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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Gloria June Fernandez,
10 Plaintiff,

11 v.

12 Carolyn W Colvin,
13 Defendant.

No. CV-15-01928-PHX-DLR
ORDER

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16 Plaintiff Gloria Fernandez seeks review under 42 U.S.C. § 405(g) of the final
17 decision of the Commissioner of Social Security (Commissioner) denying her application
18 for supplemental security income and disability insurance benefits. Because the decision
19 of the Administrative Law Judge (ALJ) is supported by substantial evidence and is not
20 based on legal error, the Commissioner's decision is affirmed.

21 **I. Background**

22 Fernandez is a 64 year-old female with an associate's degree. (A.R. 43.) She
23 previously worked as a billing associate, nurse, and physician's assistant. She alleges
24 disability based on high cholesterol, arthritis, herniated discs, sciatic nerve, depression,
25 anxiety, gout, and high blood pressure. (*Id.* at 252.)

26 On July 16, 2012, Fernandez applied for disability insurance benefits and
27 supplemental security income, alleging disability beginning March 1, 2012. (*Id.* at 11.)
28 On December 3, 2013, she appeared with her attorney and testified at a hearing before the

1 ALJ. A vocational expert also testified.

2 On February 11, 2014, the ALJ issued a decision that Fernandez was not disabled
3 within the meaning of the Social Security Act. The Appeals Counsel denied Fernandez's
4 request for review of the hearing decision, making the ALJ's decision the
5 Commissioner's final decision. On September 25, 2015, Fernandez sought review by this
6 Court.

7 **II. Legal Standard**

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

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

21 To determine whether a claimant is disabled for purposes of the Social Security
22 Act, the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears
23 the burden of proof on the first four steps, but at step five, the burden shifts to the
24 Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).

25 At the first step, the ALJ determines whether the claimant is engaging in
26 substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not
27 disabled and the inquiry ends. *Id.* At step two, the ALJ determines whether the claimant
28 has a "severe" medically determinable physical or mental impairment.

1 § 404.1520(a)(4)(ii). If not, the claimant is not disabled and the inquiry ends. *Id.* At step
2 three, the ALJ considers whether the claimant’s impairment or combination of
3 impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P
4 of 20 C.F.R. Pt. 404. § 404.1520(a)(4)(iii). If so, the claimant is automatically found to
5 be disabled. *Id.* If not, the ALJ proceeds to step four. At step four, the ALJ assesses the
6 claimant’s residual functional capacity (RFC) and determines whether the claimant is still
7 capable of performing past relevant work. § 404.1520(a)(4)(iv). If so, the claimant is not
8 disabled and the inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final step,
9 where he determines whether the claimant can perform any other work based on the
10 claimant’s RFC, age, education, and work experience. § 404.1520(a)(4)(v). If so, the
11 claimant is not disabled. *Id.* If not, the claimant is disabled. *Id.*

12 At step one, the ALJ found that Fernandez meets the insured status requirements
13 of the Social Security Act through March 31, 2015, and that she has not engaged in
14 substantial gainful activity since March 1, 2012. (A.R. 23.) At step two, the ALJ found
15 that Fernandez has the following severe impairments: degenerative disc disease and
16 spondylosis status post laminectomy and discectomy, obesity, and degenerative joint
17 disease. (*Id.*) At step three, the ALJ determined that Fernandez does not have an
18 impairment or combination of impairments that meets or medically equals an impairment
19 listed in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404. (*Id.* at 25.)

20 At step four, the ALJ found that Fernandez has the RFC to perform “the full range
21 of sedentary work as defined in 20 CFR 404.1567(a) and 416.967(a).” (*Id.* at 26.)
22 Accordingly, given her RFC, the ALJ concluded that Fernandez is capable of performing
23 her past work as a billing clerk and medical billing clerk. (*Id.* at 30.)

24 **IV. Analysis**

25 Fernandez argues the ALJ’s decision should be overturned because the ALJ
26 improperly (1) rejected the testimony of treating physician Dr. David Minor, and (2)
27 discounted the credibility of her testimony regarding the severity of her symptoms. (Doc.
28 16 at 12, 16.) The Court will address each argument in turn.

1 **A. The ALJ Did Not Err in Evaluating the Medical Source Evidence**

2 The ALJ is responsible for resolving conflicts in medical testimony. *Andrews v.*
3 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). Generally, more weight should be given to
4 the opinion of a treating physician than to the opinions of non-treating physicians. *Lester*
5 *v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Where a treating physician’s opinion is not
6 contradicted by another physician, it may be rejected only for “clear and convincing”
7 reasons, and where it is contradicted, it may not be rejected without “specific and
8 legitimate reasons” supported by substantial evidence in the record. *Id.* Likewise, an
9 examining physician’s opinion generally must be given greater weight than that of a non-
10 examining physician. *Id.* at 830. As with a treating physician, there must be clear and
11 convincing reasons for rejecting the uncontradicted opinion of an examining physician,
12 and specific and legitimate reasons, supported by substantial evidence in the record, for
13 rejecting an examining physician’s contradicted opinion. *Id.* at 830-31.

14 Dr. David Minor, D.O., has treated Fernandez for several years. (A.R. at 82.) He
15 completed three medical source statements regarding her functional capabilities. The
16 first form, dated August 16, 2012, states that Fernandez could occasionally lift less than
17 ten pounds and that she would miss work once or twice per month. (*Id.* at 383.) It noted
18 that she could sit for six hours during the workday and stand or walk for one hour during
19 the workday. (*Id.* at 382.) Minor also opined that Fernandez would often experience
20 interference with attention and concentration at work due to her mental impairments.
21 (*Id.*)

22 The second form, dated April 22, 2013, states that Fernandez can lift ten pounds
23 occasionally and less than ten pounds frequently due to “knee & back pain.” (*Id.* at 511.)
24 It also states that Fernandez is able to walk or stand less than two hours per day due to
25 “lumbar & knee pain [and] neuropathy.” (*Id.* at 512.) Further, Fernandez can sit for only
26 four hours per day and can never climb, stoop, kneel, crouch, or balance. (*Id.* at 512-13.)

27 The third form, dated September 17, 2013, states that Fernandez cannot lift any
28 weight in a work situation and would miss work three or four times a month. (*Id.* at 606.)

1 It further stated that she could sit for three hours per workday, walk or stand for one hour
2 out of the workday, and that her mental impairments would cause frequent or constant
3 interference with attention and concentration. (*Id.* at 605.)

4 The ALJ gave little weight to the opinions of Minor because they were not
5 supported by the objective medical evidence in the record and were “inconsistent with the
6 record as a whole.” (*Id.* at 29.) Inconsistency with the medical record is a sufficient
7 basis for discounting medical source evidence. *Batson v. Comm’r of Social Sec. Admin.*,
8 359 F.3d 1190, 1195 (9th Cir. 2004). As the ALJ noted, Minor “primarily summarized”
9 Fernandez’s “subjective complaints, diagnoses, and treatment, but he did not provide
10 objective clinical or diagnostic findings to support the functional assessment.” (*Id.* at 29.)
11 The statements merely cite “knee and back pain” without any supporting clinical
12 findings. The ALJ also noted that Minor’s medical source statements appear to suggest
13 further deterioration of Fernandez’s medical conditions, which contradicts the abundant
14 medical evidence indicating otherwise. The evidence demonstrates that Fernandez’s
15 back pain improved after surgery and that her mental impairments were controlled with
16 medication. Her surgeon believed the surgery to be a major success regarding her back
17 pain. (*Id.* at 519.) In October 2012, a few months after surgery, progress notes indicated
18 that Fernandez was “doing well,” but that she “would like us to sign a form for disability
19 so she could have her student loan payments waived.” (*Id.* at 589.) The notes further
20 state that “I told the patient that I cannot sign a form for permanent disability because I
21 do not think she is disabled. She can hold a job and work.” (*Id.*)

22 The Court finds the ALJ reasonably concluded that Minor’s medical source
23 statements were inconsistent with the objective medical evidence and properly afforded
24 little weight to them. Accordingly, the Court finds the ALJ set forth specific and
25 legitimate reasons supported by substantial evidence for discounting Dr. Minor’s opinion.
26 *See Lester*, 81 F.3d at 830.

27 **B. The ALJ Did Not Err in Evaluating Fernandez’s Credibility**

28 Fernandez argues that the ALJ erred in evaluating the credibility of her testimony

1 regarding the severity of her symptoms. (Doc. 16 at 16.) In evaluating credibility, the
2 ALJ is required to engage in a two-step analysis: (1) determine whether the claimant
3 presented objective medical evidence of an impairment that could reasonably be expected
4 to produce some degree of the pain or other symptoms alleged; and, if so with no
5 evidence of malingering, (2) reject the claimant's testimony about the severity of the
6 symptoms only by giving specific, clear, and convincing reasons for the rejection.
7 *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009). "In reaching a credibility
8 determination, an ALJ may weigh inconsistencies between the claimant's testimony and
9 his or her conduct, daily activities, and work record, among other factors." *Bray v.*
10 *Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009).

11 At the hearing, Fernandez testified that she had back surgery in July 2012. (A.R.
12 46.) She lives with her two sons and has a pitbull. (*Id.* at 54-55.) She has a driver's
13 license and occasionally drives. (*Id.* at 56-57.) She frequently talks on the phone with
14 her sister and a few friends. (*Id.* at 59.) Fernandez goes to the grocery store once a
15 month and goes out to eat twice a month. (*Id.* at 60-61.) She handles her daily activities
16 of living, including bathing, dressing, making breakfast and meals, doing the dishes,
17 laundry, and occasional household chores. (*Id.* at 63-64.) She has a laptop on which she
18 plays games, shops, takes online classes, and uses Facebook. (*Id.* at 64-65.) As a hobby,
19 Fernandez does embroidery, and sometimes sells her work, but rarely embroiders for
20 longer than thirty minutes at a time. (*Id.* at 65-66, 69.)

21 Fernandez further testified that she is unable to sit for longer than thirty minutes
22 due to back pain. (*Id.* at 69-70.) She stated that she has left knee pain for which she
23 takes medication. (*Id.* at 71-72.) She can only stand and walk for five to ten minutes at a
24 time before her back starts hurting, which requires her to use a scooter when she goes
25 grocery shopping. (*Id.* at 72-73.) After her surgery, she did not go to physical therapy as
26 recommended by her doctor. (*Id.* at 74-75.) The surgery helped her back pain and the
27 pain in her thigh. (*Id.* at 81.) She can lift one gallon of milk, but cannot lift two at the
28 same time because "it hurts." (*Id.* at 76.)

1 Fernandez stated that she has anxiety, major depressive disorder, and bipolar
2 disorder. (*Id.* at 77.) Sometimes she gets upset and will “scream and holler” and “can’t
3 bring [her]self back down.” (*Id.*) Medication, however, controls all the symptoms of
4 these disorders. (*Id.* at 78.)

5 The ALJ found Fernandez’s statements regarding the severity of her symptoms not
6 fully credible because they were inconsistent with the “relatively benign” medical
7 evidence and inconsistent with the relatively conservative treatment she received for her
8 conditions. (*Id.* at 26, 27.) An ALJ may discount a claimant’s credibility if the
9 “statements at her hearing do not comport with objective evidence in her medical record.”
10 *Bray*, 554 F.3d at 1227. The ALJ stated that “[t]he claimant has not generally received
11 the type of medical treatment one would expect for a totally disabled individual and the
12 claimant’s alleged loss of function is not supported by objective medical findings.” (*Id.*
13 at 27.) The ALJ noted that Fernandez had back surgery in July 2012, which was
14 described as a “major success for [her] back pain.” (*Id.* at 519.) Although her doctor
15 recommended physical therapy, Fernandez did not follow through. (*Id.* at 74-75.) For
16 pain, she takes over-the-counter medications. (*Id.* at 451.) In addition, the latest x-ray on
17 her knee was “unremarkable,” and all of her other conditions were “under control” and
18 “medically stable.” (*Id.* at 521, 641.)

19 With respect to Fernandez’s alleged mental impairments, the ALJ noted that
20 Fernandez stated that her symptoms are controlled with medication. (*Id.* at 28.) The
21 medical evidence confirms this, as over the course of several treatment visits it is noted
22 that she has “normal mood and affect,” good insight and judgment, and all of her mental
23 status examinations were within normal limits. (*Id.* at 386, 517, 619.) In November
24 2013, Fernandez reported no depression and no anxiety. (*Id.* at 611.)

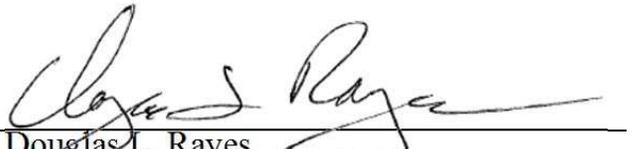
25 The Court agrees with the ALJ’s characterization of the medical evidence as
26 “relatively benign” in this case. The evidence indicates that Fernandez’s pain is managed
27 with mild medication and that her remaining medical conditions are stable. In addition,
28 her mental impairments appear to have improved, and Fernandez admitted that they are

1 controlled with medication. The ALJ reasonably concluded that this evidence
2 undermined Fernandez's testimony at the hearing, especially regarding her back pain and
3 her "screaming and hollering." Accordingly, the Court finds the ALJ provided specific,
4 clear, and convincing reasons for discounting Fernandez's credibility regarding the
5 severity of her symptoms, and that those reasons are supported by substantial evidence.
6 *Vasquez*, 572 F.3d at 591.

7 **IT IS ORDERED** that the final decision of the Commissioner of Social Security
8 is **AFFIRMED**. The Clerk shall enter judgment accordingly and terminate this case.

9 Dated this 13th day of October, 2016.

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Douglas L. Rayes
United States District Judge