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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Lori Ann Jeffries,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-17-0893-PHX-DKD

ORDER

15
16 Lorie Ann Jeffries¹ appeals from the denial of her application for benefits by the
17 Social Security Administration and argues that the ALJ should not have rejected the
18 opinion rendered by her treating physician and did not provide sufficient reasons for
19 rejecting her symptom testimony. (Doc. 16)

20 This Court has jurisdiction pursuant to 42 U.S.C. § 405(g) and, with the parties'
21 consent to Magistrate Judge jurisdiction, pursuant to 28 U.S.C. § 636(c). (Doc. 14)
22 Because the Court concludes that the ALJ did not err, the Court will uphold the denial of
23 benefits.

24 **Standard of Review**

25 This court must affirm the ALJ's findings if they are supported by substantial
26 evidence and are free from reversible error. *Marcia v. Sullivan*, 900 F.2d 172, 174 (9th

27 _____
28 ¹ The record reflects that Plaintiff's first name is spelled "Lorie" and will order the
Clerk of the Court to amend this matter accordingly.

1 Cir. 1990). Substantial evidence is more than a mere scintilla, but less than a
2 preponderance; it is “such relevant evidence as a reasonable mind might accept as
3 adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971). In
4 determining whether substantial evidence supports the ALJ’s decision, the court
5 considers the record as a whole, weighing both the evidence that supports and that which
6 detracts from the ALJ’s conclusions. *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir.
7 1988). The ALJ is responsible for resolving conflicts, ambiguity, and determining
8 credibility. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995); *Magallanes v.*
9 *Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). If there is sufficient evidence to support the
10 ALJ’s determination, the Court cannot substitute its own determination. *See Young v.*
11 *Sullivan*, 911 F.2d 180, 184 (9th Cir. 1990).

12 Thus, the Court must affirm the ALJ’s decision where the evidence considered in
13 its entirety substantially supports it and the decision is free from reversible error. 42
14 U.S.C. § 405(g); *Hammock v. Bowen*, 879 F.2d 498, 501 (9th Cir. 1989). The Court must
15 do more than merely rubber stamp the ALJ’s decision. *Winans v. Bowen*, 853 F.2d 643,
16 645 (9th Cir. 1988). However, where the evidence is susceptible to more than one rational
17 interpretation, the ALJ’s decision must be upheld. *Magallanes*, 881 F.2d at 750.

18 **Background**

19 Jeffries was 46 years old on the alleged onset date, November 20, 2012. Jeffries
20 has a 10th grade education and past relevant work was as a cashier and cashier supervisor.
21 (Tr. 21, 37, 52)

22 The ALJ decision followed the requisite five step process. (Tr. 21-27) The ALJ
23 found that Jeffries had not engaged in any substantial gainful activity since her alleged
24 onset date. (Tr. 23) Next, the ALJ found that Jeffries had the following severe
25 impairments: degenerative disc disease and dysfunction of major joints. (Tr. 23)
26 However, these impairments did not meet or medically equal the severity of any listed
27 impairments. (Tr. 23)

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1 Jeffries also testified that her COPD caused shortness of breath and affected her
2 ability to walk but that her back pain would limit her walking before she became short of
3 breath. She stated that she did not drive due to her neck pain and she could only sit down
4 for one hour before she needed to move. She stated that she could stand for 30 minutes
5 before she needed to sit and she spent most of the day lying down because of her pain.

6 *Standard of Review.* An ALJ must engage in a two-step analysis in evaluating the
7 credibility of a claimant’s testimony regarding alleged symptoms. *Smolen v. Chater*, 80
8 F.3d 1273, 1290 (9th Cir. 1996). First, the ALJ must determine whether there is objective
9 medical evidence of an underlying impairment that could reasonably be expected to
10 produce the alleged symptoms. *Id.* at 1281. Second, when there is no affirmative
11 evidence suggesting malingering, the ALJ must also set forth “specific, clear and
12 convincing reasons” before it can reject a claimant’s testimony about the severity of
13 symptoms. *Id.* at 1283-84. *See Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993). The
14 clear and convincing standard is the most heightened standard in Social Security Law.
15 *Moore v. Soc. Sec. Admin.*, 278 F.3d 920 (9th Cir. 2002). To support a finding that the
16 symptoms are not credible, the ALJ must offer specific findings properly supported by
17 the record in sufficient detail to allow a reviewing court to review the findings for
18 permissible grounds and freedom from arbitrariness. *Cotton v. Bowen*, 799 F.2d 1403,
19 1407 (9th Cir. 1986), *superseded by statute on other grounds as stated in Bunnell v.*
20 *Sullivan*, 912 F.2d 1149 (9th Cir.1990).

21 *Analysis.* Jeffries argues that the ALJ did not provide a legally sufficient
22 explanation for discounting her testimony. The Court disagrees. The ALJ noted that
23 Jeffries “routinely” told her pain management doctors that her pain management
24 medication produced minimal side effects and was well-tolerated. The ALJ also noted
25 that Jeffries had informed her doctors that her pain medications controlled her pain and
26 helped with numbness and muscle spasms. (Tr. 25) This information is a direct contrast
27 to her testimony that she was experiencing constant pain and that her pain medication
28 made her so tired and forgetful that she could not function. (Tr. 24)

1 Although the ALJ explained the “decision with less than ideal clarity, [this Court]
2 must uphold it if the agency’s path may reasonably be discerned.” *Molina v. Astrue*, 674
3 F.3d 1104, 1121 (9th Cir. 2012) (internal quotation omitted). The Court concludes that
4 the ALJ’s decision was sufficiently specific and was supported by the record. Because
5 the Court can discern the ALJ’s path, the Court will uphold the decision.

6 Treating Physician Opinion. Jeffries argues that the ALJ should not have rejected
7 the opinion rendered by her treating physician, David Cluff, D.O., in favor of an opinion
8 from a reviewing doctor. (Docs. 16, 24)

9 *Medical Record.* The record indicates that Jeffries established care with Dr. Cluff
10 on March 13, 2013. The medical record from that visit lists only shoulder pain in the
11 “history of present illness” section. Dr. Cluff referred Jeffries to a physical therapist for
12 shoulder pain and, at her request, referred her to a pain medicine specialist for her chronic
13 neck pain. (Tr. 394, 436)

14 Jeffries next saw Dr. Cluff six months later, on September 23, 2013. The “history
15 of present illness” section of the records from this visit lists only GERD and states that
16 she has had heartburn for the last nine years. Dr. Cluff also assessed Jeffries to have
17 asthma and prescribed her medications for heartburn and asthma.² (Tr. 391-93, 433-35)

18 These are the only two visits documented in the record before Dr. Cluff completed
19 a check-box form two years later, on September 22, 2015. In that assessment, Dr. Cluff
20 opined that Jeffries could sit continuously for 60 minutes and for a total of less than two
21 hours in an eight hour day; could continuously stand/walk for a single period of three
22 hours and a total of three hours in an eight hour day; could continuously lift up to five
23 pounds, frequently lift 6-10 pounds, occasionally lift 11-25 pounds, and rarely lift 26-100
24 pounds; could rarely carry anything; could rarely stoop, crawl, climb, or reach; could
25 occasionally squat; could occasionally use her hands for simple grasping and fine

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27 ² The Court notes that part of Jeffries’ argument is based on a misstatement of the
28 record. Jeffries argues that Dr. Cluff prescribed her several pain relief medications but
cites to records from different providers at different medical practices. (Doc. 16 at 8:18-
19)

1 manipulation; could frequently use her hands for pushing/pulling of controls; could use
2 her feet for repetitive movements; was totally restricted from unprotected heights,
3 occupational driving, and exposure to dust, fumes, and gases; needed moderate
4 restrictions to be around moving machinery and mild restrictions in exposure to marked
5 changes in temperature or humidity. Finally, Dr. Cluff opined that Jeffries experienced a
6 moderately severe impact in her ability to function from pain and fatigue. (Tr. 489-91)

7 Approximately five months later, on February 5, 2015, Jeffries had an
8 appointment with Dr. Cluff where he assessed her to have neck pain, GERD, and asthma.
9 She received medication refills and, at Jeffries request, a referral to another pain medicine
10 specialist. (Tr. 429-32) This is the last medical note in the record from Dr. Cluff.³

11 The ALJ decision referred to Dr. Cluff's medical notes when describing Jeffries'
12 neck pain and shoulder issues. (Tr. 25) The ALJ decision also detailed the limitations
13 contained in Dr. Cluff's medical source statement and then concluded as follows: "I find
14 that the conservative treatment and response to medication do not support this level of
15 restriction, and therefore I give this opinion only little weight." (Tr. 26)

16 *Other Opinions.* The ALJ decision discussed the other medical opinions about
17 Jeffries' ability to perform work-related activities. First, a consultative examination
18 concluded that Jeffries' impairments did not impose any limitation for 12 months. The
19 ALJ decision detailed the examination and then modified the conclusion in Jeffries' favor
20 by deciding that her impairments did restrict her to light work for more than 12 months.
21 (Tr. 25-26, 419)

22 The ALJ decision also noted that a state agency consultant had concluded that
23 Jeffries' impairments were not severe. (Tr. 26, 66) Subsequently, on reconsideration,
24 state agency medical consultant J. Wright, M.D., concluded that Jeffries could perform
25 medium work subject to some additional limitations. (Tr. 94-101) The ALJ gave Dr.

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28 ³ In November 2016, Dr. Cluff completed another check-box form which was
submitted to the Appeals Council. (Tr. 6, 550) Jeffries does not mention this on appeal
and so this Court will not consider it.

1 Wright's opinion substantial weight but also modified his conclusion "to a light range in
2 order to afford [Jeffries] the benefit of the doubt." (Tr. 26)

3 *Standard of Review.* As the Ninth Circuit recently articulated,

4 The medical opinion of a claimant's treating physician is given "controlling
5 weight" so long as it "is well-supported by medically acceptable clinical
6 and laboratory diagnostic techniques and is not inconsistent with the other
7 substantial evidence in [the claimant's] case record." 20 C.F.R. §
8 404.1527(c)(2). When a treating physician's opinion is not controlling, it is
9 weighted according to factors such as the length of the treatment
10 relationship and the frequency of examination, the nature and extent of the
11 treatment relationship, supportability, consistency with the record, and
12 specialization of the physician. *Id.* § 404.1527(c)(2)-(6).

13 *Trevizo v. Berryhill*, 871 F.3d 664, 675 (9th Cir. 2017). When a treating physician's
14 opinion is contradicted, "it may be rejected for specific and legitimate reasons that are
15 supported by substantial evidence in the record." *Carmickle v. Comm'r, Social Sec.*
16 *Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008) (internal quotation omitted).

17 *Analysis.* Again, the Court acknowledges that the ALJ decision is not a model of
18 detail but, because a path can be reasonably discerned, the Court will affirm. *Molina*,
19 674 F.3d at 1121. The ALJ concluded that Dr. Cluff's opinion was not supported by the
20 medical evidence in the record documenting Jeffries' conservative treatment and her
21 response to medication. The Court agrees that there is substantial evidence in the record
22 showing both her conservative treatment and a documented response to pain management
23 medication. Accordingly, the Court concludes that there are specific and legitimate
24 reasons.

25 Because the Court concludes that there was no error, Jeffries' arguments are not
26 well taken.

27 **IT IS ORDERED** that the decision of the ALJ and the Commissioner of Social
28 Security is affirmed.

IT IS FURTHER ORDERED that the Clerk of the Court will enter judgment
accordingly. The judgment will serve as the mandate of the Court.

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IT IS FURTHER ORDERED that the Clerk of the Court shall amend the caption in this matter to reflect that Plaintiff's first name is spelled "Lorie."

Dated this 15th day of December, 2017.



David K. Duncan
United States Magistrate Judge