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

9 Angelina Martinez,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-22-01644-PHX-DJH

ORDER

15 Plaintiff Angelina Martinez (“Plaintiff”) seeks judicial review of a decision by the
16 Social Security Administration (“SSA”) Commissioner (the “Commissioner”) denying her
17 application for Social Security Disability Insurance (“SSDI”) benefits under the Social
18 Security Act, 42 U.S.C. § 301 *et seq.* (the “Act”). (Doc. 1). Plaintiff filed her Opening
19 Brief (Doc. 14), and the Commissioner filed a Response (Doc. 18). Plaintiff did not file a
20 Reply and the time to do so has passed. *See* LRCiv 7.2(d) (a moving party has 7 days after
21 service of the responsive memorandum to file a reply memorandum). Upon review of the
22 briefs and the Administrative Record (Doc. 12, “AR”), the Court affirms the
23 Administrative Law Judge’s (“ALJ”) April 27, 2022 decision (the “April decision”) (AR
24 at 8–23).

25 **I. Background**

26 On November 18, 2003, Plaintiff was found disabled and awarded Social Security
27 Income (“SSI”) benefits. (*Id.* at 13). This favorable decision is known as the comparison
28 point decision (“CPD”). Plaintiff was impaired with ADHD, moderate depressive disorder,

1 and generalized anxiety disorder, which prevented her from performing any work activity
2 on a regular and continuing 40-hour workweek basis due to decreased attention and
3 concentration, and diminished judgment and reliability. (*Id.* at 14). When she was 36 years
4 old, Plaintiff was determined no longer disabled on February 1, 2019. (*Id.* at 124–127).
5 Plaintiff appealed that decision (*id.* at 128) and filed an application for SSDI benefits under
6 Title II of the Act on April 23, 2020, which was merged with her first appeal claim (*id.* at
7 269–275).

8 The ALJ held a hearing on Plaintiff’s application and issued the unfavorable April
9 Decision. (*Id.* at 8–23).

10 **II. The ALJ’s Eight-Step Process**

11 To be eligible for Social Security benefits, a claimant must show an “inability to
12 engage in any substantial gainful activity by reason of any medically determinable physical
13 or mental impairment which can be expected to result in death or which has lasted or can
14 be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. §
15 423(d)(1)(A); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). The
16 framework for determining whether a claimant continues to be disabled under the Act
17 entails an eight-step evaluation process for Title II claims and a seven-step evaluation for
18 Title XVI claims. *See* 20 C.F.R. §§ 404.1594(f), 416.994(b)(5). This district has
19 summarized the framework as follows:

20 At step 1 of the Title II evaluation, the ALJ determines whether the claimant
21 is engaging in substantial gainful activity. 20 C.F.R. § 404.1594(f)(1). If so,
22 the claimant is no longer disabled. *Id.* If not, the ALJ proceeds to step 2
(step 1 for the Title XVI evaluation). *Id.* § 404.1594(f)(2).

23 At step 2, the ALJ determines if the claimant has an impairment or
24 combination of impairment[s] which meets or equals the severity of an
25 impairment listed in Appendix 1 to 20 C.F.R. § 404, subpart P. *Id.* If so, the
26 claimant is still disabled. *Id.* If not, the ALJ proceeds to step 3.
Id. § 404.1594(f)(3).

27 At step 3, the ALJ determines if there has been medical improvement as
28 shown by a decrease in medical severity. *Id.* If so, the ALJ proceeds to step
4. *Id.* If not, the ALJ skips to step 5. *Id.*

1 At step 4, the ALJ determines if the medical improvement is related to the
2 claimant's ability to do work, *i.e.*, if there has been an increase in the
3 claimant's [residual functioning capacity]¹. *Id.* § 404.1594(f)(4). If so, the
ALJ skips to step 6. *Id.* If not, the ALJ proceeds to step 5. *Id.*

4 At step 5, the ALJ determines whether any exceptions in 20 C.F.R. §§
5 404.1594(d), (e) apply. *Id.* § 404.1594(f)(5). If none apply, the claimant is
6 still disabled. *Id.* If an exception in 20 C.F.R. § 404.1594(e) applies, the
7 claimant is no longer disabled. *Id.* If an exception in 20 C.F.R. §
404.1594(d) applies, the ALJ proceeds to step 6. *Id.*

8 At step 6, the ALJ determines whether all of the claimant's current
9 impairments in combination are severe. *Id.* § 1594(f)(6). If not, the claimant
is no longer disabled. *Id.* If so, the ALJ proceeds to step 7. *Id.*

10 At step 7, the ALJ assesses the claimant's [residual functioning capacity] and
11 determines whether the claimant can perform past work. *Id.* §
12 404.1594(f)(7). If so, the claimant is no longer disabled. *Id.* If not, the ALJ
proceeds to step 8. *Id.* § 404.1594(f)(8).

13 At step 8, the ALJ determines whether the claimant can perform any other
14 work give the claimant's [residual functioning capacity], age, education, and
15 past work experience. *Id.* If so, the claimant is no longer disabled. *Id.* If
16 not, the claimant is still disabled. *Id.*

17 *King v. Comm'r of Soc. Sec. Admin.*, 2020 WL 5587429, at *2 (D. Ariz. Sept. 18, 2020).

18 The ALJ's findings in the April Decision are as follows:

19 At step one, the ALJ found that Plaintiff had not engaged in substantial gainful
20 activity through the date of the April Decision. (AR. At 13–14). At step two, she found
21 that Plaintiff has the following medically determinable impairments: ADHD; moderate
22 depressive disorder; generalized anxiety disorder; and non-epileptic, psychogenic seizures.
23 (*Id.* at 14). The ALJ ultimately determined that Plaintiff does not have an impairment or
24 combination of impairments that meets or medically equals an impairment listed in
25 Appendix 1 to Subpart P of 20 C.F.R. Part 404. (*Id.* at 14–16). In so finding, the ALJ
26 applied the 20 C.F.R. § 404.1520a(b) psychiatric review technique (“PRT”) to evaluate

27
28 ¹ A claimant's residual functional capacity is defined as their maximum ability to do
physical and mental work activities on a sustained basis despite limitations from their
impairments. *See* 20 C.F.R. §§ 404.1545(a), 404.1520(e), 416.920(e).

1 Plaintiff's mental impairments. The ALJ concluded that Plaintiff had a mild limitation in
2 understanding, remembering, or applying information; a moderate limitation in interacting
3 with others; a moderate limitation in concentrating, persisting, or maintaining pace, and a
4 mild limitations in adapting or managing oneself. (*Id.* at 15).

5 At step three, the ALJ noted that medical improvement occurred on
6 February 1, 2019. (*Id.* at 16). The ALJ found there was a decrease in the severity of
7 Plaintiff's depression and anxiety such that it "no longer result[ed] in [Plaintiff's] inability
8 to sustain regular and continuing work activity due to marked limitations in [her] ability to
9 complete a normal workday/workweek without interruptions from psychologically based
10 symptoms and to perform at a consistent pace without an unreasonable number and length
11 of rest periods, as was determined at the time of the CPD (1F/7-8)." (*Id.*) The ALJ also
12 found Plaintiff's abilities in attention, concentration, judgment, and reliability had
13 improved. (*Id.*) At step four, the ALJ found that these improvements related to Plaintiff's
14 ability to do work because the residual functioning capacity ("RFC") that Plaintiff had on
15 February 1, 2019, was less restrictive than the RFC that Plaintiff had at the time of the
16 CPD. (*Id.* at 16–19). The ALJ accordingly skipped to step six, where she determined that
17 Plaintiff continued to have a combination of impairments that caused more than minimal
18 limitation in the Plaintiff's ability to perform basic work activities. (*Id.* at 18).

19 At step seven, the ALJ assessed Plaintiff's RFC based on her current impairments
20 as of February 1, 2019, as follows:

21 Plaintiff has had the [RFC] to perform a full range of work at all exertional
22 levels but with the following nonexertional limitations: she must work in an
23 environment where she never climbs ladders, ropes, or scaffolds; should not
24 work in commercial kitchens; must work in an environment with no exposure
25 to hazards like moving dangerous machinery, unprotected heights, or
26 commercial driving; due to her mental health, medication side effects and
27 other symptoms and limitations, she maintains the ability to understand,
28 remember and apply information regarding simple, routine tasks in an
environment with no contact with the public and no fast paced work that
requires consistent deadlines or moving quickly on a consistent basis
throughout the day.

1 (*Id.* at 18). In determining Plaintiff’s RFC, the ALJ stated she “considered all [of
2 Plaintiff’s] symptoms and the extent to which these symptoms can reasonably be accepted
3 as consistent with the objective medical evidence and other evidence, based on the
4 requirements of 20 C.F.R. 404.1529 and 416.929.” (*Id.*) The ALJ also considered the
5 medical opinions and prior administrative medical findings in accordance with the
6 requirements of 20 C.F.R. 404.1527 and 416.927, and in conjunction with Social Security
7 Ruling (“SSR”) 17-2p. (*Id.*) The ALJ further explained that transferability of job skills
8 was not an issue because Plaintiff has no past relevant work. (*Id.* at 23).

9 At step eight, the ALJ accepted testimony from a vocational expert that Plaintiff
10 can perform a significant number of jobs in the national economy based on her current RFC
11 and impairments—namely, as a photocopy machine officer, retail marker, and
12 housekeeping cleaner. (*Id.* at 22). The ALJ therefore concluded that Plaintiff’s disability
13 ended on February 1, 2019, and Plaintiff has not become disabled again since that date.
14 (*Id.* at 23). In other words, Plaintiff was deemed no longer disabled under the Act. (*Id.*)

15 The SSA Appeals Council denied Plaintiff’s request for review of the ALJ’s
16 April Decision, thus adopting the decision as the agency’s final decision. (*Id.* at 1–5). This
17 appeal followed. On September 27, 2022, Plaintiff filed a Complaint under
18 42 U.S.C. §§ 405(g), 1383(c)(3) requesting judicial review and reversal of the
19 Commissioner’s decision. (Doc. 1).

20 **III. Standard of Review**

21 In determining whether to reverse a decision by an ALJ, the district court reviews
22 only those issues raised by the party challenging the decision. *See Lewis v. Apfel*, 236 F.3d
23 503, 517 n.13 (9th Cir. 2001). “An ALJ’s disability determination should be upheld unless
24 it contains legal error or is not supported by substantial evidence.” *Garrison v. Colvin*, 759
25 F.3d 995, 1009 (9th Cir. 2014) (citing *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050,
26 1052 (9th Cir. 2006)); 42 U.S.C. §§ 405(g), 1383(c)(3)). “‘Substantial evidence’ means
27 more than a mere scintilla, but less than a preponderance; it is such relevant evidence as a
28 reasonable person might accept as adequate to support a conclusion.” *Garrison*, 759 F.3d

1 at 1009 (9th Cir. 2014) (internal citation omitted). To determine whether substantial
2 evidence supports a decision, the Court must consider the record as a whole and may not
3 affirm simply by isolating a “specific quantum of supporting evidence.” *Orn v. Astrue*,
4 495 F.3d 625, 630 (9th Cir. 2007).

5 The ALJ is responsible for resolving conflicts, ambiguity, and determining
6 credibility. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995); *Magallanes v. Bowen*,
7 881 F.2d 747, 750 (9th Cir. 1989). The ALJ must “set forth the reasoning behind its
8 decisions in a way that allows for meaningful review.” *Brown-Hunter v. Colvin*, 806 F.3d
9 487, 492 (9th Cir. 2015). This is because district courts may only review those reasons the
10 ALJ places on the record and cannot speculate what the ALJ’s reasoning might have been
11 based on other evidence available. *Bray v. Commissioner of Social Security Admin.*, 554
12 F.3d 1219, 1225 (9th Cir. 2009) (“Long-standing principles of administrative law require
13 [the court] to review the ALJ’s decision based on the reasoning and factual findings offered
14 by the ALJ—not post hoc rationalizations that attempt to intuit what the adjudicator may
15 have been thinking.”). Generally, “[w]here the evidence is susceptible to more than one
16 rational interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion
17 must be upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations
18 omitted).

19 “Harmless error principles apply in the Social Security Act context.” *Molina v.*
20 *Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless if there remains
21 substantial evidence supporting the ALJ’s decision, and the error does not affect the
22 ultimate nondisability determination. *Id.* Typically, the claimant bears the burden of
23 showing that an error is harmful. *Id.* at 1111 (citing *Shinseki v. Sanders*, 556 U.S. 396,
24 409 (2009)).

25 **IV. Discussion**

26 Plaintiff contends the ALJ erred in two ways: (1) the ALJ’s decision is not based on
27 substantial evidence because she failed to consider updated medical records regarding
28 Plaintiff’s seizures and lower back impairment; and (2) the ALJ’s RFC failed to account

1 for Plaintiff’s stress-based limitations in the RFC. The Court will address each of
2 Plaintiff’s arguments in turn.

3 **A. Medical Opinions**

4 First, Plaintiff argues the ALJ erred because she failed to consider additional
5 medical records that show Plaintiff suffers from epileptic—not psychogenic—seizures and
6 lower back impairments due to foraminal stenosis and disc protrusions. (Doc. 14 at 8–9).

7 **1. Seizures**

8 The ALJ found at step two that Plaintiff was impaired with psychogenic, non-
9 epileptic seizures. (AR at 14). That finding was based, in part, on the medical opinions of
10 James Haynes, M.D (“Dr. Haynes”), which the ALJ summarized in the April Decision as
11 follows:

12 Dr. Haynes testified the claimant’s seizure spells may be non-convulsive or
13 psychogenic. He said the record shows they usually occur at busy times such
14 as the holidays. He noted a video sleep study showed a non-epileptic seizure
15 “spell,” and he noted the claimant’s neurologist opined in January 2020 that
16 these were psychogenic non-epileptic (7F). He noted that a 24-hour
17 monitoring study showed no spells. Dr. Haynes further stated that more
18 detailed monitoring performed in April 2021 showed the presence of
19 psychogenic seizures, but that when the claimant takes Clonazepam, she does
20 not have any spells (12F). He noted claimant is compliant with treatment but
21 she appears “spaced out” during telehealth visits, and the claimant’s family
22 has related that she is “stressed out.” He said the claimant’s seizure disorder
23 does not meet or equal section 11.02B or 11.02D. Dr. Haynes opined
24 claimant has seizure precautions, including hazards restrictions, no working
25 in a commercial kitchen setting, and no commercial driving. Dr. Haynes’
26 opinion is given great weight based on its consistency with the greater
27 medical evidence and because he reviewed the medical evidence available to
28 him at the time of the hearing and he provided a thorough explanation of his
findings. He understands the disability program and related requirements.
His opinion is also supported by his medical specialty and familiarity with
the claimant’s neurological disorders.

(*Id.* at 21). Dr. Haynes also reiterated at Plaintiff’s hearing that “psychogenic seizure
disorder is mostly likely the correct diagnosis.” (*Id.* at 14, 78–81).

The hearing transcript further shows that Plaintiff provided the ALJ with

1 supplemental medical records the day before the hearing (*Id.* at 102–103), which
2 characterized her seizures as “consistent with a diagnosis of localization-related epilepsy
3 arising from the right frontotemporal region epileptic in nature.” (*Id.* at 801–814 (Plaintiff’s
4 February 26, 2021 “Epilepsy Monitoring Unit Discharge Summary” by the Banner
5 Neurological Institute)). Plaintiff alerted the ALJ to her late disclosures at the close of the
6 hearing, to which the ALJ replied that Plaintiff bears the responsibility to “file everything
7 on time.” (*Id.* at 102–103). The ALJ nonetheless acknowledged receipt of the records and
8 said she would proceed to make her decision. (*Id.* at 103).

9 Plaintiff contends the ALJ erred when concluding her seizures are psychogenic in
10 nature notwithstanding the supplemental records because neither the ALJ nor Dr. Haynes
11 considered the supplemental records. (Doc. 14 at 5–7 (citing AR at 801–814)). Plaintiff
12 maintains that “[d]espite acknowledging the potential need for additional expert testimony,
13 the ALJ elected to not conduct another hearing or solicit additional opinion evidence in
14 error.” (*Id.* at 5). She further argues the evidence shows her epileptic seizures would last
15 five to ten minutes and compromise her to work thereafter due to resulting fatigue.
16 (*Id.* at 8). Plaintiff reasons that because the RFC was based on the presumption that her
17 seizures were psychogenic, not epileptic, in nature, the RFC was not based on substantial
18 evidence. (*Id.* at 9).

19 The Commissioner argues it is inconsequential that the supplemental records
20 predate Dr. Haynes’ opinion because the ALJ was capable of independently reviewing such
21 records. (Doc. 18 at 12 (citing *Owen v. Saul*, 808 F. Appx. 421, 423 (9th Cir. 2020); *Farlow*
22 *v. Kijakazi*, 53 F.4th 485, 488 (9th Cir. 2022)). The Commissioner further contends the
23 supplemental records do not contradict the ALJ’s overall finding that Plaintiff’s seizures
24 are of psychogenic origin. (*Id.*) Last, the Commissioner maintains that Plaintiff has not
25 otherwise explained how a change in seizure type would be material to the RFC analysis.
26 (*Id.* at 11). The Court agrees with the Commissioner in all respects.

27 First, Plaintiff’s contention that Dr. Haynes did not have access to the supplemental
28 records when he testified at the hearing is inconsequential. Inherent in an ALJ’s authority

1 to weigh expert testimony is the capability to independently review and form conclusions
2 about medical evidence in making disability determinations. *See Farlow*, 53 F.4th at 488.
3 And although Plaintiff posits the ALJ did not consider the supplemental records at all, the
4 hearing transcript suggests otherwise. In any event, the ALJ did not solely rely on
5 Dr. Haynes' opinion with respect to seizures when assessing Plaintiff's RFC, nor could
6 she. *See* 20 C.F.R. § 404.1520(a)(3) (directing that an ALJ must "consider all evidence in
7 [a claimant's] case record" when making a disability determination).

8 Second, the fact that the supplemental records reflected a diagnosis of epileptic
9 seizures does not necessarily mean the ALJ's finding of psychogenic seizures is
10 unsupported by substantial evidence. The ALJ expressly noted in the April Decision that
11 "[e]pilepsy is indicated elsewhere in the record" when ultimately concluding Plaintiff's
12 seizures were most likely psychogenic in nature. (AR at 15). The record indeed reflects
13 competing diagnoses (*compare* AR 606, 682, 803 (finding epileptic origin) *with* AR 572,
14 598, 621 (finding psychogenic origin)), and the ALJ properly resolved such ambiguities.
15 *See Andrews*, 53 F.3d at 1039. Moreover, these ambiguities are not for the reviewing court
16 to weigh. *See Thomas*, 278 F.3d at 954 (stating that the Court cannot reweigh the evidence
17 nor substitute its judgment for that of the Commissioner).

18 Last, even if epileptic seizures were the proper diagnosis, the Court finds such error
19 is harmless because Plaintiff has not identified any resulting functional limitations that the
20 ALJ failed to consider. *See Burch v. Barnhart*, 400 F.3d 676 (9th Cir. 2005) (finding the
21 claimant "[did] not set forth, and there [was] no evidence in the record, of any functional
22 limitations . . . that the ALJ failed to consider"). Plaintiff states her epileptic seizures
23 would last five to ten minutes and compromise her ability to work thereafter due to
24 resulting fatigue. (Doc. 14 at 8). But Plaintiff does not articulate how these circumstances
25 pose limitations that differ from psychogenic seizures. The ALJ considered medical
26 evidence that recounted Plaintiff's seizure episodes in a similar manner. (*See e.g.*, AR 34
27 (explaining that Plaintiff felt "confused, fatigued, and amnesic after her [seizure] events").
28 To account for Plaintiff's seizures disorder, the ALJ included in the RFC the "seizure

1 precautions” posed by Dr. Haynes, including “hazards restrictions, no working in a
2 commercial kitchen setting, and no commercial driving.” (*Id.* 21, 18). Therefore, it is
3 unclear how a change in seizure type would be material to the limitations in Plaintiff’s
4 RFC. And the Court cannot conclude the “the ALJ failed to account for [a claimant’s]
5 injuries in some unspecified way.” *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685,
6 692 n.2 (9th Cir. 2009) (rejecting the claimant’s argument that the RFC omitted specific
7 injuries because the plaintiff “d[id] not detail what other physical limitations follow from
8 the evidence of [those] injuries, besides the limitations already listed in the RFC”).

9 2. **Lower Back Impairments**

10 Plaintiff next argues the ALJ failed to account for a December 15, 2021, MRI that
11 demonstrated Plaintiff suffered back impairments due to foraminal stenosis and disc
12 protrusions. (Doc. 14 at 9). Plaintiff argues this evidence “confirm[ed] the great likelihood
13 that [she] is limited in physical functioning,” but the ALJ disregarded the evidence and “set
14 forth no corresponding physical limitations of any kind.” (*Id.*) The Commissioner
15 contends this evidence is irrelevant to the ALJ’s April Decision because Plaintiff’s
16 disability claims were not based on allegation of physical symptoms related to her lower
17 back. (Doc. 18 at 15). The Court agrees with the Commissioner.

18 Plaintiff listed ADD and learning disability as the bases for her disability claim.
19 (AR at 320, 335). She did not mention any lower-back impairment at her hearing
20 (*id.* at 89–98), in her Continuing Disability Review Reports (*id.* 319–338), in her Disability
21 Reports (*id.* 350–358), or in her Function Reports (*id.* 359–375). Because Plaintiff did not
22 allege her lower back condition was a disabling impairment in her applications or argue
23 the issue before the ALJ, “the ALJ’s failure to consider Plaintiff’s alleged [lower back
24 condition] as an impairment does not constitute error.” *Curtis R. v. Kijakazi*, 2023 WL
25 7301988, at *5 (C.D. Cal. Nov. 3, 2023) (citing *Bowser v. Comm’r of Soc. Sec.*, 121 F.
26 App’x 231, 236–37 (9th Cir. 2005) (“The ALJ did not err in failing to account for the
27 effects of a medical impairment—obesity—that [the c]laimant never raised before the ALJ
28 and is not readily apparent from the record” because [t]o hold otherwise under these

1 circumstances would be tantamount to eviscerating [the c]laimant’s burden of showing the
2 presence of a medically determinable impairment.”)).

3 In sum, the ALJ’s finding that Plaintiff suffers from psychogenic seizures is
4 supported by substantial evidence, and the ALJ did not err when she did not consider
5 evidence of Plaintiff’s lower back impairments.

6 **B. Limitations in the RFC**

7 Second, Plaintiff argues the ALJ failed to include stress-based limitations in the
8 RFC to account for her psychogenic seizures. (Doc. 14 at 10–21). The SSA regulations
9 define a claimant’s RFC as the “*maximum degree* to which the individual retains the
10 capacity for sustained performance of the physical-mental requirements of jobs.” *Reddick*
11 *v. Chater*, 157 F.3d 715, 724 (9th Cir. 1998) (quoting 20 C.F.R. 404, Subpt. P, App. 2 §
12 200.00(c)) (emphasis added); *see also* 20 C.F.R. § 404.1545(a) (“Your residual functional
13 capacity is the most you can still do despite your limitations.”); SSR 96-8p (The RFC “does
14 not represent the least an individual can do despite his or her limitations or restrictions, but
15 the most”). The ALJ assessed Plaintiff’s current RFC as follows:

16 Plaintiff has had the [RFC] to perform a full range of work at all exertional
17 levels but with the following nonexertional limitations: she must work in an
18 environment where she never climbs ladders, ropes, or scaffolds; should not
19 work in commercial kitchens; must work in an environment with no exposure
20 to hazards like moving dangerous machinery, unprotected heights, or
21 commercial driving; due to her mental health, medication side effects and
22 other symptoms and limitations, she maintains the ability to understand,
23 remember and apply information regarding simple, routine tasks in an
environment with no contact with the public and no fast paced work that
requires consistent deadlines or moving quickly on a consistent basis
throughout the day.

24 (AR at 18).

25 Plaintiff argues the RFC is inadequate because it does not include any corresponding
26 physical or mental limitations that account for the fact that her psychogenic seizures are
27 caused and exacerbated by stress. Plaintiff cites to SSR 85-15² for the proposition that

28 ² Social Security Ruling 85-15 provides that “[a]ny impairment-related limitations created

1 limitations involving stress need to be defined in the RFC. (Doc. 14 at 18–22). Although
2 Plaintiff concedes the physical limitations reflect the precautionary restrictions advised by
3 Dr. Haynes and are generally consistent with her seizure disorder, she argues they are
4 insufficient because they do not mitigate the frequency of her seizures. (*Id.* at 14). Plaintiff
5 further contends the RFC’s mental limitations are insufficient because they were entirely
6 based on opinions by David Glassmire, Ph.D., who never discussed Plaintiff’s seizures.³
7 (*Id.* at 16 (citing AR at 85–89)). In Plaintiff’s view, the ALJ should have expressly limited
8 her to “low stress jobs” in the RFC, and erred under SSR 85-15 by failing to do so. (*Id.*
9 at 14). The Commissioner disagrees, arguing the RFC adequacy mitigates the amount of
10 stress Plaintiff would be exposed to so that her seizures would not be triggered in the first
11 place.

12 While Plaintiff complains the RFC does not have a stress-based limitation on its
13 face, the Court finds the ALJ properly considered and accounted for Plaintiff’s seizure
14 disorder by limiting her to environments that minimized stress. Although Plaintiff notes
15 that Dr. Glassmire did not discuss Plaintiff’s seizure when opining on her mental
16 limitations (*see* AR 20, 86–88), the April Decision shows the ALJ indeed considered the
17 correlation between stressful environments and Plaintiff’s seizure disorder. (AR at 17
18 (“[Plaintiff] said she thinks her seizures are stress-related”), 19 (“[Plaintiff] thinks stress
19 triggers the seizures and is therefore hesitant to change her medications.”)). The ALJ also
20 noted in her PRT findings the impact that stress has on Plaintiff’s ability to concentrate,
21 persist, or maintain pace. (AR at 15 (“[Plaintiff] complained that she has difficulty learning
22 and retaining new information, and that these symptoms are aggravated by stress.”)).

23 As noted by the Commissioner, “[c]ourts within the Ninth Circuit have [] concluded
24 that a claimant’s low tolerance of stress is encompassed in a limitation ‘to simple, repetitive

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26 by an individual's response to demands of work [] must be reflected in the RFC
assessment.” SSR 85-15.

27 ³ Dr. Glassmire discussed Plaintiff’s history of depression, anxiety, and domestic violence
28 in concluding her “mental impairments result[ed] in mild limitations in understanding,
remembering and applying information, moderate social limitations and moderate
limitations in concentration, persistence and pace, and mild limitations adapting to
change.” (AR at 20).

1 tasks’ and work ‘that does not require meeting fast-paced quotas.’” *Coats v. Colvin*, 2015
2 WL 5813333, at *22 (E.D. Cal. Sept. 30, 2015) (collecting cases); *see also Spencer v.*
3 *Kijakazi*, 2022 WL 4482567, at *6 (E.D. Cal. Sept. 27, 2022), *report and recommendation*
4 *adopted*, 2023 WL 184974 (E.D. Cal. Jan. 13, 2023) (collecting cases). Thus, the ALJ
5 included stress based-limitations in the RFC restricting Plaintiff to simple, routine tasks in
6 environments that had no contact with the public, no fast paced work that requires
7 consistent deadlines, and no fast paced work that requires moving quickly on a consistent
8 basis throughout the day. (AR at 18); *Coats*, 2015 WL 5813333, at *22. The ALJ also
9 included “seizure precautions” in the RFC to account for various physical limitations.
10 (*Id.* at 21). Contrary to Plaintiff’s position, the Court finds that these limitations, taken
11 together, show the ALJ adequately accounted for stress-based limitations that reflect the
12 most Plaintiff can do despite her impairments. *See Reddick*, 157 F.3d at 724 (quoting 20
13 C.F.R. 404, Subpt. P, App. 2 § 200.00(c); 20 C.F.R. § 404.1545(a); SSR 96-8p. The ALJ
14 did not err.

15 **V. Conclusion**

16 To summarize, the ALJ’s finding that Plaintiff suffers from psychogenic, non-
17 epileptic seizures is supported by substantial evidence. The ALJ’s failure to consider
18 Plaintiff’s alleged lower back condition does not constitute error because Plaintiff did not
19 allege her lower back condition was a disabling impairment in her applications or argue
20 the issue before the ALJ. Furthermore, the ALJ properly considered and accounted for
21 Plaintiff’s stress-induced seizures by including stress-based limitations in the RFC.

22 Accordingly,

23 **IT IS ORDERED** that the Administrative Law Judge’s April 27, 2022 decision is
24 **affirmed.**

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IT IS FURTHER ORDERED that the Clerk of Court is kindly directed to enter judgment accordingly and terminate this action.

Dated this 27th day of March, 2024.



Honorable Diane J. Humetewa
United States District Judge