to more than one rational interpretation, the
26 Court may not substitute its judgment for that of the Commissioner. *Tackett*, 180
27 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599
28 (9th Cir. 1999).

1 The ALJ is responsible for determining credibility, resolving conflicts in
2 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
3 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed de novo,
4 although deference is owed to a reasonable construction of the applicable statutes.
5 *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

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
8 rational 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
10 (9th Cir. 1984). Nevertheless, a decision supported by substantial evidence will
11 still be set aside if the proper legal standards were not applied in weighing the
12 evidence and making the decision. *Browner v. Secretary of Health and Human*
13 *Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence exists to
14 support the administrative findings, or if conflicting evidence exists that will
15 support a finding of either disability or non-disability, the Commissioner's
16 determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th
17 Cir. 1987).

18 SEQUENTIAL EVALUATION PROCESS

19 The Commissioner has established a five-step sequential evaluation process
20 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
21 416.920(a); *see, Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one
22 through four, the burden of proof rests upon the claimant to establish a prima facie
23 case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This
24 burden is met once a claimant establishes that a physical or mental impairment
25 prevents him from engaging in his previous occupation. 20 C.F.R. §§
26 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the
27 ALJ proceeds to step five, and the burden shifts to the Commissioner to show that
28 (1) the claimant can make an adjustment to other work; and (2) specific jobs exist

1 in the national economy which claimant can perform. *Batson v. Commissioner of*
2 *Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make
3 an adjustment to other work in the national economy, a finding of “disabled” is
4 made. 20 C.F.R. §§ 404.1520(a)(4)(i-v), 416.920(a)(4)(i-v).

5 **ISSUES**

6 The question presented is whether substantial evidence exists to support the
7 ALJ’s decision denying benefits and, if so, whether that decision is based on
8 proper legal standards.

9 Plaintiff contends the ALJ erred by failing to provide reasons to discount the
10 opinions of her “treating and examining sources” and by providing improper
11 rationale to reject Plaintiff’s testimony regarding her symptoms. ECF No. 18 at 8-
12 10. Plaintiff additionally provides a brief argument that the ALJ accepted
13 Plaintiff’s shoulder injury; therefore, the vocational expert’s testimony that a
14 difficulty using her right arm would prevent gainful employment should have been
15 credited to support a finding that Plaintiff was disabled. ECF No. 18 at 10.

16 **DISCUSSION**

17 **A. Medical Source Opinions**

18 Plaintiff first contends the ALJ improperly rejected her “examining
19 physicians’ opinions and utterly failed to provide any reason to discount them.”
20 ECF No. 18 at 9. However, as indicated by Defendant, Plaintiff does not identify
21 in her opening brief a specific opinion the ALJ failed to consider or how the ALJ
22 erred in this regard. ECF No. 23 at 6-7.

23 The Ninth Circuit has indicated it “will not ordinarily consider matters on
24 appeal that are not specifically and distinctly argued in [an] appellant’s opening
25 brief.” *Miller v. Fairchild Indust., Inc.*, 797 F.2d 727, 738 (9th Cir. 1986), *see also*
26 *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008).
27 “We will not manufacture arguments for an appellant, and a bare assertion does not
28 preserve a claim.” *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994) (citations

1 omitted). As indicated by the Ninth Circuit in *Greenwood*, “Judges are not like
2 pigs, hunting for truffles buried in briefs.” *Greenwood*, 28 F.3d at 977 (9th Cir.
3 1994) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (per
4 curiam)) (alteration omitted). Consequently, the Ninth Circuit has refused to
5 address claims that were only “argue[d] in passing,” *Brownfield v. City of Yakima*,
6 612 F.3d 1140, 1149 n.4 (9th Cir. 2010), or that were “bare assertion[s] . . . with no
7 supporting argument,” *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1079 n.
8 26 (9th Cir. 2008).

9 Plaintiff’s opening brief cites evidence of diagnoses and evaluations, which
10 were discussed by the ALJ, without identifying any specific errors in the ALJ’s
11 analysis of the evidence. ECF No. 18 at 5-7. Plaintiff thereafter asserts generally
12 that the ALJ did not set forth reasons for rejecting Plaintiff’s examining
13 physicians’ opinions. ECF No. 18 at 9.

14 The ALJ discussed the medical opinion evidence before him in detail and
15 rationally applied that opinion evidence in his decision. Tr. 23-24, 29-31. Plaintiff
16 has not argued or demonstrated in her opening brief how the ALJ’s determination
17 with respect to the medical opinion evidence is erroneous, other than to cite
18 generally to evidence in the record discussed by the ALJ. Because Plaintiff’s
19 contention was not argued with specificity, the Court declines to address the issue.
20 *See Carmickle*, 533 F.3d at 1161.

21 In Plaintiff’s reply brief, Plaintiff asserts for the first time that the opinions
22 of neurologist Timothy W. Powell, M.D., support a finding that she meets the
23 listings at 11.02 and 11.03. ECF No. 24 at 5. However, Plaintiff again fails to
24 specifically identify an error the ALJ made with respect to Dr. Powell’s opinions.

25 The ALJ’s decision noted Dr. Powell’s April 2010 evaluation where Plaintiff
26 reported she had experienced six convulsions that year. Tr. 24. The neurological
27 evaluation by Dr. Powell was normal including an intact memory. Tr. 24, 253-
28 257. It was Dr. Powell’s impression that Plaintiff had partial onset seizures with a

1 suspected etiology of abusive head trauma. Tr. 24, 255. An MRI of the head was
2 ordered as Plaintiff was unaware of whether she had undergone a previous brain
3 MRI. Tr. 255. A June 2010 brain MRI scan showed no significant intracranial
4 abnormalities. Tr. 24, 387. On February 24, 2011, after a hospital admission for a
5 definitive diagnosis of Plaintiff's history of episodes thought to be seizures, Dr.
6 Powell indicated the video EEG telemetry revealed six clinical events, "all of
7 which were nonepileptic/psychogenic in origin." Tr. 419-420. Other than
8 excessive beta frequencies consistent with Plaintiff's usage of benzodiazepines, no
9 abnormalities were seen throughout the study. Tr. 420. Dr. Powell diagnosed
10 "[n]onepileptic/psychogenic event" and concluded there was "no evidence to
11 support a diagnosis of seizures." Tr. 410.

12 Given Dr. Powell's diagnosis that Plaintiff does not have epilepsy,
13 Plaintiff's reply brief argument that Dr. Powell's opinion supports a finding she
14 meets the listings for epilepsy is without merit. Nothing in Dr. Powell's reports
15 suggests the ALJ's disability determination should be different.

16 **B. Plaintiff's Credibility**

17 Plaintiff next contends the ALJ erred by failing to properly consider or reject
18 her testimony regarding her symptoms. ECF No. 18 at 8-10. Plaintiff specifically
19 asserts the frequency of the seizures she described was improperly discredited by
20 the ALJ. ECF No. 24 at 3.

21 It is the province of the ALJ to make credibility determinations. *Andrews v.*
22 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). However, the ALJ's findings must be
23 supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231
24 (9th Cir. 1990). Once the claimant produces medical evidence of an underlying
25 medical impairment, the ALJ may not discredit testimony as to the severity of an
26 impairment because it is unsupported by medical evidence. *Reddick v. Chater*, 157
27 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence of malingering, the
28 ALJ's reasons for rejecting the claimant's testimony must be "clear and

1 convincing.” *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). “General
2 findings are insufficient: rather the ALJ must identify what testimony is not
3 credible and what evidence undermines the claimant’s complaints.” *Lester*, 81
4 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

5 In this case, the ALJ found Plaintiff’s medically determinable impairments
6 could reasonably be expected to cause the alleged symptoms; however, Plaintiff’s
7 statements concerning the intensity, persistence and limiting effects of the
8 symptoms were not credible to the extent they were inconsistent with the ALJ’s
9 RFC assessment. Tr. 28.

10 As indicated by the ALJ, Plaintiff provided inconsistent statements
11 regarding matters related to her disability claim. Tr. 28. Inconsistencies in a
12 disability claimant’s testimony support a decision by the ALJ that a claimant lacks
13 credibility with respect to her claim of disabling pain. *Nyman v. Heckler*, 779 F.2d
14 528, 531 (9th Cir. 1986). The ALJ noted that the first treatment notes in the record
15 are from September 2009, Tr. 297, and in October 2009 Plaintiff indicated her
16 medications initially worked fairly well, Tr. 425. As the ALJ pointed out, these
17 reports suggest Plaintiff’s impairments did not limit her functioning significantly
18 until October 2009, more than one year after she claims disability, July 9, 2008.
19 Tr. 28.

20 The ALJ also noted Plaintiff had been inconsistent in reporting the
21 frequency of her symptoms. Tr. 28. In January 2010, she reported 12 seizures
22 since her October visit, Tr. 427; on April 22, 2010, she reported having had six
23 seizures for the year, Tr. 253; on May 5, 2010, no breakthrough seizures were
24 indicated, Tr. 296; on August 4, 2010, Plaintiff reported having seizures at least
25 three times per month, Tr. 179; on September 29, 2010, she reported having had
26 six breakthrough seizures in three months, Tr. 359; on October 28, 2010, she
27 reporting have seizures at least four to six times a month, Tr. 214; on October 29,
28 2010, she reported having four seizures just that week, Tr. 376; and in March 2011,

1 she reported experiencing 10 seizures per month, Tr. 229. Plaintiff testified at the
2 administrative hearing on September 9, 2011, that from 2008 until the time of the
3 hearing she had seizures up to five or six times a month. Tr. 57. The ALJ
4 appropriately considered Plaintiff's inconsistent statements to discount her
5 subjective complaints.

6 The ALJ further noted inconsistencies between Plaintiff's complaints of
7 certain ailments and the medical evidence of record to support those allegations.
8 Tr. 28. A lack of supporting objective medical evidence is a factor which may be
9 considered in evaluating a claimant's credibility, provided it is not the sole factor.
10 *Bunnell v. Sullivan*, 347 F.2d 341, 345 (9th Cir. 1991). The ALJ noted that while
11 Plaintiff testified to significant difficulties sitting due to a fractured tailbone, Tr.
12 72, the record reflects she failed to mention this alleged impairment to her
13 treatment providers and rarely made any complaints of back pain. Tr. 28. Plaintiff
14 additionally testified she has significant limitations from frequent headaches, Tr.
15 66, 73; however, the frequency and intensity of her alleged headaches are not
16 reflected in the record, and she rarely complained of headaches except for having
17 them following a seizure. Tr. 28. It was appropriate for the ALJ to conclude that
18 the objective medical evidence did not support various allegations made by
19 Plaintiff.

20 The ALJ also noted Plaintiff's activities were inconsistent with her alleged
21 limitations. Tr. 29. It is well-established that the nature of daily activities may be
22 considered when evaluating credibility. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.
23 1989). The ALJ indicated that although Plaintiff reported on August 10, 2010, that
24 she does not drive and merely stays at home, Tr. 195, she has also reported she
25 drives herself to the grocery store one time per week and is able to shop
26 independently, Tr. 332. Tr. 29. She reported on August 10, 2010, that she was
27 able to do multiple household chores such as laundry, dishes, vacuuming, mopping
28 and dusting. Tr. 29, 196. Plaintiff also indicated in August 2010 that she was

1 doing yard work and riding horses as daily activities. Tr. 29, 332. In October
2 2010, she was able to fly to California, Tr. 365, and in September 2010 she
3 reported vigorously painting, Tr. 399. Tr. 29. This level of activity is not
4 consistent with Plaintiff's claim of total disability.

5 The ALJ additionally noted there have been periods of time Plaintiff has
6 failed to follow recommendations made by her doctors and has not taken her
7 medication as prescribed. Tr. 28-29. Noncompliance with medical care or
8 unexplained or inadequately explained reasons for failing to seek medical
9 treatment cast doubt on a claimant's subjective complaints. 20 C.F.R. §§
10 404.1530, 426.930; *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). The ALJ
11 states Plaintiff was referred to counseling in January 2010, Tr. 428, but there is no
12 evidence she sought mental health treatment until February 2011, Tr. 445. Tr. 28.
13 In August and September 2010, Plaintiff admitted to being noncompliant with
14 medical advice by not wearing her shoulder immobilizer after shoulder surgery.
15 Tr. 29, 397-398. The ALJ also indicated treatment providers questioned what
16 medications Plaintiff was actually taking due to her drug screen being negative for
17 benzodiazepines in September 2009, despite her report she was taking Klonopin,
18 Tr. 298, and her toxicology screen being negative for opiates and benzodiazepines
19 in March 2010, even though she was prescribed those drugs, Tr. 291. Tr. 28. In
20 August 2010, following an emergency room visit after having a seizure, Plaintiff
21 admitted she had not taken her medications that day. Tr. 29, 305. The fact that
22 Plaintiff failed to follow the recommendations of her treatment providers and failed
23 to take her medications as prescribed discounts her claim of disabling symptoms.

24 Lastly, the ALJ indicated Plaintiff has admitted to prescription drug abuse,
25 which she downplayed at the administrative hearing. Tr. 29. An ALJ may
26 properly consider evidence of a claimant's drug use and drug-seeking behavior in
27 assessing credibility. *Edlund v. Massanari*, 253 F.3d 1152, 1157 (9th Cir. 2001).
28 Plaintiff testified at the administrative hearing she had taken Soma, a muscle

1 relaxer, at one time, but had been taking more of the drug than she was supposed to
2 take. Tr. 69-70. She indicated she stopped taking the muscle relaxer five months
3 prior to the administrative hearing and had since ceased all medications. Tr. 70,
4 74. However, as noted by the ALJ, the record shows on April 19, 2011, Plaintiff
5 admitted to a history of longstanding Soma abuse that “she had hidden from
6 everyone for years.” Tr. 29, 437. Plaintiff indicated on April 19, 2011, she had
7 recently obtained 180 Soma 350 mg tablets and had consumed them all in less than
8 five days. Tr. 437. It was noted that her significant other had confronted her about
9 the drug abuse and she had decided to get help. Tr. 437. On July 15, 2011, it was
10 reported that Plaintiff was in the process of getting into a chemical dependency
11 program related to Soma and benzodiazepine abuse. Tr. 29, 439. As indicated by
12 the ALJ, there is no evidence Plaintiff ever entered a chemical dependency
13 program. Tr. 29.

14 The ALJ is responsible for reviewing the evidence and resolving conflicts or
15 ambiguities in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.
16 1989). It is the role of the trier of fact, not this Court, to resolve conflicts in
17 evidence. *Richardson*, 402 U.S. at 400. The Court has a limited role in
18 determining whether the ALJ’s decision is supported by substantial evidence and
19 may not substitute its own judgment for that of the ALJ even if it might justifiably
20 have reached a different result upon de novo review. 42 U.S.C. § 405(g). After
21 reviewing the record, the undersigned finds the reasons provided by the ALJ for
22 discounting Plaintiff’s subjective complaints are clear, convincing, and fully
23 supported by the record. Accordingly, the ALJ did not err by concluding
24 Plaintiff’s subjective complaints regarding the extent of her symptoms and
25 limitations were not entirely credible in this case.

26 **C. Shoulder Impairment**

27 Plaintiff provides a cursory argument that since the ALJ accepted Plaintiff’s
28 shoulder injury, the vocational expert’s testimony that a difficulty using her right

1 arm would prevent gainful employment should have been credited to support a
2 finding that Plaintiff was disabled. ECF No. 18 at 10.

3 First, the vocational expert did not testify that a difficulty using her right arm
4 would prevent Plaintiff from engaging in all gainful employment as Plaintiff
5 alleges. The vocational expert actually testified that if Plaintiff could only use her
6 right arm for a couple minutes before needing to rest, it would eliminate the
7 document preparer job from consideration. Tr. 83-84.

8 In any event, the ALJ determined at step two that Plaintiff had the severe
9 impairment of right shoulder degenerative joint disease and calcific tendonitis of
10 the rotator cuff and tear, Tr. 23, and accounted for Plaintiff's severe shoulder
11 impairment by limiting her to light exertion level work with the added limitation of
12 Plaintiff being able to only occasionally push/pull and reach overhead with her
13 right upper extremity, Tr. 26. Plaintiff does not challenge these determinations by
14 the ALJ. ECF No. 18.

15 When given a hypothetical that included these limitations, as well as other
16 limitations consistent with the ALJ's RFC determination, the vocational expert
17 concluded there were jobs that exist in significant numbers in the national
18 economy that Plaintiff could perform, including the jobs of housekeeper or cleaner,
19 laundry worker and document preparer. Tr. 78-81. Considering Plaintiff's age,
20 education, work experience and RFC, and based on the testimony of the vocational
21 expert, the ALJ concluded Plaintiff was not disabled within the meaning of the
22 Social Security Act. Tr. 31-32. The ALJ's determination is supported by
23 substantial evidence and free of legal error.

24 CONCLUSION

25 Having reviewed the record and the ALJ's findings, the Court concludes the
26 ALJ's decision is supported by substantial evidence and free of legal error.

27 Accordingly, **IT IS ORDERED:**

1 1. Defendant’s Motion for Summary Judgment, **ECF No. 23**, is
2 **GRANTED.**

3 2. Plaintiff’s Motion for Summary Judgment, **ECF No. 18**, is **DENIED.**

4 The District Court Executive is directed to file this Order and provide a copy
5 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant
6 and the file shall be **CLOSED.**

7 DATED June 18, 2014.



A handwritten signature in black ink, appearing to read "JR", written over a horizontal line.

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JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE