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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MINODORA BECK,)	Case No. EDCV 13-1314-JPR
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
vs.)	AFFIRMING COMMISSIONER
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying her applications for disability insurance benefits ("DIB") and supplemental security income ("SSI"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). This matter is before the Court on the parties' Joint Stipulation, filed April 17, 2014, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner's decision is affirmed and judgment is entered in her favor.

1 **II. BACKGROUND**

2 Plaintiff was born on May 29, 1950. (AR 179.) She obtained
3 a GED and is a certified nursing assistant. (AR 211.) She
4 previously worked as a machinist, nanny, inpatient caregiver, in-
5 home caregiver, and caregiver to her mother. (AR 32-33, 198,
6 211.)

7 Plaintiff filed applications for DIB and SSI on August 16,
8 2011. (AR 179-92.) She alleged that she had been unable to work
9 since July 17, 2010, because of a broken right ankle, plates and
10 screws in that ankle, back injury, and pain in both shoulders.
11 (AR 210.) After her applications were denied, she requested a
12 hearing before an Administrative Law Judge. (AR 117-18.)

13 A hearing was held on June 22, 2011. (AR 24-56.)
14 Plaintiff, who was represented by counsel, testified, as did a
15 vocational expert. (Id.) In a written decision issued April 17,
16 2012, the ALJ determined that Plaintiff was not disabled. (AR
17 12-20.) On May 30, 2013, the Appeals Council denied her request
18 for review. (AR 1-3.) This action followed.

19 **III. STANDARD OF REVIEW**

20 Under 42 U.S.C. § 405(g), a district court may review the
21 Commissioner's decision to deny benefits. The ALJ's findings and
22 decision should be upheld if they are free of legal error and
23 supported by substantial evidence based on the record as a whole.
24 Id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v.
25 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence
26 means such evidence as a reasonable person might accept as
27 adequate to support a conclusion. Richardson, 402 U.S. at 401;
28 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It

1 is more than a scintilla but less than a preponderance.
2 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
3 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
4 substantial evidence supports a finding, the reviewing court
5 "must review the administrative record as a whole, weighing both
6 the evidence that supports and the evidence that detracts from
7 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
8 720 (9th Cir. 1996). "If the evidence can reasonably support
9 either affirming or reversing," the reviewing court "may not
10 substitute its judgment" for that of the Commissioner. Id. at
11 720-21.

12 **IV. THE EVALUATION OF DISABILITY**

13 People are "disabled" for purposes of receiving Social
14 Security benefits if they are unable to engage in any substantial
15 gainful activity owing to a physical or mental impairment that is
16 expected to result in death or which has lasted, or is expected
17 to last, for a continuous period of at least 12 months. 42
18 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257
19 (9th Cir. 1992).

20 A. The Five-Step Evaluation Process

21 The ALJ follows a five-step sequential evaluation process in
22 assessing whether a claimant is disabled. 20 C.F.R.
23 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,
24 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first
25 step, the Commissioner must determine whether the claimant is
26 currently engaged in substantial gainful activity; if so, the
27 claimant is not disabled and the claim must be denied.
28 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If the claimant is not

1 engaged in substantial gainful activity, the second step requires
2 the Commissioner to determine whether the claimant has a "severe"
3 impairment or combination of impairments significantly limiting
4 her ability to do basic work activities; if not, a finding of not
5 disabled is made and the claim must be denied.

6 §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the claimant has a
7 "severe" impairment or combination of impairments, the third step
8 requires the Commissioner to determine whether the impairment or
9 combination of impairments meets or equals an impairment in the
10 Listing of Impairments ("Listing") set forth at 20 C.F.R., Part
11 404, Subpart P, Appendix 1; if so, disability is conclusively
12 presumed and benefits are awarded. §§ 404.1520(a)(4)(iii),
13 416.920(a)(4)(iii).

14 If the claimant's impairment or combination of impairments
15 does not meet or equal an impairment in the Listing, the fourth
16 step requires the Commissioner to determine whether the claimant
17 has sufficient residual functional capacity ("RFC")¹ to perform
18 her past work; if so, the claimant is not disabled and the claim
19 must be denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The
20 claimant has the burden of proving she is unable to perform past
21 relevant work. Drouin, 966 F.2d at 1257. If the claimant meets
22 that burden, a prima facie case of disability is established.
23 Id. If that happens or if the claimant has no past relevant
24 work, the Commissioner then bears the burden of establishing that
25 the claimant is not disabled because she can perform other

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27 ¹ RFC is what a claimant can do despite existing exertional
28 and nonexertional limitations. §§ 404.1545, 416.945; Cooper v.
Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 substantial gainful work available in the national economy.
2 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). That determination
3 comprises the fifth and final step in the sequential analysis.
4 §§ 404.1520, 416.920; Lester, 81 F.3d at 828 n.5; Drouin, 966
5 F.2d at 1257.

6 B. The ALJ's Application of the Five-Step Process

7 At step one, the ALJ found that Plaintiff had not engaged in
8 any substantial gainful activity since July 17, 2010. (AR 14.)
9 At step two, the ALJ concluded that Plaintiff had severe
10 impairments of "old fracture of right distal tibia, status post
11 internal fixation and old fracture of the right lateral
12 malleolus, status post internal fixation." (Id.) Because the
13 treatment record did not show ongoing problems with the spine,
14 gluteal region, or right shoulder, the ALJ found the alleged
15 impairments in those areas to be nonsevere. (AR 15.) At step
16 three, the ALJ determined that Plaintiff's impairments did not
17 meet or equal a Listing. (Id.) At step four, the ALJ determined
18 that Plaintiff had the RFC to perform medium work with some
19 additional limitations.² (AR 15-16.) Based on the VE's
20 testimony, the ALJ found that Plaintiff was able to perform her
21 past relevant work as a nurse's assistant as generally performed.
22 (AR 19.) Thus, the ALJ found that Plaintiff was not disabled.
23 (AR 20.)

27 ² "Medium work" involves "lifting no more than 50 pounds at
28 a time with frequent lifting or carrying of objects weighing up to
25 pounds." §§ 404.1567(c), 416.967(c).

1 **V. DISCUSSION**

2 Plaintiff argues that the ALJ erred in assessing the opinion
3 of Dr. Terrance P. Flanagan and discounting Plaintiff's
4 credibility. (J. Stip. at 3.)

5 A. The ALJ Did Not Err in Assessing Dr. Flanagan's Opinion

6 Plaintiff contends that the ALJ failed to provide an
7 adequate basis for discounting Dr. Flanagan's findings,
8 particularly with respect to her right shoulder. (J. Stip. at
9 4.)

10 1. Background

11 On September 4, 2011, Dr. Flanagan performed a complete
12 orthopedic evaluation of Plaintiff at the request of the
13 California Department of Social Services. (AR 279-84.)

14 He noted Plaintiff's complaints of pain in her neck, upper
15 back, lower back, both shoulders, left hand, right foot, right
16 ankle, and both hips. (AR 279; see also AR 280.) Dr. Flanagan
17 observed that Plaintiff sat and stood with normal posture, rose
18 from a chair without difficulty, had normal gait, and walked
19 without difficulty and without an assistive device. (AR 281.)
20 She had full range of motion in her neck with pain and had
21 tenderness in the cervical paraspinal muscles. (Id.) Her range
22 of motion in her back was limited by pain. (Id.) She also had
23 pain with rotation of her trunk and tenderness in the thoracic
24 and lumbar paraspinal muscles. (Id.)

25 Plaintiff had normal range of motion in her shoulders but
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1 positive Hawkins and Neer signs³ on the right. (Id.) She had
2 normal range of motion in her hips but pain upon palpation of her
3 gluteal muscles. (AR 282.) She had pain with palpation and
4 range of motion in her right ankle. (Id.) Plaintiff
5 demonstrated motor strength of four out of five in bilateral hip
6 flexion, knee extension, ankle plantar and dorsiflexion, and
7 bilateral shoulder abduction, but Dr. Flanagan attributed her
8 diminished ability in these exercises to limited effort because
9 of pain rather than "a true neurologic result." (AR 283.) Her
10 motor strength was otherwise grossly normal. (Id.) Straight-
11 leg-raise and other neurologic tests were negative. (Id.) The
12 rest of the examination was also normal. (See AR 281-83.)

13 Dr. Flanagan diagnosed cervical, thoracic, and lumbar
14 myofascial strain, bilateral gluteal strain, right-rotator-cuff
15 tendinitis, and right-ankle and foot posttraumatic degenerative
16 changes.⁴ (Id.) He opined that Plaintiff could lift and carry
17 only 20 pounds occasionally and 10 pounds frequently on the right
18 but 50 pounds occasionally and 25 pounds frequently on the left.
19 (AR 284.) She could stand or walk and sit for six hours each in
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21 ³ Neer and Hawkins-Kennedy impingement tests are used to
22 diagnose impingements and tears in the rotator cuff. See Physical
23 Therapist's Guide to Rotator Cuff Tear, Am. Physical Therapy Ass'n,
24 [http://www.moveforwardpt.com/symptomsconditionsdetail.aspx?cid=95](http://www.moveforwardpt.com/symptomsconditionsdetail.aspx?cid=95bd746b-b25f-46f5-8373-fb56c9f6b46a#.Uxo2Pz9dVc0)
25 [bd746b-b25f-46f5-8373-fb56c9f6b46a#.Uxo2Pz9dVc0](http://www.moveforwardpt.com/symptomsconditionsdetail.aspx?cid=95bd746b-b25f-46f5-8373-fb56c9f6b46a#.Uxo2Pz9dVc0) (last visited July
26 14, 2014).

27 ⁴ For persons suffering myofascial pain syndrome, pressure
28 on sensitive points in the muscles causes pain in seemingly
unrelated parts of the body. See Diseases and Conditions:
Myofascial Pain Syndrome, Mayo Clinic, [http://www.mayoclinic.org/](http://www.mayoclinic.org/diseases-conditions/myofascial-pain-syndrome/basics/definition/CO)
[diseases-conditions/myofascial-pain-syndrome/basics/definition/CO](http://www.mayoclinic.org/diseases-conditions/myofascial-pain-syndrome/basics/definition/CO)
N-20033195?p=1 (last updated Jan. 5, 2012).

1 an eight-hour day. (Id.) She could climb, stoop, kneel, and
2 crouch frequently and reach overhead on the right occasionally.
3 (Id.)

4 2. Applicable law

5 Three types of physicians may offer opinions in Social
6 Security cases: (1) those who directly treated the plaintiff, (2)
7 those who examined but did not treat the plaintiff, and (3) those
8 who did not treat or examine the plaintiff. Lester, 81 F.3d at
9 830. A treating physician's opinion is generally entitled to
10 more weight than that of an examining physician, and an examining
11 physician's opinion is generally entitled to more weight than
12 that of a nonexamining physician. Id.

13 When a treating or examining doctor's opinion is not
14 contradicted by other evidence in the record, it may be rejected
15 only for "clear and convincing" reasons. See Carmickle v.
16 Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008)
17 (quoting Lester, 81 F.3d at 830-31). When a treating or
18 examining physician's opinion is contradicted, the ALJ must
19 provide only "specific and legitimate reasons" for discounting
20 it. Id.

21 3. Analysis

22 The ALJ gave specific and legitimate reasons for giving only
23 "some weight" to Dr. Flanagan's opinion. (AR 19.)

24 The ALJ found that Dr. Flanagan's recommendation that
25 Plaintiff be restricted to light work with her right-upper
26 extremity was not supported by his findings. (AR 19.) Although
27 Dr. Flanagan noted positive Hawkins and Neer signs in Plaintiff's
28 upper right shoulder, she had normal range of motion in both

1 shoulders. (AR 18; see AR 282.) And Dr. Flanagan dismissed her
2 apparent weakness when abducting her shoulders as attributable to
3 limited effort because of pain rather than indicative of a
4 neurological issue. (AR 18; see AR 283.) Plaintiff herself
5 reported that her right-shoulder pain was only intermittent but
6 worsened with overhead activity (AR 18; see AR 280), a limitation
7 the ALJ took into account by limiting Plaintiff to only
8 occasional overhead reaching with her right arm (see AR 16, 19),
9 just as Dr. Flanagan recommended. That Dr. Flanagan's findings
10 did not support a restriction to light work with the right
11 shoulder but only a limitation on right-shoulder abduction was a
12 legitimate basis upon which to discount his opinion. See Thomas
13 v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002); Batson v. Comm'r
14 Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004); Chaudhry
15 v. Astrue, 688 F.3d 661, 671 (9th Cir. 2012) (ALJ need not accept
16 medical opinion that is inconsistent with clinical findings).
17 Moreover, the ALJ was entitled to rely on the vocational expert's
18 testimony that it was not "reasonable that somebody would be able
19 to lift and/or carry 50 pounds occasionally on the left . . .
20 with just one arm, and then have a limitation to light . . . on
21 the other" (AR 50), as Dr. Flanagan had opined. Cf. Bayliss v.
22 Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005).

23 The ALJ also found that Dr. Flanagan's findings were
24 inconsistent with the longitudinal medical evidence. (AR 14-15,
25 19.) Although Dr. Flanagan diagnosed myofascial strain, gluteal
26 strain, and right-rotator-cuff tendinitis, the ALJ found "very
27 little indication the claimant has [been] treated for these
28 impairments after the alleged onset date" and "no evidence of

1 ongoing, persistent treatment or problems associated with these
2 impairments after the alleged onset date." (AR 14.) Even
3 Plaintiff's attorney acknowledged that there was "minimal
4 evidence" and that the record was "one of the thinnest that I've
5 even been really a part of." (AR 30.) The medical evidence of
6 back, neck, and shoulder pain consisted primarily of treatment
7 notes from chiropractor David G. Madison, which reflected only
8 intermittent treatment and few references to shoulder pain.
9 (See AR 245-78.) As the ALJ noted, the record contains little
10 diagnostic evidence pertaining to these ailments. (AR 18.) Dr.
11 Madison's treatment notes contain occasional range-of-motion
12 measurements (see AR 250, 261) but primarily report Plaintiff's
13 reports of her symptoms, any muscle tenderness or spasm, and the
14 manipulations he performed (see, e.g., AR 246-48, 250, 254-56,
15 259). And it appears Plaintiff did not mention neck, back, or
16 shoulder pain in either of her visits to Dr. Michele Martinez.
17 (See AR 238-39.) Plaintiff stated that she visited Dr. Martinez
18 rarely because she could not afford an office visit. (AR 60.)
19 Dr. Martinez's notes reflect, however, that even when Plaintiff
20 did visit her, the doctor did not prescribe urgent or substantial
21 treatment. (See AR 238-44.)

22 Additionally, Plaintiff acknowledged that with chiropractic
23 care she was able to care for her mother, who weighed about 300
24 pounds, was bedridden, and relied upon Plaintiff to help her go
25 to the bathroom, sit up, and roll over. (AR 40.) Being able to
26 work with treatment is inconsistent with being disabled. See
27 §§ 404.1520(a)(iv), 416.920(a)(iv) ("If you can still do your
28 past relevant work, we will find that you are not disabled.");

1 Tommasetti v. Astrue, 533 F.3d 1035, 1040 (9th Cir. 2008)
2 (response to conservative treatment undermined allegations of
3 disabling impairments). Indeed, Plaintiff stopped working only
4 because her mother died.

5 Moreover, the ALJ noted that Plaintiff's pain was treated
6 conservatively, with chiropractic care and nonsteroidal
7 antiinflammatory medications. (AR 16-17; see AR 247, 251, 254,
8 259; but see AR 60 (Plaintiff reporting she took hydrocodone when
9 she could afford it).) Nor do her treatment notes indicate that
10 her pain had grown worse. (AR 17; see also AR 29, 39-40
11 (Plaintiff testifying that most of her problems had existed
12 before onset date and while she was working or caring for her
13 mother); AR 82 (Plaintiff reporting on Dec. 16, 2011, "no
14 worsening of medical condition").) In fact, the treatment notes
15 suggest that Plaintiff improved with the conservative treatment
16 she received. (AR 14-15; see AR 248 (on Aug. 10 and 13, 2010,
17 Plaintiff reporting lumbosacral area was "a little better"); id.
18 (on Aug. 16, 2010, cancelling appointment because "doing
19 better"); AR 246 (on Aug. 20, 2010, reporting lumbosacral area
20 "still bothers me some but it's better th[a]n before"); id. (on
21 Aug. 27, 2010, reporting lumbosacral area "not to[o] bad" but
22 "some" pain in upper back and collarbone); id. (on Sept. 3, 2010,
23 cancelling appointment because "doing better").)

24 Neither of Plaintiff's treating practitioners recommended
25 greater restrictions than those in the RFC; indeed, neither
26 Dr. Martinez's nor Dr. Madison's notes reflect significant
27 complaints of right-shoulder pain. (AR 17; see generally AR 238-
28 39, 246-78, 288.) Moreover, the state-agency physicians who

1 examined Plaintiff's medical records opined that she was capable
2 of medium work, including with her right side, as long as she was
3 limited to only occasional overhead reaching with her right arm.
4 (AR 19; see AR 62-63, 84-85.) That Dr. Flanagan's opinion that
5 Plaintiff could do only light work with her right arm was not
6 supported by his own findings or by Plaintiff's treatment record
7 and was contradicted by the findings of state-agency physicians
8 were legitimate bases upon which to discount his opinion. See
9 §§ 404.1527(c)(4), 416.927(c)(4) (explaining that more weight
10 should be afforded to medical opinions that are consistent with
11 the record as a whole); Batson, 359 F.3d at 1195 (holding that
12 ALJ may discredit physicians' opinions that are "unsupported by
13 the record as a whole . . . or by objective medical findings").

14 Remand is not warranted on this basis.

15 B. The ALJ Did Not Err in Assessing Plaintiff's Credibility

16 Plaintiff contends that the ALJ failed to properly evaluate
17 her credibility. (J. Stip. at 11.)

18 1. Applicable law

19 An ALJ's assessment of pain severity and claimant
20 credibility is entitled to "great weight." See Weetman v.
21 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779
22 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is not required to
23 believe every allegation of disabling pain, or else disability
24 benefits would be available for the asking, a result plainly
25 contrary to 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674
26 F.3d 1104, 1112 (9th Cir. 2012) (internal quotation marks
27 omitted).

28 In evaluating a claimant's subjective symptom testimony, the

1 ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d
2 at 1035-36. "First, the ALJ must determine whether the claimant
3 has presented objective medical evidence of an underlying
4 impairment [that] could reasonably be expected to produce the
5 pain or other symptoms alleged." Id. at 1036 (internal quotation
6 marks omitted). If such objective medical evidence exists, the
7 ALJ may not reject a claimant's testimony "simply because there
8 is no showing that the impairment can reasonably produce the
9 degree of symptom alleged." Smolen v. Chater, 80 F.3d 1273, 1282
10 (9th Cir. 1996) (emphasis in original). When the ALJ finds a
11 claimant's subjective complaints not credible, the ALJ must make
12 specific findings that support the conclusion. See Berry v.
13 Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010).

14 Absent affirmative evidence of malingering, those findings
15 must provide "clear and convincing" reasons for rejecting the
16 claimant's testimony. Lester, 81 F.3d at 834. If the ALJ's
17 credibility finding is supported by substantial evidence in the
18 record, the reviewing court "may not engage in second-guessing."
19 Thomas, 278 F.3d at 959.

20 2. Analysis

21 Contrary to Plaintiff's contention, the ALJ provided clear
22 and convincing reasons for discounting her credibility. The ALJ
23 found her allegations of disabling pain to be inconsistent with
24 both the objective medical evidence and Plaintiff's activities,
25 which he found indicated "an attempt by the claimant to
26 exaggerate the severity of her symptoms." (AR 17.)

27 With respect to the medical evidence, as noted above, the
28 ALJ found that Plaintiff was prescribed only conservative

1 treatment for her back, neck, and shoulder ailments and had
2 improved with that treatment. Plaintiff's reliance on and
3 response to conservative treatment is a clear and convincing
4 reason to discount her allegations of disabling impairments. See
5 Tommasetti, 533 F.3d at 1040 (holding that claimant's response to
6 conservative treatment undermined his reports of disabling
7 symptoms); Parra, 481 F.3d at 751 (noting "evidence of
8 'conservative treatment' is sufficient to discount a claimant's
9 testimony regarding severity of an impairment"). Moreover,
10 Plaintiff's treatment records contained little diagnostic
11 evidence of debilitating back, neck, or shoulder pain. And
12 although Dr. Flanagan opined that Plaintiff's right shoulder
13 required a light-work limitation, there is little evidence of
14 shoulder treatment in the record, and neither her treating
15 practitioners nor the state-agency physicians found her to
16 require greater restrictions than those in her RFC.⁵ That
17 Plaintiff's allegations of pain were inconsistent with the
18 medical evidence was a legitimate basis for discounting her
19 credibility. See Lingenfelter, 504 F.3d at 1040 (in determining
20 credibility, ALJ may consider "whether the alleged symptoms are
21 consistent with the medical evidence"); see also Carmickle, 533
22 F.3d at 1161 ("Contradiction with the medical record is a
23 sufficient basis for rejecting the claimant's subjective
24 testimony."); Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir.

25
26 ⁵ Claimant also testified that she had used a cane "very
27 often" since 2007 because of the pain in her back and hips. (AR
28 47.) There's no evidence, however, that the cane was prescribed to
her by a medical provider, and she did not use it when examined by
Dr. Flanagan or at the hearing. (Id.)

1 2005) ("Although lack of medical evidence cannot form the sole
2 basis for discounting pain testimony, it is a factor that the ALJ
3 can consider in his credibility analysis.").

4 Plaintiff's statements about her activities also undermined
5 her claims of disabling impairments. As the ALJ noted, although
6 Plaintiff alleged disability beginning in July 2010, her
7 impairments began significantly earlier, there is little if any
8 evidence that they worsened with time, and she continued working
9 despite them. (AR 17.) She reported to Dr. Flanagan that she
10 had suffered joint pain for approximately a decade and broke her
11 ankle in March 2007. (AR 280.) She testified, however, that she
12 left private employment as a nurse's assistant in 2007 not
13 because of these impairments but in order to become a full-time
14 caregiver to her mother, a job she testified required comparable
15 exertion. (AR 16, 17-18; see AR 34-35, 38.) For instance,
16 Plaintiff testified that she spent all of her waking hours caring
17 for her mother, who was bedridden and weighed 300 pounds,
18 including lifting, turning, bathing, dressing, and feeding her.
19 (AR 16; see AR 38-42.) Thus, she was employed as a caregiver to
20 others and then became her mother's full-time caregiver while
21 suffering almost all of the medical complaints she later alleged
22 made her disabled, and she stopped working only when her mother
23 died. (See AR 28-29 (Plaintiff testifying that her complaints
24 related to "body parts [that] were bothering [her] when [she was]
25 working"); AR 34-35 (testifying that she could have returned to
26 her prior position after her broken ankle healed); AR 39-40
27 (testifying that she suffered dizziness and fatigue while caring
28 for mother); AR 41, 277 (reporting to chiropractor that she could

1 not walk or stand a long time more than a year before she stopped
2 caring for her mother).) This was a proper basis to discount her
3 allegations of disabling impairments. Cf. Bruton v. Massanari,
4 268 F.3d 824, 828 (9th Cir. 2001) (as amended) (affirming adverse
5 credibility finding because claimant stopped working when laid
6 off, not when injured); Lobato v. Astrue, No. SACV 11-01337-MAN,
7 2012 WL 5992280, at *9 (C.D. Cal. Nov. 30, 2012) (finding that
8 work history was proper basis to discount credibility of
9 allegations when claimant was gainfully employed for years while
10 suffering from allegedly disabling impairments and no evidence
11 suggested she stopped working because of those impairments).
12 Moreover, the ALJ found, based on Plaintiff's testimony, that she
13 likely "would have continued to provide this care had her mother
14 not passed away" in July 2010. (AR 16; see AR 41 (Plaintiff
15 complained of trouble standing and walking a year before she
16 stopped caring for her mother).) He found that this too
17 detracted from the credibility of Plaintiff's claim that she
18 became disabled in July 2010. (See AR 16-17); see Morgan v.
19 Comm'r of Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir. 1999)
20 ("If a claimant is able to spend a substantial part of his day
21 engaged in pursuits involving the performance of physical
22 functions that are transferable to a work setting, a specific
23 finding as to this fact may be sufficient to discredit a
24 claimant's allegations.").

25 That Plaintiff's "allegedly disabling impairments were
26 present at approximately the same level of severity prior to the
27 onset date" and that she worked "despite having the pain symptoms
28 and dizziness that [plagued] her" at the time of the hearing are

1 clear and convincing reasons for discounting her allegations.
2 (AR 17); see Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219,
3 1227 (9th Cir. 2009) (upholding ALJ's adverse credibility
4 determination in part because claimant "recently worked as a
5 personal caregiver for two years, and has sought out other
6 employment since then"); Tommasetti, 533 F.3d at 1039 (holding
7 that ALJ may consider many factors in weighing a claimant's
8 credibility, including "ordinary techniques of credibility
9 evaluation, such as . . . inconsistent statements concerning the
10 symptoms . . . and . . . the claimant's daily activities").

11 This Court is limited to determining whether the ALJ
12 properly identified reasons for discrediting Plaintiff's
13 credibility. Smolen, 80 F.3d at 1284. The inconsistencies
14 between Plaintiff's allegations and both the medical evidence and
15 her activities as a caregiver were proper and sufficiently
16 specific bases for discounting her claims of disabling symptoms,
17 and the ALJ's reasoning was clear and convincing. See
18 Tommasetti, 533 F.3d at 1039-40; Houghton v. Comm'r Soc. Sec.
19 Admin., 493 F. App'x 843, 845 (9th Cir. 2012). Because the ALJ's
20 findings were supported by substantial evidence, this Court may
21 not engage in second-guessing. See Thomas, 278 F.3d at 959.

22 Remand is not warranted on this ground.
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1 **VI. CONCLUSION**

2 Consistent with the foregoing, and pursuant to sentence four
3 of 42 U.S.C. § 405(g),⁶ IT IS ORDERED that judgment be entered
4 AFFIRMING the decision of the Commissioner and dismissing this
5 action with prejudice. IT IS FURTHER ORDERED that the Clerk serve
6 copies of this Order and the Judgment on counsel for both parties.

7
8 DATED: August 27, 2014



9 JEAN ROSENBLUTH
U.S. Magistrate Judge

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27 ⁶ This sentence provides: "The [district] court shall have
28 power to enter, upon the pleadings and transcript of the record, a
judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."