

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**

ROSIE M. K.,<sup>1</sup>

Plaintiff,

v.

KILOLO KIJAKAZI,<sup>2</sup> Acting  
Commissioner of Social Security,

Defendant.

Case No. CV 20-06025-RAO

**MEMORANDUM OPINION AND  
ORDER**

**I. INTRODUCTION**

Plaintiff Rosie M. K. challenges the denial by the Commissioner of Social Security (“Defendant”) of her application for disability insurance benefits (“DIB”). She contends that the Administrative Law Judge (“ALJ”) erred in her consideration of the medical record and in discounting Plaintiff’s subjective symptom testimony. For the reasons stated below, the decision of the Commissioner is AFFIRMED.

---

<sup>1</sup> Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

<sup>2</sup> Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi, the Acting Commissioner of Social Security, is hereby substituted as the defendant.

1 **II. SUMMARY OF PROCEEDINGS**

2 On December 15, 2016, Plaintiff protectively filed a Title II application for  
3 DIB, alleging that she had been disabled since August 4, 2014, due to a fall at work  
4 that resulted in injuries to her neck, back, knees, hands, and nose; constant neck and  
5 back pain; numbness, tingling, weakness, poor grip and grasp in her hands; knee pain  
6 that radiated up her legs; hypertension; diabetes; asthma and sensitivity to chemicals;  
7 depression and anxiety; and poor concentration and memory. (Administrative  
8 Record (“AR”) 169-70, 206.) Her application was denied, after which she requested  
9 and was granted a hearing before an ALJ. (AR 79-87.) Following a hearing on May  
10 22, 2019, at which Plaintiff appeared with counsel, the ALJ found that Plaintiff had  
11 not been disabled at any time from her alleged onset date through the date of decision.  
12 (AR 17-28, 33-54.) The ALJ’s decision became the Commissioner’s final decision  
13 when the Appeals Council denied Plaintiff’s request for review. (AR 1-5.) This  
14 action followed.

15 **III. DISCUSSION**

16 Plaintiff contends that the ALJ erred when she: (1) found that Plaintiff’s  
17 depression and anxiety were not severe impairments; (2) did not include limitations  
18 resulting from Plaintiff’s mental impairments in her residual functional capacity  
19 determination; and (3) discounted Plaintiff’s testimony regarding her mental  
20 limitations. (JS at 2-6, 16-17, 19-22.)<sup>3</sup>

21 The ALJ followed the five-step sequential evaluation process to assess whether  
22 Plaintiff was disabled under the Social Security Act. *See Lester v. Chater*, 81 F.3d  
23 821, 828 n.5 (9th Cir. 1995). At step two, the ALJ found that Plaintiff’s degenerative  
24 disc disease of the back, mild bilateral carpal tunnel syndrome, and bilateral  
25 osteoarthritis of the knees (right knee more severe) were severe impairments but that

---

26  
27 <sup>3</sup> Plaintiff challenges the ALJ’s findings only with respect to her mental limitations.  
28 As such, the Court need not and does not address the ALJ’s physical limitation  
findings.

1 Plaintiff's depression and anxiety were not severe. (AR 19-21.) At step three, the  
2 ALJ concluded that none of Plaintiff's impairments met or equaled any impairment  
3 listed in the regulations that would by itself establish disability. (AR 21-22.)

4 Before proceeding to step four, the ALJ found that Plaintiff had the residual  
5 functional capacity to perform sedentary work with some additional postural and  
6 environmental limitations. (AR 22.) The ALJ considered the evidence of Plaintiff's  
7 mental impairments but found that the record did not support additional limitations  
8 based on those impairments. (AR 25-27.)

9 At step four, the ALJ adopted the testimony of a vocational expert and  
10 concluded that Plaintiff could perform her past relevant work as an administrative  
11 assistant and that, therefore, she was not disabled.<sup>4</sup> (AR 27-28.)

#### 12 **A. The ALJ's Step Two Determination**

13 At step two, the ALJ found that Plaintiff's mental impairments of anxiety and  
14 depression caused no more than "minimal limitation" in her ability to perform basic  
15 work activities and were, therefore, not severe. (AR 20-21.)

16 The step two inquiry is meant to be a *de minimis* screening device. *Smolen v.*  
17 *Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (citing *Bowen v. Yuckert*, 482 U.S. 137,  
18 153-54, 107 S. Ct. 2287, 96 L. Ed. 2d 119 (1987)). At step two, the ALJ identifies a  
19 claimant's severe impairments, *i.e.*, impairments that significantly limit his or her  
20 ability to do basic work activities. 20 C.F.R. §§ 404.1522(a), 416.922(a); *Smolen*,  
21 80 F.3d at 1290. A determination that an impairment is not severe requires evaluation  
22 of medical findings describing the impairment, and an informed judgment as to its  
23 limiting effects on a claimant's ability to do basic work activities. Social Security  
24 Ruling ("SSR") 85-28, 1985 WL 56856, at \*4 (Jan. 1, 1985). The ALJ must take  
25 into account subjective symptoms in assessing severity, *Smolen*, 80 F.3d at 1290, but  
26 "medical evidence alone is evaluated . . . to assess the effects of the impairment(s)

---

27 <sup>4</sup> The ALJ did not make any findings at step five regarding Plaintiff's ability to  
28 perform other work existing in the national economy.

1 on ability to do basic work activities.” SSR 85-28 at \*4. An impairment or  
2 combination thereof may properly be found not severe if the clearly established  
3 objective medical evidence shows only slight abnormalities that minimally affect a  
4 claimant’s ability to do basic work activities. *Webb v. Barnhart*, 433 F.3d 683, 687  
5 (9th Cir. 2005); *Smolen*, 80 F.3d at 1290.

6 Here, the ALJ found that Plaintiff’s mental impairments were not severe  
7 based primarily on the assessment of examining psychologist Dr. Rosa Colonna,  
8 who evaluated Plaintiff on March 22, 2017, and opined that Plaintiff would have  
9 only mild limitations on her ability to understand, remember, and carry out detailed  
10 instructions; and a mild inability to interact appropriately with supervisors,  
11 coworkers, and peers. (AR 20-21, 1364.) The ALJ also relied on the record  
12 evidence that showed numerous routine mental status examination findings and a  
13 lack of psychological treatment other than counseling, as well as on Plaintiff’s own  
14 reported daily activities, which included driving, cooking, shopping, cleaning, and  
15 volunteer work. (AR 20-21.)

16 Plaintiff challenges the ALJ’s reliance on Dr. Colonna’s opinion, as well as  
17 the ALJ’s interpretation of the treatment record, and contends that the ALJ failed to  
18 offer adequate justification for rejecting the contrary opinion of her therapist,  
19 psychologist Dr. Elaine Karr, and failed to consider statements suggesting greater  
20 disability offered by Workers’ Compensation evaluator Dr. Robert Cooper in a  
21 February 2015 report. (JS 2-6.) Because the ALJ expressly considered the  
22 evidence and possible effect of Plaintiff’s mental limitations at step four, however  
23 (AR 25-27), any error committed by her in finding that Plaintiff’s mental  
24 impairments were not severe at step two is harmless. *See Lewis v. Astrue*, 498 F.3d  
25 909, 911 (9th Cir. 2007) (“The decision reflects that the ALJ considered any  
26 limitations posed by the bursitis at [s]tep [four]. As such, any error that the ALJ  
27 made in failing to include the bursitis at [s]tep [two] was harmless.”); *Steagall v.*  
28 *Berryhill*, 2017 WL 2125740, at \*7 (C.D. Cal. May 16, 2017) (“It is established that

1 an ALJ's failure to find an impairment severe, even if erroneous, is harmless error  
2 where at the later [residual functional capacity] stage of the analysis, the ALJ  
3 discusses the impairment, the medical findings, the pertinent symptoms, and the  
4 applicable opinions concerning functional limitations.”).

5 **B. The ALJ’s Residual Functional Capacity Determination**

6 Plaintiff contends that the ALJ’s failure to include in her residual functional  
7 capacity any limitations resulting from her mental impairments was error.  
8 Specifically, Plaintiff contends that the ALJ improperly rejected limitations found,  
9 or suggested, by Dr. Karr and Workers’ Compensation evaluating psychologist Dr.  
10 Gayle Windman. (JS at 17.) For the following reasons, the Court concludes that  
11 the ALJ did not err.

12 The ALJ is responsible for assessing a claimant’s residual functional capacity  
13 “based on all of the relevant medical and other evidence.” 20 C.F.R.  
14 § 404.1545(a)(3), 404.1546(c); *see Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883  
15 (9th Cir. 2006). An ALJ’s determination of a claimant’s RFC must be affirmed “if  
16 the ALJ applied the proper legal standard and [her] decision is supported by  
17 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005);  
18 *accord Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

19 The ALJ’s residual functional capacity determination is supported by  
20 substantial evidence in the record. The ALJ relied primarily on the opinion of  
21 consulting psychologist Dr. Colonna, who examined Plaintiff and diagnosed  
22 Adjustment Disorder with mixed emotional features to consider depression and  
23 anxiety, opining that Plaintiff would have no more than mild limitations on her  
24 ability to understand, remember, and carry out detailed instructions and no more  
25 than a mild inability to interact appropriately with supervisors, coworkers, and  
26 peers. (AR 1364.) The ALJ also relied on the opinion of Dr. Anne Welty, a  
27 Workers’ Compensation evaluator, who found in April 2016 that Plaintiff would  
28 have no impairment in her activities of daily living, social functioning, and

1 concentration, persistence and pace; and only “mild” impairment in her ability to  
2 adapt to stressful circumstances, as well as on the opinion of Dr. Cooper, who noted  
3 in February 2015 that Plaintiff was “psychiatrically capable of performing her  
4 preinjury occupation.” (AR 26, 1478, 1543-44.)

5 The ALJ further relied on the “normal mental status examination findings” of  
6 Plaintiff’s treatment providers as well as her conservative treatment history and  
7 functional activities of daily living. (AR 21.) Because the records cited to by the  
8 ALJ support her interpretation of the evidence as to the mental status examination  
9 findings<sup>5</sup> and Plaintiff’s conservative treatment history, which consisted only of  
10 counseling with no medication use or emergencies, the Court cannot say that the  
11 ALJ’s findings are unreasonable. *See Burch v. Barnhart*, 400 F.3d 676, 679 (9th  
12 Cir. 2005) (“Where evidence is susceptible to more than one rational interpretation,  
13 it is the ALJ’s conclusion that must be upheld.”).

14 Plaintiff contends that the ALJ erred by failing to offer adequate justification  
15 for rejecting the opinion of her therapist, Dr. Karr. On May 1, 2019, Dr. Karr  
16 completed a Mental Impairment Questionnaire on which she indicated a diagnosis  
17 of persistent depressive disorder and “anxious distress” and assigned Plaintiff a  
18 Global Assessment of Functioning (“GAF”) score of 60, the same GAF score given  
19 by Dr. Colonna in March 2017.<sup>6</sup> (AR 1364, 1994.) Dr. Karr noted signs and  
20 symptoms, such as depressed mood, sleep disturbance, short-term memory, blunt  
21 affect, distractability, and irritability, and opined that Plaintiff would have only a  
22 “fair” ability to perform most work activities, would be moderately restricted in her  
23 activities of daily living and maintaining social functioning, and would “often”  
24 have deficiencies in concentration, persistence or pace. (AR 1994-95, 1997-98.)

---

25 <sup>5</sup> The ALJ noted numerous examples in her decision. (AR 25, 26.)

26 <sup>6</sup> “A GAF score between 51 to 60 describes ‘moderate symptoms’ or any moderate  
27 difficulty in social, occupational, or school functioning.” *Garrison v. Colvin*, 759  
28 F.3d 995, 1003 n.4 (9th Cir. 2014).

1 Plaintiff also contends that the ALJ erred by rejecting the functional  
2 assessment of Dr. Windman. On November 28, 2014, Dr. Windman examined and  
3 administered psychological testing to Plaintiff in connection with Plaintiff's  
4 Workers' Compensation proceedings. (AR 1564-93.) Dr. Windman diagnosed  
5 Plaintiff with Depressive Disorder Not Otherwise Specified, with anxiety, and  
6 indicated on a Mental and Behavioral Disorders Impairment Chart that Plaintiff  
7 would be "moderately" impaired in her activities of daily living; social functioning;  
8 concentration, persistence and pace; and adaptation. (AR 1585, 1588.) Dr.  
9 Windman provided a narrative report for each category, explaining that, for  
10 example, Plaintiff was experiencing impairment in bodily functions, personal  
11 hygiene, eating properly, and sleeping; had become irritable and impatient with  
12 people; had experienced difficulty paying attention, concentrating, and  
13 remembering things; and tended to "channel emotional stress into intensified  
14 medical complaints[.]" (AR 1588-89.)

15 An ALJ must provide specific and legitimate reasons, supported by  
16 substantial evidence in the record, for rejecting all or part of a treating physician's  
17 opinion in favor of the opinion of an examining physician, as the ALJ did in the  
18 case at bar. *See Orn v. Astrue*, 495 F.3d 625, 633 (9th Cir. 2007) ("Even if the  
19 treating doctor's opinion is contradicted by another doctor, the ALJ may not reject  
20 this opinion without providing 'specific and legitimate reasons' supported by  
21 substantial evidence in the record.") (quotation omitted). The independent clinical  
22 findings of an examining physician constitute "substantial evidence." *Id.* at 632  
23 (citation omitted). The Court finds the ALJ did so here.

24 The ALJ rejected both Dr. Karr's and Dr. Windman's assessments for the  
25 same reason, namely, that they relied exclusively on Plaintiff's own statements,  
26 which were not supported by the objective medical evidence, Plaintiff's  
27 conservative treatment history, or Plaintiff's daily activities. (AR 26.)

28 ///

1           The Court notes first that the ALJ’s statement that Dr. Windman relied  
2 exclusively on Plaintiff’s own statements is not accurate. As noted above, Dr.  
3 Windman conducted psychological testing, the results of which are generally  
4 considered to be objective medical evidence. *See, e.g., Morgan*, 169 F.3d at 598  
5 (noting conflict between the claimant’s “subjective testimony and objective medical  
6 evidence” in the form of psychological evaluations). Dr. Windman’s test results  
7 “confirmed residual abnormal levels of anxiety, somatization, mistrust, suspicion,  
8 hopelessness and depression with low energy level, cognitive impairment, low self-  
9 esteem, social withdrawal, pessimism, irritability and a sad mood.” (AR 1582.)

10           Nevertheless, the Court finds that the reason that the ALJ gave for not  
11 granting greater weight to the opinions of either Dr. Karr or Dr. Windman, - that  
12 they relied on Plaintiff’s self-reported history and symptoms, which the ALJ  
13 properly discounted - was legitimate (in that Dr. Windman plainly relied on both  
14 testing and Plaintiff’s account) and supported by substantial evidence, as discussed  
15 further herein. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (“An  
16 ALJ may reject a treating physician’s opinion if it is based to a large extent on a  
17 claimant’s self-reports that have been properly discounted as incredible.”) (cleaned  
18 up). As such, the Court finds that the ALJ’s error with respect to Dr. Windman was  
19 harmless. *See Stout v. Comm’r*, 454 F.3d 1050, 1055 (9th Cir. 2006) (holding error  
20 harmless where it was “inconsequential to the ultimate nondisability  
21 determination”).

22           Finally, the Court rejects Plaintiff’s argument that the ALJ erred in not  
23 assigning particular weight to the GAF scores of 60 that were assessed by Dr. Karr  
24 and Dr. Colonna. (JS at 3.) “GAF scores do not have a direct correlation to Social  
25 Security severity requirements . . . and should not be considered in isolation.”  
26 *Devoe v. Berryhill*, 2018 WL 1605564, at \*19 (C.D. Cal. Mar. 29, 2018) (noting “a  
27 score of just one point higher, 61, would indicate ‘mild’ symptoms or ‘some’  
28 difficulty in social, occupational, or school functioning but that Plaintiff was



1 ‘generally functioning pretty well,’ with ‘some meaningful interpersonal  
2 relationships.’”). The ALJ addressed the GAF scores but declined to give them any  
3 weight. (AR 26-27.) No more was required. *See, e.g., Pinegar v. Comm’r of Soc.*  
4 *Sec. Admin.*, 499 Fed. App’x 666, 667 (9th Cir. 2012) (noting “this Court has not  
5 found error when an ALJ does not consider” GAF scores).

### 6 **C. Plaintiff’s Testimony**

7 Plaintiff contends that the ALJ failed to provide legitimate reasons for rejecting  
8 her own statements about her mental limitations. (JS at 19-22.) For the following  
9 reasons, the Court finds that the ALJ did not err.

10 Where, as here, the claimant has presented evidence of an underlying  
11 impairment and the ALJ did not make a finding of malingering (*see* AR 23), the ALJ  
12 must “evaluate the intensity and persistence of [the] individual’s symptoms . . . and  
13 determine the extent to which [those] symptoms limit [her] . . . ability to perform  
14 work-related activities.” Soc. Sec. Ruling (“SSR”) 16-3p, 2017 WL 5180304, at \*4.  
15 In assessing the intensity and persistence of symptoms, the ALJ “examine[s] the  
16 entire case record, including the objective medical evidence; an individual’s  
17 statements . . . ; statements and other information provided by medical sources and  
18 other persons; and any other relevant evidence in the individual’s case record.” *Id.*  
19 at \*4. The ALJ must provide specific, clear and convincing reasons for rejecting the  
20 claimant’s statements. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017)  
21 (citation omitted). The ALJ must identify what testimony was found not credible and  
22 explain what evidence undermines that testimony. *Holohan v. Massanari*, 246 F.3d  
23 1195, 1208 (9th Cir. 2001). “General findings are insufficient.” *Lester*, 81 F.3d at  
24 834.

25 Plaintiff testified that she is “ill-tempered” and has difficulty getting along with  
26 people. She testified that she does not have a lot of patience, is “very emotional,”  
27 and has difficulty with memory, staying focused, and concentrating. (AR 46.) She  
28 testified that she occasionally drove and was able to go shopping, to cook, and to do

1 laundry although she could not do “light housekeeping or cleaning” because of pain  
2 in her hands. (AR 46-47.) Plaintiff testified that she tries to see her therapist, Dr.  
3 Karr, every two weeks. (AR 49.) In a function report that Plaintiff filled out and  
4 signed on March 5, 2017, she stated that she cooked dinner for her siblings several  
5 times a week; fed, groomed, and walked her dog and her siblings’ dog; did laundry  
6 and light cleaning; went shopping for groceries and clothes once or twice a week;  
7 would sometimes forget to balance her checkbook; had difficulty maintaining interest  
8 in TV shows and would fall asleep while reading; would sometimes meet friends for  
9 lunch; would get easily frustrated and impatient and was “less tolerant” with other  
10 people; found simple instructions easier to follow than complex ones; handled stress  
11 poorly; and found it difficult to adjust to new routines. (AR 226-31.)

12 In her decision, the ALJ found that Plaintiff’s testimony was not consistent  
13 with the medical and other record evidence for several reasons. (AR 23.) The ALJ  
14 found that Plaintiff by her own account was “essentially independent” in her daily  
15 activities, given that she drove, shopped, walked her own and other dogs, cooked for  
16 her siblings, and did light housework. (AR 24.) The ALJ found that Plaintiff’s  
17 treatment had been conservative. (AR 24, 25.) Finally, the ALJ found that Plaintiff’s  
18 statements were belied by the “essentially normal” mental status examinations. (AR  
19 26.) These reasons for discounting Plaintiff’s testimony are clear and convincing and  
20 supported by substantial evidence.

21 First, although Plaintiff takes issue with two aspects of the ALJ’s description  
22 of her daily activities (volunteering on a neighborhood council and typing or doing  
23 paperwork for several hours a day), (JS at 20-21), she does not challenge the ALJ’s  
24 finding that she was able to perform various activities inside and outside her home,  
25 some of which, - for example, shopping or having lunch with friends, - necessarily  
26 involve interactions with other people, despite Plaintiff’s statement that she would  
27 get frustrated and impatient with others. Although this finding does not demonstrate  
28 an ability to complete a full workweek, the ALJ was entitled to take it into account

1 in determining whether Plaintiff's testimony should be accepted. *See Molina v.*  
2 *Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (noting "ALJ may consider  
3 inconsistencies either in the claimant's testimony or between the testimony and the  
4 claimant's conduct" in weighing testimony).

5 Second, the ALJ was permitted to consider Plaintiff's apparent unwillingness  
6 to seek treatment other than counseling as a basis for concluding that her mental  
7 impairment was not as limiting as she alleged. *See, e.g., Burch*, 400 F.3d at 681.

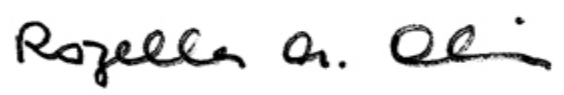
8 Finally, the ALJ was entitled to consider the disparity between Plaintiff's  
9 statements and the objective medical evidence, which largely showed unremarkable  
10 mental examination status results, as an additional ground for discounting her  
11 testimony. *See Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir.  
12 2004) ("The view of [the examining doctors], along with the contradictions from [the  
13 claimant's] own testimony and the lack of objective medical evidence supporting [the  
14 claimant's] claims, together constitute substantial evidence in support of the ALJ's  
15 negative credibility determination[.]").

16 **IV. CONCLUSION**

17 IT IS ORDERED that Judgment shall be entered AFFIRMING the decision  
18 of the Commissioner denying benefits.

19 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this  
20 Order and the Judgment on counsel for both parties.

21  
22 DATED: September 28, 2021



---

23 ROZELLA A. OLIVER  
24 UNITED STATES MAGISTRATE JUDGE  
25  
26  
27  
28

**NOTICE**

1  
2        Reports and Recommendations are not appealable to the Court of Appeals,  
3 but may be subject to the right of any party to file objections as provided in Local  
4 Civil Rule 72 and review by the District Judge whose initials appear in the docket  
5 number. No Notice of Appeal pursuant to the Federal Rules of Appellate Procedure  
6 should be filed until entry of the Judgment of the District Court.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28