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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GINA V.,

 Plaintiff,

 v.

ANDREW M. SAUL, Commissioner of
Social Security Administration,

 Defendant.

Case No. CV 18-3332-SP

**MEMORANDUM OPINION AND
ORDER**

I.

INTRODUCTION

On April 20, 2018, plaintiff Gina V. filed a complaint against defendant, the Commissioner of the Social Security Administration (“Commissioner”), seeking a review of a denial of supplemental security income (“SSI”). The parties have fully briefed the matters in dispute, and the court deems the matter suitable for adjudication without oral argument.

Plaintiff presents one disputed issue for decision, whether the Administrative Law Judge (“ALJ”) properly considered plaintiff’s subjective symptom testimony.

1 Memorandum in Support of Plaintiff’s Complaint (“P. Mem.”) at 5-11; *see*
2 Memorandum in Support of Defendant’s Answer (“D. Mem.”) at 2-11.

3 Having carefully studied the parties’ memoranda on the issue in dispute, the
4 Administrative Record (“AR”), and the decision of the ALJ, the court concludes
5 that, as detailed herein, the ALJ properly considered plaintiff’s testimony.
6 Consequently, the court affirms the decision of the Commissioner denying
7 benefits.

8 **II.**
9 **FACTUAL AND PROCEDURAL BACKGROUND**

10 Plaintiff, who was 34 years old on the alleged disability onset date,
11 completed high school through the eleventh grade. AR at 63, 97. Plaintiff has no
12 past relevant work. *Id.* at 81.

13 Plaintiff had filed three prior applications for SSI on June 13, 2006, August
14 31, 2007, and October 6, 2010, all of which were denied at the initial level.¹ *Id.* at
15 98.

16 On October 8, 2013, plaintiff filed a fourth application for SSI, alleging an
17 onset date of June 15, 1999 due to bipolar disorder, hypothyroidism, and a lower
18 back injury. *Id.* at 97. The Commissioner denied plaintiff’s application initially,
19 after which he filed a request for a hearing. *Id.* at 112-16, 120-21.

20 On September 14, 2016, plaintiff, represented by counsel, appeared and
21 testified at a hearing before the ALJ. *Id.* at 59-89. The ALJ also heard testimony
22 from Howard J. Goldfarb, a vocational expert. *Id.* at 81-87. On November 1,
23 2016, the ALJ denied plaintiff’s claim for benefits. *Id.* at 37-47.

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26 ¹ Plaintiff filed a request for hearing after the denial of his second application
27 but the ALJ dismissed the request after plaintiff failed to appear at the hearing. AR
28 at 92-93. Petitioner then filed a request for review, which was denied by the
Appeals Council as untimely. *Id.* at 95-96.

1 Applying the well-known five-step sequential evaluation process, the ALJ
2 found, at step one, that plaintiff had not engaged in substantial gainful activity
3 since October 8, 2013, the application date. *Id.* at 39.

4 At step two, the ALJ found plaintiff suffered from the following severe
5 impairments: hypothyroidism; lumbar spine degenerative disc disease and
6 spondylosis; cervical spine degenerative disc disease; hypertension with sinus
7 tachycardia; chronic obstructive pulmonary disease (“COPD”); asthma with
8 dyspnea; hypoxia; emphysema; hyperventilation syndrome; diabetes mellitus;
9 hypoglycemia; bipolar disorder; major depressive disorder; mood disorder;
10 schizophrenia; polysubstance dependence; borderline personality disorder; and
11 anxiety disorder. *Id.*

12 At step three, the ALJ found plaintiff’s impairments, whether individually or
13 in combination, did not meet or medically equal one of the listed impairments set
14 forth in 20 C.F.R. part 404, Subpart P, Appendix 1 (the “Listings”). *Id.* at 40.

15 The ALJ then assessed plaintiff’s residual functional capacity (“RFC”),² and
16 determined she had the RFC to perform less than the full range of medium work,
17 with the limitations that plaintiff could: lift, carry, push, and pull 50 pounds
18 occasionally and 25 pounds frequently; stand and walk six hours in an eight-hour
19 work day; sit six hours in an eight-hour workday; engage in postural activities such
20 as climbing, balancing, stooping, kneeling, crouching, and crawling on a frequent
21 basis; and have occasional interaction with the general public. *Id.* at 41. The ALJ
22 precluded plaintiff from concentrated exposure to pulmonary irritants such as
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24 ² Residual functional capacity is what a claimant can do despite existing
25 exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152, 1155-
26 56 n.5-7 (9th Cir. 1989). “Between steps three and four of the five-step evaluation,
27 the ALJ must proceed to an intermediate step in which the ALJ assesses the
28 claimant’s residual functional capacity.” *Massachi v. Astrue*, 486 F.3d 1149, 1151
n.2 (9th Cir. 2007).

1 fumes, odors, dust, and gases. *Id.*

2 The ALJ found, at step four, that plaintiff had no past relevant work. *Id.* at
3 46.

4 At step five, considering plaintiff's age, education, work experience, and
5 RFC, the ALJ found there were jobs that existed in significant numbers in the
6 national economy that plaintiff could perform, including packer, laborer in stores,
7 and production assembler. *Id.* Consequently, the ALJ concluded plaintiff did not
8 suffer from a disability as defined by the Social Security Act. *Id.* at 47.

9 Plaintiff filed a timely request for review of the ALJ's decision, which was
10 denied by the Appeals Council. *Id.* at 1-4. The ALJ's decision stands as the final
11 decision of the Commissioner.

12 III.

13 STANDARD OF REVIEW

14 This court is empowered to review decisions by the Commissioner to deny
15 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security
16 Administration must be upheld if they are free of legal error and supported by
17 substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001)
18 (as amended). But if the court determines that the ALJ's findings are based on
19 legal error or are not supported by substantial evidence in the record, the court may
20 reject the findings and set aside the decision to deny benefits. *Aukland v.*
21 *Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); *Tonapetyan v. Halter*, 242 F.3d
22 1144, 1147 (9th Cir. 2001).

23 "Substantial evidence is more than a mere scintilla, but less than a
24 preponderance." *Aukland*, 257 F.3d at 1035. Substantial evidence is such
25 "relevant evidence which a reasonable person might accept as adequate to support
26 a conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276
27 F.3d at 459. To determine whether substantial evidence supports the ALJ's
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1 finding, the reviewing court must review the administrative record as a whole,
2 “weighing both the evidence that supports and the evidence that detracts from the
3 ALJ’s conclusion.” *Mayes*, 276 F.3d at 459. The ALJ’s decision “cannot be
4 affirmed simply by isolating a specific quantum of supporting evidence.”
5 *Aukland*, 257 F.3d at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th
6 Cir. 1998)). If the evidence can reasonably support either affirming or reversing
7 the ALJ’s decision, the reviewing court “may not substitute its judgment for that
8 of the ALJ.” *Id.* (quoting *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir.
9 1992)).

10 IV.

11 DISCUSSION

12 Plaintiff argues the ALJ impermissibly rejected her subjective symptom
13 testimony. P. Mem. at 5-11. Specifically, plaintiff contends the ALJ’s reasons for
14 discounting her testimony were not supported by substantial evidence. *Id.*

15 The ALJ must make specific credibility findings, supported by the record.
16 Social Security Ruling (“SSR”) 96-7p.³ To determine whether testimony
17 concerning symptoms is credible, the ALJ engages in a two-step analysis.
18 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007). First, the ALJ
19 must determine whether a claimant produced objective medical evidence of an
20 underlying impairment “which could reasonably be expected to produce the pain
21 or other symptoms alleged.” *Id.* at 1036 (quoting *Bunnell v. Sullivan*, 947 F.2d
22 341, 344 (9th Cir. 1991) (en banc)). Second, if there is no evidence of

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24 ³ “The Commissioner issues Social Security Rulings to clarify the Act’s
25 implementing regulations and the agency’s policies. SSRs are binding on all
26 components of the SSA. SSRs do not have the force of law. However, because
27 they represent the Commissioner’s interpretation of the agency’s regulations, we
28 give them some deference. We will not defer to SSRs if they are inconsistent with
the statute or regulations.” *Holohan v. Massanari*, 246 F.3d 1195, 1203 n.1 (9th
Cir. 2001) (internal citations omitted).

1 malingering, an “ALJ can reject the claimant’s testimony about the severity of her
2 symptoms only by offering specific, clear and convincing reasons for doing so.”
3 *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Burrell v. Colvin*, 775 F.3d
4 1133, 1136-37 (9th Cir. 2014). The ALJ may consider several factors in weighing
5 a claimant’s credibility, including: (1) ordinary techniques of credibility
6 evaluation such as a claimant’s reputation for lying; (2) the failure to seek
7 treatment or follow a prescribed course of treatment; and (3) a claimant’s daily
8 activities. *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008); *Bunnell*,
9 947 F.2d at 346-47.

10 At the first step, the ALJ here found plaintiff’s medically determinable
11 impairments could reasonably be expected to cause the symptoms alleged. AR at
12 41. At the second step, because the ALJ did not find any evidence of malingering,
13 the ALJ was required to provide clear and convincing reasons for discounting
14 plaintiff’s testimony. The ALJ found plaintiff’s testimony to be not entirely
15 credible because: (1) the objective evidence did not support her allegations; (2)
16 she received conservative treatment; (3) she failed to comply with her treatment
17 plan; and (4) her daily activities were inconsistent with her allegations. *See id.* at
18 42-45.

19 At the hearing, plaintiff testified that she suffered from, among other things,
20 chronic lower back pain, anxiety, “thyroidism,” diabetes, and emphysema, and was
21 considered a schizophrenic. *See id.* at 65-67, 77. Plaintiff testified due to her
22 lower back pain, she could only sit for about 20 minutes and stand for about 20
23 minutes. *See id.* at 63-64. Plaintiff also testified that it was hard to be around other
24 people, she had a lot of anxiety because of her thyroid, and she got overwhelmed
25 easily. *See id.* at 65-67. Plaintiff did not believe she could perform even simple
26 work because it hurt to stand, her pace was too slow, and she could not stay
27 focused. *Id.* at 75. Plaintiff testified that she could cook, shop, and walk a mile,
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1 and during a typical day, she walked around, watched television, and sat. *See id.* at
2 63-64, 78.

3 Plaintiff also made other statements concerning her symptoms. In a
4 December 2013 Function Report, plaintiff reported she could prepare meals, do
5 housework when “feeling good,” went outside everyday, and could shop. *See id.* at
6 220-21. On a daily basis, plaintiff engaged in reading, writing, singing, drawing,
7 and watching television. *Id.* at 222. Plaintiff reported that she enjoyed spending
8 time with her family. *See id.* Plaintiff indicated her impairments affected her
9 ability to, among other things, lift, squat, walk, sit, kneel, reach, talk, complete
10 tasks, and concentrate. *Id.* at 223. At the July 2014 consultative examination,
11 plaintiff told the examining physician she could only sit for five minutes or stand
12 and walk for five minutes. *Id.* at 340.

13 The ALJ’s first reason for an adverse credibility finding was plaintiff’s
14 alleged sitting and standing limitations were inconsistent with the objective
15 findings. *Id.* at 45; *see Rollins v. Massanari*, 261 F.3d 853, 856-57 (9th Cir. 2001)
16 (the lack of objective medical evidence to corroborate pain allegations is one
17 factor, in conjunction with others, the ALJ may consider in his or her credibility
18 determination). The ALJ acknowledged an August 2015 MRI of the cervical spine
19 reflected degenerative osteophytic changes with 1-2mm impingement on the thecal
20 sac, imaging of the lumbar spine showed moderate to advanced degenerative
21 changes, and the consultative examiner observed reduced range of motion in the
22 back. *See AR* at 42; *see also id.* at 432, 439. But the ALJ noted there was no
23 indication that these impairments required significant functional limitations. The
24 few treatment records containing physical examinations reflect normal or minimal
25 objective findings. The consultative examiner observed plaintiff had a negative
26 straight leg raising test; palpation along the spinous process did not elicit pain or
27 evidence of spasm; and plaintiff’s motor function, strength, and gait were normal.

1 *See id.* at 342-43. During other physical examinations, physicians observed
2 plaintiff had full range of motion in the neck, no tenderness, no difficulty walking,
3 and otherwise normal findings.⁴ *See, e.g., id.* at 30, 374, 380, 384, 458. As such,
4 the ALJ’s finding that the objective medical evidence did not support plaintiff’s
5 alleged physical limitations was a clear and convincing reason supported by
6 substantial evidence for discounting her testimony.⁵

7 The second reason cited by the ALJ for discounting plaintiff’s testimony was
8 she received conservative treatment for her back pain. *Id* at 42; *see Parra v.*
9 *Astrue*, 481 F.3d 742, 751 (9th Cir. 2007) (“[E]vidence of conservative treatment is
10 sufficient to discount a claimant’s testimony regarding severity of an impairment.”)
11 (internal quotation marks and citation omitted). Plaintiff argues she did not receive
12 conservative treatment for her psychiatric impairments. P. Mem. at 7. But the ALJ
13 only cited conservative treatment for plaintiff’s back pain as a basis for the adverse
14 credibility finding. *See* AR at 42. The ALJ noted plaintiff was only treated with
15 pain medication. Contrary to the ALJ’s findings, it does not appear physicians
16 prescribed any course of treatment for plaintiff’s back pain, much less prescription
17 pain medication. In March 2013, plaintiff indicated to the emergency room nurse
18 she took Norco, but no treatment note in the record reflects such a prescription and
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21 ⁴ Although plaintiff alleged an onset date of June 15, 1999, the ALJ’s decision
22 focused on the period from the application date forward. *See* AR at 39. Other than
23 three sets of treatment notes, plaintiff did not submit medical records from the
24 period prior to the application date. *See id.* at 275-311. During the March and
25 August 2013 emergency room visits, plaintiff complained of back pain, but other
than a finding of pain with range of motion, the physicians did not indicate any
objective findings. *See id.* at 299.

26 ⁵ The ALJ also found the record only supported mild to moderate mental
27 limitations. *See* AR at 43-44. Plaintiff does not discuss these findings and only
28 argues the ALJ may not reject his subjective complaints of pain based on lack of
objective medical evidence.

1 the emergency room treatment note similarly contains no notation prescribing pain
2 medication. *See* AR at 300. Instead, the hospital provided plaintiff standard
3 discharge instructions regarding back pain, instructing her, among other things, to
4 rest, avoid prolonged sitting, and take acetaminophen or ibuprofen as needed. *Id.*
5 at 302-03. In July 2014 and August 2015, plaintiff was neither taking any
6 medication for her back pain nor receiving any other form of treatment such as
7 physical therapy. *See id.* at 341, 423. Consequently, although there was no
8 evidence to support the ALJ's finding that plaintiff's back pain was treated with
9 pain medication, the ALJ's underlying finding that plaintiff's testimony should be
10 discounted because she was treated conservatively was supported by substantial
11 evidence. Plaintiff's back pain was so mild that her physicians chose not to even
12 prescribe pain medication to treat it.

13 Third, the ALJ cited plaintiff's failure to comply with her treatment plan as a
14 basis for an adverse credibility finding. *See id.* at 42-44; *Tommasetti*, 533 F.3d at
15 1039. The record contains substantial evidence of non-compliance. When plaintiff
16 was hospitalized in August 2015 and February 2016 for respiratory issues, it was
17 due to the fact that she failed to take her medication. *See id.* at 42-43, 382, 407,
18 421. Plaintiff also failed to take her medication on several other occasions that did
19 not result in hospitalization. *See id.* at 356, 358, 364. Indeed, when plaintiff took
20 her medication as prescribed, her symptoms were well-controlled. *See, e.g., id.* at
21 76, 333, 362; *Warre v. Comm'r*, 439 F.3d 1001, 1006 (9th Cir. 2006)
22 ("Impairments that can be controlled effectively with medication are not disabling
23 for purposes of determining eligibility for SSI benefits.").

24 Finally, the ALJ discounted plaintiff's testimony because her activities of
25 daily living were inconsistent with her alleged symptoms. *See* AR at 43-44;
26 *Valentine v. Astrue*, 574 F.3d 685, 693 (9th Cir. 2009) (the ALJ properly
27 discounted plaintiff's credibility because his daily activities suggested his claims
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1 about the severity of his limitations were exaggerated); *Thomas v. Barnhart*, 278
2 F.3d 947, 958-59 (9th Cir. 2002) (in making a credibility determination, an ALJ
3 may consider inconsistencies between a claimant’s testimony and conduct).
4 Plaintiff testified she could only sit and stand for 20 minutes at a time and told the
5 consultative examiner she could only sit, stand, and walk for five minutes. *See* AR
6 at 63-64, 340. Notwithstanding the fact that these statements were inconsistent
7 with each other, her statement that she could only walk for five minutes was
8 inconsistent with her testimony that she could walk a mile. *See id.* at 64; *see also*
9 *Bunnell*, 947 F.2d at 346 (an ALJ “may discredit claimant based on inconsistencies
10 in the testimony”). Moreover, plaintiff reported she went out everyday, which is
11 seemingly inconsistent with an ability to walk or stand for only five minutes at
12 time. *See id.* at 221. Thus, substantial evidence supported the ALJ’s findings that
13 at least some of plaintiff’s activities were inconsistent with the severity of the
14 limitations alleged.

15 In sum, the ALJ cited multiple clear and convincing reasons supported by
16 substantial evidence for finding plaintiff’s testimony less than entirely credible. As
17 such, the ALJ did not err in discounting plaintiff’s subjective allegations.

18 V.

19 CONCLUSION

20 IT IS THEREFORE ORDERED that Judgment shall be entered
21 AFFIRMING the decision of the Commissioner denying benefits, and dismissing
22 the complaint with prejudice.

23
24 DATED: September 30, 2019



25 SHERI PYM
26 United States Magistrate Judge