

1 Plaintiff first challenges the determination that her fibromyalgia was a non-
2 severe impairment. The regulations do not define a “severe” impairment. Instead, they
3 state what a non-severe impairment is: one that does not significantly limit physical or
4 mental ability to do basic work activities. 20 C.F.R. §§ 404.1521, 416.921. The basic
5 work activities are “the abilities and aptitudes necessary to do most jobs,” including various
6 physical and mental activities. [*Id.*] In its internal procedures, the Social Security
7 Administration assesses an impairment as “non-severe” if it has no more than a minimal
8 effect on the individual’s ability to do basic work functions. SSR 85-28. This minimalist
9 treatment has received the Courts’ imprimatur. *Yuckert v. Bowen*, 841 F.2d 303, 306 (9th
10 Cir. 1988); *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). Thus, the requirement
11 that a claimant have a severe impairment has been transmogrified into a requirement that
12 the claimant have an impairment that is not very severe at all — it simply must have more
13 than a minimal effect on his or her ability to do basic work functions.

14 The question of severity therefore is a question of functionability; a person can
15 have an impairment that does not much affect the ability to function, in which case the
16 impairment is not severe. Almost all of Plaintiff’s argument is devoted to a different
17 subject, however — whether Plaintiff had fibromyalgia at all. The Administrative Law
18 Judge did raise this issue in a footnote [AR 12 n.1], but he did not rely on it, finding instead
19 that Plaintiff had fibromyalgia, but that it was non-severe. Neither this Court nor the
20 Administrative Law Judge nor Plaintiff is a doctor, and none is qualified to determine
21 whether Plaintiff met the criteria for having fibromyalgia. *See Day v. Weinberger*, 522
22 F.2d 1154,1156 (9th Cir. 1975); *Manso-Pizarro v. Secretary of Health and Human*
23 *Services*, 76 F.3d 15, 17 (1st Cir. 1996) (“With a few exceptions (not relevant here), an
24 ALJ, as a lay person, is not qualified to interpret raw data in a medical record.”). What
25 Plaintiff would have the ability to challenge, however, is the issue of whether the
26 Administrative Law Judge appropriately concluded that Plaintiff’s fibromyalgia burdened
27 her functionability more than minimally.

1 As noted, Plaintiff does not develop this point. She does not point to any
2 evidence in the record where a doctor opined that her fibromyalgia imposed severe
3 limitations on her functionability. She asserts that she was diagnosed with fibromyalgia
4 in 2004, yet continued working until 2009, and her fibromyalgia was not the reason that
5 she stopped working. Under the circumstances, the Administrative Law Judge was within
6 his authority in concluding that fibromyalgia was not a severe impairment.

7 Plaintiff's second argument is that the Administrative Law Judge wrongly
8 discounted her assertions as to pain. In this Court, again — unlike in the administrative
9 hearing — Plaintiff focuses on her fibromyalgia. Fibromyalgia is an elusive disease, and
10 objective evidence is hard to come by. *See Benecke v. Barnhart*, 379 F.3d 587, 589 (9th
11 Cir. 2004). But this does not mean that any plaintiff with fibromyalgia cannot work, or
12 must be believed completely. Plaintiff here had a variety of ailments; the main ones
13 identified by the Administrative Law Judge were a degenerative disc disease of the
14 cervical spine and right rotator cuff tendinitis. It was those impairments, in combination
15 with the non-severe impairments (which included fibromyalgia), which the Administrative
16 Law Judge evaluated, and Plaintiff's testimony as to her level of pain had to be related to
17 the impairments. Thus, in evaluating Plaintiff's credibility, the Administrative Law Judge
18 was assessing her believability as to the impact of all her impairments, in combination.

19 Although it cannot be an ending point in a credibility analysis, the objective
20 medical evidence certainly can be a starting point. *Rollins v. Massanari*, 261 F. 3d 853,
21 857 (9th Cir. 2001). Here, the Administrative Law Judge's determination that the objective
22 medical evidence belied the degree of Plaintiff's pain was a factor that he could at least
23 begin with. If he had stopped there, he would have run afoul of cases like *Bunnell v.*
24 *Sullivan*, 947 F.2d 341 (9th Cir. 1991) (en banc), but he was entitled to consider the
25 evidence he detailed as one factor indicating that Plaintiff's claim that she could not work
26 was overstated.

27 He also noted that Plaintiff attempted to exaggerate her symptoms [AR 15],
28 and this was consistent with statements in the record that Plaintiff was a poor and vague

1 historian, and that, although she makes unusual comments such as she could not move,
2 speak, or eat, visual observations belied the comments. [AR 599-600]

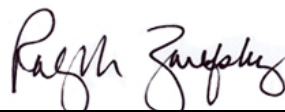
3 The Administrative Law Judge also noted that Plaintiff's daily activities were
4 inconsistent with her statements that she could do virtually nothing. [AR 15] It is true, of
5 course, that a claimant need not be totally unable to function in order to qualify for
6 disability benefits, but this was not the point the Administrative Law Judge was addressing.
7 Rather, he was addressing the inconsistency between Plaintiff's assertion that she could do
8 virtually nothing, and the record that showed that she could do considerably more than
9 nothing. Such an inconsistency is a valid basis for finding a claimant less than wholly
10 credible. *Bunnell*, 947 F.2d at 346; *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).

11 The Administrative Law Judge also addressed the nature of Plaintiff's care in
12 comparison to Plaintiff's complaints. Conservative care in the face of supposed inability
13 to function makes the claim less credible. *Johnson v. Shalala*, 60 F.3d 1428, 1433 (9th Cir.
14 1995). Although Plaintiff asserts in this Court that her medication was increased, she
15 testified at the hearing (at which she was represented by counsel) that her medication had
16 not been changed in the last year or two. [AR 9] The Administrative Law Judge also
17 referenced the fact that, even though she had a back problem, surgery had not been
18 recommended for it. [AR 15]

19 These were valid reasons for the Administrative Law Judge to disbelieve
20 Plaintiff. A different person might interpret the evidence differently, but the Court must
21 defer to the interpretation placed on it by the Administrative Law Judge. *Rollins, supra*.

22 In accordance with the foregoing, the decision of the Commissioner is
23 affirmed.

24 DATED: February 17, 2015

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27 RALPH ZAREFSKY
28 UNITED STATES MAGISTRATE JUDGE