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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Melissa Duran,

Plaintiff,

v.

Carolyn W. Colvin, Acting Commissioner
of the Social Security Administration,

Defendant.

No. CV-13-0323-PHX-GMS

ORDER

Pending before the Court is the appeal of Plaintiff Melissa Duran, which challenges the Social Security Administration’s decision to deny benefits. (Doc. 14.) For the reasons set forth below, the Court affirms that decision.

BACKGROUND

Duran applied for disability insurance benefits on April 29, 2009, (R. at 146–51), and for supplemental security income on May 18, 2009, (*Id.* at 152–58). In both applications, Duran alleged a disability onset date of November 16, 2007. (*Id.*) Duran met the insured status requirements of the Social Security Act through December 31, 2011. (*Id.* at 26.) Her claims were denied both initially and upon reconsideration. (*Id.* at 83–90, 93–99.) She then appealed to an Administrative Law Judge (“ALJ”). (*Id.* at 106–07.) The ALJ conducted a hearing on the matter on April 4, 2011. (*Id.* at 37–78.)

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1 In evaluating whether Duran was disabled, the ALJ undertook the five-step
2 sequential evaluation for determining disability.¹ (*Id.* at 25–26.) At step one, the ALJ
3 determined that Duran had not engaged in substantial gainful activity since the alleged
4 onset date. (*Id.* at 26.) At step two, the ALJ determined that Duran suffered from the
5 severe impairments of obesity, post lumbar surgery, and post kidney removal due to
6 cancer. (*Id.*) At step three, the ALJ determined that none of these impairments, either
7 alone or in combination, met or equaled any of the Social Security Administration’s listed
8 impairments. (*Id.* at 26–27.)

9 At that point, the ALJ made a determination of Duran’s residual functional
10 capacity (“RFC”),² concluding that she could perform sedentary work. (*Id.* at 27–30.) The
11 ALJ thus determined at step four that Duran retained the RFC to perform her past

12 ¹ The five-step sequential evaluation of disability is set out in 20 C.F.R. §
13 404.1520 (governing disability insurance benefits) and 20 C.F.R. § 416.920 (governing
14 supplemental security income). Under the test:

15 A claimant must be found disabled if she proves: (1) that she
16 is not presently engaged in a substantial gainful activity[,] (2)
17 that her disability is severe, and (3) that her impairment meets
18 or equals one of the specific impairments described in the
19 regulations. If the impairment does not meet or equal one of
20 the specific impairments described in the regulations, the
21 claimant can still establish a prima facie case of disability by
22 proving at step four that in addition to the first two
23 requirements, she is not able to perform any work that she has
24 done in the past. Once the claimant establishes a prima facie
25 case, the burden of proof shifts to the agency at step five to
26 demonstrate that the claimant can perform a significant
27 number of other jobs in the national economy. This step-five
28 determination is made on the basis of four factors: the
claimant’s residual functional capacity, age, work experience
and education.

26 *Hoopai v. Astrue*, 499 F.3d 1071, 1074–75 (9th Cir. 2007) (internal citations and
quotations omitted).

27 ² RFC is the most a claimant can do despite the limitations caused by his
28 impairments. *See* S.S.R. 96-8p (July 2, 1996).

1 relevant work as a collections supervisor and a collections agent. (*Id.* at 30.) The ALJ did
2 not reach step five. Given this analysis, the ALJ concluded that Duran was not disabled.
3 (*Id.*)

4 The Appeals Council declined to review the decision. (*Id.* at 1–6.)

5 Plaintiff filed the complaint underlying this action on June 18, 2013, seeking this
6 Court’s review of the ALJ’s denial of benefits.³ (Doc. 14.) The matter is now fully
7 briefed before this Court. (Docs. 14, 19, 26.)

8 DISCUSSION

9 I. STANDARD OF REVIEW

10 A reviewing federal court will only address the issues raised by the claimant in the
11 appeal from the ALJ’s decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir.
12 2001). A federal court may set aside a denial of disability benefits only if that denial is
13 either unsupported by substantial evidence or based on legal error. *Thomas v. Barnhart*,
14 278 F.3d 947, 954 (9th Cir. 2002). Substantial evidence is “more than a scintilla but less
15 than a preponderance.” *Id.* (quotation omitted). “Substantial evidence is relevant evidence
16 which, considering the record as a whole, a reasonable person might accept as adequate
17 to support a conclusion.” *Id.* (quotation omitted).

18 However, the ALJ is responsible for resolving conflicts in testimony, determining
19 credibility, and resolving ambiguities. *See Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
20 Cir. 1995). “When the evidence before the ALJ is subject to more than one rational
21 interpretation, we must defer to the ALJ’s conclusion.” *Batson v. Comm’r of Soc. Sec.*
22 *Admin.*, 359 F.3d 1190, 1198 (9th Cir. 2004). This is so because “[t]he [ALJ] and not the
23 reviewing court must resolve conflicts in evidence, and if the evidence can support either
24 outcome, the court may not substitute its judgment for that of the ALJ.” *Matney v.*

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26 ³ Plaintiff was authorized to file this action by 42 U.S.C. § 405(g) (“Any
27 individual, after any final decision of the Commissioner of Social Security made after a
28 hearing to which he was a party . . . may obtain a review of such decision by a civil
action . . .”).

1 *Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992) (citations omitted).

2 **II. ANALYSIS**

3 Duran argues that the ALJ erred by: (A) giving little weight to the assessment of
4 her treating physician, Dr. Rakkar, (Doc. 14 at 14–20), (B) rejecting Duran’s symptom
5 testimony, (*id.* at 21–28), and (C) determining Duran’s work capacities without support
6 in substantial evidence in the record, (*id.* at 28–30). The Court will address each
7 argument in turn.

8 **A. Assessment by Treating Physician**

9 Duran first argues that the ALJ improperly discounted the assessment by her
10 treating physician Dr. Rakkar. The regulations impose a hierarchy for medical opinions
11 offered by licensed physicians. The opinion of a treating physician is given more weight
12 than non-treating and non-examining medical sources. *See* 20 C.F.R. § 404.1527; *Orn v.*
13 *Astrue*, 495 F.3d 625, 631 (9th Cir. 2007); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
14 1995). When the treating doctor’s opinion is uncontradicted, the ALJ can reject those
15 conclusions only for “‘clear and convincing’ reasons.” *Lester*, 81 F.3d at 830 (quoting
16 *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)). Even when another doctor
17 disagrees with the treating doctor’s opinion, as is the case here with Dr. Tom, (R. at 341–
18 48), the ALJ can reject the treating doctor’s conclusions only when he provides “‘specific
19 and legitimate reasons’ supported by substantial evidence in the record for so doing.” *Id.*
20 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

21 The ALJ was “unable to assign great weight” to Dr. Rakkar’s opinions. (R. at 30.)
22 He first asserted that Dr. Rakkar’s August 2010 finding that Duran can sit for only a half
23 hour a day was unsupported by the objective medical evidence in the record and that Dr.
24 Rakkar’s assessments regarding Duran’s fatigue conflicted with the medical evidence and
25 with Duran’s function report. (*Id.*) The ALJ further noted that Dr. Rakkar assessed
26 different sitting limitations in her August 2010 and July 2011 opinions. (*Id.*) The ALJ
27 cited to numerous portions of Duran’s medical records demonstrating that her condition
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1 improved following her July 2009 surgery. The medical records following her surgery
2 state that her symptoms improved 60%, that she was walking better, and that imaging
3 demonstrated normal disc spaces with no evidence of spondylolisthesis or compression
4 factors. (*Id.* at 28.) Duran’s medical records following her surgery do note that she
5 continued to report back pain, but that imaging and medical examinations neither
6 explained why her pain persisted following recovery from the surgery nor suggested
7 severe fatigue. (*Id.*; *see also id.* at 434–37, 470, 529.) Further, Dr. Rakkar’s opinions do
8 not cite to any objective medical evidence or otherwise provide justification for the
9 assessed limitations that would controvert the medical records. As such, the medical
10 records conflict with both Dr. Rakkar’s findings about Duran’s ability to sit and with her
11 findings about Duran’s fatigue.

12 The ALJ further noted that Dr. Rakkar stated that Duran could maintain only
13 frequent use of her hands, but that the medical records do not support this limitation. (*Id.*
14 at 29.) Again, Dr. Rakkar did not offer explanation to suggest otherwise.

15 Finally, the ALJ stated that Dr. Rakkar’s finding of Duran’s need for a hand-held
16 device for ambulation was contradicted by records of her walking well without the use of
17 any such device and the lack of a prescription for a cane or other device. (*Id.* at 29–30.)
18 However, the record does indicate that Duran did use a hand-held device for ambulation
19 at various points (R. at 211, 219), and that the existence of a prescription for such a
20 device is irrelevant as such devices are available without a prescription. Accordingly, this
21 particular argument is not supported by substantial evidence in the record.

22 Without considering the ALJ’s argument regarding the use of a hand-held device
23 for ambulation, the ALJ nonetheless provided specific and legitimate reasons for
24 discounting Dr. Rakkar’s opinions, supported by substantial evidence in the record.
25 *Murray*, 722 F.2d at 502. Thus, the ALJ will not be reversed on this ground.

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1 **B. Plaintiff’s Symptom Testimony**

2 Duran next contends that the ALJ erred in finding that her testimony was not fully
3 credible as to the severity and extent of her limitations. The ALJ must engage in a two-
4 step analysis in determining whether a claimant’s testimony is credible. *Lingenfelter v.*
5 *Astrue*, 504 F.3d 1028, 1035–36 (9th Cir. 2007). The ALJ must first “determine whether
6 the claimant has presented objective medical evidence of an underlying impairment
7 which could reasonably be expected to produce the pain or other symptoms alleged.” *Id.*
8 at 1036. If she has, and the ALJ has found no evidence of malingering, then the ALJ may
9 reject the claimant’s testimony “only by offering specific, clear and convincing reasons
10 for doing so.” *Id.* If an ALJ finds that a claimant’s testimony relating to the intensity of
11 his pain and other limitations is unreliable, the ALJ must make a credibility determination
12 citing the reasons why the testimony is unpersuasive. *See Bunnell v. Sullivan*, 947 F.2d
13 341 (9th Cir. 1991). The ALJ must specifically identify what testimony is credible and
14 what testimony undermines the claimant’s complaints. *See Morgan v. Comm’r of Soc.*
15 *Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). These findings, properly supported by the
16 record, must be sufficiently specific to allow a reviewing court to conclude the
17 adjudicator rejected the claimant’s testimony on permissible grounds and did not
18 arbitrarily discredit a claimant’s testimony regarding pain. *Bunnell*, 947 F.2d at 345–46
19 (internal quotation marks and citation omitted).

20 Here, at the first step, the ALJ concluded that Duran’s medically determinable
21 impairments could reasonably be expected to produce her alleged symptoms. (R. at 27.)
22 However, at the second step, the ALJ found that Duran’s statements regarding the
23 intensity, persistence, and limiting effects of her symptoms were not credible to the
24 extent that they conflicted with the ALJ’s RFC assessment. (*Id.* at 27–28.) The ALJ did
25 not state that he found any evidence of malingering; thus, his reasons for rejecting
26 Duran’s symptom testimony must be clear and convincing. *Lingenfelter*, 504 F.3d at
27 1036. The ALJ’s general statement that Duran’s symptom testimony conflicts with the
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1 RFC does not itself constitute “specific, clear and convincing reasons” for discounting
2 her testimony. Indeed, the ALJ is required to consider Duran’s symptom testimony in
3 making the RFC assessment. 20 CFR § 416.945(a) (3). “Dismissing a claimant’s
4 credibility because it is inconsistent with a conclusion that must itself address the
5 claimant’s credibility is circular reasoning” that cannot be sustained by this Court.
6 *Leitheiser v. Astrue*, No. CV 10–6243–SI, 2012 WL 967647 at *9 (D. Or. Mar. 16, 2012).

7 However, beyond this general statement, the ALJ did provide clear and convincing
8 reasons for his finding that Duran’s symptom testimony was only somewhat credible.
9 First, the ALJ cited to objective medical evidence in the record that does not support her
10 testimony. (R. at 28–29.) This included numerous portions of Duran’s medical records
11 noting symptom improvement and normal gait. (*Id.*) As noted previously, the medical
12 records demonstrate that Duran continued to report pain, but that this was not supported
13 in repeated examinations and imaging in the record. Additionally, the ALJ found that
14 Duran’s testimony was inconsistent with some of her own statements about her daily
15 activities. (*Id.*) The ALJ noted that portions of Duran’s testimony conflicted with prior
16 statements she had made about her ability to sit and with her reported activities of daily
17 living. (*Id.*) Accordingly, the ALJ did not err in finding Duran’s symptom testimony only
18 somewhat credible.

19 **C. Determination of Plaintiff’s Work Capacities**

20 Finally, Duran argues that the ALJ erred in his determination of her work
21 capacities. The ALJ determined that Duran was capable of a limited range of sedentary
22 work. (R. at 27.) Duran asserts that the ALJ based his determination solely on his own
23 opinion, untied to supporting evidence in the record. Duran argues that this is the case
24 because the ALJ gave only little weight to Dr. Rakkar’s opinion, gave only “some
25 weight” to state agency ratings, and instead assigned Duran a more limited RFC than
26 recommended by the agency doctors.

