

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EMMA L. SOLIS,

Plaintiff,

v.

ANDREW M. SAUL,
Commissioner of Social Security,

Defendant.

Case No. CV 18-06852-JEM

MEMORANDUM OPINION AND ORDER
AFFIRMING DECISION OF THE
COMMISSIONER OF SOCIAL SECURITY

PROCEEDINGS

On August 9, 2018, Emma L. Solis (“Plaintiff” or “Claimant”) filed a complaint seeking review of the decision by the Commissioner of Social Security (“Commissioner”) denying Plaintiff’s application for Social Security Disability Insurance benefits. (Dkt. 1.) The Commissioner filed an Answer on November 13, 2018. (Dkt. 13.) On January 29, 2019, the parties filed a Joint Submission Statement (“JSS”). (Dkt. 18.) The matter is now ready for decision.

Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before this Magistrate Judge. After reviewing the pleadings, transcripts, and administrative record (“AR”), the Court concludes that the Commissioner’s decision must be affirmed and this case dismissed with prejudice.

BACKGROUND

1
2 Plaintiff is a 63 year-old female who applied for Social Security Disability Insurance
3 benefits on March 3, 2015, alleging disability beginning February 5, 2014. (AR 15.) The ALJ
4 determined that Plaintiff has not engaged in substantial gainful activity since February 5, 2014,
5 the alleged onset date. (AR 17.)

6 Plaintiff's claim was denied initially on July 10, 2015. (AR 15.) Plaintiff filed a timely
7 request for hearing, which was held before Administrative Law Judge ("ALJ") Michael D.
8 Radensky on March 23, 2017, in Norwalk, California. (AR 15.) Plaintiff appeared and testified
9 at the hearing and was represented by counsel. (AR 15.) Vocational expert ("VE") Kristan
10 Cicero also appeared and testified at the hearing. (AR 15.)

11 The ALJ issued an unfavorable decision on May 11, 2017. (AR 15-24.) The Appeals
12 Council denied review on June 11, 2018. (AR 1-3.)

DISPUTED ISSUES

13
14 As reflected in the Joint Submission Statement, Plaintiff raises the following disputed
15 issues as grounds for reversal and remand:

- 16 1. Whether Plaintiff has the requisite transferable skills to perform the jobs as
17 identified by the Vocational Expert.
- 18 2. Whether the ALJ failed to comply with applicable law in finding that Plaintiff
19 retains the residual functional capacity to perform light work and could perform
20 her past relevant work as a payroll clerk.

STANDARD OF REVIEW

21
22 Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether
23 the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v.
24 Chater, 80 F.3d 1273 , 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846
25 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and
26 based on the proper legal standards).

27 Substantial evidence means "more than a mere scintilla,' but less than a
28 preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v.

1 Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is “such relevant evidence as a
2 reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at
3 401 (internal quotation marks and citation omitted).

4 This Court must review the record as a whole and consider adverse as well as
5 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). Where
6 evidence is susceptible to more than one rational interpretation, the ALJ’s decision must be
7 upheld. Morgan v. Comm’r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).
8 “However, a reviewing court must consider the entire record as a whole and may not affirm
9 simply by isolating a ‘specific quantum of supporting evidence.’” Robbins, 466 F.3d at 882
10 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495
11 F.3d 625, 630 (9th Cir. 2007).

12 THE SEQUENTIAL EVALUATION

13 The Social Security Act defines disability as the “inability to engage in any substantial
14 gainful activity by reason of any medically determinable physical or mental impairment which
15 can be expected to result in death or . . . can be expected to last for a continuous period of not
16 less than 12 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner has
17 established a five-step sequential process to determine whether a claimant is disabled. 20
18 C.F.R. §§ 404.1520, 416.920.

19 The first step is to determine whether the claimant is presently engaging in substantial
20 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging
21 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,
22 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or
23 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not
24 significantly limit the claimant’s ability to work. Smolen, 80 F.3d at 1290. Third, the ALJ must
25 determine whether the impairment is listed, or equivalent to an impairment listed, in 20 C.F.R.
26 Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d at 746. If the impairment
27 meets or equals one of the listed impairments, the claimant is presumptively disabled. Bowen,
28 482 U.S. at 141. Fourth, the ALJ must determine whether the impairment prevents the

1 claimant from doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir.
2 2001). Before making the step four determination, the ALJ first must determine the claimant's
3 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). The RFC is "the most [one] can
4 still do despite [his or her] limitations" and represents an assessment "based on all the relevant
5 evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The RFC must consider all of the
6 claimant's impairments, including those that are not severe. 20 C.F.R. §§ 416.920(e),
7 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

8 If the claimant cannot perform his or her past relevant work or has no past relevant work,
9 the ALJ proceeds to the fifth step and must determine whether the impairment prevents the
10 claimant from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864,
11 869 (9th Cir. 2000). The claimant bears the burden of proving steps one through four,
12 consistent with the general rule that at all times the burden is on the claimant to establish his or
13 her entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established
14 by the claimant, the burden shifts to the Commissioner to show that the claimant may perform
15 other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support
16 a finding that a claimant is not disabled at step five, the Commissioner must provide evidence
17 demonstrating that other work exists in significant numbers in the national economy that the
18 claimant can do, given his or her RFC, age, education, and work experience. 20 C.F.R.
19 § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is disabled and
20 entitled to benefits. Id.

21 THE ALJ DECISION

22 In this case, the ALJ determined at step one of the sequential process that Plaintiff has
23 not engaged in substantial gainful activity since February 5, 2014, the alleged onset date. (AR
24 17.)

25 At step two, the ALJ determined that Plaintiff has the following medically determinable
26 severe impairments: degenerative disc disease; right shoulder impairment; right wrist
27 impairment; and right knee impairment. (AR 17-19.)
28

1 At step three, the ALJ determined that Plaintiff does not have an impairment or
2 combination of impairments that meets or medically equals the severity of one of the listed
3 impairments. (AR 19-20.)

4 The ALJ then found that Plaintiff has the RFC to perform less than the full range of light
5 work as defined in 20 CFR § 404.1567(b) with the following limitations:

6 Claimant can lift and carry 20 pounds occasionally and 10 pounds frequently.

7 Claimant can stand/walk 6 hours in an 8 hour workday. Claimant can sit 6 hours
8 in an 8 hour day. Claimant can occasionally perform above shoulder level work
9 with the right upper extremity. Claimant can engage in occasional power grasping
10 with the right wrist, otherwise Claimant can engage in frequent fine and gross
11 manipulative activities bilaterally. Claimant can engage in occasional postural
12 activities, but cannot climb ladders, ropes, or scaffolds. Claimant cannot work
13 around unprotected heights or dangerous machinery. Claimant cannot engage in
14 repetitive pushing or pulling of foot pedals or controls with the right lower
15 extremity.

16 (AR 20-23.) In determining the above RFC, the ALJ made a determination that Plaintiff's
17 subjective symptom allegations were "not entirely consistent" with the medical evidence and
18 other evidence of record. (AR 20.) Plaintiff does not challenge this finding.

19 At step four, the ALJ found that Plaintiff is able to perform her past relevant work as a
20 payroll clerk as actually and generally performed. (AR 23.)

21 Consequently, the ALJ found that Claimant is not disabled, within the meaning of the
22 Social Security Act. (AR 23.)

23 **DISCUSSION**

24 The ALJ decision must be affirmed. The ALJ's RFC is supported by substantial
25 evidence. The ALJ's step four determination that Plaintiff can perform her past relevant work
26 ("PRW") as a payroll clerk is also supported by substantial evidence.

1 **I. THE ALJ’S RFC FINDING IS SUPPORTED BY SUBSTANTIAL EVIDENCE**

2 Plaintiff alleges disability due to degenerative disc disease, right shoulder impairment,
3 right wrist impairment, and right knee impairment. (AR 17.) The ALJ found these impairments
4 to be severe. (AR 17.) Notwithstanding these impairments, the ALJ found that Plaintiff could
5 perform a restricted range of light work. (AR 20.) With this RFC, the ALJ determined at step
6 four of the sequential process that Plaintiff could perform her PRW as a payroll clerk as actually
7 and generally performed and, therefore, was not disabled. (AR 23.) Plaintiff challenges the
8 ALJ’s RFC and step four PRW findings.

9 The ALJ’s RFC is not a medical determination but an administrative finding or legal
10 decision reserved to the Commissioner based on consideration of all the relevant evidence,
11 including medical evidence, lay witnesses, and subjective symptoms. See SSR 96-5p; 20
12 C.F.R. § 1527(e). In determining a claimant’s RFC, an ALJ must consider all relevant evidence
13 in the record, including medical records, lay evidence, and the effects of symptoms, including
14 pain reasonably attributable to the medical condition. Robbins, 446 F.3d at 883.

15 Plaintiff’s challenge to the ALJ’s RFC lacks merit. Plaintiff performed her PRW at a light
16 level of exertion, which requires lifting 20 pounds occasionally and a good deal of walking or
17 standing. 20 C.F.R. § 404.1567(b). Thus, the ALJ found that Plaintiff could perform the
18 occupation of payroll clerk as actually performed, consistent with the ALJ’s less than light work
19 RFC. (AR 20, 23.) Plaintiff, however, claims that she only is able to sit or stand for a short
20 period of time and thus cannot perform light work. (JSS 5.) Even if this were true, the payroll
21 occupation as generally performed requires only sedentary exertion. (AR 23, 51-52.) Thus,
22 even if the ALJ had restricted Plaintiff to sedentary work, any error in the RFC determination
23 would be harmless. See Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008) (error is
24 harmless when it is “inconsequential to the ultimate nondisability determination”), quoting Stout
25 v. Comm’r, 454 F.3d 1050, 1055-56 (9th Cir. 2006); Carmichael v. Comm’r Soc. Sec. Adm.,
26 533 F.3d 1155, 1162 (9th Cir. 2008) (error is harmless where it would not change the outcome
27 of the disability determination).

1 The evidence in the record, moreover, supports the ALJ's less than light work RFC.
2 Radiology of the cervical spine indicated only mild degenerative changes for which the
3 Claimant received only mild and conservative treatment in the form of pain medication and
4 physical therapy. (AR 21.) Examinations in 2015 and 2016 indicated some reduced range of
5 motion in the neck and back, but normal gait and normal motor strength. (AR 21.) The ALJ
6 found that a reduced light work RFC accounts for Plaintiff's condition. (AR 21.)

7 The medical evidence indicates a right shoulder impairment. (AR 21.) Plaintiff had
8 arthroscopic surgery for tendonitis in February 2014 but improved after surgery. (AR 21.) The
9 consulting examiner found Claimant would be able to lift 20 pounds occasionally. (AR 21.)
10 Plaintiff was treated conservatively with only physical therapy and medication. (AR 21.) An X-
11 ray of the shoulder in 2016 was unremarkable. (AR 21.) Again, the ALJ determined that a less
12 than light work RFC with a restriction to occasional right above shoulder work accounts for this
13 condition. (AR 21.)

14 The record medical evidence also indicates a right wrist impairment. (AR 21.) Plaintiff
15 has decreased sensation in three right fingers and reduced grip strength. (AR 21.) The
16 consultant found that Claimant could only occasionally power grasp with the right wrist but
17 could otherwise use the hands frequently for fine and gross manipulative activities. (AR 21.) In
18 October 2016, Claimant had 5/5 motor strength in her bilateral wrists and in her hand grip. (AR
19 22.) She only uses ibuprofen and ointments. (AR 22.) The ALJ found that the RFC
20 restrictions for the right wrist and bilateral hands account for these conditions. (AR 22.)

21 Plaintiff also has a right knee impairment. (AR 22.) Plaintiff has moderate degenerative
22 changes in the right knee but had 5/5 motor strength in the knees in October 2016. (AR 22.)
23 Plaintiff received very conservative treatment. (AR 22.) The ALJ found that the Claimant's
24 reduced light work RFC accounts for this condition. (AR 22.)

25 Plaintiff contends that there is no credible evidence in the record to contradict Claimant's
26 testimony that she was only able to sit or stand for a short period. This assertion is plainly
27 untrue. The above objective evidence contradicts that assertion. So does the opinion of the
28 consulting examiner Dr. H. H. Bleecker who found that Plaintiff would have a reduced light work

1 residual RFC. (AR 22.) The ALJ also relied on an RFC with occasional reaching above the
2 right shoulder. (AR 22.) Plaintiff did not address or discuss any of the medical evidence cited
3 by the ALJ.

4 Additionally, the ALJ determined that Plaintiff's subjective symptom allegations are "not
5 entirely consistent" with the medical evidence and other evidence of record. (AR 20.) The ALJ
6 found that the Claimant's statements are not consistent with or supported by the objective
7 medical evidence. (AR 22.) An ALJ is permitted to consider whether there is a lack of medical
8 evidence to corroborate a claimant's alleged symptoms so long as it is not the only reason for
9 discounting a claimant's subjective symptom allegations. Burch v. Barnhart, 400 F.3d 676,
10 680-81 (9th Cir. 2005.) The ALJ also found that Plaintiff received mild and conservative
11 treatment for her musculoskeletal conditions. (AR 21-22.) An ALJ may consider conservative
12 treatment in evaluating a claimant's subjective symptom allegations. Tommasetti, 533 F.3d at
13 1039. The ALJ further found that Plaintiff's daily activities are inconsistent with disabling
14 limitations. (AR 22.) Inconsistent activities are a legitimate consideration in evaluating
15 subjective symptom allegations. Bunnell v. Sullivan, 947 F.2d 341, 345-46 (9th Cir. 1991). The
16 ALJ also found that Plaintiff's mental impairment of depression with anxiety was not severe.
17 (AR 18-19.) Once again, Plaintiff did not address or discuss the ALJ's adverse ruling on her
18 subjective symptom allegations.

19 Plaintiff challenges the ALJ's RFC but it is the ALJ's responsibility to resolve conflicts in
20 the evidence and ambiguities in the record. Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir.
21 1995). Where the ALJ's interpretation of the record is reasonable, as it is here, it should not be
22 second-guessed. Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001).

23 The ALJ's RFC is supported by substantial evidence.

24 **II. THE ALJ'S STEP FOUR PRW FINDING IS**
25 **SUPPORTED BY SUBSTANTIAL EVIDENCE**

26 The ALJ at step four of the sequential process determined that Plaintiff could perform
27 her PRW as a payroll clerk as actually and generally performed. (AR 23.) In finding that
28 Plaintiff could perform her PRW as a payroll clerk (DOT 215.382-014), the ALJ relied on the

1 testimony of a VE, who stated that a person with Plaintiff's less than light work RFC could
2 perform that occupation as actually and generally performed. (AR 23, 51-53.) See SSR 82.61
3 (claimant not disabled if he or she can perform PRW as actually or generally performed). The
4 VE also testified that, according to the Dictionary of Occupational Titles ("DOT"), the occupation
5 generally required sedentary exertion but light exertion as Plaintiff actually performed the job.
6 (AR 51.) The VE's testimony is consistent with the DOT, which describes the payroll clerk
7 occupation as "sedentary," involving exerting up to 10 pounds occasionally, as well as sitting
8 most of the time but walking and standing for brief periods. See 1991 WL 671908. Plaintiff
9 does not identify any conflict between the VE's testimony and the DOT. See SSR 00-4p. The
10 DOT job description and the VE's testimony are substantial evidence supporting the ALJ's step
11 four PRW determination. See 20 C.F.R. § 404.1566(d)-(e).

12 Plaintiff worked as a payroll clerk from 1989 to 2005. (JSS 3.) The DOT (215.382-014)
13 job description for a payroll clerk includes:

14 Compiles payroll data, and enters data or computes and posts wages, and
15 reconciles errors, to maintain payroll records, using computer or calculator:

16 Compiles payroll data, such as hours worked, sales or piecework, taxes,
17 insurance, and union dues to be withheld, and employee identification number,
18 from time sheets and other records. Prepares computer input forms, enters data
19 into computer files, or computes wages and deductions, using calculator, and
20 posts to payroll records. Reviews wages computed and corrects errors to ensure
21 accuracy of payroll. Records changes affecting net wages, such as exemptions,
22 insurance coverage, and loan payments for each employee to update master
23 payroll records. Records data concerning transfer of employees between
24 departments. May prorate expenses to be debited or credited to each
25 department for cost accounting records. May prepare periodic reports of
26 earnings, taxes, and deductions. May keep records of leave pay and nontaxable
27 wages. May prepare and issue paychecks.

28

1 1991 WL 671908. The occupation is sedentary with a Reasoning Level of 4, a Math level of 3
2 and a Language Level (Reading) of 3.

3 Plaintiff contends that the job of a payroll clerk has become more complicated than the
4 1988 DOT job description. She claims that she lacks the requisite transferable skills to perform
5 the enhanced requirements of the payroll clerk. Plaintiff's contention that she does not have
6 the skills to perform the payroll clerk occupation is based on a non-governmental career
7 recruitment website, Accounting Jobs Today. The ALJ, however, was not bound to follow such
8 job descriptions. Plaintiff presents no legal authority requiring the ALJ to do so. Plaintiff,
9 moreover, states in a conclusory manner she does not have the skills to meet the current
10 demands of the payroll clerk but does not explain why that is so. She also fails to identify what
11 limitations in her RFC prevented her from performing the duties of the payroll clerk occupation
12 or even what skills she cannot perform. She provided no vocational analysis and never raised
13 the issue of a change in skills for the occupation with the VE at the hearing. To the extent
14 Plaintiff claims that she cannot perform the light level exertion in the RFC, the Court already
15 has ruled that this contention is contrary to the medical and other evidence of record.
16 Additionally, the payroll clerk job as generally performed is sedentary. (AR 23.) To the extent
17 she claims that she cannot perform the payroll clerk occupation mentally, the ALJ found that
18 Plaintiff does not have a severe mental impairment and imposed no mental limitation in
19 Plaintiff's RFC. (AR 18-19.) Additionally, the consulting psychiatric examiner Dr. Ashraf
20 Elmashet opined Plaintiff could perform detailed and complex instructions. (AR 18-19, 2636.)
21 Plaintiff does not discuss or address the record evidence regarding her mental impairments.

22 The VE found that Plaintiff has no transferable skills. (AR 53.) The VE's finding,
23 however, is immaterial. At step four of the sequential process, the ALJ does not consider
24 transferable skills when considering whether a claimant can perform his or her PRW. 20
25 C.F.R. § 404.1560(b)(3); see also POMS DI 25005.001C ("when evaluating a claimant's ability
26 to do PRW, do not consider . . . transferability of skills"). Transferability of skills is a
27 consideration at step five of the sequential process in determining whether the claimant
28 obtained job skills that would assist the claimant in performing other work. 20 C.F.R. §

1 404.1568. Here, the ALJ at step four of the sequential process determined that Plaintiff could
2 perform her PRW and never made nor needed to make any finding regarding transferability of
3 skills only relevant at the fifth step of the sequential process. The question as Plaintiff posed it,
4 whether she has transferable skills to perform the jobs identified by the VE, is inapplicable
5 here. See Seat v. Astrue, 2013 WL 328513, at *5 (E.D. Wash. Jan. 28, 2013) (“‘Special rules’
6 for persons closely approaching retirement age concern the transferability of skills in a step five
7 analysis Since the ALJ found Plaintiff could return to her past relevant work as a
8 hairdresser at step four, transferability of skills is not an issue.”)

9 As already noted, a claimant bears the burden of proving steps one through four,
10 consistent with the general rule that at all times the burden is on the claimant to establish his or
11 her entitlement to benefits. Parra, 481 F.3d at 746. Here, Plaintiff did not carry her burden to
12 prove that she cannot perform her PRW as a payroll clerk.

13 The ALJ’s finding that Plaintiff can perform her PRW as a payroll clerk as actually and
14 generally performed is supported by substantial evidence.

15 * * *

16 The ALJ’s nondisability determination is supported by substantial evidence and free of
17 legal error.

18 **ORDER**

19 IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the
20 Commissioner of Social Security and dismissing this case with prejudice.

21
22 DATED: August 6, 2019

23 /s/ John E. McDermott
24 JOHN E. MCDERMOTT
25 UNITED STATES MAGISTRATE JUDGE
26
27
28