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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SYLVIA MARIE AVILA,
Plaintiff,
v.
CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

Case No. EDCV 13-2113 JC
MEMORANDUM OPINION

I. SUMMARY

On November 27, 2013, plaintiff Sylvia Marie Avila (“plaintiff”) filed a Complaint seeking review of the Commissioner of Social Security’s denial of plaintiff’s application for benefits. The parties have consented to proceed before the undersigned United States Magistrate Judge.

This matter is before the Court on the parties’ cross motions for summary judgment, respectively (“Plaintiff’s Motion”) and (“Defendant’s Motion”). The Court has taken both motions under submission without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; December 2, 2013 Case Management Order ¶ 5.

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1 Based on the record as a whole and the applicable law, the decision of the
2 Commissioner is AFFIRMED. The findings of the Administrative Law Judge
3 (“ALJ”) are supported by substantial evidence and are free from material error.¹

4 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**
5 **DECISION**

6 In November 2009, plaintiff filed applications for Supplemental Security
7 Income and Disability Insurance Benefits. (Administrative Record (“AR”) 197,
8 201). Plaintiff asserted that she became disabled on September 1, 2004, due to
9 psychiatric problems, bipolar disorder, fibromyalgia, and osteoarthritis. (AR 232).
10 The ALJ examined the medical record and heard testimony from plaintiff (who
11 was represented by counsel) and a vocational expert on June 8, 2012. (AR 49-86).

12 On July 20, 2012, the ALJ determined that plaintiff was not disabled
13 through the date of the decision. (AR 22-36). Specifically, the ALJ found:
14 (1) plaintiff suffered from the following severe impairments: fibromyalgia, right
15 knee degenerative changes, and bipolar disorder (AR 24); (2) plaintiff’s
16 impairments, considered singly or in combination, did not meet or medically equal
17 a listed impairment (AR 24-26); (3) plaintiff retained the residual functional
18 capacity to perform sedentary work (20 C.F.R. §§ 404.1567(a), 416.967(a)) with
19 additional limitations² (AR 26); (4) plaintiff could not perform her past relevant
20 work (AR 34); (5) there are jobs that exist in significant numbers in the national
21 economy that plaintiff could perform, specifically addressing clerk, table worker,
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23 ¹The harmless error rule applies to the review of administrative decisions regarding
24 disability. See Molina v. Astrue, 674 F.3d 1104, 1115-22 (9th Cir. 2012) (discussing contours of
25 application of harmless error standard in social security cases) (citing, *inter alia*, Stout v.
Commissioner, Social Security Administration, 454 F.3d 1050, 1054-56 (9th Cir. 2006)).

26 ²The ALJ determined that plaintiff: (i) needed a sit/stand option; (ii) could have no more
27 than occasional interaction with supervisors; (iii) could have no more than frequent interaction
28 with coworkers and the public; (iv) was limited to simple repetitive tasks; and (v) could perform
no more than occasional pushing or pulling with the right lower extremity. (AR 26).

1 and ticket counter (AR 35-36); and (6) plaintiff's allegations regarding her
2 limitations were not credible to the extent they were inconsistent with the ALJ's
3 residual functional capacity assessment (AR 29).

4 The Appeals Council denied plaintiff's application for review. (AR 1).

5 **III. APPLICABLE LEGAL STANDARDS**

6 **A. Sequential Evaluation Process**

7 To qualify for disability benefits, a claimant must show that the claimant is
8 unable "to engage in any substantial gainful activity by reason of any medically
9 determinable physical or mental impairment which can be expected to result in
10 death or which has lasted or can be expected to last for a continuous period of not
11 less than 12 months." Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012)
12 (quoting 42 U.S.C. § 423(d)(1)(A)) (internal quotation marks omitted). The
13 impairment must render the claimant incapable of performing the work claimant
14 previously performed and incapable of performing any other substantial gainful
15 employment that exists in the national economy. Tackett v. Apfel, 180 F.3d 1094,
16 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

17 In assessing whether a claimant is disabled, an ALJ is to follow a five-step
18 sequential evaluation process:

- 19 (1) Is the claimant presently engaged in substantial gainful activity? If
20 so, the claimant is not disabled. If not, proceed to step two.
- 21 (2) Is the claimant's alleged impairment sufficiently severe to limit
22 the claimant's ability to work? If not, the claimant is not
23 disabled. If so, proceed to step three.
- 24 (3) Does the claimant's impairment, or combination of
25 impairments, meet or equal an impairment listed in 20 C.F.R.
26 Part 404, Subpart P, Appendix 1? If so, the claimant is
27 disabled. If not, proceed to step four.

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1 (4) Does the claimant possess the residual functional capacity to
2 perform claimant’s past relevant work? If so, the claimant is
3 not disabled. If not, proceed to step five.

4 (5) Does the claimant’s residual functional capacity, when
5 considered with the claimant’s age, education, and work
6 experience, allow the claimant to adjust to other work that
7 exists in significant numbers in the national economy? If so,
8 the claimant is not disabled. If not, the claimant is disabled.

9 Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th
10 Cir. 2006) (citing 20 C.F.R. §§ 404.1520, 416.920); see also Molina, 674 F.3d at
11 1110 (same).

12 The claimant has the burden of proof at steps one through four, and the
13 Commissioner has the burden of proof at step five. Bustamante v. Massanari, 262
14 F.3d 949, 953-54 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1098); see also Burch
15 v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (claimant carries initial burden of
16 proving disability).

17 **B. Standard of Review**

18 Pursuant to 42 U.S.C. section 405(g), a court may set aside a denial of
19 benefits only if it is not supported by substantial evidence or if it is based on legal
20 error. Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir.
21 2006) (citing Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457
22 (9th Cir. 1995)). Substantial evidence is “such relevant evidence as a reasonable
23 mind might accept as adequate to support a conclusion.” Richardson v. Perales,
24 402 U.S. 389, 401 (1971) (citations and quotations omitted). It is more than a
25 mere scintilla but less than a preponderance. Robbins, 466 F.3d at 882 (citing
26 Young v. Sullivan, 911 F.2d 180, 183 (9th Cir. 1990)).

27 To determine whether substantial evidence supports a finding, a court must
28 “consider the record as a whole, weighing both evidence that supports and

1 evidence that detracts from the [Commissioner’s] conclusion.” Aukland v.
2 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (quoting Penny v. Sullivan, 2 F.3d
3 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming
4 or reversing the ALJ’s conclusion, a court may not substitute its judgment for that
5 of the ALJ. Robbins, 466 F.3d at 882 (citing Flaten, 44 F.3d at 1457).

6 **IV. DISCUSSION**

7 Plaintiff contends that a reversal or remand is required because the ALJ
8 inadequately evaluated the credibility of her subjective complaints. (Plaintiff’s
9 Motion at 3-13). The Court disagrees.

10 **A. Pertinent Law**

11 An ALJ is not required to believe every allegation of disabling pain or other
12 non-exertional impairment. Orn v. Astrue, 495 F.3d 625, 635 (9th Cir. 2007)
13 (citing Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989)). “To determine whether
14 a claimant’s testimony regarding subjective pain or symptoms is credible, an ALJ
15 must engage in a two-step analysis.”³ Lingenfelter v. Astrue, 504 F.3d 1028,
16 1035-36 (9th Cir. 2007); see Social Security Ruling (“SSR”) 96-7p (“[Social
17 Security] regulations describe a two-step process for evaluating [a claimant’s]
18 symptoms.”). “First, the ALJ must determine whether the claimant has presented
19 objective medical evidence of an underlying impairment ‘which could reasonably
20 be expected to produce the pain or other symptoms alleged.’” Id. (quoting
21 Bunnell v. Sullivan, 947 F.2d 341, 344 (9th Cir. 1991) (en banc)).

22 “Second, if the claimant meets this first test, and there is no evidence of
23 malingering, ‘the ALJ can reject the claimant’s testimony about the severity of her
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26 ³To the extent plaintiff suggests that SSR 12-2P provides a different process for
27 evaluating the credibility of a claimant’s subjective symptoms related to fibromyalgia (Plaintiff’s
28 Motion at 10-11), plaintiff is incorrect. SSR 12-2P expressly states that subjective symptom
statements by a claimant with fibromyalgia are evaluated using “the [standard] two-step process
set forth in [Social Security] regulations and in SSR 96-7p.” SSR 12-2P at *5.

1 symptoms only by offering specific, clear and convincing reasons for doing so.”
2 Id. at 1036 (citations omitted). “In making a credibility determination, the ALJ
3 ‘must specifically identify what testimony is credible and what testimony
4 undermines the claimant’s complaints.” Greger v. Barnhart, 464 F.3d 968, 972
5 (9th Cir. 2006) (citation omitted). The ALJ’s credibility findings “must be
6 sufficiently specific to allow a reviewing court to conclude the ALJ rejected the
7 claimant’s testimony on permissible grounds and did not arbitrarily discredit the
8 claimant’s testimony.” Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir. 2004).

9 To find a claimant not credible, an ALJ must rely either on reasons
10 unrelated to the subjective testimony (*e.g.*, reputation for dishonesty), internal
11 contradictions in the claimant’s statements and testimony, or conflicts between the
12 claimant’s testimony and the claimant’s conduct (*e.g.*, daily activities, work
13 record, unexplained or inadequately explained failure to seek treatment or to
14 follow prescribed course of treatment). Orn, 495 F.3d at 636; Robbins, 466 F.3d
15 at 883; Burch, 400 F.3d at 680-81; SSR 96-7p. Although an ALJ may not
16 disregard a claimant’s testimony solely because it is not substantiated
17 affirmatively by objective medical evidence, the lack of medical evidence is a
18 factor that the ALJ can consider in his or her credibility assessment. Burch, 400
19 F.3d at 681.

20 Questions of credibility and resolutions of conflicts in the testimony are
21 functions solely of the Commissioner. Greger, 464 F.3d at 972. Accordingly, if
22 the ALJ’s interpretation of the claimant’s testimony is reasonable and is supported
23 by substantial evidence, it is not the court’s role to “second-guess” it. Rollins v.
24 Massanari, 261 F.3d 853, 857 (9th Cir. 2001).

25 **B. Analysis**

26 First, the ALJ properly discredited plaintiff’s subjective complaints of pain
27 due to internal conflicts within plaintiff’s own statements and testimony. See
28 Light v. Social Security Administration, 119 F.3d 789, 792 (9th Cir.), as amended

1 (1997) (in weighing plaintiff’s credibility, ALJ may consider “inconsistencies
2 either in [plaintiff’s] testimony or between his testimony and his conduct”); see
3 also Fair, 885 F.2d at 604 n.5 (ALJ can reject pain testimony based on
4 contradictions in plaintiff’s testimony). For example, plaintiff testified at the
5 hearing that she experienced pain at a level of seven out of ten, every day,
6 24 hours a day, seven days a week, and that due to her extreme pain plaintiff “[did
7 not] sleep at all at night.” (AR 63-65, 70). In contrast, as the ALJ noted, plaintiff
8 reported to doctors that she was “doing well and improving with regard to
9 fibromyalgia pain symptoms” while taking her prescribed medication. (AR 28,
10 30) (citing AR 374 [plaintiff “doing better both with her fibromyalgia and with her
11 mood disorder” with prescribed medication]; AR 387 [“The [plaintiff] is feeling
12 really quite well on the combination of 150 mg of Lyrica 3 times a day along with
13 the Vicodin 4 a day.”]; AR 392 [Lyrica “working very well” for fibromyalgia,
14 plaintiff “[f]eels like a new person”]; AR 393 [Lyrica “took away all [of
15 plaintiff’s] pain” and “saved her life”]; AR 399 [plaintiff stated “taking a Vicodin
16 at night relieve[d] the pain . . . [o]therwise she [had] trouble sleeping at night”]).
17 Similarly, plaintiff reported taking lithium and “doing quite well” with her mood.
18 (AR 392). At the hearing, plaintiff testified that since her 2009 hospitalization,
19 her bipolar disorder had “gotten better” and was “stable on [her] medications.”
20 (AR 72).

21 Second, an ALJ may properly consider a plaintiff’s failure to “seek
22 treatment or to follow a prescribed course of treatment” in assessing her
23 credibility. See Smolen v. Chater, 80 F.3d 1273, 1284 (9th Cir. 1996). An ALJ
24 may not reject symptom testimony, however, where a claimant provides “evidence
25 of a good reason for not taking medication.” Id. at 1284 (citations omitted). Here,
26 as the ALJ noted, treatment records reflect that in July 2011 plaintiff reported that
27 she had stopped taking Lyrica because plaintiff “felt [it] was making her suicidal.”
28 (AR 30) (citing AR 603). Plaintiff suggests that her alleged side effect (*i.e.*,

1 suicidal thoughts) was a “good reason” for her not taking prescribed medication.
2 (Plaintiff’s Motion at 8). Nonetheless, evidence that, among other things, plaintiff
3 had taken Lyrica for several years with no reports of significant side effects, that
4 plaintiff experienced dramatic improvement in her symptoms while on the
5 medication, and that plaintiff apparently stopped taking it as prescribed without
6 consulting a physician, supported the ALJ’s contrary finding and conclusion that
7 such lack of compliance “diminished” the credibility of plaintiff’s subjective
8 complaints. (AR 28; see, e.g., AR 393 [August 21, 2007 progress note reflecting
9 plaintiff said 75 mg of Lyrica taken twice a day “took away all [her] pain” and
10 “saved her life”]; AR 387 [March 21, 2008 progress note: plaintiff reported
11 “feeling really quite well on the combination of 150 mg of Lyrica 3 times a day
12 along with the Vicodin 4 a day.”]; AR 374 [January 20, 2009 progress note:
13 plaintiff reported “doing better” with her fibromyalgia while taking Lyrica and
14 other prescribed medication]).

15 Third, the ALJ observed that, contrary to plaintiff’s alleged difficulty
16 concentrating due to her pain, plaintiff “did not demonstrate or manifest any
17 difficulty concentrating during the hearing.” (AR 28). The ALJ was permitted to
18 rely on his own observations of plaintiff at the hearing as one of the several factors
19 affecting plaintiff’s credibility. See Drouin v. Sullivan, 966 F.2d 1255, 1259 (9th
20 Cir. 1992) (upholding credibility rejection where ALJ’s observation of claimant at
21 the hearing was one of several legitimate reasons stated); see also Verduzco v.
22 Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999) (ALJ’s reliance on observations of
23 claimant proper where ALJ pointed to plaintiff’s affirmative exhibition of
24 symptoms which were inconsistent with both medical evidence and plaintiff’s
25 other behavior and did not point to the absence of the manifestation of external
26 symptoms to discredit plaintiff, referring to the latter as disapproved “sit and
27 squirm” jurisprudence).

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1 Finally, an ALJ may discredit a plaintiff's subjective symptom testimony in
2 part because it is unsupported by objective medical evidence. Burch, 400 F.3d at
3 681; Rollins, 261 F.3d at 857 ("While subjective pain testimony cannot be rejected
4 on the sole ground that it is not fully corroborated by objective medical evidence,
5 the medical evidence is still a relevant factor in determining the severity of the
6 claimant's pain and its disabling effects.") (citation omitted). Here, the ALJ
7 reasonably concluded that plaintiff's physical limitations were not as severe as
8 plaintiff alleged, in part because, as noted above, plaintiff's condition dramatically
9 improved with medication. (AR 28; see AR 374, 387, 392, 393, 399); see, e.g.,
10 Warre v. Commissioner of Social Security Administration, 439 F.3d 1001, 1006
11 (9th Cir. 2006) ("Impairments that can be controlled effectively with medication
12 are not disabling for the purpose of determining eligibility for SSI benefits.")
13 (citations omitted). This Court will not second-guess the ALJ's reasonable
14 interpretation of plaintiff's medical records, even if, as plaintiff suggests, such
15 evidence could give rise to inferences more favorable to plaintiff. Robbins, 466
16 F.3d at 882 (citation omitted).

17 Accordingly, plaintiff is not entitled to a reversal or remand on this basis.

18 **V. CONCLUSION**

19 For the foregoing reasons, the decision of the Commissioner of Social
20 Security is affirmed.

21 LET JUDGMENT BE ENTERED ACCORDINGLY.

22 DATED: June 19, 2014

23 _____
/s/

24 Honorable Jacqueline Chooljian
25 UNITED STATES MAGISTRATE JUDGE
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