

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 11, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THERESA ANN TODD,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:17-CV-00199-RHW

**ORDER GRANTING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

Before the Court are the parties’ cross-motions for summary judgment, ECF Nos. 12, 13. Plaintiff Theresa Ann Todd brings this action seeking judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner’s final decision, which denied her applications for Disability Insurance Benefits and Supplemental Security Income under Titles II & XVI of the Social Security Act, 42 U.S.C §§ 401-434 & 1381-1383F. After reviewing the administrative record and briefs filed by the parties, the Court is now fully informed. For the reasons set forth below, the

1 Court **GRANTS** Defendant’s Motion for Summary Judgment and **DENIES** Ms.
2 Todd’s Motion for Summary Judgment.

3 **I. Jurisdiction**

4 Ms. Todd filed her applications for supplemental security income and
5 disability insurance benefits on July 16, 2013. AR 205-10. Her alleged onset date
6 is May 31, 2013. AR 205. Her application was initially denied on September 25,
7 2013, AR 120-23, and on reconsideration on January 29, 2014, AR 131-48.

8 Administrative Law Judge (“ALJ”) Virginia M. Robinson held a hearing on
9 August 6, 2015. AR 38-67. On January 28, 2016, ALJ Robinson issued a decision
10 finding Ms. Todd ineligible for disability benefits. AR 20-31. The Appeals Council
11 denied Ms. Todd’s request for review on April 6, 2017, AR 1-5, making the ALJ’s
12 ruling the “final decision” of the Commissioner.

13 Ms. Todd timely filed the present action challenging the denial of benefits
14 on June 6, 2017. ECF No. 6. Accordingly, Ms. Todd’s claims are properly before
15 this Court pursuant to 42 U.S.C. § 405(g).

16 **II. Sequential Evaluation Process**

17 The Social Security Act defines disability as the “inability to engage in any
18 substantial gainful activity by reason of any medically determinable physical or
19 mental impairment which can be expected to result in death or which has lasted or
20 can be expected to last for a continuous period of not less than twelve months.” 42

1 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be
2 under a disability only if the claimant's impairments are of such severity that the
3 claimant is not only unable to do his previous work, but cannot, considering
4 claimant's age, education, and work experience, engage in any other substantial
5 gainful work that exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A) &
6 1382c(a)(3)(B).

7 The Commissioner has established a five-step sequential evaluation process
8 for determining whether a claimant is disabled within the meaning of the Social
9 Security Act. 20 C.F.R. §§ 404.1520(a)(4) & 416.920(a)(4); *Lounsbury v.*
10 *Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006).

11 Step one inquires whether the claimant is presently engaged in "substantial
12 gainful activity." 20 C.F.R. §§ 404.1520(b) & 416.920(b). Substantial gainful
13 activity is defined as significant physical or mental activities done or usually done
14 for profit. 20 C.F.R. §§ 404.1572 & 416.972. If the claimant is engaged in
15 substantial activity, he or she is not entitled to disability benefits. 20 C.F.R. §§
16 404.1571 & 416.920(b). If not, the ALJ proceeds to step two.

17 Step two asks whether the claimant has a severe impairment, or combination
18 of impairments, that significantly limits the claimant's physical or mental ability to
19 do basic work activities. 20 C.F.R. §§ 404.1520(c) & 416.920(c). A severe
20 impairment is one that has lasted or is expected to last for at least twelve months,

1 and must be proven by objective medical evidence. 20 C.F.R. §§ 404.1508-09 &
2 416.908-09. If the claimant does not have a severe impairment, or combination of
3 impairments, the disability claim is denied, and no further evaluative steps are
4 required. Otherwise, the evaluation proceeds to the third step.

5 Step three involves a determination of whether any of the claimant’s severe
6 impairments “meets or equals” one of the listed impairments acknowledged by the
7 Commissioner to be sufficiently severe as to preclude substantial gainful activity.
8 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526 & 416.920(d), 416.925, 416.926;
9 20 C.F.R. § 404 Subpt. P. App. 1 (“the Listings”). If the impairment meets or
10 equals one of the listed impairments, the claimant is *per se* disabled and qualifies
11 for benefits. *Id.* If the claimant is not *per se* disabled, the evaluation proceeds to
12 the fourth step.

13 Step four examines whether the claimant’s residual functional capacity
14 enables the claimant to perform past relevant work. 20 C.F.R. §§ 404.1520(e)-(f)
15 & 416.920(e)-(f). If the claimant can still perform past relevant work, the claimant
16 is not entitled to disability benefits and the inquiry ends. *Id.*

17 Step five shifts the burden to the Commissioner to prove that the claimant is
18 able to perform other work in the national economy, taking into account the
19 claimant’s age, education, and work experience. *See* 20 C.F.R. §§ 404.1512(f),
20 404.1520(g), 404.1560(c) & 416.912(f), 416.920(g), 416.960(c). To meet this

1 burden, the Commissioner must establish that (1) the claimant is capable of
2 performing other work; and (2) such work exists in “significant numbers in the
3 national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); *Beltran v. Astrue*,
4 676 F.3d 1203, 1206 (9th Cir. 2012).

5 **III. Standard of Review**

6 A district court's review of a final decision of the Commissioner is governed
7 by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited, and the
8 Commissioner's decision will be disturbed “only if it is not supported by
9 substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1144,
10 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence means “more than
11 a mere scintilla but less than a preponderance; it is such relevant evidence as a
12 reasonable mind might accept as adequate to support a conclusion.” *Sandgathe v.*
13 *Chater*, 108 F.3d 978, 980 (9th Cir.1997) (quoting *Andrews v. Shalala*, 53 F.3d
14 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted). In determining
15 whether the Commissioner’s findings are supported by substantial evidence, “a
16 reviewing court must consider the entire record as a whole and may not affirm
17 simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc.*
18 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock v. Bowen*, 879
19 F.2d 498, 501 (9th Cir. 1989)).

1 In reviewing a denial of benefits, a district court may not substitute its
2 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.
3 1992). If the evidence in the record “is susceptible to more than one rational
4 interpretation, [the court] must uphold the ALJ's findings if they are supported by
5 inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104,
6 1111 (9th Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.
7 2002) (if the “evidence is susceptible to more than one rational interpretation, one
8 of which supports the ALJ’s decision, the conclusion must be upheld”). Moreover,
9 a district court “may not reverse an ALJ's decision on account of an error that is
10 harmless.” *Molina*, 674 F.3d at 1111. An error is harmless “where it is
11 inconsequential to the [ALJ's] ultimate nondisability determination.” *Id.* at 1115.
12 The burden of showing that an error is harmful generally falls upon the party
13 appealing the ALJ's decision. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

14 **IV. Statement of Facts**

15 The facts of the case are set forth in detail in the transcript of proceedings,
16 and accordingly, are only briefly summarized here. Ms. Todd was 60 years old at
17 the time of her hearing. AR 205. She has completed school through the ninth
18 grade. AR 224. Her previous work experience includes caregiving, housekeeping,
19 and office management. AR 225.

20 //

1 **V. The ALJ's Findings**

2 The ALJ determined that Ms. Todd was not under a disability within the
3 meaning of the Act since May 31, 2013, her alleged onset date. AR 20-31.

4 **At step one**, the ALJ found that Ms. Todd had not engaged in substantial
5 gainful activity since May 31, 2013, her alleged onset date (citing 20 C.F.R. §§
6 404.1571 *et seq.* and 416.971 *et seq.*). AR 22.

7 **At step two**, the ALJ found Ms. Todd had the following severe
8 impairments: degenerative disc disease; osteoarthritis; hearing loss; obesity;
9 chronic obstructive pulmonary disorder; and edema (citing 20 C.F.R. §§
10 404.1520(c) and 416.920(c)). AR 22.

11 **At step three**, the ALJ found that Ms. Todd did not have an impairment or
12 combination of impairments that meets or medically equals the severity of one of
13 the listed impairments in 20 C.F.R. § 404, Subpt. P, App. 1. AR 23-26.

14 **At step four**, the ALJ found Ms. Todd had the following residual functional
15 capacity. She can perform light work as defined in 20 C.F.R. §§ 404.1567(b) and
16 416.967(b) with the following limitations: she can lift or carry up to 20 pounds
17 occasionally and up to 10 pounds frequently; she can stand or walk for
18 approximately 6 hours and sit for approximately 6 hours per 8 hour work week
19 with normal breaks; she can occasionally climb ramps or stairs; she can never
20 climb ladders, ropes, or scaffolds; she can occasionally stoop, kneel, crouch, or

1 crawl; she can frequently handle and finger; she can occasionally reach overhead;
2 and she must avoid concentrated exposure to excessive noise, vibration, and
3 workplace hazards such as dangerous machinery or working at unprotected
4 heights. AR 26.

5 The ALJ determined that Ms. Todd is capable of performing past relevant
6 work as a cleaner (housekeeping) and hotel clerk. AR 31. The ALJ found she was
7 capable of performing this work as it is actually and generally performed. *Id.*

8 Because the ALJ found Ms. Todd capable of performing her past relevant
9 work at step four, the ALJ did not perform a **step five** analysis to determine
10 whether in light of her age, education, work experience, and residual functional
11 capacity, there are jobs that exist in significant numbers in the national economy
12 that Ms. Todd can perform.

13 **VI. Issues for Review**

14 Ms. Todd argues that the Commissioner's decision is not free of legal error
15 and not supported by substantial evidence. Specifically, she argues the ALJ erred
16 by: (1) failing to properly weigh the opinion of Mara L. Fusfield, ARNP; (2)
17 failing to find Ms. Todd has medically-determinable fibromyalgia; (3) failing to
18 find Ms. Todd met or equaled Listing 1.02 when the ALJ failed to consider the
19 opinion of Dr. Rox C. Burkett, M.D.; (4) improperly finding Ms. Todd could return
20 to her past relevant work and was not disabled under the Grid Rules; and (5)

1 discrediting Ms. Todd without specific, clear, and convincing reasons to do so.
2 ECF No. 12 at 4.

3 **VII. Discussion**

4 **A. The ALJ did not err in the weighing of the opinion of Nurse Fusfield.**

5 The ALJ gave little weight to the opinions in the record from Nurse Mara L.
6 Fusfield, ARNP. AR 30. First, Nurse Fusfield provided a Physical Functional
7 Evaluation for Washington State Department of Social and Health Services in July
8 2013. AR 316-18. Nurse Fusfield stated that Ms. Todd was severely limited and
9 unable to meet the demands of sedentary work. AR 318. The ALJ gave little
10 weight to this opinion because it was unsupported by the record and because Nurse
11 Fusfield noted a significant amount of objective testing was needed, so the ALJ
12 classified the opinion as “tentative.” AR 30, 317, 318.

13 Second, Nurse Fusfield also stated in January 2015 that she would assist
14 with disability paperwork because she believed Ms. Todd to be disabled. AR 504.
15 The ALJ also rejected this statement both because it “infringes on an issue reserved
16 to the Commissioner” and because it conflicts with Ms. Todd’s activities of daily
17 living. AR 30.

18 Finally, the ALJ also gave very little weight to the May 2015 Physical
19 Functional Evaluation by Nurse Fusfield that again Ms. Todd was severely limited
20 and unable to meet the demands of sedentary work. AR 30, 542-46. The ALJ

1 rejected the opinion for “the same reasons” as the other opinions, and she also
2 noted that Nurse Fusfield did not explain how or why Ms. Todd’s condition is
3 expected to last 999 months. AR 30, 544.

4 The opinions of Nurse Fusfield are classified as “other source” opinions.
5 “Other sources” for opinions include nurse practitioners, physicians' assistants,
6 therapists, teachers, social workers, spouses, and other non-medical sources. 20
7 C.F.R. §§ 404.1513(d), 416.913(d). An ALJ is required to “consider observations
8 by non-medical sources as to how an impairment affects a claimant's ability to
9 work.” *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir.1987). Non-medical
10 testimony can never establish a diagnosis or disability absent corroborating
11 competent medical evidence. *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th
12 Cir.1996). An ALJ is obligated to give reasons germane to “other source”
13 testimony before discounting it. *Dodrill v. Shalala*, 12 F.3d 915 (9th Cir.1993).

14 Inconsistency with evidence in the medical record is a germane reason to
15 reject other source testimony. *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir.
16 2005). Despite finding Ms. Todd severely limited, the record shows that Nurse
17 Fusfield described Ms. Todd as doing “a lot better” due to her medication on
18 multiple occasions. AR 348-49, 438. Additionally, there was some diagnostic
19 testing made prior to the May 2015 statement, and while these tests show some
20 evidence of limitations, they do not support the severe limitations opined by Nurse

1 Fusfield. AR 322-25. These inconsistencies are germane reasons to reject the
2 opinion.

3 Additionally, the ALJ opined that Nurse Fusfield’s opinions were tentative
4 because she recommended numerous diagnostic tests. AR 30. For example, in her
5 July 2013 opinion, Nurse Fusfield does not describe any testing to support her
6 findings, but rather states Ms. Todd needs various laboratory tests, x-rays, and
7 possibly a CT scan. AR 317, 318. The ALJ reasoned that it was unclear how Nurse
8 Fusfield made her findings absent reliable medical evidence. This is a germane
9 reason for rejecting the opinion.

10 The ALJ also rejected the statement that Ms. Todd is disabled because that is
11 a finding reserved for the Commissioner. This is appropriate. “Conclusory
12 statements . . . regarding the ultimate question of disability are not binding on the
13 ALJ.” *Nyman v. Heckler*, 779 F.2d 528, 530 (9th Cir. 1985).

14 Finally, the ALJ stated that the finding of disability by Nurse Fusfield
15 conflicted with Ms. Todd’s daily activities. Inconsistency between allegations by
16 an other source opinion and a claimant’s activities is a germane reason to discount
17 the opinion. *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir.
18 2008).

19 In sum, the ALJ provided numerous germane reasons for the rejection of
20 Nurse Fusfield’s opinions.

1 **B. The ALJ did not err by failing to find Ms. Todd had severe medically-**
2 **determinable fibromyalgia.**

3 At step two in the five-step sequential evaluation for Social Security cases,
4 the ALJ must determine whether a claimant has a medically severe impairment or
5 combination of impairments. An impairment is found to be not severe “when
6 medical evidence establishes only a slight abnormality or a combination of slight
7 abnormalities which would have no more than a minimal effect on an individual’s
8 ability to work.” *Yuckert v. Bowen*, 841 F.2d 303, 306 (9th Cir. 1988) (quoting
9 SSR 85-28). Step two is generally “a de minimis screening device [used] to
10 dispose of groundless claims,” and the ALJ is permitted to find a claimant lacks a
11 medically severe impairment only when the conclusion is clearly established by the
12 record. *Webb v. Barnhart*, 433 F. 683, 687 (9th Cir. 2005) (quoting *Smolen v.*
13 *Chater*, 80 F.3d 1273, 1290 (9th Cir.1996)).

14 The ALJ found that fibromyalgia was not a medically-determinable
15 impairment. Referring to the notes of Dr. Nina Flavin, M.D., the ALJ found that
16 the diagnosis was not conclusive and that there was no indication further testing
17 was performed to determine if Ms. Todd did have the condition. AR 23. This is
18 supported by the record. Dr. Flavin equivocally stated on December 3, 2013, that
19 the “[c]linical presentation is starting to fit with a diagnosis of fibromyalgia.” AR
20 429. In November 2014, Dr. Flavin again failed to make a conclusive diagnosis,

1 stating that fibromyalgia “best fits [Ms. Todd’s] clinical symptomatology.” AR
2 484. However, Dr. Flavin also noted that “[g]iven the concern for possible
3 polymyalgia rheumatic,” she recommended additional testing of inflammation
4 markers. *Id.*

5 Ms. Todd argues that despite a lack of definitive diagnosis in the record, the
6 ALJ erred by not reaching a different conclusion from the record. However, when
7 the ALJ presents a reasonable interpretation that is supported by the evidence, it is
8 not the role of the courts to second-guess it. *Rollins v. Massanari*, 261 F.3d 853,
9 857 (9th Cir. 2001). The Court “must uphold the ALJ's findings if they are
10 supported by inferences reasonably drawn from the record.” *Molina*, 674 F.3d
11 1104, 1111; *see also Thomas*, 278 F.3d 947, 954 (if the “evidence is susceptible to
12 more than one rational interpretation, one of which supports the ALJ’s decision,
13 the conclusion must be upheld”).

14 Moreover, Ms. Todd was found to have at least one severe impairment, so
15 this case was not resolved at step two. Thus, any error in the ALJ’s finding at step
16 two is harmless, if all impairments, severe and non-severe, were considered in the
17 determination for Ms. Todd’s residual functional capacity. *See Lewis v. Astrue*, 498
18 F.3d 909, 910 (9th Cir. 2007) (holding that a failure to consider an impairment in
19 step two is harmless error where the ALJ includes the limitations of that
20 impairment in the determination of the residual functional capacity). The ALJ

1 specifically noted that despite the finding regarding fibromyalgia, she did consider
2 Ms. Todd's reported pain in machining in the decision. AR 23. Thus, even if the
3 failure to specifically accept fibromyalgia as a severe impairment was in error, it
4 would be harmless.

5 **C. The ALJ did not err in finding Ms. Todd did not meet Listing 1.02.**

6 The ALJ gave "particular attention" to Listing 1.02, which determines
7 disability related to major dysfunction of a joint. AR 25. The ALJ determined Ms.
8 Todd did not meet this listing, which Ms. Todd argues was in error.

9 In particular, Ms. Todd points to evidence in the record that she needed a
10 walker, which demonstrates that she had a sufficient degree of difficulty
11 ambulating that would reach the threshold of Listing 1.02. ECF No. 12 at 14-15.
12 The evidence to which she points, however, is provided either by Ms. Todd or
13 Nurse Fusfield, both whom the ALJ determined were not reliable sources. *See*
14 *supra* at pp. 9-11; *infra* at pp. 17-20. Likewise, the alleged level of impairment is
15 inconsistent with normal findings in gait and station on examination and a full
16 range of motion and muscle strength. AR 348-49.

17 **D. The Appeals Council did not err with regard to the opinion of Dr. Rox**

18 **Burkett, M.D.**

19 Ms. Todd alleges the Appeals Council erred by failing to consider the
20 February 2016 opinion of Dr. Burkett. AR 637-40. Ms. Todd argues that Dr.

1 Burkett's findings demonstrated disability. ECF No. 12 at 15. In support of her
2 argument, Ms. Todd relies on the holding in *Taylor v. Comm'r of Soc. Sec. Admin.*,
3 659 F.3d 1228 (9th Cir. 2011). In *Taylor*, the Ninth Circuit found error because the
4 new evidence was not considered at all by the Appeals Council. *See Taylor*, 659
5 F.3d at 1233 ("Somewhere in the shuffle, Dr. Thompson's psychiatric evaluation
6 and medical source statement were lost, and the Appeals Council never considered
7 them when it denied Taylor's request for review.") Here, the Appeals Council
8 specifically identified Dr. Burkett's letter as new evidence that was considered, but
9 the Appeals Council ultimately determined that Dr. Burkett's opinion did not
10 provide a basis for changing the ALJ's decision. AR 2, 4. *Taylor* is inapplicable.

11 In addition, the decision is supported by the evidence. Two other doctors,
12 Dr. Norman Staley, M.D., and Dr. Alnoor Virji, M.D., reviewed the same record
13 and offered contrary opinions to Dr. Burkett. AR 72-75, 95-98. The ALJ gave
14 significant weight to these opinions. AR 29. The Appeals Council determined this
15 was not altered by the new evidence. The Court finds no error.

16 **E. The ALJ did not err by finding Ms. Todd could return to her past**
17 **relevant work and was not disabled under the Grid Rules.**

18 Ms. Todd first alleges that the ALJ improperly calculated her residual
19 functional capacity, and that she should have been limited to sedentary work. ECF
20 No. 12 at 16. She relies on the arguments made in prior sections of her briefing. *Id.*

1 The Court, however, will uphold the ALJ’s findings when a claimant attempts to
2 restate the argument that the residual functional capacity finding did not account
3 for all limitations. *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175-76 (9th Cir.
4 2008).

5 Ms. Todd then alleges that the ALJ erred by failing to adequately assess
6 whether she could return to her previous relevant work. ECF No. 12 at 16-17. The
7 ALJ reached her conclusion that Ms. Todd could perform her past relevant work as
8 a housekeeper and hotel clerk based on her residual functional capacity and the
9 testimony of the vocational expert. AR 31. The ALJ made specific findings
10 regarding a review of the Dictionary of Occupational Titles regarding the
11 housekeeping job. *Id.* While Ms. Todd disagrees with this finding, in reviewing a
12 denial of benefits, a district court may not substitute its judgment for that of the
13 ALJ. *Matney*, 981 F.2d at 1019. If the evidence in the record “is susceptible to
14 more than one rational interpretation, [the court] must uphold the ALJ's findings if
15 they are supported by inferences reasonably drawn from the record.” *Molina*, 674
16 F.3d at 1111.

17 Likewise, there is no error with the finding that Ms. Todd could return to her
18 work as a hotel clerk. Through the use of hypothetical, the vocational expert
19 testified that absent a restriction to simple and routine tasks, the position of hotel
20 clerk would not be precluded. AR 64-65. Ultimately, the ALJ did not include a

1 restriction for simple and routine tasks in Ms. Todd’s residual functional capacity.
2 AR 26. Neither does the record support such a restriction, nor does Ms. Todd argue
3 for one. Ms. Todd bases her argument that the finding she could return to her role
4 as a hotel clerk is precluded because the vocational expert answered affirmatively
5 when asked if the hotel clerk position was primarily computer-based. AR 66.
6 However, the vocational expert found Ms. Todd able to perform the hotel clerk job
7 based on her residual functional capacity as long as it did not include restrictions
8 on simple and routine tasks. AR 64-65. It is reasonable that the vocational expert
9 considered computer usage in her calculations, as her testimony demonstrates she
10 was aware of the requirement. Moreover, Ms. Todd lists computer games among
11 her hobbies, indicating she is not as restricted on computers as this argument
12 suggests. AR 277.

13 **F. The ALJ properly evaluated Ms. Todd’s credibility.**

14 An ALJ engages in a two-step analysis to determine whether a claimant’s
15 testimony regarding subjective symptoms is credible. *Tommasetti*, 533 F.3d at
16 1039. First, the claimant must produce objective medical evidence of an underlying
17 impairment or impairments that could reasonably be expected to produce some
18 degree of the symptoms alleged. *Id.* Second, if the claimant meets this threshold,
19 and there is no affirmative evidence suggesting malingering, “the ALJ can reject
20

1 the claimant's testimony about the severity of [his] symptoms only by offering
2 specific, clear, and convincing reasons for doing so." *Id.*

3 In weighing a claimant's credibility, the ALJ may consider many factors,
4 including, "(1) ordinary techniques of credibility evaluation, such as the claimant's
5 reputation for lying, prior inconsistent statements concerning the symptoms, and
6 other testimony by the claimant that appears less than candid; (2) unexplained or
7 inadequately explained failure to seek treatment or to follow a prescribed course of
8 treatment; and (3) the claimant's daily activities." *Smolen v. Chater*, 80 F.3d 1273,
9 1284 (9th Cir. 1996). Here, the ALJ found that the medically determinable
10 impairments could reasonably be expected to produce some of the symptoms Ms.
11 Todd alleges; however, the ALJ determined that Ms. Todd's statements regarding
12 intensity, persistence, and limiting effects of the symptoms were not entirely
13 credible. AR 27-29. The ALJ provided multiple reasons for discrediting Ms.
14 Todd's subjective complaint testimony. AR *Id.*

15 First, the ALJ found that the objective medical evidence does not support
16 Ms. Todd's allegations. AR 27-28. Inconsistency between a claimant's allegations
17 and relevant medical evidence is a legally sufficient reason to reject a claimant's
18 subjective testimony. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001).
19 The ALJ noted that imaging from July 2013 demonstrated only mild changes or
20 impairments. AR 322-25. Additionally, the ALJ pointed to the findings that Ms.

1 Todd walked with a normal station and gait; despite pain, had a full range of
2 motion in her knees; and had normal muscle strength. AR 348-49. The record also
3 shows normal examination findings of the chest, lungs, and cardiovascular system
4 and no acute pulmonary process in July 2013, despite smoking a half to full pack
5 of cigarettes a day. AR 331, 352. Additional imaging in December 2014 also
6 resulted in mild findings. AR 469, 471. Medical records from Nurse Fusfield note
7 significant improvement in Ms. Todd's symptoms with medication. AR 29, 348-
8 49, 438.

9 Additionally, the ALJ accounted for more significant findings in the residual
10 functional capacity. AR 28. For example, to compensate for the moderate to severe
11 degenerative disc disease seen on June 2015 imaging (AR 551-53, 555), the ALJ
12 limited Ms. Todd to light work. AR 28.

13 The ALJ also based her findings on inconsistent statements in the record.
14 Inconsistent statements regarding symptoms may be a valid reason to disregard a
15 claimant's testimony. *Smolen*, 80 F.3d at 1284. For example, despite stating on her
16 function report that she cooks very little, AR 274, she testified at the hearing that
17 she cooks regularly for her aunt and uncle, AR 51. Likewise, she claimed at the
18 hearing she couldn't do any laundry, AR 51, yet she stated on her function report
19 that she can do her personal laundry except for bedding, AR 275. Despite
20

1 allegations of disabling pain, she also described a variety of household chores,
2 such as dishes, vacuuming, mopping, dusting, and cleaning the bathroom. *Id.*

3 Finally, the ALJ noted that Ms. Todd’s history of multiple convictions for
4 driving under the influence weigh on her credibility regarding her explanations for
5 why she cannot drive. AR 29, 276, 408. While this may not be dispositive on its
6 own, it can be considered as an “ordinary technique[] for credibility evaluation.”
7 *Smolen*, 80 F.3d at 1284.

8 In sum, the Court finds that the ALJ provided multiple legally sufficient
9 explanations for her findings regarding Ms. Todd’s credibility.

10 **VIII. Conclusion**

11 Having reviewed the record and the ALJ’s findings, the Court finds the
12 ALJ’s decision is supported by substantial evidence and free from legal error.

13 Accordingly, **IT IS ORDERED:**

14 1. Plaintiff’s Motion for Summary Judgment, **ECF No. 12**, is **DENIED**.

15 2. Defendant’s Motion for Summary Judgment, **ECF No. 13**, is

16 **GRANTED.**

17 *///*

18 *///*

19 *///*

20 *///*

