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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Tamara L Thompson,  
10 Plaintiff,

11 v.

12 Carolyn W Colvin,  
13 Defendant.  
14

No. CV-16-00372-PHX-JAT

**ORDER**

15 Pending before the Court is Plaintiff's appeal of the Commissioner's denial of her  
16 application for social security disability benefits. The parties are familiar with Plaintiff's  
17 medical history; therefore, the Court will only discuss it below as necessary for the  
18 decision.

19 Plaintiff does not claim a particular error in the Administrative Law Judge's (ALJ)  
20 application of the five-step sequential evaluation to determine whether Plaintiff is entitled  
21 to benefits. *See Bowen v. Yuckert*, 482 U.S. 137, 140-41 (1987) (citing 20 C.F.R. §§  
22 404.1520(b)-(f)). Instead, Plaintiff claims four separate errors regarding how the ALJ  
23 reached her conclusions within the five-steps. The four claimed errors are: 1) the ALJ  
24 failed to give sufficient reasons for discrediting the treating physicians; 2) the ALJ failed  
25 to give sufficient reasons for discrediting Plaintiff's claimed symptoms; 3) the ALJ failed  
26 to give sufficient reasons for discrediting the lay witness testimony; and 4) the ALJ did  
27 not pose a complete hypothetical to the vocational expert. The Court will consider each  
28 of these claims of error in turn.

1     **I.     Physicians**

2             The ALJ must give “clear and convincing” reasons for rejecting the opinion of a  
3 treating if it is not contradicted. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995).  
4 The ALJ must give “specific and legitimate” reasons, supported by substantial evidence  
5 in the record, for rejecting the opinion of a treating physician when it is contradicted.  
6 *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). Here, Plaintiff argues the ALJ  
7 failed to give sufficient reasons to reject the opinions of her two treating physicians: Dr.  
8 Dearing and Dr. Syal. (Doc. 14 at 18). Plaintiff also argues that the ALJ failed to give  
9 sufficient reasons for rejecting portions of the opinion of examining physician, Dr.  
10 Darden. (*Id.*).

11             Plaintiff never states whether she argues that the clear and convincing test verses  
12 the specific and legitimate test applies in this case. (Doc. 14 at 12). Defendant argues  
13 that because there is a conflict in the medical evidence, the specific and legitimate test  
14 applies. (Doc. 15 at 4). The Court agrees with Defendant and will determine whether the  
15 ALJ provided specific and legitimate reasons for rejecting the opinions at issue.

16             **A.     Dr. Dearing**

17             The ALJ gave the following reasons for rejecting the testimony of treating  
18 physician Dr. Dearing: 1) his opinions were not consistent with his own clinical and  
19 laboratory findings (Doc. 11-3 at 41); 2) his opinions were not consistent with the  
20 medical records (*id.*); 3) his opinions were based on Plaintiff’s self-reported symptoms  
21 (*id.*); 4) his limitations on Plaintiff’s abilities were not based on objective evidence and he  
22 gave no explanation for how he arrived at the limitations (such as breaks every two  
23 hours) (*id.*); 5) his opinions on fibromyalgia and anxiety are outside his area of expertise;  
24 and, 6) any legal conclusions about the Plaintiff’s ability to work are the exclusive  
25 purview of the ALJ (*id.*).

26             Plaintiff only argues that one of these six reasons is not a legitimate reason to  
27 discredit Dr. Dearing, namely that the diagnoses are outside his area of expertise. As to  
28 the other five reasons, Plaintiff seems to concede that such reasons could be specific and

1 legitimate, but argues that the reasons are not supported by the record in this case.

2 **1. Specific and Legitimate**

3 **a. Fifth Reason stated by ALJ**

4 Turning first to the doctor's area of expertise, Plaintiff argues that the ALJ cannot  
5 discredit a treating physician for giving an opinion outside his area of expertise. (Doc. 14  
6 at 14 (*citing Lester v. Chater*, 81 F.3d 821, 833 (9th Cir. 1995))). In *Lester*, the Court of  
7 Appeals stated that the treating physician was entitled to special weight, even for  
8 diagnoses outside his area of expertise, if the doctor was actually treating the condition.  
9 81 F.3d at 833. The Court of Appeals also stated that the treating physician's opinion as  
10 to the impact of the combination of all of a plaintiff's limitations was also entitled to  
11 special weight. *Id.* Defendant counters and cites 20 C.F.R. § 404.1527(d)(5), which  
12 allows the ALJ to consider the doctor's specialty when determining what weight to give  
13 the opinion. (Doc. 15 at 7 n.2). Alternatively, Defendant argues that any error was  
14 harmless. (*Id.*).

15 In this area, it appears that what the regulations permit the ALJ to consider and  
16 what the Ninth Circuit Court of Appeals permits the ALJ to consider in determining the  
17 weight to give an opinion are not exactly aligned. In this case, it appears the ALJ did  
18 give a reason for discounting the weight to be given to the treating physician's opinion  
19 that was impermissible under *Lester*. Accordingly, this was error. However, because the  
20 ALJ gave five additional permissible reasons, this Court agrees with Defendant that this  
21 error was harmless. *See Stout v. Commissioner of Sec. Sec. Admin.*, 454 F3d 1050, 1054-  
22 56 (9th Cir. 2006).

23 **2. Substantial Evidence of Record**

24 Next the Court must determine whether the ALJ's five other reasons are supported  
25 by substantial evidence in the record. Substantial evidence is more than a mere scintilla,  
26 but less than a preponderance. *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998). It  
27 is such relevant evidence as a reasonable mind might accept as adequate to support a  
28 conclusion. *Id.* In determining whether there is substantial evidence to support a

1 decision, this Court considers the record as a whole, weighing both the evidence that  
2 supports the ALJ's conclusions and the evidence that detracts from the ALJ's  
3 conclusions. *Id.* If there is sufficient evidence to support the ALJ's determination, the  
4 Court cannot substitute its own determination. *See Young v. Sullivan*, 911 F.2d 180, 184  
5 (9th Cir. 1990). Additionally, the ALJ is responsible for resolving conflicts in medical  
6 testimony, determining credibility, and resolving ambiguities. *See Andrews v. Shalala*,  
7 53 F.3d 1035, 1039 (9th Cir. 1995).

8 **a. First Reason Stated by ALJ**

9 First, Plaintiff acknowledges that one basis the ALJ gave for giving little weight to  
10 the opinion of Dr. Dearing was that the doctor's ultimate opinions on Plaintiff's  
11 limitations were inconsistent with his own treatment notes and inconsistent with his own  
12 laboratory findings. (Doc. 14 at 13). Other than saying that Dr. Dearing's opinions are  
13 consistent with the medical record (which would presumably include Dr. Dearing's own  
14 record), Plaintiff makes no specific argument addressing this reason given by the ALJ.

15 Conversely, Defendant points to multiple places in Dr. Dearing's treatment notes  
16 that support the ALJ's conclusion that Dr. Dearing's opinions are not supported by his  
17 clinical findings. For example, Dr. Dearing reported that Plaintiff had consistently  
18 normal physical exams during the relevant period. (Doc. 15 at 5 (*citing* Tr. 567, 57-68,  
19 576, 582-83, 588, 600, 651, 656-57, 672, 694, 699)). Plaintiff denied having myalgias  
20 (muscle pain), arthralgias (joint pain), or muscle weakness. (Doc. 15 at 5 (*citing* Tr. 567,  
21 770). Further, on the day Dr. Dearing completed the form on Plaintiff's residual  
22 functional capacity, Plaintiff's physical exam was normal, with Dr. Dearing finding that  
23 Plaintiff was oriented to person, place and time, was well-developed and well-nourished,  
24 and had a normal range of motion and normal reflexes. (Doc. 15 at 5 (*citing* Tr. 588)).  
25 This evidence is substantial and supports the ALJ's first reason.

26 **b. Second Reason Stated by ALJ**

27 Second, Plaintiff argues that the ALJ's reason for rejecting the opinions of Dr.  
28 Dearing because they are inconsistent with other medical records is incorrect.

1 Specifically, Plaintiff argues that Dr. Dearing's assessment of Plaintiff's mental  
2 limitations was consistent with Dr. Klink's opinion. (Doc. 14 at 14-15). Plaintiff further  
3 argues that Dr. Dearing's assessment of Plaintiff's physical limitations was consistent  
4 with the opinion of Dr. Bhalla. (Doc. 14 at 15). Finally, Plaintiff argued that Dr.  
5 Dearing's assessment of Plaintiff's physical limitations was consistent with her physical  
6 therapy and chiropractic treatment of back, foot and ankle pain. (Doc. 14 at 15).

7 Defendant responds and notes that Dr. Klink's opinions did not cause Plaintiff to  
8 be disabled, but instead allowed for simple, routine work with repetitive tasks; thus,  
9 Defendant concludes that Dr. Dearing's opinion being consistent with Dr. Klink's  
10 opinion does not lead to a disability finding. (Doc. 15 at 8). Further, Defendant notes  
11 that Plaintiff's symptoms (once having 14 tender points, and once having only 8 tender  
12 points), Plaintiff's denial of having muscle pain, and the limited clinical findings by any  
13 doctor on arthritis were all inconsistent with Dr. Dearing's diagnosis of fibromyalgia and  
14 inflammatory arthritis. (Doc. 15 at 6 (*citing* Tr. 39, 507, 433, 607, 567, and 38)).

15 All of the evidence cited by Defendant is substantial evidence to support the ALJ's  
16 decision. When there is conflict in the medical evidence, the ALJ must resolve the  
17 conflict; and here, there is substantial evidence to support the ALJ's conclusion that the  
18 evidence does not support Dr. Dearing's findings.

19 **c. Third Reason Stated by ALJ**

20 Defendant notes that the ALJ can reject treating physician's opinions that are not  
21 based on clinical findings, but instead based on Plaintiff's self-reported symptoms, if the  
22 ALJ properly discredited the Plaintiff's self-reported symptoms. (Doc. 15 at 6 (*citing*  
23 *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014))). Plaintiff does not dispute this  
24 law. Instead, Plaintiff argues that the ALJ did not properly reject her symptoms. The  
25 Court will address these arguments below.

26 **d. Fourth Reason Stated by ALJ**

27 Next, Defendant argues that the ALJ properly failed to give weight to Dr. Dearing  
28 because his limitations were brief, conclusory and inadequately supported by clinical

1 findings. (Doc. 15 at 6 (*citing Chaudhry v. Astrue*, 688 F.3d 661, 671 (9th Cir. 2012))).  
2 Plaintiff argues that Dr. Dearing’s limitations are consistent with other doctor’s  
3 diagnoses. (Doc. 14 at 15). However, Plaintiff does not dispute the ALJ’s statement that  
4 there is nothing in Dr. Dearing’s clinical findings to support or show why Dr. Dearing  
5 concluded that Plaintiff: 1) needed unscheduled breaks every 2 hours; and 2) can only sit  
6 for 3 hours. (Doc. 11-3 at 41). Thus, this reason stated by the ALJ is supported by  
7 substantial evidence in the record.

8 **e. Sixth Reason Stated by ALJ**

9 Finally, the ALJ rejected any “opinion” of Dr. Dearing that was a legal conclusion  
10 about Plaintiff’s eligibility for social security disability benefits. The specific findings  
11 the ALJ rejected included that Plaintiff: 1) is “disabled”; 2) is “unable to work”; 3)  
12 “cannot perform a past job”; 4) “meets a Listing”; and is “unable to work full time.”  
13 (Doc. 11-3 at 41). Plaintiff argues that Dr. Dearing’s ultimate conclusion that someone  
14 with the limitations Dr. Dearing found in Plaintiff would not be able to sustain  
15 competitive employment is a medical conclusion. (Doc. 14 at 15). This Court disagrees.  
16 Whether Plaintiff can work is the ultimate question the ALJ must answer, not a medical  
17 condition a doctor can diagnose. Thus, the ALJ gave a proper reason for discounting this  
18 portion of Dr. Dearing’s opinion.

19 **3. Conclusion Regarding Dr. Dearing**

20 Because the ALJ gave at least four specific and legitimate reasons supported by  
21 substantial evidence of record to not give controlling weight to the opinions and  
22 limitations of Dr. Dearing, the Court will not reverse the ALJ based on this claim of  
23 error.

24 **B. Dr. Syal**

25 The ALJ gave the following reasons for not crediting the opinion of treating  
26 physician Dr. Syal: 1) the opinions are not consistent with the medical records (Doc. 11-3  
27 at 49); 2) the opinions are not consistent with Dr. Syal’s own clinical findings; 3) Dr.  
28 Syal’s opinion on Plaintiff’s limitations is not supported by objective evidence, and was

1 vague with no medical support; 4) Dr. Syal's limitations were internally inconsistent and  
2 inconsistent with other medical evidence; and 5) Dr. Syal's opinion on Plaintiff's mental  
3 limitation was outside his area of expertise. Similar to the discussion of Dr. Dearing  
4 above, Plaintiff effectively argues that reasons 1-4 are not supported by the record, and  
5 that reason 5 is not a legitimate reason to discredit Dr. Syal's opinions.

6 **1. Fifth Reason Stated by ALJ**

7 For the same reasons stated above with respect to Dr. Dearing, the Court finds that  
8 in this Circuit, it is error for the ALJ to discredit a treating physician because he or she is  
9 rendering opinions outside his or her area of expertise. However, because the ALJ gave  
10 four other reasons for discrediting Dr. Syal's opinion, this error was harmless.

11 **2. First Reason Stated by ALJ**

12 Plaintiff argues that the ALJ's statement that Dr. Syal's opinions and limitations  
13 are inconsistent with the other medical evidence is incorrect because Dr. Syal's opinions  
14 are consistent with the opinions of Drs. Klinck and Bhalla. (Doc. 14 at 16-17). In her  
15 opinion, the ALJ specifically noted that she was relying on the opinions of Dr. Daughtery  
16 (Tr. 113-140); Dr. DKH (Tr. 143-174) and Dr. Darden (Tr. 438-434) and that they  
17 conflicted with Dr. Syal's opinions. (Doc. 11-3 at 48). As indicated above, it is the  
18 ALJ's job to resolve conflicts in the medical testimony. Thus, Plaintiff's argument that  
19 because Dr. Syal is not inconsistent with two doctors of record means he is not  
20 inconsistent with any doctors of record is incorrect. Accordingly, this reason stated by  
21 the ALJ is supported by substantial evidence of record.

22 **3. Second Reason Stated by ALJ**

23 Next, the ALJ discounted the opinions and limitations of Dr. Syal because they are  
24 not consistent with his own clinical findings. Defendant notes that although Dr. Syal  
25 found limitations of sitting or standing for only 30 minutes at a time and walking only  
26 half a block (Doc. 15 at 8-9), Dr. Syal's examine notes stated that the physical exam was  
27 normal, motor exam was normal, strength was normal, deep tendon reflexes were 2+,  
28 plantar response was normal, sensory exam was normal, coordination was intact and gate

1 was normal (Doc. 15 at 9). Further, Plaintiff alleged she can sit longer than Dr. Syal  
2 opined. (Doc. 15 at 9). And Dr. Syal believed Plaintiff was a malingerer. (Doc. 15 at 9).  
3 Additionally, the ALJ noted that while Dr. Syal found many limitations on Plaintiff  
4 (sitting 4 hours of an 8 hour day, lifting no more than 20 pounds, unscheduled breaks  
5 every 2 hours for 5-10 minutes, and severe symptoms that would frequently interfere with  
6 the attention and concentration required to perform simple repetitive tasks), Plaintiff was  
7 nonetheless working 8 hours per day, 5 days a week at the time Dr. Syal made these  
8 findings. (Doc. 11-3 at 49). All of these facts taken together are substantial evidence of  
9 record to support the ALJ's reason for not crediting Dr. Syal, specifically because the  
10 doctor's own notes are inconsistent with his diagnosed limitations.

#### 11 **4. Third Reason Stated by ALJ**

12 The ALJ also did not credit Dr. Syal's opinion because it was vague and  
13 unsupported by objective evidence. Plaintiff argues that the side effects of Plaintiff's  
14 various medications could be an objective basis for Dr. Syal's limitations. (Doc. 14 at  
15 16). However, for the reasons stated with respect to the ALJ's second reason for not  
16 giving greater weight to Dr. Syal, Dr. Syal's examination findings are inconsistent with  
17 the limitations. Therefore, the record supports the ALJ's finding that the objective  
18 evidence does not support the limitations and is vague as to how the doctor arrived at the  
19 limitations.

#### 20 **5. Fourth Reason Stated by ALJ**

21 Next, the ALJ noted that Dr. Syal's findings were internally inconsistent. (Doc.  
22 11-3 at 49). By way of example, Defendant notes that Dr. Syal opined that Plaintiff had  
23 no limitations in repetitive reaching, handling, or fingering, but concluded Plaintiff had  
24 limitations in the ability to do these tasks. (Doc. 15 at 9 (*citing* Tr. 728)). These internal  
25 inconsistencies are substantial evidence of record to support the ALJ's reason for not  
26 crediting the opinion of Dr. Syal.

#### 27 **6. Conclusion Regarding Dr. Syal**

28 For the foregoing reasons, the ALJ gave specific and legitimate reasons supported

1 by substantial evidence of record to not give controlling weight to the opinions and  
2 limitations of Dr. Syal. The Court will not reverse the ALJ based on this claim of error.

3 **C. Dr. Darden**

4 Plaintiff argues the ALJ erred in only crediting part and not all of examining  
5 physician, Dr. Darden's opinion. Defendant responds and notes that much of Dr.  
6 Darden's opinion is expressed as: Plaintiff "may" have certain limitations. Further, the  
7 ALJ found that, "... Dr. Darden's restrictions contain wording such as 'likely' and 'may  
8 experience' and 'may be vulnerable', which are vague and imprecise as to the claimant's  
9 true limitations." (Doc. 11-3 at 48). The ALJ did not err in not crediting limitations that  
10 were equivocal. *See Glosenger v. Social Sec. Admin.*, 2014 WL 1513995, \*6 (April 16  
11 2014); *Valentine v. Commissioner of Social Security Administration*, 574 F.3d 685, 691-  
12 92 (9th Cir. 2009). Accordingly, the Court will not reverse the ALJ based on this claim  
13 of error.

14 **D. Conclusion Regarding Physicians**

15 The Court finds that the ALJ gave sufficient reasons for rejecting the opinions of  
16 the physicians recounted above. Accordingly, the Court will not reverse the decision of  
17 the ALJ based on Plaintiff's claims of error regarding the physicians' opinions.

18 **II. Plaintiff's Subjective Complaints**

19 The parties agree that under the facts of this case, the ALJ could reject the  
20 Plaintiff's symptom testimony only if the ALJ gave clear and convincing reasons for  
21 rejecting the testimony. (Doc. 14 at 18-19; Doc. 15 at 11); *see generally Garrison v.*  
22 *Colvin*, 759 F.3d 995, 1014-15 (9th Cir. 2014). The ALJ gave 5 reasons for rejecting  
23 Plaintiff's symptom testimony, specifically: 1) the severity of her claimed symptoms  
24 were inconsistent with and not supported by the medical evidence; 2) the severity of her  
25 claimed symptoms were inconsistent with her daily activities; 3) her reports of her  
26 symptoms throughout the record were inconsistent and unpersuasive; 4) her testimony  
27 was inconsistent with her treatment history; and 5) her prior work history and reasons for  
28 being unemployed were inconsistent with her symptom testimony. In her opinion, the

1 ALJ gave expansive explanations for each of these reasons. (Doc. 11-3 at 44-47).

2 Plaintiff claims the ALJ erred in failing to fully credit Plaintiff's symptom  
3 testimony. First, Plaintiff takes issue with the ALJ's fourth reason (that Plaintiff's  
4 treatment history was inconsistent with her claimed symptoms) by advancing reasons for  
5 Plaintiff's treatment history which are not supported by the record. Specifically, Plaintiff  
6 hypothesizes that her failure to take her medication was perhaps because of poor  
7 memory, perhaps due to financial limitations, or perhaps due to poor judgment from her  
8 mental issues. (Doc. 14 at 20). However, Plaintiff cites nothing for these arguments and  
9 none of these arguments appear to have been presented to the ALJ.

10 Defendant responded to this argument, relying on *Molina v. Astrue*, 674 F.3d  
11 1104, 1114 (9th 2012), which held, "Although Molina provided reasons for resisting  
12 treatment, there was no medical evidence that Molina's resistance was attributable to her  
13 mental impairment rather than her own personal preference, and it was reasonable for the  
14 ALJ to conclude that the 'level or frequency of treatment [was] inconsistent with the level  
15 of complaint.'" This Court agrees with Defendant that this case is analogous to *Molina*.  
16 Thus, the ALJ's reason for discrediting Plaintiff (that her treatment history is inconsistent  
17 with the severity of the symptoms she claims), is a clear and convincing reason which  
18 was not premised on any error.

19 Second, Plaintiff claims the ALJ's first reason (that Plaintiff's claimed symptoms  
20 were inconsistent with the medical record and not supported by the medical record) was  
21 error. Specifically, Plaintiff claims that a few periods of well-being do not mean that  
22 Plaintiff is not disabled and that Plaintiff's stable or improved symptoms do not mean she  
23 is not disabled. (Doc. 14 at 20).

24 While Plaintiff argues she has had only temporary recoveries from mental  
25 limitations, the record detailed by the ALJ is inconsistent with Plaintiff's arguments. The  
26 ALJ noted 11 examples in the medical records that supported the ALJ's finding that  
27 Plaintiff had either improved, was experiencing no symptoms, or that her mood was  
28 stable. (Doc. 11-3 at 45-46, citing Exhibits: B22F, p.51; 12F; B10F; B22F, pp.19-20;

1 B22F, p.26; B22F; B23F; B13F; B16F; B 18F; B16F, p.2). Plaintiff's claimed symptoms  
2 being inconsistent with or not supported by the medical records is a clear and convincing  
3 reason to reject her symptoms testimony (*see Morgan v. Comm. Of Soc. Sec. Admin.*, 169  
4 F.3d 595, 599-600 (9th Cir. 1999)), and is supported by the record in this case.

5 Third, Plaintiff claims the ALJ's second reason (that Plaintiff's daily activities are  
6 inconsistent with the claimed severity of her symptoms) and fifth reason (that Plaintiff's  
7 prior work history or reasons for leaving various jobs are inconsistent with the claimed  
8 severity of her symptoms) are improper reasons for finding Plaintiff not credible. (Doc.  
9 14 at 21).

10 Preliminarily, Plaintiff's daily activities can be considered in determining whether  
11 her testimony regarding the severity of her symptoms is credible. *See e.g., Morgan*, 169  
12 F.3d at 600. Additionally, Plaintiff's work history can also be considered in determining  
13 whether her testimony about the severity of her symptoms is credible. *See Thomas v.*  
14 *Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002). Here, Plaintiff appears to impliedly be  
15 arguing that after *Garrison*, 759 F.3d at 1016, daily activities can no longer be considered  
16 negatively against Plaintiff in determining whether Plaintiff is credible because daily  
17 activities at home are done in a different environment than a work environment.

18 In this case, Plaintiff talks on the phone, uses Facebook regularly, grocery shops,  
19 uses the computer, cares for ducks, geese and chickens, uses email, babysits her two  
20 toddler grandchildren, independently handles her personal care, cooks, does light  
21 household chores (including laundry, washing dishes, vacuuming and mopping), drives,  
22 manages her family finances, and independently uses public transportation. (Doc. 11-3  
23 at 44-45, 46). Plaintiff also takes walks and pulls weeds. (*Id.* at 44). Obviously some of  
24 these activities are done in the home, and some are not.

25 Although *Garrison* noted that at home activities are done in a more flexible  
26 environment, Plaintiff's activities in this case are quite robust, including managing  
27 finances and caring for two small children. In the second and third full paragraphs on  
28 page 44 of the ALJ's opinion, the ALJ recited Plaintiff's testimony of severe mental and

1 physical limitations. The Court agrees that the limitations described by Plaintiff are  
2 inconsistent with the many daily activities in which Plaintiff engages. Thus, the Court  
3 finds this reason provided by the ALJ is a clear and convincing reason to not credit  
4 Plaintiff's symptom testimony.

5 Additionally, Plaintiff argues that her an inability to get along with others in a  
6 workplace environment and her doctor's suggestion that she responds inappropriately to  
7 supervisors should be considered part of her disability rather than a lack of motivation to  
8 work on Plaintiff's part. (Doc. 14 at 21-22). Nothing in the record suggests that  
9 Plaintiff's inability to get along with supervisors or other co-workers relates to her  
10 disability. (Doc. 11-3 at 45); *cf. Bayliss v. Barnhart*, 427 F.3d 1211, 1217 n.3 (9th Cir.  
11 2005) (noting claimant's diagnosis with at least 5 mental disorders). Further, Plaintiff  
12 stated that she has failed to look for work for transportation reasons, not disability  
13 reasons. (*Id.*). Thus, this fifth reason given by the ALJ is clear and convincing and  
14 supported by substantial evidence of record.

15 Based on the foregoing, the ALJ has given five separate clear and convincing  
16 reasons for not crediting Plaintiff's subjective symptom testimony. Further, each reason  
17 was supported by substantial evidence of record. Therefore, this Court will not reverse  
18 the decision of the ALJ on this basis.

### 19 **III. Lay Witness Testimony**

20 The ALJ may discount the testimony of lay witnesses only if the ALJ gives  
21 reasons for discounting the testimony that are germane to each witness. *Dodrill v.*  
22 *Shalala*, 12 F.3d 915, 919 (9th Cir. 1993). In this case, Plaintiff's husband and daughter  
23 each completed a questionnaire regarding Plaintiff's symptoms. (Doc. 14 at 23).  
24 Plaintiff's son also submitted a questionnaire regarding Plaintiff's seizures. (Doc. 11-3 at  
25 49). The ALJ gave little weight to these questionnaires. (*Id.*). Specifically, the ALJ said  
26 the reports of symptoms in the questionnaires are inconsistent with the medical  
27 testimony. (*Id.*). Additionally, the ALJ found the questionnaires unpersuasive because  
28 they answers are conclusory and do not describe Plaintiff's symptoms. (*Id.*). Finally, the

1 ALJ further noted that Plaintiff's husband does not live with Plaintiff, but instead lives  
2 and works in North Dakota and, thus, Plaintiff's husband does not have the opportunity to  
3 observe her symptoms on a regular basis. (*Id.*).

4 On appeal, Plaintiff does not claim that the ALJ's reasons are not germane reasons  
5 as to each witness to discount their lay testimony. Instead, Plaintiff argues that each  
6 reason offered by the ALJ is factually inaccurate based on the record. (Doc. 14 at 23-24).  
7 First, Plaintiff states without citation "these witness statements do describe Plaintiff's  
8 symptoms and are quite detailed in explaining how Plaintiff's impairments limit her  
9 ability to perform work activity." Plaintiff offers no examples to support this assertion.

10 Based on the ALJ's citations, the Court has reviewed the questionnaires. (Tr. 360,  
11 352-359, and 317-327). The Court agrees with the ALJ that while the lay witnesses  
12 answered all the questions, the answers are basically conclusory assertions, mostly  
13 referencing generalized anxiety. Therefore, the Court agrees with the ALJ that the  
14 witness statement do not provide adequate evidence to be helpful regarding a  
15 determination of disability.

16 Next, Plaintiff argues that the husband's questionnaire should not have been  
17 discounted because he visits for two weeks every 3 to 6 months. (Doc. 14 at 23). This  
18 Court agrees with the ALJ that the potential that the husband only sees Plaintiff 4 weeks  
19 out of a 52 week year is a germane reason to discount his reporting of her symptoms.

20 Finally, Plaintiff argues that the ALJ was factually incorrect to conclude that the  
21 lay witness statements were inconsistent with the medical evidence; specifically, Plaintiff  
22 claims the ALJ did not give particularized reasons for rejecting the lay witness's reports  
23 that Plaintiff has difficulty taking criticism from supervisors. (Doc. 14 at 23-14).  
24 Plaintiff did not cite to where in the lay witnesses' reports any lay witnesses reported that  
25 Plaintiff could not take criticism from a supervisor.<sup>1</sup> Further, the Court cannot  
26 hypothesize how Plaintiff's daughter or husband would be in a position to observe her

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27  
28 <sup>1</sup> The Court did note that Plaintiff's husband reported Plaintiff having told him  
about getting written up. However, Plaintiff's husband also reported that Plaintiff had  
never been fired or laid off because she could not get along with others. (Tr. at 324).

1 receiving criticism from a supervisor. Nonetheless, the Court has already addressed the  
2 ALJ's rejection of certain medical testimony, and acceptance of other testimony, and  
3 concluded the ALJ did not err in this regard. Thus, the ALJ's statement that the lay  
4 witness statements are not supported by the "greater objective medical evidence" is  
5 accurate based on the record as a whole and the ALJ's other findings. (Doc. 11-3 at 49).

6 Based on all of the foregoing, the Court finds the ALJ gave germane reasons for  
7 discounting each of the lay witness reports. Accordingly, the ALJ did not err in this  
8 regard.

#### 9 **IV. Vocational Expert Hypothetical**

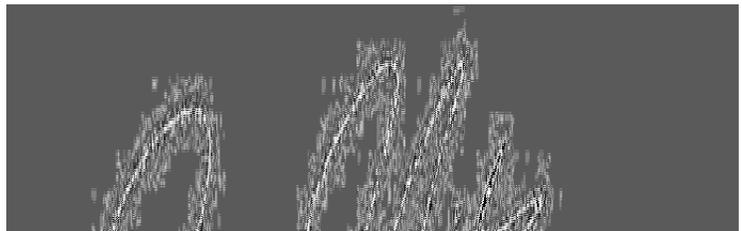
10 Plaintiff also argued that the ALJ posed an incomplete hypothetical to the  
11 vocational expert that was not supported by the record. (Doc. 14 at 24). Specifically,  
12 Plaintiff states, "Here, in posing her hypothetical questions to the vocational expert, the  
13 ALJ omitted Plaintiff's credible allegations, those of the lay witnesses, and the limitations  
14 assessed by Plaintiff's treating and examining doctors as detailed above." (*Id.*) For all of  
15 the reasons stated above, this Court finds the ALJ did not err in not crediting these  
16 sources. Thus, the ALJ also did not err in not including these sources' limitations in the  
17 hypothetical posed to the vocational expert.

#### 18 **V. Conclusion**

19 Based on the foregoing,

20 **IT IS ORDERED** that the decision of the ALJ is affirmed and the Clerk of the  
21 Court shall enter judgment accordingly.<sup>2</sup>

22 Dated this 1st day of November, 2016.



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28 <sup>2</sup> To the extent a mandate is require, the judgment shall serve as the mandate in  
this case.