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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Stephanie Pollock,

10 Plaintiff,

11 v.

12 Commission of Social Security,

13 Defendant.
14

No. CV-15-01533-PHX-DLR

ORDER

15
16 Plaintiff Stephanie Pollock appeals the Commissioner of Social Security's
17 decision denying her application for disability insurance benefits. For the following
18 reasons, the Commissioner's decision is affirmed.

19 **BACKGROUND**

20 Pollock applied for disability insurance benefits in April 2012, alleging that she
21 became disabled in October 2011. (A.R. 133.) Pollock appeared and testified at a
22 hearing before an Administrative Law Judge ("ALJ") in November 2013. (*Id.* at 30-48.)
23 A vocational expert ("VE") also testified. (*Id.*) In February 2014, the ALJ issued a
24 written decision denying Pollock's application for disability insurance benefits. (*Id.* at
25 15-24.) The Appeals Council denied Pollock's request for review, making the ALJ's
26 decision the Commissioner's final decision. (*Id.* at 1, 10.) This appeal followed.

27 **LEGAL STANDARD**

28 The district court reviews only those issues raised by the party challenging the

1 ALJ's decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The court
2 may set aside the Commissioner's disability determination only if the determination is
3 not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d
4 625, 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, less than a
5 preponderance, and relevant evidence that a reasonable person might accept as adequate
6 to support a conclusion considering the record as a whole. *Id.* As a general rule,
7 "[w]here the evidence is susceptible to more than one rational interpretation, one of
8 which supports the ALJ's decision, the ALJ's conclusion must be upheld." *Thomas v.*
9 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

10 DISCUSSION

11 To determine whether a claimant is disabled for purposes of the Social Security
12 Act, the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears
13 the burden of proof on the first four steps, but at step five, the burden shifts to the
14 Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step,
15 the ALJ determines whether the claimant is engaging in substantial gainful activity. 20
16 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not disabled and the inquiry ends. *Id.*
17 At step two, the ALJ determines whether the claimant has a "severe" medically
18 determinable physical or mental impairment. § 404.1520(a)(4)(ii). If not, the claimant is
19 not disabled and the inquiry ends. *Id.* At step three, the ALJ considers whether the
20 claimant's impairment or combination of impairments meets or medically equals an
21 impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404. § 404.1520(a)(4)(iii).
22 If so, the claimant is automatically found to be disabled. *Id.* If not, the ALJ proceeds to
23 step four. At step four, the ALJ assesses the claimant's residual functional capacity
24 ("RFC") and determines whether the claimant is still capable of performing past relevant
25 work. § 404.1520(a)(4)(iv). If so, the claimant is not disabled and the inquiry ends. *Id.*
26 If not, the ALJ proceeds to the fifth and final step, where he determines whether the
27 claimant can perform any other work based on the claimant's RFC, age, education, and
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1 work experience. § 404.1520(a)(4)(v). If so, the claimant is not disabled. *Id.* If not, the
2 claimant is disabled. *Id.*

3 At step one, the ALJ determined that Pollock meets the insured status
4 requirements of the Social Security Act through December 31, 2016, and has not engaged
5 in substantial gainful activity since her alleged disability onset date. (A.R. 17.) The ALJ
6 found at step two that Pollock's bipolar disorder and back pain are severe impairments,
7 but concluded at step three that they do not meet or medically equal the severity of an
8 impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404. (*Id.* at 17-18.) At
9 step four, the ALJ found that Pollock has the RFC to perform:

10 a full range of work at all exertional levels but with the following
11 nonexertional limitations: [she] has mild limitations in her ability to
12 understand, remember and carry out simple instructions and to make
13 judgments on simple work related decisions; she has moderate limitations
14 in her ability to understand, remember and carry out complex instructions
15 and in her ability to make judgments on complex work related decisions;
she has moderate limitations in her ability to interact appropriately with
supervisors and coworkers; and she has moderate limitations in her ability
to respond appropriately to usual work situations and to changes in a
routine work setting.

16 (*Id.* at 19.) Based on this RFC, the ALJ found that Pollock is unable to perform her past
17 relevant work as a certified nursing assistant. (*Id.* at 22.) At step five, however, after
18 considering Pollock's age, education, work experience, and RFC, the ALJ concluded that
19 there are jobs that exist in significant numbers in the national economy that Pollock can
20 perform. (*Id.* at 23.) Accordingly, the ALJ found that Pollock is not disabled within the
21 meaning of the Social Security Act. (*Id.* at 24.)

22 Pollock argues that the ALJ erred by: (1) failing to articulate limitations
23 associated with her back pain; (2) discrediting her subjective complaints; and (3)
24 assigning no weight to the opinion of nurse practitioner Susan Anderson. (Doc. 13.)

25 **I. Pollock's Back Pain**

26 Pollock argues that the ALJ erred by not articulating limitations associated with
27 her back pain, which the ALJ found was a severe impairment at step two. (Doc. 13 at 13-
28 16.) She contends it is unknown whether she can perform other work in the national

1 economy “[w]ithout knowing what limitations the ALJ would have given for the back
2 pain” (*Id.* at 16.) The ALJ’s decision, however, is not silent on the limitations
3 associated with her back pain. The ALJ found that Pollock retained the RFC to perform
4 work “at all exertional levels,” and determined that she has only nonexertional
5 limitations. (A.R. 19.) In other words, the ALJ assessed no limitations arising from her
6 back pain, and Pollock incorrectly assumes that a severe impairment identified at step
7 two requires corresponding exertional limitations at step four. “[T]he step-two inquiry is
8 a de minimis screening device to dispose of groundless claims.” *Smolen v. Charter*, 80
9 F.3d 1273, 1290 (9th Cir. 1996). It is based on medical evidence alone and reasonable
10 doubts are resolved in favor of the claimant. As such, a severe finding at step two does
11 not require the ALJ to later find work-preclusive limitations after considering all other
12 relevant evidence. *See Hoopai v. Astrue*, 499 F.3d 1071, 1076 (9th Cir. 2007) (“The step
13 two and step five determinations require different levels of severity of limitations such
14 that the satisfaction of the requirements at step two does not automatically lead to the
15 conclusion that the claimant has satisfied the requirements at step five.”); *Taylor v.*
16 *Heckler*, 605 F. Supp. 407, 412 (D. Me. 1984) (“[A] determination that an impairment is
17 “severe” for purposes of the second sequential severity test has no bearing on the proper
18 application of the fourth test.”). Accordingly, although Pollock established that she
19 suffered from severe impairments at step two, the ALJ did not err by concluding that
20 Pollock has no work-preclusive exertional limitations arising from her back pain at step
21 four.

22 **II. Credibility of Pollock’s Symptom Testimony**

23 Pollock next argues that the ALJ improperly discredited her symptom testimony.
24 (Doc. 13 at 16-19.) In evaluating the credibility of a claimant’s symptom testimony, the
25 ALJ is required to engage in a two-step analysis: (1) determine whether the claimant
26 presented objective medical evidence of an impairment that could reasonably be expected
27 to produce some degree of the pain or other symptoms alleged; and, if so with no
28 evidence of malingering, (2) reject the claimant’s testimony about the severity of the

1 symptoms only by giving specific, clear, and convincing reasons for the rejection.
2 *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009). Here, Pollock reported dizziness,
3 fatigue, hand tremors, and difficulty standing, walking, and sitting for extended periods
4 of time. (A.R. 19-20.) She said that she experienced pain and fatigue when squatting,
5 bending, or kneeling. (*Id.*) Additionally, Pollock complained of visual and auditory
6 hallucinations, thoughts of aggression, and increased anxiety when around others. (*Id.*)
7 The ALJ found that Pollock's impairments could reasonably be expected to cause her
8 alleged symptoms, but concluded that Pollock's statements about the intensity,
9 persistence, and limiting effects of these symptoms were not entirely credible. (*Id.*) The
10 ALJ offered four reasons for her conclusion.

11 First, the ALJ found that Pollock's complaints were inconsistent with the overall
12 treatment record. (A.R. 20-21.) Inconsistency with the medical record is a sufficient
13 basis for rejecting a claimant's allegations of disabling symptoms. *Carmickle v. Comm'r*
14 *Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008). Substantial evidence supports the
15 ALJ's finding. For example, Pollock's physical examinations revealed normal gait,
16 coordination, and reflexes. (*Id.* at 20, 270, 506, 532, 535, 538-39.) An MRI and x-rays
17 revealed an overall normal spine for someone of Pollock's age. (*Id.* at 20, 338, 424-25.)
18 Additionally, although Pollock reported some instances of hallucinations to her mental
19 health providers, she also reported that these symptoms were occurring less frequently.
20 (*Id.* at 544.)

21 Second, the ALJ found that Pollock's symptoms improved with medication. (*Id.*
22 at 20-21.) Improvement with conservative treatment is a sufficient basis for discrediting
23 a claimant's allegations of disabling symptoms. *Tommasetti v. Astrue*, 533 F.3d 1035,
24 1040 (9th Cir. 2008). Substantial evidence supports the ALJ's finding. For example,
25 treatment records show that Pollock experienced a 60-80% reduction in pain with
26 medication, and that she experienced no side-effects. (A.R. 20, 531, 534, 540.)
27 Additionally, Pollock's mental health records revealed that her hallucinations and mood
28 improved over time with medication. (*Id.* at 20, 268, 471, 544, 589, 591.)

1 Third, the ALJ found that Pollock has made inconsistent statements about her
2 symptoms. (A.R. 20.) The ALJ may rely on ordinary techniques of credibility evaluation
3 when assessing a claimant's credibility. *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir.
4 2012). Substantial evidence supports the ALJ's finding that Pollock inconsistently
5 described her symptoms. For example, although she alleged that she suffers from hand
6 tremors that make it difficult to function, she denied experiencing numbness/tingling, loss
7 of motor skills, incoordination, or involuntary movements on multiple occasions. (A.R.
8 20, 526, 529, 532, 535, 538.)

9 Finally, the ALJ found that Pollock's daily activities were inconsistent with the
10 reported severity of her symptoms. (*Id.* 20-21.) "[T]he ALJ may discredit a claimant's
11 testimony when the claimant reports participation in everyday activities indicating
12 capacities that are transferable to a work setting." *Molina*, 674 F.3d at 1113. "Even
13 where those activities suggest some difficulty functioning, they may be grounds for
14 discrediting the claimant's testimony to the extent that they contradict claims of a totally
15 debilitating impairment." *Id.* Substantial evidence supports the ALJ's finding. Pollock
16 reported that she kept busy taking online Pharmacy Technician courses. (A.R. at 18, 21,
17 37.) Although Pollock reported that she is struggling to finish a final course, the ALJ
18 reasonably concluded that some of the mental abilities required to engage in online
19 schooling are the same as those necessary for obtaining and maintaining employment.
20 Accordingly, the ALJ did not err in finding Pollock's subjective symptom testimony not
21 entirely credible.

22 **III. Nurse Practitioner Anderson's Opinion**

23 Finally, Pollock contends that the ALJ should have given more weight to the
24 opinion of Anderson, a nurse practitioner. (Doc. 13 at 19-20.) Anderson opined that
25 Pollock's "mental illness prevents her from working at this time. Her condition is fragile
26 and she is easily stressed." (A.R. 568.) In weighing medical source opinions, Social
27 Security regulations distinguish between acceptable medical sources and other sources.
28 20 C.F.R. § 404.1513. "[O]nly licensed physicians and certain other qualified specialists

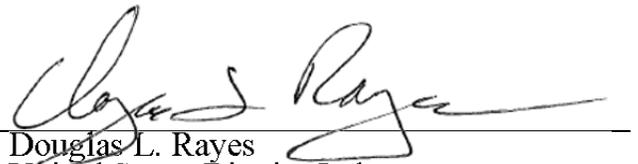
1 are considered '[a]cceptable medical sources.'" *Molina*, 674 F.3d at 1111 (quoting §
2 404.1513(a)). The opinions of other sources, such as physicians' assistants and nurse
3 practitioners, "are not entitled to the same deference." *Id.* (citing 20 C.F.R. § 404.1527;
4 SSR 06-03p, 2006 WL 2329939). "The ALJ may discount testimony from these 'other
5 sources' if the ALJ 'gives reasons germane to each witness for doing so.'" *Id.* (quoting
6 *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1224 (9th Cir. 2010)). Here, the ALJ
7 properly rejected Anderson's opinion because it is was a conclusion "on an issue reserved
8 to the Commissioner." (A.R. 21.) The ALJ also noted that Anderson's opinion was
9 inconsistent with the overall medical record, which indicated improvement and stability
10 over time. (*Id.*) These are germane reasons for discounting Ms. Anderson's opinion.¹

11 **CONCLUSION**

12 For the foregoing reasons, the ALJ's decision is free of legal error and supported
13 by substantial evidence.

14 **IT IS ORDERED** that the final decision of the Commissioner is **AFFIRMED**.
15 The Clerk shall enter judgment accordingly and terminate this case.

16 Dated this 17th day of May, 2016.

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27 Douglas L. Rayes
28 United States District Judge

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¹ Pollock argues that the opinion of a nurse practitioner working under the close supervision of a medical doctor could be entitled to the same weight as that doctor. (Doc. 13 at 19 (citing *Gomez v. Chater*, 74 F.3d 967 (9th Cir. 1996).) However, Pollock does not argue that Ms. Anderson worked under the close supervision of a medical doctor, nor does the record support such a finding.