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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Bryna Corbett,

Plaintiff,

vs.

Michael J. Astrue,

Defendant.

No. CV 11-00719-PHX-NVW

ORDER

Bryna Corbett seeks review under 42 U.S.C. § 405(g) of the final decision of the Commissioner of Social Security (“the Commissioner”), which denied her claim for supplemental security income under the Social Security Act. Because the decision of the Administrative Law Judge (“ALJ”) is supported by substantial evidence and is not based on legal error, the Commissioner’s decision will be affirmed.

I. Background

A. Factual Background

Corbett was born on February 1, 1975. She was 32 years old as of December 11, 2007, the date she applied for supplemental security income. She graduated from high school and completed one year of college. Her past work includes cashier, receptionist, and gas station attendant.

Corbett has been diagnosed with peripheral neuropathy, diabetes, obesity, hypertension, gastroesophageal reflux disease, and chronic back pain. She also has been

1 diagnosed with cyclothymic disorder (a mild form of bipolar disorder), post-traumatic
2 stress disorder, and obsessive/compulsive disorder.

3 In 2008, Corbett reported that she prepared meals, cared for her four children, took
4 them to school, picked them up from school, vacuumed, washed clothes, cared for family
5 pets, drove, shopped in stores and by computer, read every day for about 20 minutes,
6 watched movies twice a month, and attended church weekly. She said that her eleven-
7 year-old child helped get the two-year-old out of her van, and her children helped her put
8 on pants or shorts because of her back pain. She also said she could pay bills, handle a
9 savings account, use a checkbook, and count change. She reported that she was taking
10 online educational courses. In August 2008, Corbett was five feet six inches tall and
11 weighed 354 pounds.

12 In January 2010, Corbett testified that she was taking online college courses, had a
13 driver's license, and was able to drive, go to stores, and make latch hook rugs. She lived
14 with her husband and four children, ages seventeen, twelve, eight, and four years old.
15 She testified that her physical pain is basically in her back and, if she stands too long, her
16 left leg. She reported taking medication for her cyclothymic disorder, but still having
17 difficulty concentrating, mood swings, sleep problems, and anxiety. She testified that she
18 was five feet six inches tall and weighed 350 pounds.

19 **B. Procedural History**

20 On December 11, 2007, Corbett applied for disability insurance benefits, alleging
21 disability beginning January 1, 2004. The application was denied on initial review and
22 again on reconsideration, after which Corbett requested that her claim be heard by an
23 ALJ. On January 20, 2010, an administrative hearing was held at which Corbett testified
24 and was represented by counsel. Tracy Young, an impartial vocational expert, also
25 appeared and testified at the administrative hearing. On March 17, 2010, the ALJ issued
26 his decision that Corbett had not been under a disability as defined in the Social Security
27 Act since December 11, 2007, the application date.

28

1 On February 14, 2011, the Appeals Council denied Corbett's request for review of
2 the ALJ's unfavorable decision, making that decision the final decision of the
3 Commissioner. On April 12, 2011, Corbett sought judicial review of the decision
4 pursuant to § 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

5 **II. Standard of Review**

6 The district court reviews only those issues raised by the party challenging the
7 ALJ's decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The court
8 may set aside the Commissioner's disability determination only if the determination is not
9 supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625,
10 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, less than a
11 preponderance, and relevant evidence that a reasonable person might accept as adequate
12 to support a conclusion considering the record as a whole. *Id.* In determining whether
13 substantial evidence supports a decision, the court must consider the record as a whole
14 and may not affirm simply by isolating a "specific quantum of supporting evidence." *Id.*
15 As a general rule, "[w]here the evidence is susceptible to more than one rational
16 interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be
17 upheld." *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

18 If the ALJ's decision is not supported by substantial evidence or suffers from legal
19 error, the court has discretion to reverse and remand either for an award of benefits or for
20 further administrative proceedings. *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir.
21 1996); *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987). "Remand for further
22 proceedings is appropriate if enhancement of the record would be useful." *Benecke v.*
23 *Barnhart*, 379 F.3d 587, 593 (9th Cir. 2004). "Conversely, where the record has been
24 developed fully and further administrative proceedings would serve no useful purpose,
25 the district court should remand for an immediate award of benefits." *Id.* (citing *Smolen*,
26 80 F.3d at 1292).

27 The ALJ is responsible for resolving conflicts in medical testimony, determining
28 credibility, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.

1 1995). In reviewing the ALJ’s reasoning, the court is “not deprived of [its] faculties for
2 drawing specific and legitimate inferences from the ALJ’s opinion.” *Magallanes v.*
3 *Bowen*, 881 F.2d 747, 755 (9th Cir. 1989).

4 **III. Five-Step Sequential Evaluation Process**

5 To determine whether a claimant is disabled for purposes of the Social Security
6 Act, the ALJ follows a five-step process. 20 C.F.R. § 416.920(a). If the ALJ determines
7 that the claimant is disabled or not disabled at any step, the ALJ does not continue to the
8 next step. The claimant bears the burden of proof on the first four steps, but at step five,
9 the burden shifts to the Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.
10 1999).

11 At the first step, the ALJ determines whether the claimant is engaging in
12 substantial gainful activity. 20 C.F.R. § 416.920(a)(4)(I). If so, the claimant is not
13 disabled and the inquiry ends. *Id.* At the step two, the ALJ determines whether the
14 claimant has a “severe” medically determinable physical or mental impairment.
15 § 416.920(a)(4)(ii). If not, the claimant is not disabled and the inquiry ends. *Id.* At step
16 three, the ALJ considers whether the claimant’s impairment or combination of
17 impairments meet or equal an impairment listed in Appendix 1 to Subpart P of 20 C.F.R.
18 Pt. 404. § 416.920(a)(4)(iii). If so, the claimant is automatically found to be disabled.
19 *Id.* If not, the ALJ proceeds to step four. At step four, the ALJ assesses the claimant’s
20 residual functional capacity and determines whether the claimant is still capable of
21 performing past relevant work. § 416.920(a)(4)(iv). If so, the claimant is not disabled
22 and the inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final step, where he
23 determines whether the claimant can perform any other work based on the claimant’s
24 residual functional capacity, age, education, and work experience. § 416.920(a)(4)(v). If
25 so, the claimant is not disabled. *Id.* If not, the claimant is disabled. *Id.*

26 **IV. Analysis**

27 At step one, the ALJ found that Corbett had not engaged in substantial gainful
28 activity since December 11, 2007, the application date. At step two, the ALJ found that

1 Corbett had the following severe impairments: obesity, obsessive/compulsive disorder,
2 cyclothymic disorder, borderline intellectual functioning, post-traumatic stress disorder,
3 and peripheral neuropathy. At step three, the ALJ found that Corbett did not have an
4 impairment or combination of impairments that met or medically equaled one of the listed
5 impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1.

6 At step four, the ALJ found:

7 [T]he claimant has the residual functional capacity to perform light work as
8 defined in 20 CFR 416.967(b) except that the claimant is limited to standing
9 or walking for only 4 hours out of an 8 hour workday. The claimant is
10 limited to sitting for up to 6 hours out of an 8 hour workday. The claimant
11 must be able to shift positions from sitting to standing at will. The claimant
12 should avoid climbing ladders, ropes and scaffolds. The claimant may on
13 occasion climb, balance, stoop, crouch and crawl. The claimant should
14 avoid working at unprotected heights and around hazardous moving
15 machinery. The claimant should avoid working around an excessive
16 amount of dust, fumes or gasses. The claimant has pain in her back, legs
17 and abdomen and occasional numbness and swelling in her legs which is of
18 a slight nature and would have a slight effect on her ability to do basic work
19 activities or this pain is or can be controlled through the use of prescription
20 medications without significant adverse side effects. The claimant may
21 have only occasional contact with the public. The claimant's mental
22 impairments, including her mood swings, obsessive compulsive disorder
23 and decrease in concentration are of a moderate nature and would normally
24 have a moderate effect on her ability to do basic work activities or her
25 mental impairments [are] or can be controlled through the use of
26 appropriate medications without significant adverse side effects.

27 "Light work involves lifting no more than 20 pounds at a time with frequent lifting or
28 carrying of objects weighing up to 10 pounds." 20 C.F.R. § 416.967(b).

Corbett does not raise any issues related to the ALJ's determinations at the first
three steps of the five-step sequential evaluation process. At step four, the ALJ found that
Corbett is unable to perform any past relevant work. At step five, the ALJ found that
given her age, education, work experience, and residual functional capacity, there are jobs
that exist in significant numbers in the national economy that Corbett can perform, such
as hand packager and production worker.

A. Weighing Medical Source Evidence

1. Legal Standard

1 In weighing medical source opinions in Social Security cases, the Ninth Circuit
2 distinguishes among three types of physicians: (1) treating physicians, who actually treat
3 the claimant; (2) examining physicians, who examine but do not treat the claimant; and
4 (3) non-examining physicians, who neither treat nor examine the claimant. *Lester v.*
5 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Generally, more weight should be given to the
6 opinion of a treating physician than to the opinions of non-treating physicians. *Id.* A
7 treating physician’s opinion is afforded great weight because such physicians are
8 “employed to cure and [have] a greater opportunity to observe and know the patient as an
9 individual.” *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9th Cir. 1987). Where a treating
10 physician’s opinion is not contradicted by another physician, it may be rejected only for
11 “clear and convincing” reasons, and where it is contradicted, it may not be rejected
12 without “specific and legitimate reasons” supported by substantial evidence in the record.
13 *Lester*, 81 F.3d at 830. Moreover, the Commissioner must give weight to the treating
14 physician’s subjective judgments in addition to his clinical findings and interpretation of
15 test results. *Id.* at 832-33.

16 Further, an examining physician’s opinion generally must be given greater weight
17 than that of a non-examining physician. *Id.* at 830. As with a treating physician, there
18 must be clear and convincing reasons for rejecting the uncontradicted opinion of an
19 examining physician, and specific and legitimate reasons, supported by substantial
20 evidence in the record, for rejecting an examining physician’s contradicted opinion. *Id.* at
21 830-31.

22 The opinion of a non-examining physician is not itself substantial evidence that
23 justifies the rejection of the opinion of either a treating physician or an examining
24 physician. *Id.* at 831. “The opinions of non-treating or non-examining physicians may
25 also serve as substantial evidence when the opinions are consistent with independent
26 clinical findings or other evidence in the record.” *Thomas*, 278 F.3d at 957. Factors that
27 an ALJ may consider when evaluating any medical opinion include “the amount of
28 relevant evidence that supports the opinion and the quality of the explanation provided;

1 the consistency of the medical opinion with the record as a whole; [and] the specialty of
2 the physician providing the opinion.” *Orn*, 495 F.3d at 631.

3 Moreover, Social Security Rules expressly require a treating source’s opinion on
4 an issue of a claimant’s impairment be given *controlling* weight if it is well-supported by
5 medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent
6 with the other substantial evidence in the record. 20 C.F.R. § 404.1527(d)(2). If a
7 treating source’s opinion is not given controlling weight, the weight that it will be given is
8 determined by length of the treatment relationship, frequency of examination, nature and
9 extent of the treatment relationship, relevant evidence supporting the opinion, consistency
10 with the record as a whole, the source’s specialization, and other factors. *Id.*

11 Finding that a treating physician’s opinion is not entitled to controlling weight
12 does not mean that the opinion should be rejected:

13 [A] finding that a treating source medical opinion is not well-
14 supported by medically acceptable clinical and laboratory diagnostic
15 techniques or is inconsistent with the other substantial evidence in the case
16 record means only that the opinion is not entitled to “controlling weight,”
17 not that the opinion should be rejected. Treating source medical opinions
are still entitled to deference and must be weighed using all of the factors
provided in 20 C.F.R. §404.1527. . . . In many cases, a treating source’s
medical opinion will be entitled to the greatest weight and should be
adopted, even if it does not meet the test for controlling weight.

18 *Orn*, 495 F.3d at 631-32 (quoting Social Security Ruling 96-2p). Where there is a
19 conflict between the opinion of a treating physician and an examining physician, the ALJ
20 may not reject the opinion of the treating physician without setting forth specific,
21 legitimate reasons supported by substantial evidence in the record. *Id.* at 632.

22 **2. The ALJ Did Not Err in Weighing Medical Source Opinion**
23 **Evidence.**

24 Dr. Doss

25 Corbett contends the ALJ misinterpreted the evidence supplied by consulting
26 psychologist Minette Doss, Ed.D., P.C., and the restrictions indicated within the doctor’s
27 report. She argues that a Global Assessment of Functioning score of 50 denotes severe
28

1 symptoms and that “when offered the restrictions as indicated by Dr. Doss’s report (TR
2 431), the vocational expert stated that work would not be sustained (TR 64).”

3 The ALJ gave “great weight” to the opinion of Dr. Doss, “who opined that the
4 claimant exhibited a strong memory, was able to interact with people, pay bills, do
5 housekeeping and play with her toddler.” The ALJ said that he gave Dr. Doss’s opinion
6 “great weight” because she was able to personally examine and test Corbett, and her
7 opinion was well supported by test results and Corbett’s self-reported activities of daily
8 living. He did not assign Dr. Doss’s opinion “controlling weight.”

9 Dr. Doss diagnosed Corbett with obsessive/compulsive disorder, cyclothymia,
10 alcohol dependence, nicotine dependence, and borderline intellectual functioning
11 although the test results were somewhat compromised by Corbett’s need for and lack of
12 reading glasses. She determined Corbett’s Global Assessment of Functioning score to be
13 50 and states it as “50 – moderate symptoms.” The record does not show that Dr. Doss
14 found Corbett to have severe symptoms.

15 State agency psychologist Adrienne Gallucci, Psy.D., subsequently reviewed Dr.
16 Doss’s report and records from Mohave Mental Health Clinic. Based on her review, she
17 opined that Corbett is able to:

- 18 1. Remember work-like procedures and understand and remember
19 instructions.
- 20 2. Carry out very short and simple instructions, maintain attention for
21 2-hour segments, maintain regular attendance and be punctual within
22 customary tolerances, sustain an ordinary routine without special
23 supervision, work in coordination with or proximity to others without being
24 unduly distracted by them, make simple work-related decisions, and
25 complete a normal workday and workweek without interruptions from
26 psychologically based symptoms and perform at a consistent pace without
27 an unreasonable number and length of rest periods.
- 28 3. Ask simple questions or request assistance, accept instructions and
respond appropriately to criticism from supervisors, and get along with
coworkers or peers without unduly distracting them or exhibiting behavioral
extremes.
4. Respond appropriately to changes in a routine work setting, and be
aware of normal hazards and take appropriate precautions.

1 Although the ALJ did not mention Dr. Gallucci by name, he stated, “The results of the
2 examination [by Dr. Doss] suggest that the claimant is able to remember work-like
3 procedures and understand and remember instructions, carry out short and simple
4 instructions, maintain attention for 2 hour segments, sustain an ordinary routine, work
5 with others, complete a normal workday or workweek, ask simple questions, accept
6 instructions and respond appropriately, and respond to changes in a work setting.” This
7 summary demonstrates that the ALJ did not misinterpret Dr. Doss’s report as reviewed by
8 Dr. Galluci.

9 At the administrative hearing, Corbett’s attorney questioned the vocational expert
10 whether a person would be able to perform jobs such as hand packager and production
11 worker if she had the following limitations one-third of the workday: decreased
12 concentration, decreased IQ, cannot regularly do grooming and hygiene, cannot
13 effectively modulate her emotions, cannot learn quickly or efficiently, and cannot deal
14 with things that are not perfect. The vocational expert said a person with those limitations
15 would not be able to perform jobs such as hand packager and production worker.
16 Although Corbett’s attorney referred to these limitations as things that Dr. Doss found
17 Corbett could not do, Dr. Doss did not opine that Corbett had decreased concentration.
18 Further, Dr. Doss expressly found that Corbett could “remember well,” and Dr. Gallucci
19 interpreted Dr. Doss’s test results and report as suggesting Corbett could maintain
20 attention for 2-hour segments.

21 Thus, the hearing decision does not indicate that the ALJ misinterpreted the
22 evidence supplied by Dr. Doss.

23 Dr. Mane

24 Corbett contends the ALJ erred by rejecting the opinion of her primary care
25 physician, Sheila Mane, M.D. The hearing decision states:

26 The undersigned gives no weight to the opinion of Sheila Mane, M.D., one
27 of the claimant’s treating physicians, who opined in a December 7, 2009
28 medical assessment of ability to do work related activities that the claimant
was unable to sit for longer than 1 hour, stand or walk for more than 5-10
minutes, or lift and carry even up to 5 pounds (Ex. 18F). Doctor Mane

1 opined that the claimant was unable to drive an automobile (Id. at 2).
2 Doctor Mane's opinions are simply not supported by the objective medical
3 evidence of record, especially the minimal findings revealed by
4 radiographic examination of the claimant's spine. Furthermore, the
5 claimant has testified that, in performing her activities of daily living, she is
6 able to drive, cook, care for and play with her children, perform some
7 housework and work and play on her computer. The excessive limitations
8 contained in Doctor Mane's assessment are in excess of the activities that
9 the claimant performs on a daily basis, and, thus, lack credibility or basis in
10 objective medical findings. As such, the undersigned gives her opinion no
11 weight.

12 Corbett cites to an electrodiagnostic study that revealed evidence of peripheral
13 neuropathy of bilateral lower extremities and reasons that Dr. Mane was able to determine
14 from the electrodiagnostic study and her clinical observations "a clearer picture" than the
15 radiographic examination of the spine produced. But even if Dr. Mane relied on evidence
16 of peripheral neuropathy of the lower extremities, there is no explanation for her opinion
17 that Corbett could never lift any weight, even less than five pounds, but could reach
18 continuously and use either hand for continuous actions such as grasping, pushing/pulling
19 of controls, and fine manipulation. Further, Dr. Mane's opinion that the total time during
20 an entire eight-hour work day Corbett could sit is one hour and stand or walk is zero
21 hours (meaning she must recline the remaining seven hours) is inconsistent with Corbett's
22 report that she takes online courses, plays games on the computer, drives, vacuums, and
23 shops.

24 Because the ALJ gave clear, convincing, specific, and legitimate reasons supported
25 by substantial evidence in the record for rejecting Dr. Mane's opinion of Corbett's
26 physical limitations, including both objective medical evidence and her reported daily
27 living activities, he did not err by giving Dr. Mane's opinion no weight.

28 Dr. Lee

Corbett contends the ALJ erred by giving great weight to the opinion of Sung Won
Lee, M.D.:

As for the opinion evidence, the undersigned gives great weight to the
opinion of Doctor Lee, the physician who performed a consultative
examination of the claimant and who opined that the claimant was capable
of performing work-related activities. Doctor Lee had the opportunity to
review the claimant's medical history, including some radiographic

1 findings, and also had the opportunity to personally examine the claimant.
2 Doctor Lee's opinion is supported by the relatively mild objective medical
3 evidence of record, as well as the claimant's activities of daily living, which
4 include caring for 4 children and attending online classes.

5 Corbett criticizes Dr. Lee's opinion because he did not have any treating source
6 chart notes to review and did not make a diagnosis of neuropathy. However, Dr. Lee
7 identified "left leg neuropathy" as one of Corbett's chief complaints and stated that she
8 had reported that she had been told that the numbness in her left leg may be related to
9 diabetic neuropathy. Under the heading "Diagnoses," Dr. Lee stated:

10 Self-reported history of peripheral neuropathy, with some evidence from a
11 nerve conduction study that apparently suggests peripheral neuropathy in
12 the bilateral lower extremities. There is no evidence of loss of sensitivity to
13 light touch or pinprick in the lower extremities, however. Somewhat doubt
14 that the claimant's numbness is related to diabetic neuropathy, given that
15 she has been carrying a diagnosis of diabetes for only two years.

16 Dr. Lee also found that Corbett had minimal tenderness in the lower lumbar area
17 and that straight leg raising elicited pain at 5 degrees in both legs. But he observed that
18 Corbett was able to sit comfortably during the examination and was able to take off her
19 shoes. Moreover, she reported to Dr. Lee that she is able to cook and clean and use a
20 computer for leisure and education.

21 Thus, the ALJ did not err by giving great weight to Dr. Lee's opinion.

22 **B. Subjective Symptom Testimony**

23 **1. Legal Standard**

24 In evaluating the credibility of a claimant's testimony regarding subjective pain or
25 other symptoms, the ALJ is required to engage in a two-step analysis: (1) determine
26 whether the claimant presented objective medical evidence of an impairment that could
27 reasonably be expected to produce some degree of the pain or other symptoms alleged;
28 and, if so with no evidence of malingering, (2) reject the claimant's testimony about the
severity of the symptoms only by giving specific, clear, and convincing reasons for the
rejection. *See Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009). To support a lack of
credibility finding, the ALJ is required to point to specific facts in the record that
demonstrate that Corbett's symptoms are less severe than she claims. *Id.* at 592.

1 To be found credible regarding subjective pain or fatigue, a claimant is not
2 required to: (1) produce objective medical evidence of the pain or fatigue itself, or the
3 severity thereof; (2) produce objective medical evidence of the causal relationship
4 between the medically determinable impairment and the symptom; or (3) show that her
5 impairment could reasonably be expected to cause the severity of the alleged symptom,
6 only that it could reasonably have caused some degree of the symptom. *Smolen v.*
7 *Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996).

8 **2. The ALJ Did Not Err by Finding Corbett's Subjective Symptom**
9 **Testimony Not Credible.**

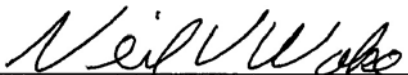
10 Corbett contends that the ALJ erred by finding her less than credible. However,
11 the ALJ provided specific, clear, and convincing reasons for rejecting Corbett's testimony
12 about the severity of her symptoms and pointed to facts in the record that demonstrate
13 Corbett's symptoms are less severe than she claims. The hearing decision states:

14 The undersigned finds the claimant less than credible with respect to the
15 extent to which her impairments prevent her from engaging in work related
16 activities. First, the undersigned notes that the claimant remains able to
17 care for 4 children, including a toddler, despite her impairments. The
18 claimant remains able to cook, clean and drive, and until recently was able
19 to attend church. The claimant recently began taking online classes at a
20 local community college. The objective findings in the record simply do
21 not support the degree of limitation that the claimant alleges. The claimant
22 remains highly functional.

23 IT IS THEREFORE ORDERED affirming the final decision of the Commissioner
24 of Social Security denying Bryna Corbett supplemental security income under the Social
25 Security Act.

26 IT IS FURTHER ORDERED that the Clerk enter judgment in favor of Defendant
27 against Plaintiff and that Plaintiff take nothing. The Clerk shall terminate this action.

28 DATED this 3rd day of January, 2012.

29 
30 _____
31 Neil V. Wake
32 United States District Judge