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

9 Beth Herold,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-20-01133-PHX-JAT

ORDER

15 Pending before the Court is Plaintiff Beth Herold's appeal of her denial of social
16 security disability benefits. The appeal is fully briefed (Doc. 18, Doc. 21, Doc. 25), and the
17 Court now rules.

18 **I. BACKGROUND**

19 **a. Factual Overview**

20 Plaintiff was 58 years old at the time of her hearing and has a Doctor of Chiropractic
21 degree. (AR 34, 40). Plaintiff has past relevant work experience as a consultant. (AR 23).
22 Plaintiff suffers from lumbar and cervical degenerative disc disease, asthma, irritable bowel
23 syndrome, gastroesophageal reflux disease, fibromyalgia, depression, and anxiety. (AR
24 17–18).

25 On April 25, 2018, Plaintiff filed applications for a period of disability and disability
26 insurance benefits. (AR 13). Plaintiff also filed an application for supplemental security
27 income on May 3, 2018. (AR 13). Plaintiff alleged disability beginning January 29, 2015
28 due to a combination of physical and mental impairments such as: pain in her back, neck,

1 wrist, knees, shoulder, and feet, along with chronic fatigue, fibromyalgia fog, temperature
2 issues, migraine headaches, and irritable bowel syndrome with chronic diarrhea. (AR 20,
3 237).

4 Plaintiff's claims were denied initially on September 8, 2018, and upon
5 reconsideration on December 20, 2018. (AR 13). An ALJ conducted a hearing on
6 November 5, 2019 and denied Plaintiff's claim on December 03, 2019. (AR 13–24). The
7 SSA Appeals Counsel denied a request for review of that decision and adopted the ALJ's
8 decision as the agency's final decision. (AR 1).

9 **b. The SSA's Five-Step Evaluation Process**

10 To qualify for social security benefits, a claimant must show she "is under a
11 disability." 42 U.S.C. § 423(a)(1)(E). A claimant is disabled if she suffers from a medically
12 determinable physical or mental impairment that prevents her from engaging "in any
13 substantial gainful activity." *Id.* § 423(d)(1)–(2). The SSA has created a five-step process
14 for an ALJ to determine whether the claimant is disabled. *See* 20 C.F.R. § 404.1520(a)(1).
15 Each step is potentially dispositive. *See id.* § 404.1520(a)(4).

16 At the first step, the ALJ determines whether the claimant is "doing substantial
17 gainful activity." *Id.* § 404.1520(a)(4)(i). If so, the claimant is not disabled. *Id.* Substantial
18 gainful activity is work activity that is both "substantial," involving "significant physical
19 or mental activities," and "gainful," done "for pay or profit." *Id.* § 404.1572(a)–(b).

20 At the second step, the ALJ considers the medical severity of the claimant's
21 impairments. *Id.* § 404.1520(a)(4)(ii). If the claimant does not have "a severe medically
22 determinable physical or mental impairment," the claimant is not disabled. *Id.* A "severe
23 impairment" is one which "significantly limits [the claimant's] physical or mental ability
24 to do basic work activities." *Id.* § 404.1520(c). Basic work activities are "the abilities and
25 aptitudes necessary to do most jobs." *Id.* § 404.1522(b).

26 At the third step, the ALJ determines whether the claimant's impairment or
27 combination of impairments "meets or equals" an impairment listed in the regulations. *Id.* §
28 404.1520(a)(4)(iii). If so, the claimant is disabled. *Id.* If not, before proceeding to step four,

1 the ALJ must assess the claimant’s “residual functional capacity” (RFC). *Id.* §
2 404.1520(a)(4). The RFC represents the most a claimant “can still do despite [her]
3 limitations.” *Id.* § 404.1545(a)(1). In assessing the claimant’s RFC, the ALJ will consider
4 the claimant’s “impairment(s), and any related symptoms, such as pain, [that] may cause
5 physical and mental limitations that affect what [the claimant] can do in a work setting.” *Id.*

6 At the fourth step, the ALJ uses the RFC to determine whether the claimant can still
7 perform her “past relevant work.” *Id.* § 404.1520(a)(4)(iv). The ALJ compares the
8 claimant’s RFC with the physical and mental demands of the claimant’s past relevant
9 work. *Id.* § 404.1520(f). If the claimant can still perform her past relevant work, the ALJ
10 will find that the claimant is not disabled. *Id.* § 404.1520(a)(4)(iv).

11 At the fifth and final step, the ALJ determines whether—considering the claimant’s
12 RFC, age, education, and work experience—she “can make an adjustment to other
13 work.” *Id.* § 404.1520(a)(4)(v). If the ALJ finds that the claimant can make an adjustment
14 to other work, then the claimant is not disabled. *Id.* If the ALJ finds that the claimant cannot
15 make an adjustment to other work, then the claimant is disabled. *Id.*

16 **c. The ALJ’s Application of the Factors**

17 At the first step, the ALJ concluded that Plaintiff had not engaged in substantial
18 gainful activity since the alleged onset date of her disability. (AR 17). At step two, the ALJ
19 concluded that Plaintiff’s lumbar and cervical degenerative disc disease and asthma
20 constituted severe impairments. (AR 17). During the third step, the ALJ determined that
21 Plaintiff’s impairments did not meet the severity of one of the impairments listed in the
22 regulations. (AR 19). After evaluating Plaintiff’s RFC, the ALJ concluded that Plaintiff
23 could perform light work as defined in 20 C.F.R. §§ 404.1567(b) and 416.967(b) except,
24 as relevant here, Plaintiff can occasionally climb ramps and stairs, but never climb ladders,
25 ropes, or scaffolds. (AR 22). Plaintiff can also occasionally balance, stoop, kneel, crouch,
26 crawl, and reach overhead. (AR 22). Lastly, Plaintiff must avoid chemicals, odors, dusts,
27 fumes, gases, and hazards, including moving machinery and unprotected heights. (AR 22).
28 At step four, the ALJ concluded that Plaintiff could perform past relevant work as a

1 consultant because that work “does not require the performance of work-related activities
2 precluded by the claimant’s residual functional capacity.” (AR 23). Accordingly, the ALJ
3 determined that Plaintiff was not disabled.¹

4 **II. LEGAL STANDARD**

5 This Court may not overturn the ALJ’s denial of disability benefits absent legal error
6 or a lack of substantial evidence. *Luther v. Berryhill*, 891 F.3d 872, 875 (9th Cir. 2018).
7 “Substantial evidence means . . . such relevant evidence as a reasonable mind might accept
8 as adequate to support a conclusion.” *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017)
9 (quoting *Desrosiers v. Sec’y of Health & Human Servs.*, 846 F.2d 573, 576 (9th Cir. 1988)).
10 “The inquiry here is whether the record, read as a whole, yields such evidence as would
11 allow a reasonable mind to accept the conclusions reached by the ALJ.” *Gallant v. Heckler*,
12 753 F.2d 1450, 1453 (9th Cir. 1984) (citation omitted). “Where evidence is susceptible of
13 more than one rational interpretation, it is the ALJ’s conclusion which must be upheld; and
14 in reaching [her] findings, the ALJ is entitled to draw inferences logically flowing from the
15 evidence.” *Id.* (citations omitted); see *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d
16 1190, 1193 (9th Cir. 2004). This is because “[t]he trier of fact and not the reviewing court
17 must resolve conflicts in the evidence, and if the evidence can support either outcome, the
18 court may not substitute its judgment for that of the ALJ.” *Matney v. Sullivan*, 981 F.2d
19 1016, 1019 (9th Cir. 1992); see *Benton ex rel. Benton v. Barnhart*, 331 F.3d 1030, 1035
20 (9th Cir. 2003) (“If the evidence can support either outcome, the Commissioner’s decision
21 must be upheld.”).

22 The ALJ is responsible for resolving conflicts in medical testimony, determining
23 credibility, and resolving ambiguities. See *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
24 Cir. 1995). Thus, if on the whole record before the Court, substantial evidence supports the
25 ALJ’s decision, the Court must affirm it. See *Hammock v. Bowen*, 879 F.2d 498, 501 (9th
26 Cir. 1989); see also 42 U.S.C. § 405(g). On the other hand, the Court “may not affirm
27 simply by isolating a specific quantum of supporting evidence.” *Orn v. Astrue*, 495 F.3d

28 ¹ Because she determined that Plaintiff could perform past relevant work, the ALJ did not
need to analyze the fifth step. (AR 23).

1 625, 630 (9th Cir. 2007) (quotation omitted). The Court is not charged with reviewing
2 the evidence and making its own judgment as to whether Plaintiff is or is not disabled.
3 *See Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). Rather, the Court’s inquiry is
4 constrained to the reasons asserted by the ALJ and the evidence relied upon in support of
5 those reasons. *See id.*

6 **III. ANALYSIS**

7 Plaintiff argues that the ALJ erred by (1) rejecting Plaintiff’s symptom testimony,
8 and (2) rejecting the assessments of Plaintiff’s treating physician and finding the state
9 agency physician’s assessment persuasive. (Doc. 18). The Court addresses each in turn.

10 **a. Symptom Testimony**

11 Plaintiff argues that the ALJ committed material harmful error by rejecting
12 Plaintiff’s symptom testimony in the absence of clear and convincing reasons supported by
13 substantial evidence in the record. (*Id.* at 10). Specifically, Plaintiff argues that the ALJ
14 improperly rejected testimony regarding the severity of the symptoms on the basis that the
15 severity is not consistent with the medical evidence. (*Id.* at 12).

16 When evaluating the credibility of a claimant’s testimony regarding subjective pain,
17 the ALJ must engage in a two-step analysis. First, the ALJ must determine if the claimant
18 has presented objective medical evidence of an underlying impairment which could
19 reasonably be expected to produce some degree of the pain or other symptoms alleged.
20 *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014). Second, if there is no evidence of
21 malingering, the ALJ can reject the claimant’s testimony about the severity of the
22 symptoms only by giving specific, clear, and convincing reasons for the rejection. *Id.* at
23 1014–15.

24 Plaintiff’s symptom testimony included statements about her physical and mental
25 limitations. Specifically, Plaintiff testified that her pain is so severe she can only do one
26 outing per day, she sometimes has trouble getting dressed or taking a shower because she
27 does not feel stable and the water causes her pain, and she cannot unload the washing
28 machine and dryer. (AR 45–46). Furthermore, Plaintiff stated she has a hard time bending

1 over, she cannot read books or magazines because they are difficult to understand, and she
2 cannot put a pot in the oven. (AR 47–48). Regarding her mental well-being, Plaintiff stated
3 she cries all the time, cannot eat, frequently throws up, and has had suicidal thoughts. (AR
4 51–52). Lastly, Plaintiff testified that she can only walk a quarter of the way around the
5 grocery store, has trouble standing in one spot, sitting for longer than an hour, and has
6 trouble focusing and must re-read more than half the time. (AR 54–55).

7 The ALJ found that Plaintiff’s medically determinable impairments could
8 reasonably be expected to cause some of Plaintiff’s alleged symptoms. (AR 20). However,
9 the ALJ concluded that Plaintiff’s “statements concerning the intensity, persistence and
10 limiting effects of these symptoms [were] not entirely consistent with the medical evidence
11 and other evidence in the record for the reasons explained in [the] decision.” (AR 20).

12 Plaintiff argues the ALJ committed a “fundamental legal error” by requiring
13 Plaintiff’s subjective symptom testimony be “entirely consistent” with medical evidence.
14 (Doc. 18 at 12). The Court, however, does not read the ALJ’s language as requiring the
15 Plaintiff to fully corroborate her symptom testimony with objective medical evidence.
16 Rather, the ALJ’s statement notes that the record contains conflicting evidence as to the
17 severity of Plaintiff’s symptoms. Although Plaintiff is not required to provide medical
18 evidence of the severity of her symptoms, *see Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th
19 Cir. 1991) (explaining that “an adjudicator may not reject a Plaintiff’s subjective
20 complaints based solely on a lack of objective medical evidence to fully corroborate the
21 alleged severity of pain”), the ALJ may properly consider objective medical evidence to
22 assess Plaintiff’s credibility regarding the intensity and persistence of her
23 symptoms. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (pointing to
24 medical evidence as a relevant factor in determining severity of Plaintiff’s pain and
25 disabling effects).

26 The Court finds that the ALJ provided specific, clear, and convincing reasons for
27 rejecting Plaintiff’s symptom testimony. When determining the credibility of a plaintiff’s
28 symptom testimony, an ALJ can consider the following factors, including but not limited

1 to: the plaintiff’s “reputation for truthfulness, inconsistencies either in [plaintiff’s]
2 testimony or between [the plaintiff’s] testimony and conduct, [her] daily activities, [her]
3 work record, and testimony from physicians and third parties concerning the nature,
4 severity, and effect of the [alleged] symptoms.” *Thomas v. Barnhart*, 278 F.3d 947, 958–
5 59 (9th Cir. 2002).

6 After considering the factors above, the ALJ concluded that Plaintiff’s subjective
7 symptom testimony was inconsistent with the objective medical evidence in the
8 record. (AR 20). *See Thomas*, 278 F.3d at 960 (noting that an ALJ cannot reject a plaintiff’s
9 symptom testimony solely because the objective medical evidence is inconsistent with the
10 alleged limitations, however, the ALJ may properly reject the testimony “by using ordinary
11 techniques of credibility evaluation” to determine the testimony was not credible (citation
12 omitted)). Substantial evidence supports the ALJ’s conclusion. Medical providers
13 consistently noted normal gait, coordination, and strength, and the record indicated
14 improvement with conservative treatment. (AR 352, 594, 602, 609–10, 617–18, 624–25,
15 647, 687, 703–04, 711–12, 741, 841, 849, 857, 865, 873, 880, 897–98, 905–06, 913–14,
16 939); *see Bunnell*, 947 F.2d at 346 (noting that when determining a claimant’s credibility,
17 the ALJ must consider the “type, dosage, effectiveness, and adverse side-effects” of
18 treatment). Specifically, Plaintiff reported that steroid injections provided 20 percent relief,
19 a SI joint injection provided 100 percent relief after 20 minutes, and lumbar facet and
20 medial branch blocks provided significant relief 20 minutes after the procedure. (AR 598,
21 658–65, 890–93). Likewise, the medical evidence showed that Plaintiff’s asthma was fairly
22 well managed with medication (AR 441, 505), and “[i]mpairments that can be controlled
23 effectively with medication are not disabling for purposes of determining eligibility for
24 [disability] benefits.” *See Warre v. Comm’r of Soc. Sec.*, 439 F.3d 1001, 1006 (9th Cir.
25 2006).

26 Along with her “entirely consistent” argument, Plaintiff also argues the ALJ
27 committed legal error by making no “effort to connect the discussion of the medical
28 evidence to a finding that any specific part of the symptom testimony lacked credibility.”

1 (Doc. 18 at 13). *See Nelson v. Comm’r of Soc. Sec. Admin.*, No. CV-19-08027-PCT-JZB,
2 2020 WL 1510332, at *3 (D. Ariz. Mar. 30, 2020) (“Indeed, this Court has repeatedly
3 rejected ALJ rationale that discussed medical evidence but provided no connection
4 between that discussion and rejection of claimants’ symptom testimony.” (collecting
5 cases)). The Court disagrees that the ALJ failed to connect the symptom testimony to the
6 medical evidence.

7 The ALJ explicitly recognized that Plaintiff complained of functional limitations of
8 difficulty “lifting, squatting, standing, bending, reaching, walking, sitting, kneeling, [and]
9 climbing stairs” (AR 20), but noted that contrary to these complaints, Plaintiff consistently
10 exhibited normal gait, coordination, and strength. (AR 21, 352, 594, 602, 609–10, 617–18,
11 624–25, 647, 687, 703–04, 711–12, 741, 841, 849, 857, 865, 873, 880, 897–98, 905–06,
12 913–14, 939). Additionally, the ALJ explicitly recognized Plaintiff’s complaints of
13 difficulty with “remembering, completing tasks, concentrating, understanding, [and]
14 following instructions” (AR 20), but noted that contrary to these complaints Plaintiff had
15 multiple mental examinations that came back normal. (AR 386, 388–89, 391–94, 402–03,
16 555–60, 563, 585, 587, 589–90, 827). Accordingly, the ALJ properly rejected Plaintiff’s
17 symptom testimony by providing specific, clear, and convincing reasons for determining
18 that the testimony was not credible.

19 **b. Medical Assessment**

20 Plaintiff next argues that the ALJ, in finding Plaintiff’s mental impairments to be
21 non-severe, committed material harmful error by rejecting the assessments of Plaintiff’s
22 treating physician, Dr. Parker. (Doc. 18 at 15).

23 The law previously distinguished between the opinions of treating physicians,
24 examining physicians, and non-examining physicians. *See Lester v. Chater*, 81 F.3d 821,
25 830 (9th Cir. 1995). This distinction was known as the “treating physician
26 rule.” *See Edlund v. Massanari*, 253 F.3d 1152, 1158 (9th Cir. 2001), *as amended on reh’g*
27 (Aug. 9, 2001). “In March of 2017, [t]he Social Security Administration amended their
28 regulations to abrogate the treating physician rule, among other changes.” *Alonzo v.*

1 *Comm'r of Soc. Sec. Admin.*, No. CV-18-08317-PCT-JZB, 2020 WL 1000024, at *3 (D.
2 Ariz. Mar. 2, 2020) (citing *Revisions to Rules Regarding the Evaluation of Medical*
3 *Evidence*, 82 Fed. Reg. 5844-01, 2017 WL 168819, at *5852–57 (Jan. 18, 2017)). The new
4 regulations apply to claims filed on or after March 27, 2017. 20 C.F.R. §§ 404.1520c,
5 416.920c. The new regulations provide that the ALJ “will not defer or give any specific
6 evidentiary weight, including controlling weight, to any medical opinion(s) or prior
7 administrative medical finding(s), including those from your medical sources.” 20 C.F.R.
8 §§ 404.1520c, 416.920c.

9 Furthermore, the ALJ will consider all medical opinions according to several
10 enumerated factors, including whether the opinion is supported by objective medical
11 evidence and whether the opinion is consistent with the evidence from other
12 sources. *Alonzo*, 2020 WL 1000024, at *3. Under the new regulations, the ALJ must
13 consider and explain how well the medical evidence supports the medical opinion and how
14 consistent the medical opinion is with the record, and may, but is not required to, explain
15 how the other factors under § 404.1520c(c)(3)–(5) are considered. 20 C.F.R. §
16 404.1520c(b)(2). If the ALJ finds that two or more medical opinions are equally well-
17 supported, consistent with the record, but not the same, the ALJ must articulate how it
18 considered other persuasive factors. 20 C.F.R. § 404.1520c(b)(3).

19 “When the evidence before the ALJ is subject to more than one rational
20 interpretation, [the court] must defer to the ALJ’s conclusion.” *Batson*, 359 F.3d at 1198.
21 This is so because “[t]he [ALJ] and not the reviewing court must resolve conflicts in
22 evidence, and if the evidence can support either outcome, the court may not substitute its
23 judgment for that of the ALJ.” *Matney*, 981 F.2d at 1019 (citations omitted).

24 Considering the new regulations set by the Social Security Administration, each
25 medical opinion is on equal ground, regardless of the source. To find the ALJ made a
26 materially harmful error, this Court must find that the ALJ’s reliance on the non-treating
27 physicians’ medical assessments are not supported by and are inconsistent with the medical
28 evidence on record. This Court discerns no materially harmful error.

1 Substantial evidence supports the ALJ’s determination that Plaintiff’s mental
2 impairments were not severe. *See Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005)
3 (applying substantial evidence review to an ALJ’s severity determination). The ALJ used
4 the standard set forth at 20 C.F.R. § 404.1520a(c)(3)–(4) when evaluating Plaintiff’s mental
5 impairments. (AR 17–18). The ALJ determined that Plaintiff’s limitations were mild in
6 understanding, remembering, or applying information; interacting with others;
7 concentrating, persisting, or maintaining pace; and adapting or managing oneself. (AR 18).
8 This finding is supported by the medical evidence on record. Dr. Celia Drake noted that
9 Plaintiff was alert, had logical and organized thought processes, related in a cooperative
10 and appropriate manner, and scored a 28 out of 30 on the Mini-Mental State Examination.
11 (AR 357). Furthermore, Dr. Joel Parker repeatedly found that Plaintiff had normal speech,
12 full memory, full orientation, logical thought processes, full concentration, and normal
13 judgement. (AR 386–94, 396–97, 399, 402–03, 556–57, 559–60, 563–67, 585–90, 827).

14 Additionally, the ALJ states the mental symptoms are a “reasonable response” to
15 Plaintiff’s financial difficulties and that the medical evidence of record indicates normal
16 mental status examinations. (AR 18). These normal mental status examinations were
17 demonstrated by the record from both Dr. Drake and Dr. Parker. (AR 357, 386–94, 396–
18 97, 399, 402–03, 556–57, 559–60, 563–67, 585–90, 827). In addition, the Disability
19 Determination Service reviewing psychological consultant found the mental impairments
20 non-severe, which was affirmed on reconsideration. (AR 87, 107, 126, 145). The ALJ
21 found these opinions persuasive because they were consistent with the remaining record
22 which showed “essentially normal mental status examinations, with only occasion[al]
23 periods of increased symptoms due to financial difficulty,” and the record supports this
24 finding. (AR 22, 357, 386–99, 402–03, 556–60, 563–67, 585–90, 827, 1069). The opinions
25 of the Disability Determination Service reviewing psychological consultant were also
26 consistent with the psychological consultative examiner’s opinion.

27 Lastly, the ALJ determined specifically that Dr. Parker’s opinion was not supported
28 by Dr. Parker’s medical records, nor was it consistent with the medical evidence on record

1 which indicated normal mental status other than some increased symptoms. (AR 23). The
2 medical evidence from both Dr. Drake's and Dr. Parker's mental status examinations
3 support the ALJ's conclusion because most of the mental status examinations were normal.
4 (AR 357, 386-94, 396-97, 399, 402-03, 556-57, 559-60, 563-67, 585-90, 827).
5 Accordingly, this Court finds that the ALJ did not err by rejecting Dr. Parker's assessment
6 in favor of the State agency experts' medical findings, and the findings were supported by
7 and consistent with the medical record.

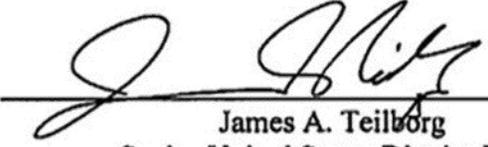
8 **IV. CONCLUSION**

9 Based on the foregoing,

10 **IT IS ORDERED** that the ALJ decision is **AFFIRMED**. The Clerk of Court shall
11 enter judgment accordingly.

12 Dated this 19th day of July, 2021.

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James A. Teilborg
Senior United States District Judge