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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-EASTERN DIVISION**

HELEN G. VILLEGAS,
Plaintiff,

v.
CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

ED CV 14-00874-SH
MEMORANDUM DECISION AND
ORDER

This matter is before the Court for review of the Decision by the Commissioner of Social Security denying plaintiff’s application for Supplemental Security Income. Pursuant to 28 U.S.C. § 636(c), the parties have consented that the case may be handled by the undersigned. The action arises under 42 U.S.C. § 405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The plaintiff and the defendant have filed their pleadings (Plaintiff’s Brief in Support of Complaint [“Plaintiff’s Brief”]; [Defendant’s Opposition], and the

1 defendant has filed the certified transcript of record. After reviewing the matter, the
2 Court concludes that the Decision of the Commissioner should be affirmed.

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5 **I. BACKGROUND**

6 On October 7, 2010, plaintiff Helen G. Villegas filed an application for
7 Supplemental Security Income, alleging an inability to work since July 9, 2008. (See 1
8 Administrative Record [“AR”] 128-36). On November 16, 2012 (following a hearing on
9 August 1, 2012, see 1 AR 109-27), an Administrative Law Judge (“ALJ”) determined
10 that plaintiff had the following severe impairments -- major depressive disorder and
11 generalized anxiety disorder-- but found that plaintiff was not disabled within the
12 meaning of the Social Security Act. (See 1 AR 29-39).

13 Following the Appeals Council’s denial of plaintiff’s request for a review of the
14 hearing decision (see 1 AR 1-4), plaintiff filed this action in this Court.

15 Plaintiff solely alleges that the ALJ failed to provide clear and convincing reasons
16 for finding plaintiff not credible. After reviewing the matter, the Court concludes that the
17 decision of the Commissioner should be affirmed.

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19 **II. DISCUSSION**

20 **ISSUE NO. 1:**

21 Plaintiff asserts that the ALJ failed to provide clear and convincing reasons for
22 finding her not fully credible. Defendant asserts that the ALJ properly assessed
23 plaintiff’s credibility.

24 At the administrative hearing, plaintiff testified that she is single (she has had an
25 off and on relationship with her husband, but she could not remember when their
26 relationship ended). She is homeless, and stays with different people, including her sister
27 twice a week (for the past 9 or 10 years) and another family member twice a week. She
28 has limited belongings; she carries what she needs in a little briefcase. She has not been

1 incarcerated the past five years; she was incarcerated in 2004. She last worked in 1996;
2 she has been receiving general relief for 9 to 10 years. She one time worked for a
3 temporary agency for two days, but since it was not data entry work she was not
4 comfortable with it.

5 She testified she typically gets up at 8 or 9 a.m. She is able to prepare simple
6 meals, dress herself, and take a shower or bath. She drives herself to the market (once a
7 month) and to doctor's appointments only. The driving takes 4 hours a week. Shopping
8 at the market takes approximately 2 hours. When she stays with others, she helps clear
9 the table; she does not wash the dishes, mop or dust or sweep or vacuum, or take out the
10 trash.

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12 With respect to social activities, she does not have any hobbies and does not read.
13 She last had a hobby about 8 or 9 years earlier. She watches television 2 to 3 hours a day,
14 listens to music, and occasionally watches movies. She chats with her sister when her
15 sister is around. Although she has a cellular phone, she does not use it for games or for
16 the internet. She does not garden, do yard work, or socialize with others (she stays by
17 herself. She goes to church one Sunday a month (45 minutes). She does not attend any
18 formal group meetings. She stays home almost every day, feeling isolated (like she is
19 drowning slowly) and crying.

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21 She testified she has lost about 45 pounds the past two years. When asked about
22 what problems she has that prevent her from working on a full-time basis, she said she
23 cannot handle stress, is a nervous person, has anxiety, and gets chronic pain throughout
24 her body (particularly on her left side, from her legs to her shoulders). Her chronic pain
25 began as a result of a left pelvis fracture suffered in a 2000 vehicle incident involving her
26 fiancé. When asked if she is on medication, she stated, "I was just told to take ibuprofen
27 but I've been . . . told to go back to see my family practitioner so she can refer me . . .
28 back to therapy again." (She had made an appointment to see her family practitioner).

1 She testified that she has has been seeing Dr. Boda, a psychiatrist, at Kaiser Corona
2 for a while. She has gone to one therapy session (which she found helpful), and has
3 scheduled a second session. She was taking Prozac, Buspar, and Dexilant sleeping pills
4 for anxiety and depression. She has taken the medications for longer than a couple years,
5 but there have been gaps in her taking them. When asked if her medications helped her
6 with her anxiety, she stated she had not taking them regularly because she could not
7 afford them (but she is beginning to take them again). The medications help her a little.
8

9 She testified she can stand or sit for 5 to 10 minutes before experiencing pain. The
10 heaviest item she can lift is her purse.

11 She testified that she had some past difficulties with drugs and alcohol, but has
12 been clean and sober since September 2004. (See 1 AR 111-24).

13 The ALJ found that plaintiff had the following residual functional capacity
14 (“RFC”)¹: the ability to perform the full range of medium work² with certain limitations,
15 including: sitting, standing and/or walking for 6 hours out of an 8-hour workday with
16 customary breaks; kneeling, stooping, crawling crouching and climbing ramps and stairs
17 frequently, and climbing ladders, ropes and scaffolds occasionally; performing fine
18 manipulation with her left, non-dominant hand frequently; sustaining attention,
19 concentration, persistence, and pace in at least 2-hour blocks of time, with the ability to
20 perform detailed and complex tasks; the ability to interact appropriately with co-workers
21 and supervisors, but requiring casual, non-intense contact with the public (such as a ticket
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25 ¹ A Residual Functional Capacity (“RFC”) is what a claimant can still do
26 despite existing exertional and nonexertional limitations. See 20 C.F.R. §
404.1545(a)(1).

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28 ² “Medium work involves lifting no more than 50 pounds at a time with
frequent lifting or carrying of objects weighing up to 25 pounds.” 20 C.F.R. §§
404.1567(c) and 416.967(c).

1 taker); and due to low tolerance for stress, requiring a work environment free from fast-
2 paced production or assembly line work. (See 1 AR 33).

3 After summarizing plaintiff's testimony, the ALJ found that plaintiff's "allegations
4 concerning the intensity, persistent and limiting effects of his symptoms are less than
5 fully credible. The allegations of severe emotional problems causing functional
6 limitations are inconsistent with the objective medical evidence, which indicates an
7 attempt by the claimant to exaggerate the severity of her symptoms." (1 AR 34). The
8 ALJ then stated the following:
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10 As stated above, the claimant has provided a very limited treatment history
11 consisting of one psychiatric evaluation in pursuit of a worker's compensation
12 claimant and three outpatient treatment sessions in 2010 and early 2011. From the
13 record, it appears that the claimant was employed as a data entry clerk for a
14 warehouse in 1996 and was terminated while on medical leave for stress. She
15 reported she was under an extreme amount of work stress because she perceived
16 that she was doing the job of three employees and was being harassed by her
17 employer. Her worker's compensation claim was denied and she lived on State
18 disability until 1997. While, it was recommended that she receive vocational
19 rehabilitation, it is unclear whether she participated in the service. (Exhibit 1F/8-
20 35)
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22 The claimant has alleged on onset date of disability as July 9, 2008, however
23 it is unclear from the record as to why she has selected this date. It appears that she
24 last worked in 1996 and then did not start seeking mental health treatment until
25 September 2010. At the first visit, she reported symptoms of depression and
26 anxiety while presenting with an unremarkable mental status examination. She
27 was diagnosed with depression and given a Global Assessment of Functioning
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1 (GAF) of 70-61³ indicating mild symptoms. Further, her therapist stated that she
2 was generally functioning pretty well. (Exhibit 11F/27-31) She first saw Robert
3 Bota, M.D. at her second treatment session in November 2010. At this visit, she
4 reported being stressed and depressed but described her stress as a five out of ten.
5 Further, she complained that she did not like her last doctor because she did not
6 feel that she was helped enough with her disability application. This statement
7 coupled with the lack of treatment indicates that the claimant was more motivated
8 in obtaining disability benefits rather than medical help for her alleged emotional
9 issues. (Exhibit 11F/62-63) Dr. Bota reported that the claimant presented with a
10 normal mental status examination and he diagnosed her with major depression,
11 moderate and with a GAF of 60-51⁴ indicating moderate symptoms. He prescribed
12 psychotropic medication. (Exhibit 11F/64-65) She did not see Dr. Bota again until
13 January 2011 and at this visit, she reported that her depression had improved
14 despite not taking any medication. Again, her mental status examination was
15 normal and Dr. Bota assessed that she was improving. (Exhibit 11F/85-89) There
16 are no other treatment records after January 2011 indicating that the claimant's
17 alleged mental issues resolved or were not as debilitating as she has claimed.
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19 The claimant testified that she suffers from chronic pain, however there is no
20 medical evidence showing that she has anything physically wrong with her. From
21 the medical records, it appears that she went for some routine physical
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24 ³ A GAF score of 61-70 indicates some mild symptoms (e.g., depressed mood
25 and mild insomnia) or some difficulty in social, occupational, or school functioning (e.g.,
26 occasional truancy, or theft within the household), but generally functioning pretty well,
27 has some meaningful relationships (American Psychiatric Association, *Diagnostic and
28 Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision (DSM-IV-TR), 34
(2000)).

⁴ A GAF score of 51-60 indicates moderate symptoms (e.g., flat affect and
circumstantial speech, occasional panic attacks) or moderate difficulty in social,
occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers)
(American Psychiatric Association, *Diagnostic and Statistical Manual of Mental
Disorders*, Fourth Edition, Text Revision (DSM-IV-TR), 34 (2000)).

1 examinations and other mundane physical issues including urinary tract infections
2 and skin infections from June 2006 to March 2011. (Exhibit 3F and 11F/98-107)
3 There is no evidence showing that she ever sought treatment for chronic pain or
4 was diagnosed with a substantial physical impairment. (AR 34-35, footnotes in
5 original).
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8 The ALJ then stated: “After careful consideration of the evidence, the undersigned
9 finds that the claimant’s medical determinable impairments could reasonably be expected
10 to cause the alleged symptoms; however, the claimant’s statements concerning the
11 intensity, persistence and limiting effects of these symptoms are not credible to the extent
12 they are inconsistent with the above residual functional capacity assessment.” (AR 35).
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14 A claimant initially must produce objective medical evidence establishing a
15 medical impairment reasonably likely to be the cause of the subjective symptoms.
16 Smolen v. Chater, 157 F.3d 1273, 1281 (9th Cir. 1996); Bunnell v. Sullivan, 947 F.2d
17 341, 345 (9th Cir. 1991). Once a claimant produces objective medical evidence of an
18 underlying impairment that could reasonably be expected to produce the pain or other
19 symptoms alleged, and there is no evidence of malingering, the ALJ may reject the
20 claimant’s testimony regarding the severity of his or her pain and symptoms only by
21 articulating clear and convincing reasons for doing so. Smolen v. Chater, *supra*; see also
22 Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998); Light v. Social Sec. Admin., 119
23 F.3d 789, 792 (9th Cir. 1997).
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1 Here, substantial evidence supports the ALJ's finding that plaintiff's testimony
2 about the intensity, persistence and limiting effects of her symptoms was not fully
3 credible.⁵

4 The first reason given by the ALJ -- that there was a lack of objective medical
5 evidence supporting plaintiff's testimony that she suffered severe emotional problems
6 and chronic pain -- was supported by the record. See Cotton v. Bowen, 799 F.2d 1403,
7 1406 (9th Cir. 1986)("[T]he Secretary may decide to disregard [a claimant's pain]
8 testimony whenever the claimant fails to submit objective medical findings establishing a
9 medical impairment that could reasonably be expected to produce the claimed pain.");
10 Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001)("While subjective pain testimony
11 cannot be rejected on the sole ground that it is not fully corroborated by objective
12 medical evidence, the medical evidence is still a relevant factor in determining the
13 severity of the claimant's pain and its disabling effects."); Tidwell v. Apfel, 161 F.3d
14 599, 602 (9th Cir. 1998).

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16 As noted by the ALJ (see 1 AR 34-35), plaintiff's psychiatric treatment records
17 were limited and did not reflect plaintiff having serious psychological limitations (see 1
18 AR 210-38, 490-94, 524-30, 548-52). Indeed, as noted by the ALJ (see 1 AR 35), in
19 January 2011, plaintiff's treating psychiatrist, Dr. Bota, found that even without
20 medication plaintiff's functional limitations were moderate and that plaintiff's depression
21 had improved. (See 1 AR 548-52). Moreover, as noted by the ALJ (see 1 AR 35) and
22 which plaintiff does not attempt to dispute, there is no indication in the record that
23 plaintiff suffered chronic physical pain or was diagnosed with a severe physical
24 impairment.
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28 ⁵ The Court will not consider reasons for finding plaintiff not fully credible
that were not given by the ALJ in the Decision. See Pinto v. Massanari, 249 F.3d 840,
847-48 (9th Cir. 2001); SEC v. Chenery Corp., 332 U.S. 194, 196, 67 S.Ct. 1575, 91
L.Ed. 1995 (1947).

1 However, another reason given by the ALJ -- the inconsistency between the
2 alleged onset date of plaintiff's disability (July 9, 2008), see 1 AR 128, and the date
3 plaintiff began to seek mental health treatment (September 2010), see 1 AR 490-94,
4 which was unrelated to a worker's compensation claim based on psychiatric issues
5 following her 1996 termination from work (see 1 AR 204-46) -- was also supported by
6 the record. See Light v. Social Security Admin., 119 F.3d 789, 792 (9th Cir. 1997)("In
7 weighing a claimant's credibility, the ALJ may consider his reputation for truthfulness,
8 inconsistencies either in his testimony or between her testimony and his conduct, his
9 daily activities, his work history, and testimony from physicians and third parties
10 concerning the nature, severity, and effect on the symptoms of which he complains.");
11 Bunnell v. Sullivan, 947 F.2d 341, 346 (9th Cir. 1991)("Another relevant factor [in a
12 credibility determination] may be 'unexplained, or inadequately explained, failure to seek
13 treatment or follow a prescribed course of treatment.'").⁶ The ALJ correctly found that
14 if plaintiff was claiming an onset date of 2008, but did not seek mental health treatment
15 until 2010, there was an inconsistency between her actions and her assertion of an onset
16 date two years earlier.
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23 ⁶ After noting that when plaintiff visited Dr. Bota on November 29, 2010,
24 plaintiff "complained that she did not like her last doctor[s] because she did not feel that
25 she was helped enough with her disability application" the ALJ wrote: This statement
26 coupled with the lack of treatment indicates that the claimant was more motivated in
27 obtaining disability benefits rather than medical help for her alleged emotional issues."
28 (See 1 AR 35, citing 1 AR 525-26). Even assuming arguendo that the ALJ's finding was
not a proper basis for discrediting plaintiff, see Edgar v. Astrue, 2010 WL 2730927, *5
(D. Or. 2010)("The ALJ may not chastise a claimant for seeking disability benefits
payments; such circumvents the very purpose of disability benefit applications."), as
plaintiff contends, the Court's determination above that the ALJ's other reasons for
finding plaintiff partially not credible were proper renders such error harmless. See
Carmichael v. Commissioner, Soc. Sec. Administration, 533 F.3d 1155, 1162-63 (9th Cir.
2008); Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005).

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ORDER

For the foregoing reasons, the decision of the Commissioner is affirmed.

DATED: February 2, 2015



STEPHEN J. HILLMAN
UNITED STATES MAGISTRATE JUDGE