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

Nov 13, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TRISHA G.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO: 4:17-CV-5160-FVS

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment. ECF Nos. 14 and 16. This matter was submitted for consideration without oral argument. The plaintiff is represented by Attorney Thomas Andrew Bothwell. The defendant is represented by Special Assistant United States Attorney Leisa A. Wolf. The Court has reviewed the administrative record, the parties' completed briefing, and is fully informed. For the reasons discussed below, the court **DENIES** Plaintiff's Motion for Summary Judgment, ECF No. 14, and **GRANTS** Defendant's Motion for Summary Judgment, ECF No. 16.

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT~1

1 **JURISDICTION**

2 Plaintiff Trisha G.¹ protectively filed for disability insurance benefits and
3 supplemental security income on August 22, 2013, alleging an onset date of March
4 18, 2013. Tr. 239-47. Benefits were denied initially, Tr. 145-48, and upon
5 reconsideration, Tr. 151-54. Plaintiff appeared for a hearing before an
6 administrative law judge (“ALJ”) on April 19, 2016. Tr. 46-81. Plaintiff was
7 represented by counsel and testified at the hearing. *Id.* The ALJ denied benefits,
8 Tr. 19-41, and the Appeals Council denied review. Tr. 1. The matter is now
9 before this court pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).

10 **BACKGROUND**

11 The facts of the case are set forth in the administrative hearing and
12 transcripts, the ALJ’s decision, and the briefs of Plaintiff and the Commissioner.
13 Only the most pertinent facts are summarized here.

14 Plaintiff was 38 years old at the time of the hearing. *See* Tr. 239. She got
15 her GED in 2001, and testified that she was enrolled in a medical assistant program
16 but did not complete the program. Tr. 55, 262. She resides with her three children,
17 aged 15, 11, and 9. Tr. 51. Plaintiff has work history as a cashier, sales

18 _____
19 ¹ In the interest of protecting Plaintiff’s privacy, the Court will use Plaintiff’s first
20 name and last initial, and, subsequently, Plaintiff’s first name only, throughout this
21 decision.

1 representative, receptionist, sales attendant, child monitor, and check cashier. Tr.
2 68-70, 77. She testified that she was fired from several jobs because of too many
3 absences, and her most recent job ended because the store closed down. Tr. 68-71.
4 Plaintiff testified that she could not work because of her anxiety, and inability to
5 get out of bed “most of the time” because she “always[s] feels really sad.” Tr. 57.

6 Plaintiff reported that she is only able to leave the house once a week
7 because of her anxiety, it is very difficult to get out of bed because of sadness
8 “most of the time,” it is difficult to interact with people, and she gets nervous and
9 paranoid every time she has to leave the house. Tr. 52, 57-58, 67. She also
10 testified that she has manic moods that last from three days to a week,
11 approximately three times each year. Tr. 72-73. Plaintiff testified that her
12 symptoms started after the birth of her first child 20 years ago, and continue to
13 worsen. Tr. 57-58.

14 **STANDARD OF REVIEW**

15 A district court’s review of a final decision of the Commissioner of Social
16 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
17 limited; the Commissioner’s decision will be disturbed “only if it is not supported
18 by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153,
19 1158 (9th Cir. 2012). “Substantial evidence” means “relevant evidence that a
20 reasonable mind might accept as adequate to support a conclusion.” *Id.* at 1159
21 (quotation and citation omitted). Stated differently, substantial evidence equates to

1 “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and
2 citation omitted). In determining whether the standard has been satisfied, a
3 reviewing court must consider the entire record as a whole rather than searching
4 for supporting evidence in isolation. *Id.*

5 In reviewing a denial of benefits, a district court may not substitute its
6 judgment for that of the Commissioner. If the evidence in the record “is
7 susceptible to more than one rational interpretation, [the court] must uphold the
8 ALJ’s findings if they are supported by inferences reasonably drawn from the
9 record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district
10 court “may not reverse an ALJ’s decision on account of an error that is harmless.”
11 *Id.* An error is harmless “where it is inconsequential to the [ALJ’s] ultimate
12 nondisability determination.” *Id.* at 1115 (quotation and citation omitted). The
13 party appealing the ALJ’s decision generally bears the burden of establishing that
14 it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

15 **FIVE-STEP EVALUATION PROCESS**

16 A claimant must satisfy two conditions to be considered “disabled” within
17 the meaning of the Social Security Act. First, the claimant must be “unable to
18 engage in any substantial gainful activity by reason of any medically determinable
19 physical or mental impairment which can be expected to result in death or which
20 has lasted or can be expected to last for a continuous period of not less than twelve
21 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s

1 impairment must be “of such severity that he is not only unable to do his previous
2 work[,] but cannot, considering his age, education, and work experience, engage in
3 any other kind of substantial gainful work which exists in the national economy.”

4 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

5 The Commissioner has established a five-step sequential analysis to
6 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
7 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
8 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
9 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
10 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
11 404.1520(b), 416.920(b).

12 If the claimant is not engaged in substantial gainful activity, the analysis
13 proceeds to step two. At this step, the Commissioner considers the severity of the
14 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
15 claimant suffers from “any impairment or combination of impairments which
16 significantly limits [his or her] physical or mental ability to do basic work
17 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
18 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
19 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
20 §§ 404.1520(c), 416.920(c).

1 At step three, the Commissioner compares the claimant's impairment to
2 severe impairments recognized by the Commissioner to be so severe as to preclude
3 a person from engaging in substantial gainful activity. 20 C.F.R. §§
4 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
5 severe than one of the enumerated impairments, the Commissioner must find the
6 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

7 If the severity of the claimant's impairment does not meet or exceed the
8 severity of the enumerated impairments, the Commissioner must pause to assess
9 the claimant's "residual functional capacity." Residual functional capacity (RFC),
10 defined generally as the claimant's ability to perform physical and mental work
11 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
12 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the
13 analysis.

14 At step four, the Commissioner considers whether, in view of the claimant's
15 RFC, the claimant is capable of performing work that he or she has performed in
16 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

17 If the claimant is capable of performing past relevant work, the Commissioner
18 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).

19 If the claimant is incapable of performing such work, the analysis proceeds to step
20 five.

1 At step five, the Commissioner considers whether, in view of the claimant's
2 RFC, the claimant is capable of performing other work in the national economy.
3 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
4 the Commissioner must also consider vocational factors such as the claimant's age,
5 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
6 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
7 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
8 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
9 work, analysis concludes with a finding that the claimant is disabled and is
10 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

11 The claimant bears the burden of proof at steps one through four. *Tackett v.*
12 *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five,
13 the burden shifts to the Commissioner to establish that (1) the claimant is capable
14 of performing other work; and (2) such work "exists in significant numbers in the
15 national economy." 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v. Astrue*,
16 700 F.3d 386, 389 (9th Cir. 2012).

17 **ALJ'S FINDINGS**

18 At step one, the ALJ found Plaintiff has not engaged in substantial gainful
19 activity since March 18, 2013, the alleged onset date. Tr. 24. At step two, the ALJ
20 found Plaintiff has the following severe impairments: arthralgias, left knee
21 derangement, diabetes mellitus, affective disorder, and anxiety disorder. Tr. 25.

1 At step three, the ALJ found that Plaintiff does not have an impairment or
2 combination of impairments that meets or medically equals the severity of a listed
3 impairment. Tr. 25. The ALJ then found that Plaintiff had the RFC

4 to perform medium work as defined in 20 CFR 404.1567(c) and
5 416.967(c) with some exceptions. The claimant can lift and/or carry
6 fifty pounds occasionally and twenty-five pounds frequently, and stand
7 and/or walk, and sit, for about six hours in an eight-hour day. She can
8 frequently kneel, crouch, and crawl, and must avoid concentrated
9 exposure to vibrations and extreme cold. The claimant has sufficient
10 concentration to understand, remember, and carry out simple, repetitive
11 tasks, and can maintain concentration, persistence, and pace in two-
12 hour increments for simple, repetitive tasks throughout an eight-hour
workday. The claimant can work superficially and occasionally with
the general public. Superficial means she can refer the public to others
to resolve their demands or requests, but she is not having to resolve
those demands or requests. The claimant can work in same room with
an unlimited number of coworkers, but not in coordination of work
activity. She can adapt to simple workplace changes and make simple
workplace judgments as may be required for simple, repetitive task
work, and can interact occasionally with supervisors.

13 Tr. 27-28. At step four, the ALJ found that Plaintiff is unable to perform any past
14 relevant work. Tr. 34. At step five, the ALJ found that considering Plaintiff's age,
15 education, work experience, and RFC, there are jobs that exist in significant
16 numbers in the national economy that Plaintiff can perform, including: cleaner,
17 industrial and kitchen helper. Tr. 34-35. On that basis, the ALJ concluded that
18 Plaintiff has not been under a disability, as defined in the Social Security Act, from
19 March 18, 2013, through the date of the decision. Tr. 35.

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21 / / /

1 **ISSUES**

2 Plaintiff seeks judicial review of the Commissioner’s final decision denying
3 her disability insurance benefits under Title II of the Social Security Act and
4 supplemental security income benefits under Title XVI of the Social Security Act.
5 ECF No. 14. Plaintiff raises the following issues for this Court’s review:

- 6 1. Whether the ALJ properly considered Plaintiff’s symptom claims
7 2. Whether the ALJ properly weighed the medical opinion evidence; and
8 3. Whether the ALJ erred at step five.

9 **DISCUSSION**

10 **A. Plaintiff’s Symptom Claims**

11 An ALJ engages in a two-step analysis when evaluating a claimant’s
12 testimony regarding subjective pain or symptoms. “First, the ALJ must determine
13 whether there is objective medical evidence of an underlying impairment which
14 could reasonably be expected to produce the pain or other symptoms alleged.”
15 *Molina*, 674 F.3d at 1112 (internal quotation marks omitted). “The claimant is not
16 required to show that her impairment could reasonably be expected to cause the
17 severity of the symptom she has alleged; she need only show that it could
18 reasonably have caused some degree of the symptom.” *Vasquez v. Astrue*, 572
19 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

20 Second, “[i]f the claimant meets the first test and there is no evidence of
21 malingering, the ALJ can only reject the claimant’s testimony about the severity of

1 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
2 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal
3 citations and quotations omitted). “General findings are insufficient; rather, the
4 ALJ must identify what testimony is not credible and what evidence undermines
5 the claimant’s complaints.” *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th
6 Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he ALJ
7 must make a credibility determination with findings sufficiently specific to permit
8 the court to conclude that the ALJ did not arbitrarily discredit claimant’s
9 testimony.”). “The clear and convincing [evidence] standard is the most
10 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,
11 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,
12 924 (9th Cir. 2002)).

13 Here, the ALJ found Plaintiff’s medically determinable impairments could
14 reasonably be expected to cause some of the alleged symptoms; however,
15 Plaintiff’s “statements concerning the intensity, persistence and limiting effects of
16 these symptoms are not entirely consistent with the medical evidence and other
17 evidence in the record” for several reasons. Tr. 28.

18 *1. Ability to Work*

19 First, the ALJ found “[t]he records indicate [Plaintiff] has been able to work
20 in spite a long history of mental health difficulties.” Tr. 29. In support of this
21 finding, the ALJ noted that Plaintiff’s “work history reports and her earnings

1 records demonstrate [Plaintiff] worked fairly consistently following high school.
2 For example, [Plaintiff] reported working full time for a payday loan company
3 earning above the substantial gainful activity threshold level between 2008 and
4 2010, which is consistent with her earnings records.” Tr. 29 (citing Tr. 254, 328,
5 333-34). Generally, the ability to work can be considered in assessing credibility.
6 *Bray v. Comm’r Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009); *see also* 20
7 C.F.R. § 404.1571 (employment “during any period” of claimed disability may be
8 probative of a claimant’s ability to work at the substantial gainful activity level).

9 However, the work history cited by the ALJ in support of this finding was
10 between 2008 and 2010, three years before Plaintiff’s alleged onset date of
11 disability of March 18, 2013. *See* Tr. 239, 242. Moreover, “[i]t does not follow
12 from the fact that a claimant tried to work for a short period of time and, because
13 of his impairments, *failed*, that he did not then experience pain and limitations
14 severe enough to preclude him from *maintaining* substantial gainful employment.”
15 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1038 (9th Cir. 2007). In fact, evidence that
16 a claimant tried to work, and was unsuccessful, may support the claimant’s
17 allegations of disabling pain. *Id.* While not considered by the ALJ, Plaintiff
18 testified that she was fired from the jobs cited by the ALJ because of too many
19 absences; and she was missing three days per month at her most recent payday
20 loan job in 2013, before the store closed down. Tr. 68-71. Based on the foregoing,
21 Plaintiff’s attempts to work prior to the relevant adjudicatory period, is not a

1 specific, clear and convincing reason to discount Plaintiff's symptom claims.
2 However, this error is harmless because, as discussed below, the ALJ's ultimate
3 credibility finding was supported by substantial evidence. *See Carmickle v.*
4 *Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008).

5 2. Daily Activities

6 Second, the ALJ noted that Plaintiff's "activities throughout the relevant
7 period are inconsistent with her allegations of severely limiting symptoms." Tr.
8 29. Plaintiff correctly notes that a claimant need not be utterly incapacitated in
9 order to be eligible for benefits. ECF No. 14 at 14 (citing *Fair v. Bowen*, 885 F.2d
10 597, 603 (9th Cir. 1989)); *see also Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.
11 2007) ("the mere fact that a plaintiff has carried on certain activities . . . does not in
12 any way detract from her credibility as to her overall disability."). Regardless,
13 even where daily activities "suggest some difficulty functioning, they may be
14 grounds for discrediting the [Plaintiff's] testimony to the extent that they contradict
15 claims of a totally debilitating impairment." *Molina*, 674 F.3d at 1113.

16 Here, Plaintiff testified that she is unable to leave her home for four or five
17 days a week due to severe anxiety, and was unable to maintain regular attendance
18 at a job because she had difficulty getting out of bed. Tr. 28, 57-58, 67-69.

19 Plaintiff additionally alleges difficulty with lifting, squatting, bending, standing,
20 reaching, walking, sitting, kneeling, climbing stairs, seeing, completing tasks,
21 understanding, following instructions, using her hands, getting along with others,

1 paying attention, handling stress and changes in routine, and with her memory and
2 concentration. Tr. 28 (citing Tr. 325-26). However, as noted by the ALJ, Plaintiff
3 testified that she is entirely responsible for caring for three of her children,
4 prepares meals, drives, goes grocery shopping, and goes to the laundromat. Tr. 29,
5 51-55. Plaintiff also reported that she vacuums on a daily basis, and prepares
6 meals taking an hour or more on a daily basis. Tr. 29, 322.

7 The ALJ found that “[c]aring for children on a regular basis suggests
8 [Plaintiff] retains the ability to handle at least routine stressors and responsibilities,
9 and make simple judgments and decisions.” Tr. 29. Plaintiff argues the ALJ
10 “failed to account for the limited involvement she has with her children”;
11 including: not helping them with homework, not getting them ready for school, and
12 getting help from her 20 year old daughter. ECF No. 14 at 14 (citing Tr. 51-53).
13 However, Plaintiff’s ability to care for children without help during any period
14 may undermine claims of totally disabling symptoms. *See Rollins v. Massanari*,
15 261 F.3d 853, 857 (9th Cir. 2001). As indicated above, Plaintiff reported that she
16 cleaned, prepared meals, does grocery shopping, does laundry, and is ultimately
17 responsible for caring for her three children. Tr. 51-55. Moreover, the ALJ
18 specifically noted that while Plaintiff testified that “her oldest daughter helps her
19 care for her other children, [Plaintiff] previously indicated that she was not getting
20 any such help.” Tr. 30 (citing Tr. 321).

1 In addition, the ALJ noted that Plaintiff testified she works on memory
2 books and scrap books several times per week, and “spends a couple hours
3 working on these projects at a time. [Plaintiff] specifically described working on a
4 turtle made out of planting pots for five hours, including gluing and painting, and
5 said that once she starts a project like this she has to finish it.” Tr. 30, 63. And
6 “[c]ontrary to her allegations of almost never leaving her home, [Plaintiff] advised
7 treating providers that she was engaged in a variety of outside activities, including
8 playing football with her son and taking her children to the river ‘each day’ so they
9 could play.” Tr. 30 (citing Tr. 497, 555). Finally, the ALJ noted that Plaintiff
10 complied with the dependency court requirements related to her children,
11 including, attending and participating in drug and alcohol classes twice a week and
12 participating in therapy. Tr. 30, 53-54, 65-66. Plaintiff argues that the “outdoor”
13 activities cited by the ALJ, and the drug and alcohol classes she attended, were
14 “sporadic and not performed eight hours a day.” ECF No. 14 at 14. However,
15 regardless of the rate at which these particular activities were performed, it was
16 reasonable for the ALJ to conclude that Plaintiff’s overall “level of activity . . . is
17 inconsistent with [Plaintiff’s] allegations, including the statements that she never
18 leaves her home and spends almost all of her time in bed.” Tr. 30; *Molina*, 674
19 F.3d at 1113 (Plaintiff’s activities may be grounds for discrediting Plaintiff’s
20 testimony to the extent that they contradict claims of a totally debilitating
21 impairment); *see also Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)

1 (“[t]he ALJ is responsible for determining credibility”). This was a clear and
2 convincing reason to discredit Plaintiff’s symptom claims.

3 3. *Lack of Objective Medical Evidence*

4 Third, the ALJ found the “minimal and mild physical examinations findings
5 found throughout the record are inconsistent with [Plaintiff’s] allegations of
6 significant physical findings,” and “regular notations in [Plaintiff’s] treatment
7 notes of normal psychiatric observations are inconsistent with the allegations of
8 severely limiting mental health symptoms.” Tr. 30. An ALJ may not discredit a
9 claimant’s pain testimony and deny benefits solely because the degree of pain
10 alleged is not supported by objective medical evidence. *Rollins*, 261 F.3d at 857;
11 *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991); *Fair*, 885 F.2d at 601.
12 However, the medical evidence is a relevant factor in determining the severity of a
13 claimant’s pain and its disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §
14 404.1529(c)(2).

15 Here, the ALJ set out the medical evidence contradicting Plaintiff’s claims
16 of disabling physical limitations, including: treating and examining providers’
17 documentation of normal range of motion, normal strength, and normal gait; and
18 findings that Plaintiff “routinely appeared in no distress.” Tr. 30 (citing Tr. 496,
19 498-99, 503-04, 506, 509, 511, 610-11). Plaintiff does not challenge this finding in
20 her opening brief; therefore, the Court may decline to consider this issue. *See*
21 *Carmickle*, 533 F.3d at 1161 n.2. Regardless, the Court finds the ALJ reasonably

1 relied on this evidence to find that “[g]iven [Plaintiff’s] allegations of severely
2 limiting and constant symptoms, one would expect her treating providers to note
3 some discomfort or pain behavior during a significant number of medical
4 appointments. The absence of such observations is inconsistent with [Plaintiff’s]
5 allegations of severely limiting and constant symptoms.” Tr. 30; *see Thomas*, 278
6 F.3d at 958-59 (“If the ALJ finds that the claimant’s testimony as to the severity of
7 her pain and impairments is unreliable, the ALJ must make a credibility
8 determination . . . [t]he ALJ may consider testimony from physicians and third
9 parties concerning the nature, severity and effect of the symptoms of which the
10 claimant complains.”).

11 Similarly, the ALJ outlined medical evidence inconsistent with Plaintiff’s
12 allegations of disabling mental health limitations, including “normal psychiatric
13 observations” that Plaintiff was calm, pleasant, cooperative, well groomed, had full
14 range of affect and mood, and normal speech, good range of affect, and good eye
15 contact. Tr. 30 (citing, e.g., Tr. 511, 550, 565, 605, 615, 620, 625, 665, 676). In
16 addition, the ALJ noted that Plaintiff’s performance on “mental status
17 examinations over the relevant period is inconsistent with her allegations of
18 severely limiting mental health symptoms.” Tr. 31. For instance, a mental status
19 examination performed by examining psychologist Dr. Marks indicated Plaintiff
20 had no delusions or hallucinations, was well organized and had progressive stream
21 of mental activity, was fully oriented, had low average cognition, good effort in

1 concentration, persistence, and pace, and some problems with memory and abstract
2 problem solving. Tr. 30 (citing Tr. 605-06). Moreover, mental status results from
3 treating providers found Plaintiff demonstrated good or intact memory, had fair or
4 good judgment and insight, and could spell a word backwards. Tr. 30 (citing Tr.
5 550, 665, 670, 672, 674, 676, 680). Based on the foregoing evidence, the ALJ
6 reasonably concluded that the “minimal nature of the psychiatric observation
7 documented by [Plaintiff’s] treating providers and examining professionals are
8 inconsistent with [Plaintiff’s] allegations of severely limiting mental health
9 symptoms.” Tr. 31.

10 Plaintiff argues this reasoning was not valid because Plaintiff “was nearly
11 always struggling with either depression or mania and she was frequently tearful
12 during her appointments.” ECF No. 14 at 14 (Tr. 510-11, 548, 552-55, 560-63,
13 605, 615, 625, 658-60, 665-66, 668, 672-74, 678-80, 700). However, regardless of
14 evidence that could be interpreted more favorably to the Plaintiff, the ALJ properly
15 relied on evidence from the overall record, as cited extensively above, to support
16 the finding that Plaintiff’s allegations of significant physical limitations and severe
17 mental health symptoms, were inconsistent with minimal physical and psychiatric
18 examination findings. Tr. 27. “[W]here evidence is susceptible to more than one
19 rational interpretation, it is the [Commissioner’s] conclusion that must be upheld.”
20 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). The lack of corroboration of
21 Plaintiff’s claimed limitations by the medical evidence was a clear and convincing

1 reason, supported by substantial evidence, for the ALJ to discount Plaintiff's
2 symptom claims.

3 *4. Inconsistencies*

4 As noted by the ALJ, “[i]n the context of a disability evaluation, an
5 individual’s statements are evaluated for their consistency, both internally and with
6 other information in the case record.” Tr. 28 (citing Social Security Ruling
7 (“SSR”) 16-3p, 2017 WL 5180304, at *6, *9 (October 25, 2017)); *see also*
8 *Thomas*, 278 F.3d at 958-59 (in evaluating the severity of Plaintiff’s symptoms, the
9 ALJ may consider inconsistencies in Plaintiff’s testimony, and between her
10 testimony and her conduct); *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir.
11 2008) (prior inconsistent statements may be considered). Here, the ALJ noted that
12 Plaintiff inconsistently stated the reasons she is unable to work. Tr. 31. At the
13 hearing she testified she stopped working because she was not able to maintain
14 regular attendance, but during a mental health evaluation Plaintiff reported that she
15 was unable to work because “she was too sad to be around others and lacked a
16 clear understanding of what she was doing.” Tr. 31 (citing Tr. 69-71, 604).
17 Plaintiff argues these symptoms are “consistent with her bipolar disorder.” ECF
18 No. 14 at 15. However, regardless of whether Plaintiff experienced these
19 symptoms, it was reasonable for the ALJ to rely on the inconsistency between
20 Plaintiff’s testimony, and her prior statements about why she was unable to work.
21 *See Thomas*, 278 F.3d at 958-59.

1 While not identified by either party, the Court notes that the ALJ considered
2 additional inconsistencies in the record as part of the evaluation of Plaintiff's
3 symptom claims. Tr. 30-31. First, the ALJ noted that Plaintiff "inconsistently
4 reported how her mental health conditions affected her abilities to perform
5 activities of daily living. For example, at the hearing Plaintiff testified that she has
6 difficulty getting out of bed during a typical day, that she spent the majority of the
7 day in bed, and that she only did laundry once every three weeks." Tr. 30.
8 However, Plaintiff previously reported that she did laundry and cleaned twice a
9 week, and in a subsequent report indicated that she was "constantly cleaning the
10 house and herself, which is inconsistent with the allegations of the amount of time
11 she spends in bed." Tr. 30, 55, 61, 322, 344. Second, the ALJ found Plaintiff's
12 allegations she would be unable to maintain attendance in the workplace are
13 inconsistent with her ability to attend counseling appointments with minimal
14 absences, make all court appearances, and follow through with the requirements of
15 dependency court to regain custody of her children. Tr. 31, 54. These
16 inconsistencies between Plaintiff's testimony and her conduct, and her prior
17 inconsistent statements, were clear, convincing, and unchallenged reasons to
18 discount Plaintiff's symptom claims.

19 The Court concludes that the ALJ provided clear and convincing reasons,
20 supported by substantial evidence, for rejecting Plaintiff's symptom claims.

1 **B. Medical Opinions**

2 There are three types of physicians: “(1) those who treat the claimant
3 (treating physicians); (2) those who examine but do not treat the claimant
4 (examining physicians); and (3) those who neither examine nor treat the claimant
5 [but who review the claimant's file] (nonexamining [or reviewing] physicians).”
6 *Holohan v. Massanari*, 246 F.3d 1195, 1201–02 (9th Cir. 2001)(citations omitted).
7 Generally, a treating physician's opinion carries more weight than an examining
8 physician's, and an examining physician's opinion carries more weight than a
9 reviewing physician's. *Id.* If a treating or examining physician's opinion is
10 uncontradicted, the ALJ may reject it only by offering “clear and convincing
11 reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d
12 1211, 1216 (9th Cir. 2005). Conversely, “[i]f a treating or examining doctor's
13 opinion is contradicted by another doctor's opinion, an ALJ may only reject it by
14 providing specific and legitimate reasons that are supported by substantial
15 evidence.” *Id.* (citing *Lester*, 81 F.3d at 830–831). “However, the ALJ need not
16 accept the opinion of any physician, including a treating physician, if that opinion
17 is brief, conclusory and inadequately supported by clinical findings.” *Bray*, 554
18 F.3d at 1228 (quotation and citation omitted).

19 The opinion of an acceptable medical source such as a physician or
20 psychologist is given more weight than that of an “other source.” *See* SSR 06-03p
21 (Aug. 9, 2006), *available at* 2006 WL 2329939 at *2; 20 C.F.R. § 416.927(a).

1 “Other sources” include nurse practitioners, physician assistants, therapists,
2 teachers, social workers, and other non-medical sources. 20 C.F.R. § 416.913(d).
3 The ALJ need only provide “germane reasons” for disregarding an “other source”
4 opinion. *Molina*, 674 F.3d at 1111. However, the ALJ is required to “consider
5 observations by nonmedical sources as to how an impairment affects a claimant's
6 ability to work.” *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987).

7 Plaintiff argues the ALJ erroneously considered the opinions of examining
8 psychologist N.K. Marks, Ph.D. and treating providers Susan Wible, RN, Sarah
9 Reeve, LMHC, and Kelli Campbell, ARNP. ECF No. 14 at 8-12.

10 *1. N.K. Marks, Ph.D.*

11 In January 2014, Dr. Marks examined Plaintiff and opined that her “mood
12 instability prevents her from being able to work,” and she “would be a very unstable
13 and unreliable employee at this time.” Tr. 608. The ALJ gave this opinion little
14 weight. Tr. 33. Because Dr. Marks’ opinion was contradicted by John Robinson,
15 Ph.D., Tr. 94-96, and Sean Mee, Ph.D., Tr. 123-25, the ALJ was required to provide
16 specific and legitimate reasons for rejecting Dr. Marks’ opinion. *Bayliss*, 427 F.3d
17 at 1216.

18 First, the ALJ found Dr. Marks’ “summary relies heavily on [Plaintiff’s]
19 subjective statements, which have been inconsistent over the relevant period and are
20 inconsistent with the medical records.” Tr. 33. An ALJ may reject a physician’s
21 opinion if it is based “to a large extent” on Plaintiff’s self-reports that have been

1 properly discounted as not credible. *Tommasetti*, 533 F.3d at 1041. Plaintiff
2 generally contends that the ALJ failed to explain how she reached her conclusion
3 that Dr. Marks’ opinion was based on self-report. ECF No. 14 at 8. However, as
4 noted by the ALJ in her decision, the mental status examination conducted as part of
5 Dr. Marks’ evaluation “noted no delusions or hallucinations, and indicated [Plaintiff]
6 presented with well organized and progressive stream of mental activity, full
7 orientation, low average cognition, good effort in concentration, persistence and
8 pace, and some problems with memory and abstract problem solving.” Tr. 31 (citing
9 Tr. 605-06). The ALJ further noted that Dr. Marks observed that Plaintiff was
10 pleasant, cooperative, well groomed, and demonstrated a full range of affect and
11 mood. Tr. 30 (citing Tr. 605).

12 Dr. Marks failed to discuss how these largely unremarkable results of the
13 mental status examinations supported a finding that Plaintiff was unable to work.
14 Moreover, the Court’s review of the record indicates that Plaintiff reported to Dr.
15 Marks during the evaluation that she was “unable to work due to mood instability,”
16 which was reiterated verbatim by Dr. Marks as part of the medical source statement.
17 See Tr. 607-08. For all of these reasons, it was reasonable for the ALJ to conclude
18 that Dr. Marks’ opinion was based in large part on Plaintiff’s properly discounted
19 subjective complaints. *See Burch*, 400 F.3d at 679 (where evidence is susceptible to
20 more than one interpretation, the ALJ’s conclusion must be upheld). This was a
21 specific and legitimate reason to reject Dr. Marks’ opinion.

1 Second, the ALJ noted that Dr. Mark's opinion is inconsistent with Plaintiff's
2 activities. Tr. 33. An ALJ may discount an opinion that is inconsistent with a
3 claimant's reported functioning. *See Morgan v. Comm'r of Soc. Sec. Admin.*, 169
4 F.3d 595, 601-02 (9th Cir. 1999). In her decision, the ALJ noted evidence that
5 Plaintiff is responsible for caring for three children, prepares meals, drives, goes
6 grocery shopping, goes to the laundromat, vacuums daily, works on memory and
7 scrap books for hours at a time, played football with her son, and has taken her
8 children on daily outings. Tr. 29-30 (citing Tr. 51-55, 63, 322, 497, 555). Plaintiff
9 contends that "the daily activities of [Plaintiff] show she did very little," and cites
10 reports by Plaintiff in the record that she had difficulty leaving her home, was not
11 motivated, and was irritable, depressed and anxious. ECF No. 14 at 9 (citing Tr.
12 510-11, 548-55, 560-66, 615). However, regardless of evidence that could be
13 considered more favorable to Plaintiff, the ALJ reasonably concluded that these
14 activities are inconsistent with Dr. Marks' opinion that Plaintiff is completely unable
15 to work. *See Burch*, 400 F.3d at 679. This is a specific and legitimate reason to
16 reject Dr. Marks' opinion.

17 Third, the ALJ found Dr. Marks' opinion was inconsistent with "the normal to
18 mild psychiatric symptoms observed by treating providers, and the normal to
19 minimal mental status examinations findings described [earlier in the ALJ's
20 opinion]." Tr. 33. An ALJ may discredit a physician's opinion that is unsupported
21 by the record as a whole or by objective medical findings. *Batson*, 359 F.3d at 1195;

1 *see also Orn*, 495 F.3d at 631 (consistency of a medical opinion with the record as a
2 whole is a relevant factor in evaluating that medical opinion). Plaintiff argues this
3 reason is not valid because Plaintiff’s treating providers, Ms. Wible and Ms. Reeve,
4 “observed on many occasions that [Plaintiff] was struggling with depression and
5 anxiety and was tearful.” ECF No. 14 at 9. However, as extensively cited in the
6 ALJ’s decision, the longitudinal record also included regular notations of normal
7 psychiatric observations by treating providers, and benign mental status examination
8 findings, which the ALJ reasonably found are inconsistent with Dr. Marks’ opinion
9 that Plaintiff was unable to work due to mood instability. Tr. 30-31 (citing Tr. 511,
10 550, 565, 605-06, 615, 620, 625, 665, 676, 670, 672, 674, 676, 680). This was a
11 specific and legitimate reason, supported by substantial evidence, for the ALJ to give
12 Dr. Marks’ opinion little weight.

13 *2. Susan Wible, RN*

14 In September 2013, treating provider Ms. Wible opined that due to Plaintiff’s
15 “mental emotional disability,” her ability to work was limited to 1-10 hours per
16 week. Tr. 637. The ALJ gave her opinion little weight. Tr. 33. Ms. Wible is
17 considered an “other source” under the regulations; thus, the ALJ must give germane
18 reasons to reject her opinion. 20 C.F.R. § 416.913(d); *see Dodrill*, 12 F.3d at 918-
19 19.

20 First, the ALJ found Ms. Wible’s opinion “explicitly relies on [Plaintiff’s]
21 subjective statements, which are inconsistent with the medical records as indicated

1 [earlier in the ALJ’s decision].” Tr. 33. An ALJ may reject a physician’s opinion if
2 it is based “to a large extent” on Plaintiff’s self-reports that have been properly
3 discounted as not credible. *Tommasetti*, 533 F.3d at 1041. Plaintiff argues the ALJ
4 fails to explain with specificity how she reached this conclusion. ECF No. 14 at 10.
5 However, the Court’s review of Ms. Wible’s opinion reveals that her diagnosis of
6 bipolar affective disorder was not supported by testing or lab reports; and Ms. Wible
7 relied entirely on Plaintiff’s “symptoms” as “specific limitations” on her ability to
8 work. Tr. 637. As discussed above, the ALJ properly discounted Plaintiff’s
9 symptom claims. Furthermore, the ALJ’s decision cites Ms. Wible’s treating notes,
10 including one dated October 2013, one month after her September 2013 opinion,
11 finding that Plaintiff demonstrated normal speech, good range of affect, and good
12 eye contact. Tr. 30 (citing Tr. 550, 565, 615, 620, 625, 665). For these reasons, it
13 was reasonable for the ALJ to infer that Ms. Wible’s opinion largely relied on
14 Plaintiff’s properly discounted symptom claims, which were inconsistent with the
15 overall medical record. This was a germane reason to give Ms. Wible’s opinion less
16 weight. Moreover, even assuming the ALJ failed to properly support this reasoning,
17 any error is harmless because, as discussed below, the ALJ’s ultimate rejection of
18 Ms. Wible’s opinion was supported by substantial evidence. *See Carmickle*, 533
19 F.3d at 1162-63.

20 The ALJ additionally found Ms. Wible’s opinion is “inconsistent with
21 [Plaintiff’s] activities, the normal to mild psychiatric symptoms observed by treating

1 providers, and the normal to minimal mental status mental status examination
2 findings described [earlier in the ALJ’s decision].” Tr. 33. An ALJ may discount an
3 opinion that is inconsistent with a claimant’s reported functioning. *See Morgan*, 169
4 F.3d at 601-02. And the ALJ may discredit a physician’s opinion that is
5 unsupported by the record as a whole or by objective medical findings. *Batson*, 359
6 F.3d at 1195. These same reasons were also offered by the ALJ to discount Dr.
7 Marks’ opinion, as discussed in detail above, and Plaintiff relies on precisely the
8 same argument she asserted with regard to Dr. Marks’ opinion, namely: (1) that
9 Plaintiff’s activities are not inconsistent with Ms. Wible’s opinion because they are
10 “extremely limited” and she had difficulty leaving her home; and (2) Ms. Wible’s
11 opinion is supported by treating providers’ observations that Plaintiff was
12 “struggling with depression and anxiety, and was tearful.” ECF No. 14 at 10-11.
13 However, as discussed extensively above, it was reasonable for the ALJ to find
14 Plaintiff’s activities, including caring for three children, were inconsistent with Ms.
15 Wible’s opinion that Plaintiff could only work 1-10 hours per week; and the ALJ
16 properly relied on benign mental status examination results and normal
17 psychological observations in the record as further reason to discredit Ms. Wible’s
18 opinion. These were specific and germane reasons to reject Ms. Wible’s opinion.

19 *3. Sarah Reeve, LMHC*

20 In November 2015, treating provider Ms. Reeve completed a check box
21 “mental medical source statement.” Tr. 695-97. She opined that Plaintiff had severe

1 limitations in her ability to work in coordination with or proximity to others without
2 being distracted by them, complete a normal workday and workweek without
3 interruptions from psychologically based symptoms and to perform at a consistent
4 pace without an unreasonable number and length of rest periods, and travel to
5 unfamiliar places or use public transportation. Tr. 695-97. Ms. Reeve also assessed
6 marked, or “marked to severe,” limitations in Plaintiff’s ability to carry out detailed
7 instructions, maintain attention and concentration for extended periods, make simple
8 work related decisions, accept instructions and respond appropriately to criticism
9 from supervisors, get along with co-workers or peers without distracting them or
10 exhibiting behavioral extremes, and respond appropriately to changes in the work
11 setting. Tr. 696-97. The ALJ gave Ms. Reeve’s opinion no weight. Ms. Reeve is
12 considered an “other source” under the regulations; thus, the ALJ must give germane
13 reasons to reject her opinion. 20 C.F.R. § 416.913(d); *see Dodrill*, 12 F.3d at 918-
14 19.

15 Here, the ALJ noted that Ms. Reeve “failed to provide any support or basis for
16 her suggested limitations in spite of a paragraph that specifically asked her to
17 explain her conclusions in narrative form.” Tr. 33 (citing Tr. 697). An ALJ may
18 permissibly reject check box reports that do not contain any explanation of the bases
19 for their conclusions. *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996); *see also*
20 *Bray*, 554 F.3d at 1228 (“the ALJ need not accept the opinion of any physician,
21 including a treating physician, if that opinion is brief, conclusory and inadequately

1 supported by clinical findings.”). Plaintiff generally argues Ms. Reeve’s opinion
2 was “supported in all of her treatment records, which were provided in the record.”
3 ECF No. 14 at 12. The Ninth Circuit has held that when a treating physician’s
4 check-box opinion was “based on significant experience with [Plaintiff] and
5 supported by numerous records, [it was] therefore entitled to weight that an
6 otherwise unsupported and unexplained check-box form would not merit.”
7 *Garrison*, 759 F.3d at 1013. However, only four of the treatment notes cited by
8 Plaintiff in support of this argument were signed by Ms. Reeve, which does not rise
9 to the level of a “significant” experience with Plaintiff that “was supported by
10 numerous records.” ECF No. 14 at 12 (citing Tr. 624, 656, 658, 660). Moreover,
11 the Court’s review of the cited treatment notes does not provide any arguable
12 explanation of the bases for the marked and severe limitations assessed by Ms.
13 Reeve in her check-box opinion. *Crane*, 76 F.3d at 253. This was a germane reason
14 for the ALJ to reject Ms. Reeve’s opinion.

15 In addition, as above, the ALJ found “the numerous marked and severe
16 limitations are inconsistent with [Plaintiff’s] activities, the normal to mild
17 psychiatric symptoms observed by treating providers, and the normal to minimal
18 mental status examination findings described [earlier in the ALJ’s decision].” Tr.
19 33. Plaintiff argues these reasons are not valid for the “same reasons stated above
20 regarding the opinion of Dr. Marks and Dr. Wible.” ECF No. 14 at 11-12.

21 However, for the same reasons discussed in detail above, the Court finds that the

1 ALJ did not err in finding severity of the limitations assessed by Ms. Reeve is not
2 consistent with her activities, and is not supported by the benign clinical and
3 objective findings in the overall record. *See Morgan*, 169 F.3d at 601-02 (ALJ may
4 discount an opinion that is inconsistent with a claimant’s reported functioning);
5 *Batson*, 359 F.3d at 1195 (ALJ may discredit a physician’s opinion that is
6 unsupported by the record as a whole or by objective medical findings). These were
7 germane reasons to reject Ms. Reeve’s opinion.

8 *4. Kelli Campbell, ARNP*

9 In January 2014, treating nurse practitioner Ms. Campbell opined that due to
10 Plaintiff’s “chronic” left knee pain and bipolar affective disorder, she was limited to
11 1-10 hours of sedentary work per week. Tr. 640-42. Ms. Campbell also specifically
12 noted that any limitations due to Plaintiff’s mental health diagnoses should be
13 “review[ed] with her psychiatrist,” and acknowledged that she did not have any
14 recent testing or lab reports regarding Plaintiff’s knee condition. Tr. 640. The ALJ
15 gave Ms. Campbell’s opinion little weight. Tr. 32. Ms. Campbell is considered an
16 “other source” under the regulations; thus, the ALJ must give germane reasons to
17 reject her opinion. 20 C.F.R. § 416.913(d); *see Dodrill*, 12 F.3d at 918-19.

18 The ALJ found Ms. Campbell’s opinion “is inconsistent with the minimal
19 physical examination findings and the observations of [Plaintiff] during medical
20 appointments.” Tr. 32. An ALJ may discredit a physician’s opinion that is
21 unsupported by the record as a whole or by objective medical findings. *Batson*, 359

1 F.3d at 1195. Plaintiff argues this was not a valid reason because the ALJ failed to
2 give “specific examples of inconsistencies.” ECF No. 14 at 12. However, earlier in
3 the decision the ALJ noted “minimal and mild physical examination findings found
4 throughout the record,” including: normal range of motion, normal strength, normal
5 gait, and routine observations that Plaintiff appeared in no distress. Tr. 30 (citing Tr.
6 496, 498-99, 503-04, 506, 509, 511, 610-11). Moreover, as noted above, the ALJ
7 cited “regular notations in [Plaintiff’s] treatment notes of normal psychiatric
8 observations,” including findings that Plaintiff was calm, pleasant, cooperative, well
9 groomed, had full range of affect and mood, and normal speech, good range of
10 affect, and good eye contact. Tr. 30-31 (citing Tr. 511, 550, 565, 605-06, 615, 620,
11 625, 665, 676, 670, 672, 674, 676, 680). It was reasonable for the ALJ to find these
12 minimal clinical findings and observations of Plaintiff were inconsistent with the
13 severity of Ms. Campbell’s assessment that Plaintiff was limited to 1-10 hours of
14 sedentary work per week. *See Burch*, 400 F.3d at 679 (where evidence is
15 susceptible to more than one interpretation, the ALJ’s conclusion must be upheld).
16 These were germane reasons to give Ms. Campbell’s opinion little weight.

17 **C. Step Five**

18 Last, Plaintiff argues the ALJ “failed to account for limitations set forth” in
19 the medical opinions discussed above; and therefore erred at step five by posing an
20 incomplete hypothetical to the vocational expert. ECF No. 14 at 15-16. Plaintiff is
21 correct that “[i]f an ALJ’s hypothetical does not reflect all of the claimant’s

1 limitations, the expert's testimony has no evidentiary value to support a finding that
2 the claimant can perform jobs in the national economy.” *Bray*, 554 F.3d at 1228
3 (citation and quotation marks omitted). However, as discussed in detail above, the
4 ALJ's rejection of the medical opinions of Dr. Marks, Ms. Wible, Ms. Reeve, and
5 Ms. Campbell, was supported by the record and free of legal error. The
6 hypothetical proposed to the vocational expert contained the limitations reasonably
7 identified by the ALJ and supported by substantial evidence in the record. The
8 ALJ did not err at step five.

9 **CONCLUSION**

10 A reviewing court should not substitute its assessment of the evidence for
11 the ALJ's. *Tackett*, 180 F.3d at 1098. To the contrary, a reviewing court must
12 defer to an ALJ's assessment as long as it is supported by substantial evidence. 42
13 U.S.C. § 405(g). As discussed in detail above, the ALJ properly weighed the
14 medical opinion evidence, provided clear and convincing reasons to discount
15 Plaintiff's symptom claims, and did not err at step five. After review the Court
16 finds the ALJ's decision is supported by substantial evidence and free of harmful
17 legal error.

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

- 19 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is **DENIED**.
- 20 2. Defendant's Motion for Summary Judgment, **ECF No. 16**, is

21 **GRANTED.**

