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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Elizabeth Achtschin,  
10 Plaintiff,  
11 v.  
12 Carolyn W. Colvin,  
13 Defendant.  
14

No. CV-15-08257-PCT-DGC

**ORDER**

15 Plaintiff Elizabeth Achtschin seeks review under 42 U.S.C. § 405(g) of the final  
16 decision of the Commissioner of Social Security which denied her disability insurance  
17 benefits and supplemental security income under sections 216(i), 223(d), and  
18 1614(a)(3)(A) of the Social Security Act. Because Achtschin has not identified any  
19 reversible error, the Court will affirm.

20 **I. Background.**

21 Achtschin is a 61-year-old female who previously worked as a cashier, caregiver,  
22 and small business owner. A.R. 22. On January 28, 2014, Achtschin filed an application  
23 for disability insurance benefits and supplemental security income, alleging disability  
24 beginning October 31, 2013. A.R. 12. On April 7, 2015, an ALJ held a hearing on the  
25 application. A.R. 30-61. Achtschin appeared with her attorney and testified. A  
26 vocational expert also testified. *Id.*

27 On August 3, 2015, the ALJ issued a decision that Achtschin was not disabled  
28 within the meaning of the Social Security Act. A.R. 12-24. The decision proceeded

1 according to the five-step evaluation process set forth at 20 C.F.R. § 404.1520(a)(4). At  
2 step one, the ALJ found that Achtschin met the insured status requirements of the Social  
3 Security Act through September 30, 2017, and that she had not engaged in substantial  
4 gainful activity at any time between the alleged onset date and the date of decision.

5 A.R. 13. At step two, the ALJ found that Achtschin had the following severe  
6 impairments: bipolar disorder and polysubstance abuse disorder, in reported remission.

7 A.R. 14. At step three, the ALJ determined that Achtschin did not have an impairment or  
8 combination of impairments that met or medically equaled an impairment listed in

9 Appendix 1 to Subpart P of 20 C.F.R. Pt. 404. A.R. 14. At step four, the ALJ found that  
10 Achtschin had the residual functional capacity (“RFC”) to perform:

11 a full range of work at all exertional levels but with the following  
12 nonexertional limitations: she can understand, remember and carry out  
13 simple and repetitive tasks, make simple work-related decisions,  
occasionally interact with coworkers, supervisors and the public, within a  
routine work environment with few, if any, changes.

14 A.R. 16. The ALJ found Achtschin unable to perform any of her past relevant work.

15 A.R. 22. At step five, the ALJ conclude that, considering Achtschin’s age, education,  
16 work experience, and RFC, there were jobs existing in significant numbers in the national  
17 economy that Achtschin could perform, including hand packager, salvage laborer, and  
18 kitchen helper. A.R. 23. The Appeals Council denied Achtschin’s request for review,  
19 making the ALJ’s decision the Commissioner’s final decision. A.R. 3.

## 20 **II. Legal Standard.**

21 The district court reviews only those issues raised by the party challenging the  
22 ALJ’s decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The court  
23 may set aside the Commissioner’s disability determination only if the determination is  
24 not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d  
25 625, 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, less than a  
26 preponderance, and relevant evidence that a reasonable person might accept as adequate  
27 to support a conclusion considering the record as a whole. *Id.* In determining whether  
28 substantial evidence supports a decision, the court must consider the record as a whole

1 and may not affirm simply by isolating a “specific quantum of supporting evidence.” *Id.*  
2 As a general rule, “[w]here the evidence is susceptible to more than one rational  
3 interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be  
4 upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

5 **III. Analysis.**

6 Achtschin argues that the ALJ (1) improperly discounted her credibility;  
7 (2) improperly discounted the opinion of treating psychiatrist Dr. Lisa Parsons; and  
8 (3) improperly adopted an RFC not presented to the vocational expert. Doc. 14 at 3.

9 **A. Symptom Testimony.**

10 In evaluating the credibility of a claimant’s testimony regarding her symptoms, the  
11 ALJ is required to engage in a two-step analysis. First, the ALJ must determine whether  
12 the claimant presented objective medical evidence of an impairment that could  
13 reasonably be expected to produce the symptoms alleged. *Vasquez v. Astrue*, 572 F.3d  
14 586, 591 (9th Cir. 2009). Second, if there is no evidence of malingering, the ALJ may  
15 reject the claimant’s testimony only by giving specific, clear, and convincing reasons. *Id.*

16 Achtschin reported that her mental impairments, including bipolar disorder, post-  
17 traumatic stress disorder, insomnia, and anxiety, caused marked limitations that would  
18 render her unable to perform even sedentary work on a regular and continuing basis.  
19 A.R. 17. The ALJ determined that Achtschin’s medically determinable impairments  
20 could reasonably be expected to cause the alleged symptoms, but that her statements  
21 concerning the intensity, persistence, and limiting effects of these symptoms were not  
22 entirely credible. A.R. 17-18. The ALJ gave the following explanation for her credibility  
23 determination:

24 The record shows the claimant has a history of work cessation for  
25 nonmedical reasons, including theft and walking off the job. She also  
26 reported intending on re-enrolling in medical billing classes when she got a  
27 new job. She reported engaging with friends and family. These factors  
demonstrate the claimant’s mental and physical impairments are not as  
severe as alleged.

28 The record shows the claimant’s mental symptoms are manageable when  
she takes her medications and complies with treatment. Progress records  
from May 31, 2011 indicate the claimant’s medications were working well.

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Mental health progress notes from March 21, 2013 show the claimant reported her medications had been targeting her symptoms and moods well. . . . She reported quitting her job at Wal-Mart because she did not ‘feel supported there.’ The claimant was seeking other work, with an upcoming interview with Merry Maids housekeeping service. She also reported that her mental health symptoms had remained stable, with no hospitalizations or incarcerations.

As of September 2013, the claimant had a GAF of 60, consistent with high-end moderate symptoms and limitations in social and occupational functioning. . . . Review of her records show that she consistently refills Ambien about 5 days early and that she also[ ]obtained Ambien from another provider [ ]at the same time. This suggests the claimant may abuse her sleep medication, which undermines her credibility.

On September 12, 2013, the claimant said she had been arrested the previous night for assaulting her daughter. This activity does not bolster the claimant’s credibility in any way. She also reported losing her job for stealing from her employer. . . .

The claimant’s symptoms appear to be better controlled than she alleges.

A.R. 18-19.

The Commissioner declines to defend some of the reasons provided by the ALJ for discounting Achtschin’s credibility. For example, the Commissioner declines to defend the ALJ’s clearly erroneous finding that Achtschin assaulted her daughter (in fact, Achtschin was assaulted *by* her daughter (A.R. 384)). But the Commissioner argues that the ALJ was justified in discounting Achtschin’s credibility based on: (1) her history of work cessation for nonmedical reasons; (2) her history of abusing Ambien; (3) her work as a housekeeper; and (4) evidence that her symptoms were manageable with medication. Doc. 16 at 4-9. Because the Court concludes that the first two reasons are specific, clear, and convincing reasons for discounting Achtschin’s credibility, it need not consider the Commissioner’s other reasons.

A claimant’s history of work cessation for nonmedical reasons is a clear and convincing reason for discounting her testimony. *See Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001). Achtschin does not dispute this, but argues that she stopped working due to her bipolar disorder. Doc. 14 at 13. There is evidence in the record, however, that she quit her job at Wal-Mart because “she did not feel supported there,”

1 and began to look for new work immediately afterwards. A.R. 434. Although it is  
2 certainly plausible that Achtschin's bipolar disorder contributed to her decision to quit, it  
3 was not unreasonable for the ALJ to conclude that the decision was made for nonmedical  
4 reasons. Substantial evidence supports the ALJ's finding that Achtschin had a history of  
5 work cessation for nonmedical reasons, and this finding provides a clear and convincing  
6 reason for discounting Achtschin's credibility.

7 A claimant's history of abusing prescription medications is a clear and convincing  
8 reason for discounting her testimony, insofar as it suggests a motive for exaggerating  
9 symptoms. *See Edlund v. Massanari*, 253 F.3d 1152, 1157 (9th Cir. 2001). The ALJ  
10 found Achtschin not entirely credible based, in part, on evidence in the record that she  
11 consistently refilled her Ambien prescription five days early, that she once obtained  
12 Ambien from multiple providers at the same time, and that, on at least one occasion, she  
13 reported taking two extra pills. A.R. 18 (citing A.R. 366, 384). Achtschin notes that her  
14 doctor did not diagnose this behavior as substance abuse and continued to prescribe  
15 Ambien after noticing it. Doc. 17 at 3-4. But the doctor's failure to describe this  
16 behavior as substance abuse did not prevent the ALJ from drawing her own common-  
17 sense conclusions from the evidence. *See Morgan v. Comm'r*, 169 F.3d 595, 601 (9th  
18 Cir. 1999) ("Where medical reports are inconclusive . . . resolution of conflicts in the  
19 testimony are functions solely of the [Commissioner].") (citation and internal quotation  
20 marks omitted). Substantial evidence supports the ALJ's finding that Achtschin had a  
21 history of abusing Ambien, and this finding justified the ALJ's decision to discount  
22 Achtschin's credibility.

23 **B. Opinion of Dr. Parsons.**

24 Dr. Lisa Parsons has been Achtschin's treating psychiatrist since at least May  
25 2012. A.R. 515. On August 6, 2014, Dr. Parsons completed a mental ability  
26 questionnaire at Achtschin's request. In this questionnaire, Dr. Parsons opined that  
27 Achtschin had no useful ability: (1) to relate to co-workers or supervisors; (2) to deal  
28 with the public; (3) to use judgment; (4) to deal with work stresses; (5) to function

1 independently; (6) to maintain attention and concentration; (7) to understand, remember,  
2 and carry out simple job instructions; (8) to behave in an emotionally stable manner;  
3 (9) to relate predictably in social situations; or (10) to demonstrate reliability. A.R. 588-  
4 89. Dr. Parsons attributed these limitations to Achtschin's "[s]evere anxiety, mood  
5 instability, and memory impairment." *Id.*

6 On January 23, 2015, Dr. Parsons completed a second questionnaire. Dr. Parsons  
7 opined that Achtschin suffered from marked impairment in her ability: (1) to work with  
8 or in proximity to others without distracting them or exhibiting behavioral extremes;  
9 (2) to perform and complete work tasks at a consistent pace; (3) to carry through  
10 instructions and complete tasks independently; (4) to maintain attention and  
11 concentration; (5) to perform at production levels expected by most employers; (6) to  
12 respond appropriate to changes; (7) to remember locations, workday procedures, and  
13 instructions; (8) to take necessary precautions with respect to normal hazards; and (9) to  
14 tolerate customary work pressures. A.R. 590-92. Dr. Parsons further opined that  
15 Achtschin suffered from extreme impairments in her ability to work with or in proximity  
16 to others without becoming distracted by them, and in her ability to behave predictably,  
17 reliably, and in an emotionally stable manner. *Id.* Dr. Parsons attributed these limitations  
18 to Achtschin's bipolar disorder, post-traumatic stress disorder, generalized anxiety  
19 disorder, and panic disorder. A.R. 592.

20 Dr. Parsons's opinions are contradicted by other doctors, including the state  
21 agency psychological consultants Mary Downs, Ph.D, and Andrienne Gallucci, Psy.D.  
22 A.R. 20, 69-75, 101-05. Therefore, the Court must determine whether the ALJ offered  
23 specific and legitimate reasons for rejecting Dr. Parsons's opinions – that is, reasons  
24 based on “a detailed and thorough summary of the facts and conflicting clinical  
25 evidence.” *Cotton v. Bowen*, 799 F.2d 1403, 1408 (9th Cir. 1986). The ALJ offered the  
26 following explanation for discounting Dr. Parsons's opinions:

27 Dr. Parson's [sic] opinion was given less weight because it is inconsistent  
28 with the greater objective record, including [the] state agency reviewing  
physician opinion, and it is inconsistent with the claimant's reported level  
of functioning, her intermittent work, her preserved relationship with her

1 employer and benefit from medication. It is also inconsistent with Dr.  
2 Parson's [sic] own treatment notes, which support the finding of no more  
than moderate mental limitations.

3 A.R. 20. The Court must determine whether any of the following constitutes a specific  
4 and legitimate reason for discounting Dr. Parsons's opinions: (1) inconsistency between  
5 the opinions and those of the state agency reviewing physician; (2) inconsistency between  
6 the opinions and Achtschin's reported activities; (3) Dr. Parsons's failure to consider the  
7 efficacy of medication in controlling Achtschin's symptoms; or (4) inconsistency  
8 between the opinions and Dr. Parsons's treatment notes. Because the Court concludes  
9 that the last reason is a specific and legitimate reason for discounting Dr. Parsons's  
10 opinions, it need not consider the ALJ's other reasons.

11 Inconsistency between a physician's opinion and the underlying treatment notes is  
12 a clear and convincing reason for discounting that opinion. *Connett v. Barnhart*, 340  
13 F.3d 871, 875 (9th Cir. 2003). In *Morgan v. Commissioner*, for example, the Ninth  
14 Circuit upheld the ALJ's decision to discount a doctor's opinion because:

15 The ALJ listed specific examples of how the level of impairment indicated  
16 by [the doctor] was unreasonable given the description of [the claimant's]  
17 symptoms in her reports and other evidence in the record. For example,  
18 [the doctor], at various times, assessed [the claimant] as engaging and  
19 cooperative, with a sense of humor and a good ability to express himself.  
20 She indicated that [the claimant] was adequately groomed and punctual for  
his appointments. The ALJ relied on these specific factors in rejecting [the  
21 doctor's] opinion that [the claimant] "lacked an ability to function socially  
22 in order to conduct personal business and otherwise carry out daily  
23 activities."

24 169 F.3d at 601.

25 The ALJ identified specific inconsistencies between Dr. Parsons's opinion and her  
26 treatment notes, similar to those identified in *Morgan*. The ALJ explained:

27 Although Dr. Parsons assessed serious limitations [in her August 6, 2014  
28 opinion], the claimant's presentation that day on exam was not consistent  
with such limitations. On this date, Dr. Parsons observed the claimant with  
a cooperative and engaging attitude, pressured but normal speech, and clear  
and understandable language, within normal limits. The claimant's affect  
was appropriate to mood and broad ranged. Her thought processes were  
goal directed, logical and sequential. She complained of suicidal ideation  
but denied intent or plan. Judgment and insight were good, self-concept  
was realistic, and she was fully oriented in all spheres.

1 A.R. 19. The ALJ reasonably found that these notes were “consistent with no more than  
2 moderate limitations in mental functioning.” *Id.*

3 The Commissioner points to additional support for the ALJ’s position in the  
4 record.<sup>1</sup> As the Commissioner notes, Dr. Parsons’s treatment notes between April 2013  
5 and January 2015 consistently report cooperative and engaged attitude, good eye contact,  
6 clear and coherent speech, logical and directed thought process, good judgment, and  
7 unremarkable cognition. Doc. 16 at 10 (citing A.R. 376, 380, 384, 390, 488, 585-86,  
8 631-23). Dr. Parsons’s treatment notes for March 21, 2014 report are particularly hard to  
9 square with the opinion she provided in August of that year. These notes indicate that  
10 Achtschin reported sleeping well and feeling rested, having no panic attacks, having no  
11 feelings of worthlessness or hopelessness, and having a generally “ok” mood. A.R. 380.  
12 Given the discrepancy between the dire picture painted by Dr. Parsons’s opinions and the  
13 more nuanced picture painted by her treatment notes, it was reasonable for the ALJ to  
14 assign less weight to the opinions.

15 **C. RFC.**

16 Achtschin argues that the ALJ erred by adopting an RFC that differs from the  
17 hypothetical posed to the vocational expert. At the hearing, the ALJ asked the vocational  
18 expert whether a hypothetical individual of Achtschin’s background would be able to  
19 perform work existing in significant numbers in the national economy if she was limited  
20 to “understand[ing], remember[ing], and carry[ing] out *simple instructions*.” A.R. 57  
21 (emphasis added). In her decision, however, the ALJ stated that Achtschin was limited to  
22 understand[ing], remember[ing], and carry[ing] out *simple and repetitive tasks*.” A.R. 16  
23 (emphasis added). Achtschin argues that the change in wording is material because there  
24 is a “difference between the ability follow instruction and the ability to accomplish  
25 tasks.” Doc. 14 at 11. The Court does not agree. As the Commissioner puts it, “[a]

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27 <sup>1</sup> Although the Court may not affirm the ALJ’s decision based on grounds not set  
28 forth in the ALJ’s opinion, the Court can consider evidence not specifically mentioned in  
the opinion if it was available to the ALJ and supports the ALJ’s stated ground for  
decision. *Warre v. Comm’r*, 439 F.3d 1001, 1005 n.3 (9th Cir. 2006).

1 common sense reading of the two terms – simple tasks versus simple instructions –  
2 reveals that both terms convey the same concept.” Doc. 16 at 13. To perform simple  
3 tasks, one must understand, remember, and implement simple instructions. Conversely,  
4 the ability to understand, remember, and implement simple instructions implies the  
5 ability to perform simple tasks. The slight discrepancy between the wording the ALJ  
6 used at the hearing and the wording she used in her decision was not harmful error.

7 In her reply, Achtschin points to an additional discrepancy: the ALJ’s hypothetical  
8 indicates that Achtschin would “work best” in a routine work environment (A.R. 57-58),  
9 while the decision states without qualification that Achtschin is limited to working within  
10 such an environment. A.R. 16. Achtschin waived this argument by failing to raise it in  
11 her opening brief, thereby depriving the Commissioner of an opportunity to respond.  
12 *Alaska Ctr. For Env’t v. U.S. Forest Serv.*, 189 F.3d 851, 858 n.4 (9th Cir. 1999)  
13 (“Arguments not raised in opening brief are waived.”). Even if the issue had been  
14 properly presented, however, the Court could not conclude that the ALJ’s ultimate  
15 finding of non-disability rested on the subtle distinction between Achtschin “working  
16 best” in a routine work environment and being limited to work in such an environment.

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

19 Dated this 6th day of July, 2016.

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23 \_\_\_\_\_  
24 David G. Campbell  
25 United States District Judge  
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