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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KATHY M. MASON,)	NO. CV 15-5712-E
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social Security,)	
)	
Defendant.)	
)	

PROCEEDINGS

Plaintiff filed a Complaint on July 28, 2015, seeking review of the Commissioner's denial of benefits. The parties filed a consent to proceed before a United States Magistrate Judge on August 28, 2015.

Plaintiff filed a motion for summary judgment on February 12, 2016. Defendant filed a motion for summary judgment on March 4, 2016. The Court has taken both motions under submission without oral argument. See L.R. 7-15; "Order," filed July 30, 2015.

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1 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

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3 Plaintiff asserted disability based on alleged mental and
4 physical impairments (Administrative Record ("A.R.") 52-64, 157-63,
5 183, 203-206, 213-15, 218-19, 226). An Administrative Law Judge
6 ("ALJ") examined the medical record and heard testimony from Plaintiff
7 and a vocational expert (A.R. 29-244, 251-358).

8
9 The ALJ found Plaintiff has "degenerative disc disease and
10 degenerative arthritis of the lumbar spine . . . bilateral carpal
11 tunnel syndrome . . . and hypertension," impairments that are "severe
12 in combination" (A.R. 31). The ALJ determined Plaintiff retains the
13 residual functional capacity to perform a reduced range of light work
14 (A.R. 35).¹ The vocational expert testified that a person with this
15 capacity could perform certain identified jobs existing in significant
16 numbers in the national economy (A.R. 66-68). The ALJ relied on this
17 testimony in deeming Plaintiff not disabled (A.R. 40-42). The Appeals
18 Council denied review (A.R. 1-4).

19
20 **STANDARD OF REVIEW**

21
22 Under 42 U.S.C. section 405(g), this Court reviews the
23 Administration's decision to determine if: (1) the Administration's
24 findings are supported by substantial evidence; and (2) the

25 _____
26 ¹ According to the ALJ, Plaintiff's capacity for light
27 work is reduced by the following additional limitations: "She can
28 occasionally push and pull bilaterally. She can occasionally
climb, balance, stoop, kneel, crouch and crawl. She can
frequently handle and finger" (A.R. 35).

1 Administration used correct legal standards. See Carmickle v.
2 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
3 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner
4 of Social Sec. Admin., 682 F.3d 1157, 1161 (9th Cir. 2012).
5 Substantial evidence is "such relevant evidence as a reasonable mind
6 might accept as adequate to support a conclusion." Richardson v.
7 Perales, 402 U.S. 389, 401 (1971) (citation and quotations omitted);
8 see Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

9
10 If the evidence can support either outcome, the court may
11 not substitute its judgment for that of the ALJ. But the
12 Commissioner's decision cannot be affirmed simply by
13 isolating a specific quantum of supporting evidence.
14 Rather, a court must consider the record as a whole,
15 weighing both evidence that supports and evidence that
16 detracts from the [administrative] conclusion.

17
18 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and
19 quotations omitted).

20
21 **DISCUSSION**
22

23 After consideration of the record as a whole, Defendant's motion
24 is granted and Plaintiff's motion is denied. The Administration's
25 findings are supported by substantial evidence and are free from

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1 material² legal error. Plaintiff's contrary arguments are unavailing.

2
3 **I. Substantial Evidence Supports the Conclusion Plaintiff Can Work.**

4
5 Substantial medical evidence supports the conclusion Plaintiff is
6 not disabled. Dr. Robin Alleyne, an examining internist, opined
7 Plaintiff retains a physical residual functional capacity greater than
8 the capacity the ALJ found to exist (A.R. 285). Dr. Nina Kapitanski,
9 an examining psychiatrist, opined Plaintiff has an unlimited mental
10 residual functional capacity (A.R. 280). Non-examining state agency
11 physicians essentially concurred with the opinions of the examining
12 physicians (A.R. 80-83, 92-95). Where, as here, the opinions of non-
13 examining physicians do not contradict "all other evidence in the
14 record," the opinions may furnish substantial evidence to support the
15 administrative decision. See Andrews v. Shalala, 53 F.3d 1035, 1041
16 (9th Cir. 1995). Significantly, no physician has opined Plaintiff has
17 ever been disabled from all employment for a continuous twelve month
18 period. See Matthews v. Shalala, 10 F.3d 678, 680 (9th Cir. 1993) (in
19 upholding the Administration's decision, the Court emphasized: "None
20 of the doctors who examined [claimant] expressed the opinion that he
21 was totally disabled."); accord Curry v. Sullivan, 925 F.2d 1127, 1130
22 n.1 (9th Cir. 1991).

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25 _____
26 ² The harmless error rule applies to the review of
27 administrative decisions regarding disability. See Garcia v.
28 Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v.
Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart,
400 F.3d 676, 679 (9th Cir. 2005).

1 The vocational expert testified that a person with the residual
2 functional capacity the ALJ found to exist could perform certain jobs
3 existing in significant numbers in the national economy (A.R. 66-68).
4 The ALJ properly relied on this testimony in denying disability
5 benefits. See Barker v. Secretary, 882 F.2d 1474, 1478-80 (9th Cir.
6 1989); Martinez v. Heckler, 807 F.2d 771, 774-75 (9th Cir. 1986).

7
8 To the extent any of the medical evidence is in conflict, it is
9 the prerogative of the ALJ to resolve such conflicts. See Lewis v.
10 Apfel, 236 F.3d 503, 509 (9th Cir. 2001). When evidence "is
11 susceptible to more than one rational interpretation," the Court must
12 uphold the administrative decision. See Andrews v. Shalala, 53 F.3d
13 at 1039-40; accord Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir.
14 2002); Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997). The
15 Court will uphold the ALJ's rational interpretation of the evidence in
16 the present case notwithstanding any conflicts in the record.

17
18 **II. The ALJ Did Not Err in Discounting Plaintiff's Credibility.**

19
20 Plaintiff subjectively complained of allegedly disabling pain and
21 other symptomatology (A.R. 52-64). The ALJ found Plaintiff's
22 subjective complaints regarding the severity of her symptomatology "not
23 entirely credible" (A.R. 37). As discussed below, the ALJ did not
24 thereby err.

25
26 An ALJ's assessment of a claimant's credibility is entitled to
27 "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir.
28 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). Where, as

1 here, the ALJ finds that the claimant's medically determinable
2 impairments reasonably could be expected to cause some degree of the
3 alleged symptoms of which the claimant subjectively complains, any
4 discounting of the claimant's complaints must be supported by
5 specific, cogent findings. See Berry v. Astrue, 622 F.3d 1228, 1234
6 (9th Cir. 2010); Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995);
7 but see Smolen v. Chater, 80 F.3d 1273, 1282-84 (9th Cir. 1996)
8 (indicating that ALJ must offer "specific, clear and convincing"
9 reasons to reject a claimant's testimony where there is no evidence of
10 malingering).³ An ALJ's credibility findings "must be sufficiently
11 specific to allow a reviewing court to conclude the ALJ rejected the
12 claimant's testimony on permissible grounds and did not arbitrarily
13 discredit the claimant's testimony." See Moisa v. Barnhart, 367 F.3d
14 882, 885 (9th Cir. 2004) (internal citations and quotations omitted);
15 see also Social Security Ruling 96-7p. As discussed below, the ALJ
16 stated sufficient reasons for deeming Plaintiff's subjective
17 complaints not entirely credible.

18
19 The ALJ accurately characterized Plaintiff's past work as
20 "sporadic," inferring that Plaintiff "has not demonstrated a
21 commitment to work, even when she was admittedly not disabled" (A.R.

22
23 ³ In the absence of an ALJ's reliance on evidence of
24 "malingering," most recent Ninth Circuit cases have applied the
25 "clear and convincing" standard. See, e.g., Burrell v. Colvin,
26 775 F.3d 1133, 1136-37 (9th Cir. 2014); Chaudhry v. Astrue, 688
27 F.3d 661, 670, 672 n.10 (9th Cir. 2012); Molina v. Astrue, 674
28 F.3d 1104, 1112 (9th Cir. 2012); see also Ballard v. Apfel, 2000
WL 1899797, at *2 n.1 (C.D. Cal. Dec. 19, 2000) (collecting
earlier cases). In the present case, the ALJ's findings are
sufficient under either standard, so the distinction between the
two standards (if any) is academic.

1 37, 166-70). A claimant's sporadic work history can be a sufficient
2 reason to discount the claimant's credibility. See Smolen v. Chater,
3 80 F.3d at 1284 (ALJ may consider claimant's "work record" in
4 determining claimant's credibility); see also Deck v. Colvin, 588 Fed.
5 App'x 747, 748 (9th Cir. 2014) (sporadic work history is a specific,
6 clear and convincing reason for discrediting claimant's pain
7 testimony).

8
9 The ALJ also accurately pointed out that Plaintiff sometimes
10 exaggerated her alleged problems:

11
12 The claimant has alleged a number of conditions not
13 supported with medical evidence. For example, she testified
14 that she has a protruding muscle in her leg, but I find no
15 evidence that this was ever observed by a healthcare
16 professional. She also alleges osteoporosis (Exhibit 11E,
17 p. 1), and when she requested a hearing, Ms. Mason stated
18 that a bone in her left hand pops out (Exhibit 13E, p. 1).
19 However, neither of these conditions is medically
20 documented. Moreover, while the claimant testified to
21 radiation of her back symptoms to her right leg, her
22 treating physician, Dr. Cohen, documented negative straight-
23 leg raising both seated and supine, and no neurological
24 abnormalities (Exhibit 3F, p. 1).

25
26 Such misrepresentations or exaggerations can justify the rejection of
27 a claimant's credibility. See Tonapetyan v. Halter, 242 F.3d 1144,
28 1148 (9th Cir. 2001) (claimant's tendency to exaggerate is an adequate

1 reason for rejecting claimant's testimony); Bickell v. Astrue, 343
2 Fed. App'x 275, 277-78 (9th Cir. 2009) (same); Brawner v. Secretary,
3 839 F.2d 432, 433 (9th Cir. 1987) (misrepresentations made by claimant
4 in the course of pursuing disability benefits justifies rejection of
5 claimant's credibility); Madrigal v. Sullivan, 777 F. Supp. 1503, 1507
6 (N.D. Cal. 1991) (claimant's complaints of excess pain properly
7 disregarded where complaints found to be exaggerated); see also
8 Copeland v. Bowen, 861 F.2d 536, 541 (9th Cir. 1988) (claimant's
9 credibility may be suspect where the claimant alleges a limitation
10 "disparate from that observed by the consultative examiner").
11

12 The ALJ also emphasized significant inconsistencies in
13 Plaintiff's various statements. For example, on June 28, 2012,
14 Plaintiff stated that she used a walker and a cane (A.R. 38, 214-15).
15 Approximately two weeks later, however, Plaintiff appeared for a
16 consultative examination without a walker or a cane (A.R. 38, 277-86).
17 Plaintiff later testified she does not require any assistive device
18 whatsoever (A.R. 38, 54). For further example, Plaintiff sometimes
19 claimed, but sometimes denied, that her prescription medications
20 caused significant side effects (A.R. 36-37, 62, 204, 220).
21 Inconsistencies in a claimant's statements may impact adversely on the
22 claimant's credibility. See Verduzco v. Apfel, 188 F.3d 1087, 1090
23 (9th Cir. 1999); Moncada v. Chater, 60 F.3d 521, 524 (9th Cir. 1995);
24 Fair v. Bowen, 885 F.2d 597, 604 n.5 (9th Cir. 1989).
25

26 The ALJ also pointed out that, despite Plaintiff's allegedly
27 disabling pain and other symptomatology, Plaintiff once declined the
28 replacement of her pain medication and, more than once, failed to

1 follow up on medical referrals (A.R. 38-39, 259, 299, 312, 330).
2 Inadequately explained gaps in treatment or failures to comply with
3 recommended treatment can justify the discounting of a claimant's
4 credibility. See Fair v. Bowen, 885 F.2d at 603 (unexplained or
5 inadequately explained failure to follow prescribed course of
6 treatment can cast doubt on claimant's credibility); see also Meanel
7 v. Apfel, 172 F.3d 1111, 1114 (9th Cir. 1999) (Administration properly
8 may consider the claimant's failure to follow treatment advice).

9
10 Accordingly, the ALJ stated sufficient reasons to allow this
11 Court to conclude that the Administration discounted Plaintiff's
12 credibility on permissible grounds.⁴ See Moisa v. Barnhart, 367 F.3d
13 at 885. The Court therefore defers to the Administration's
14 credibility determination. See Lasich v. Astrue, 252 Fed. App'x 823,
15 825 (9th Cir. 2007) (court will defer to Administration's credibility
16 determination when the proper process is used and proper reasons for
17 the decision are provided); accord Flaten v. Secretary of Health &
18 Human Services, 44 F.3d 1453, 1464 (9th Cir. 1995).⁵

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22 ⁴ Furthermore, even if one or two of the ALJ's stated
23 reasons were to be deemed legally infirm, the Court still could
24 uphold the Administration's credibility determination. See
25 Carmickle v. Commissioner, 533 F.3d 1155, 1162-63 (9th Cir.
26 2008).

27 ⁵ In this discussion section, the Court does not
28 determine whether Plaintiff's subjective complaints are credible.
Some evidence suggests that those complaints may be credible.
However, it is for the Administration, and not this Court, to
evaluate witnesses' credibility. See Magallanes v. Bowen, 881
F.2d 747, 750, 755-56 (9th Cir. 1989).

