

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  
EASTERN DIVISION**

ANGENETT FORD,  
Plaintiff,

v.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,  
Defendant.

NO. EDCV 09-1080 AGR

**MEMORANDUM OPINION AND  
ORDER**

---

Angenett Ford filed this action on June 19, 2009. Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before Magistrate Judge Rosenberg on July 9 and 16, 2009. (Dkt. Nos. 8-9.) On January 26, 2010, the parties filed a Joint Stipulation ("JS") that addressed the disputed issues. The Court has taken the matter under submission without oral argument.

Having reviewed the entire file, the Court affirms the decision of the Commissioner.

///

///

///

///

I.

**PROCEDURAL BACKGROUND**

On May 7, 2007, Ford filed applications for disability insurance benefits and supplemental security income benefits. Administrative Record (“AR”) 9. In both applications, Ford alleged a disability onset date of February 28, 2007. *Id.* The applications were denied initially and upon reconsideration. AR 50-53. Ford requested a hearing before an Administrative Law Judge (“ALJ”). AR 69. On January 16, 2009, the ALJ conducted a hearing at which Ford and a lay witness testified. AR 19-49. On March 16, 2009, the ALJ issued a decision denying benefits. AR 6-15. On May 13, 2009, the Appeals Council denied the request for review. AR 1-3. This action followed.

II.

**STANDARD OF REVIEW**

Pursuant to 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to deny benefits. The decision will be disturbed only if it is not supported by substantial evidence, or if it is based upon the application of improper legal standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995); *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

“Substantial evidence” means “more than a mere scintilla but less than a preponderance – it is such relevant evidence that a reasonable mind might accept as adequate to support the conclusion.” *Moncada*, 60 F.3d at 523. In determining whether substantial evidence exists to support the Commissioner’s decision, the Court examines the administrative record as a whole, considering adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the evidence is susceptible to more than one rational interpretation, the Court must defer to the Commissioner’s decision. *Moncada*, 60 F.3d at 523.

1 III.

2 **DISCUSSION**

3 **A. Disability**

4 A person qualifies as disabled, and thereby eligible for such benefits, “only  
5 if his physical or mental impairment or impairments are of such severity that he is  
6 not only unable to do his previous work but cannot, considering his age,  
7 education, and work experience, engage in any other kind of substantial gainful  
8 work which exists in the national economy.” *Barnhart v. Thomas*, 540 U.S. 20,  
9 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003).

10 **B. The ALJ’s Findings**

11 The ALJ found that Ford meets the insured status requirements through  
12 December 31, 2011. AR 11.

13 Ford has “severe impairments in the musculoskeletal system.” *Id.* She has  
14 the residual functional capacity to perform light work. “Specifically, the claimant is  
15 able to lift and/or carry 20 pounds occasionally and 10 pounds frequently. Out of  
16 an 8-hour workday, the claimant is able to stand and/or walk for 6 hours and sit  
17 for 6 hours. She is able to occasionally, climb, stoop, and crouch. The claimant  
18 should avoid work that requires fine discrimination or constant use of her eyes at  
19 close work. She should avoid working with hand-fed and hazardous machinery.”  
20 AR 12.

21 The ALJ found that Ford is able to perform her past relevant work as a fast  
22 food worker and assembler as it was actually and generally performed in the  
23 national economy. AR 14-15.

24 **C. Treating Podiatrist**

25 On January 7, 2008, a podiatrist, Dr. Lee, opined that Ford was disabled  
26 from returning to her regular or customary work during the period January 7, 2008  
27 through April 7, 2008. AR 181. Ford contends the ALJ ignored this opinion. JS

28 4.

1           The ALJ noted Dr. Lee’s medical records. AR 14. The ALJ found that  
2 Ford’s plantar fasciitis and plantar keratosis “do not significantly limit her ability to  
3 do basic work for 12 consecutive months.” AR 11. Ford was treated with mild  
4 conservative care, including stretching, orthotics, steroid anesthetic injections,  
5 and debridement, and “would not further reduce the claimant’s residual functional  
6 capacity. AR 11, 14.

7           Although the ALJ addressed Dr. Lee’s medical records as a whole without  
8 singling out the opinion of temporary disability, the decision is clear as to the  
9 basis for the ALJ’s finding that Ford’s foot condition did not further reduce her  
10 residual functional capacity. *Magallanes v. Bowen*, 881 F.2d 747, 755 (9th Cir.  
11 1989) (“As a reviewing court, we are not deprived of our faculties for drawing  
12 specific and legitimate inferences from the ALJ’s opinion.”). The ALJ’s  
13 description of Dr. Lee’s diagnosis and treatment is supported by substantial  
14 evidence. Dr. Lee’s opinion of disability for a period of three months is not  
15 inconsistent with the ALJ’s finding. Ford’s argument that the ALJ implicitly  
16 rejected Dr. Lee’s opinion is incorrect. The ALJ did not err.

#### 17           **D. Lay Witness**

18           “In determining whether a claimant is disabled, an ALJ must consider lay  
19 witness testimony concerning a claimant’s ability to work.” *Stout v. Comm’r*, 454  
20 F.3d 1050, 1053 (9th Cir. 2006). “Lay testimony as to a claimant’s symptoms is  
21 competent evidence that an ALJ must take into account, unless he or she  
22 expressly determines to disregard such testimony and gives reasons germane to  
23 each witness for doing so.” *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001); see  
24 *Valentine v. Comm’r, SSA*, 574 F.3d 685, 694 (9th Cir. 2009).

25           The ALJ found that lay witness Eugene Devine’s testimony, “even at full  
26 face value,” did not preclude light work. The ALJ further found that Devine’s  
27 testimony was inconsistent with Ford’s testimony. AR 13. As the ALJ noted,  
28 Ford testified that she takes arthrotec 75 for arthritis. AR 13, 22-24. The

1 medication stops the pain completely, to zero. AR 26-27. She usually takes the  
2 medication once a day. AR 28. For back pain, Ford takes ibuprofen, which stops  
3 the pain completely. AR 33-34. For wheezing, Ford uses an inhaler which helps.  
4 AR 34-35. For foot pain, she receives injections in her feet every two months.  
5 AR 32.

6 Devine testified that he stops by for 30-60 minutes, three times per week.  
7 AR 46. He does whatever Ford wants done, including vacuuming, washing the  
8 dishes, taking out the trash, making up the bed, and cleaning the bathroom. AR  
9 45. When he is there, Ford normally sits on the couch with her feet up and says  
10 her feet are bothering her. AR 46. Once, when Ford was trying to “cut the yard,”  
11 Devine took over for her. Ford became out of breath and used the inhaler. AR  
12 46-47.

13 Contrary to Ford’s argument, the ALJ accepted Devine’s testimony about  
14 his observations at face value. Ford argues Devine testified she cannot do  
15 chores. JS 6. Devine testified that “when I get there, she can’t get up.” AR 45.  
16 When asked what he meant by “she can’t get up,” Devine responded that “when I  
17 get there, she’s normally sitting on the couch” and when he asks if she is okay,  
18 she says “her feet are bothering her.” AR 45-46. It is the ALJ’s province to  
19 resolve ambiguities in the evidence. *Magallanes*, 881 F.2d at 750. The ALJ  
20 reasonably interpreted Devine’s testimony to mean that he believed she could not  
21 get up because that is what she told him. As discussed below, the ALJ  
22 discounted Ford’s credibility. The ALJ did not err.

### 23 **E. Examining Physician**

24 Ford argues the ALJ improperly ignored the opinion of examining physician  
25 Dr. Pourrabbani.

26 An examining physician's opinion constitutes substantial evidence when it  
27 is based on independent clinical findings. *Orn v. Astrue*, 495 F.3d 625, 631 (9th  
28 Cir. 2007). An ALJ may reject an uncontradicted examining physician’s medical

1 opinion based on “clear and convincing reasons.” *Carmickle v. Comm’r, Soc.*  
2 *Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008) (citation and quotation marks  
3 omitted). When an examining physician’s opinion is contradicted, “it may be  
4 rejected for ‘specific and legitimate reasons that are supported by substantial  
5 evidence in the record.’” *Id.* at 1164 (citation omitted). An examining physician's  
6 opinion constitutes substantial evidence when it is based on independent clinical  
7 findings. *Id.*

8 Dr. Pourrabbani’s functional assessment was that Ford could “lift or carry  
9 20 pounds occasionally and 10 pounds frequently. She can stand or walk for 6  
10 hours in an 8-hour day. She can sit for 6 hours in an 8-hour day. Push and pull  
11 are unlimited in both the upper and lower extremities. She does have postural  
12 limitations including kneeling, bending, stooping, crawling, and climbing, which  
13 can be performed frequently. There are no manipulative, visual, communicative  
14 or environmental limitations.” AR 140.

15 As Ford acknowledges, the ALJ discounted the examining physician’s  
16 opinion to the extent the one-time examination “did not adequately account for  
17 the claimant’s allegations of back pain and visual limitations.” AR 14. The ALJ  
18 therefore adopted the more *restrictive* RFC from the state agency physicians that  
19 limited Ford to occasional postural activities, precluded work that required fine  
20 discrimination or constant use of her eyes at close work, and precluded work with  
21 hand-fed and hazardous machinery. AR 12, 14. To the extent the ALJ  
22 discounted Dr. Pourrabbani’s opinion, he did so in Ford’s favor. The ALJ did not  
23 err.

#### 24 **F. Credibility**

25 “To determine whether a claimant’s testimony regarding subjective pain or  
26 symptoms is credible, an ALJ must engage in a two-step analysis.” *Lingenfelter*  
27 *v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007).

28 First, “the ALJ must determine whether the claimant has presented

1 objective medical evidence of an underlying impairment ‘which could reasonably  
2 be expected to produce the pain or other symptoms alleged.’” *Id.* (quoting  
3 *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991) (en banc)). The ALJ found  
4 that Ford’s medically determinable impairments could reasonably be expected to  
5 cause her symptoms. AR 13.

6 “Second, if the claimant meets this first test, and there is no evidence of  
7 malingering, ‘the ALJ can reject the claimant’s testimony about the severity of her  
8 symptoms only by offering specific, clear and convincing reasons for doing so.’”  
9 *Lingenfelter*, 504 F.3d at 1036 (citations omitted). “In making a credibility  
10 determination, the ALJ ‘must specifically identify what testimony is credible and  
11 what testimony undermines the claimant’s complaints.’” *Greger v. Barnhart*, 464  
12 F.3d 968, 972 (9th Cir. 2006) (citation omitted). “[T]o discredit a claimant’s  
13 testimony when a medical impairment has been established, the ALJ must  
14 provide specific, cogent reasons for the disbelief.” *Orn*, 495 F.3d at 635 (citations  
15 and quotation marks omitted). “The ALJ must cite the reasons why the claimant’s  
16 testimony is unpersuasive.” *Id.* (citation and quotation marks omitted). The ALJ  
17 may consider (a) inconsistencies or discrepancies in a claimant’s statements; (b)  
18 inconsistencies between a claimant’s statements and activities; (c) exaggerated  
19 complaints; and (d) an unexplained failure to seek treatment. *Thomas*, 278 F.3d  
20 at 958-59.

21 The ALJ found that Ford’s statements concerning the intensity, persistence  
22 and limiting effects of her symptoms were not credible to the extent they were  
23 inconsistent with the RFC. AR 14. The ALJ discounted her credibility for three  
24 reasons: (1) inconsistency in Ford’s statements; (2) conservative treatment; and  
25 (3) allegations unsupported by medical evidence. AR 13.

1 The ALJ found that Ford's statements were inconsistent. AR 13.<sup>1</sup> The  
2 ALJ's finding is supported by substantial evidence. Ford testified she  
3 experiences constant pain at the level of 10, and stands for about five minutes  
4 and sits for ten minutes. AR 23-24, 30. On the other hand, Ford testified that she  
5 takes arthrotec 75, usually once a day, which stops the arthritic pain completely  
6 to zero. AR 13, 22-24, 26-28. Ibuprofen stops the back pain completely. AR 33-  
7 34. Although Ford identified back pain as a reason she could not work (AR 22),  
8 the ALJ noted that she also testified the back pain comes "once in a while,"  
9 maybe once a month. AR 33. An inhaler helps the wheezing. AR 34-35. For  
10 foot pain, she receives injections in her feet every two months. AR 32. Whereas  
11 Ford's questionnaire indicates she did not require naps or rest periods during the  
12 day (AR 109), the ALJ noted Ford's testimony that she lies down for 20 minutes,  
13 three times a day. AR 13. Whereas Ford testified that her left leg gives out (AR  
14 29), Ford denied any numbness or weakness in the lower extremities to the  
15 examining physician. AR 136.

16 "[E]vidence of 'conservative treatment' is sufficient to discount a claimant's  
17 testimony." *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007); see also  
18 *Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008). Ford does not  
19 dispute that she is treated with medications, injections and debridement. JS 15;  
20 AR 11, 13; *E.g.*, *Tommasetti*, 533 F.3d at 1040 (describing physical therapy and  
21 anti-inflammatory medication as conservative treatment).<sup>2</sup>

22 Although lack of objective medical evidence supporting the degree of  
23

---

24 <sup>1</sup> Ford argues that the ALJ incorrectly found Ford does not take  
25 medication. JS 14. Ford mischaracterizes the ALJ's decision. The ALJ correctly  
26 noted that Ford stated in her Exertional Daily Activities Questionnaire that she  
does not take medications. AR 12-13, 109. The ALJ also noted Ford's testimony  
at the hearing that she takes medications that relieve her pain. AR 13.

27 <sup>2</sup> Impairments that can be controlled effectively with medication are not  
28 considered disabling. See *Warre v. Comm'r of the SSA*, 439 F.3d 1001, 1006  
(9th Cir. 2006).



1 limitation “cannot form the sole basis for discounting pain testimony,” it is a factor  
2 that an ALJ may consider in assessing credibility. *Burch v. Barnhart*, 400 F.3d  
3 676, 681 (9th Cir. 2005).

4 The ALJ’s credibility finding is supported by substantial evidence. “If the  
5 ALJ’s credibility finding is supported by substantial evidence in the record, we  
6 may not engage in second-guessing.” *Thomas*, 278 F.3d at 959.

### 7 **G. Past Relevant Work**

8 “At step four of the sequential analysis, the claimant has the burden to  
9 prove that he cannot perform his prior relevant work ‘either as actually performed  
10 or as generally performed in the national economy.’” *Carmickle*, 533 F.3d at  
11 1166 (citation omitted). “Although the burden of proof lies with the claimant at  
12 step four, the ALJ still has a duty to make the requisite factual findings to support  
13 his conclusion.” *Pinto v. Massanari*, 249 F.3d 840, 844 (9th Cir. 2001). The ALJ  
14 must make “specific findings as to the claimant’s residual functional capacity, the  
15 physical and mental demands of the past relevant work, and the relation of the  
16 residual functional capacity to the past work.” *Id.* at 845; Social Security Ruling  
17 (“SSR”) 82-62;<sup>3</sup> see also 20 C.F.R. §§ 404.1520(e), 416.920(e). The ALJ is not  
18 required to make explicit findings as to whether a claimant can perform past  
19 relevant work both as generally performed and as actually performed. *Pinto*, 249  
20 F.3d at 845.

21 The ALJ found that Ford could return to her past relevant work as a fast  
22 foods worker and assembler, both as actually and generally performed. AR 14-  
23 15. The ALJ correctly found that the fast foods worker job was unskilled light  
24 work. AR 15; see Dictionary of Occupational Titles (“DOT”) 311.472-010 (fast  
25

---

26 <sup>3</sup> Social Security rulings do not have the force of law. Nevertheless, they  
27 “constitute Social Security Administration interpretations of the statute it  
28 administers and of its own regulations,” and are given deference “unless they are  
plainly erroneous or inconsistent with the Act or regulations.” *Han v. Bowen*, 882  
F.2d 1453, 1457 (9th Cir. 1989).

1 foods worker). The DOT raises a rebuttable presumption as to job classification.  
2 *Johnson v. Shalala*, 60 F.3d 1428, 1435 (9th Cir. 1995).

3 The Commissioner does not appear to dispute Ford's argument that she  
4 cannot return to her past relevant work as actually performed. Instead, the  
5 Commissioner argues that there is no inconsistency between Ford's RFC and her  
6 past relevant work as generally performed. JS 22. "[T]he full range of light work  
7 requires standing or walking, off and on, for a total of approximately 6 hours of an  
8 8-hour workday." SSR 83-10. Crouching is limited to occasional. *Id.* Ford does  
9 not identify any inconsistency between her RFC and the DOT description of fast  
10 foods worker.

#### 11 H. Vocational Expert

12 Ford argues that the ALJ was required to call a vocational expert at step  
13 five of the sequential analysis because she has nonexertional limitations not  
14 contemplated by the grids. JS 22-23. Here, however, the ALJ determined that  
15 Ford's RFC did not preclude her from performing her past relevant work at step  
16 four. AR 15. This determination made it unnecessary for the ALJ to proceed to  
17 the fifth step, and the ALJ did not err in failing to call a vocational expert. See  
18 *Crane v. Shalala*, 76 F.3d 251, 255 (9th Cir. 1995).

#### 19 IV.

#### 20 ORDER

21 IT IS HEREBY ORDERED that the decision of the Commissioner is  
22 affirmed.

23 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this  
24 Order and the Judgment herein on all parties or their counsel.

25  
26 DATED: August 2, 2010

27   
28 ALICIA G. ROSENBERG  
United States Magistrate Judge