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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LYNDA FAYE TRAYLOR,
Plaintiff,
v.
CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

Case No. EDCV 14-1091 JC
MEMORANDUM OPINION

I. SUMMARY

On June 4, 2014, plaintiff Lynda Faye Traylor (“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; June 9, 2014 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 On September 22, 2011, plaintiff filed an application for Disability
7 Insurance Benefits. (Administrative Record (“AR”) 15, 120). Plaintiff asserted
8 that she became disabled on January 6, 2007, due to diabetes, chronic back pain,
9 weak legs, numbness in the fingers of right and left hands, right thumb problems,
10 right side rib pain, weak arms, arthritis, and carpal tunnel syndrome. (AR 15,
11 191). The ALJ examined the medical record and heard testimony from plaintiff
12 (who was represented by counsel) and a vocational expert on April 9, 2013. (AR
13 27-52).

14 On May 2, 2013, the ALJ determined that plaintiff was not disabled through
15 the date of the decision. (AR 15-22). Specifically, the ALJ found: (1) plaintiff
16 suffered from the following severe impairments: degenerative disc disease and
17 arthritis (AR 17); (2) plaintiff’s impairments, considered singly or in combination,
18 did not meet or medically equal a listed impairment (AR 17); (3) plaintiff retained
19 the residual functional capacity to perform light work (20 C.F.R. § 404.1567(b))
20 with additional limitations² (AR 18); (4) plaintiff could perform her past relevant
21 work as a childcare worker and case aide (AR 20); (5) alternatively, there are jobs
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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 could (i) lift and/or carry 20 pounds occasionally and
27 10 pounds frequently; (ii) sit up to six hours in an eight-hour day; (iii) stand and walk up to six
28 hours total in an eight-hour day; (iv) push and pull as much as lifting and carrying; and
(v) frequently handle and finger. (AR 18).

1 that exist in significant numbers in the national economy that plaintiff could
2 perform, specifically general cashier, housekeeping cleaner, and cafeteria
3 attendant (AR 21); and (6) plaintiff's allegations regarding her limitations were
4 not credible to the extent they were inconsistent with the ALJ's residual functional
5 capacity assessment (AR 19).

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

7 **III. APPLICABLE LEGAL STANDARDS**

8 **A. Sequential Evaluation Process**

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

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

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

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1 Part 404, Subpart P, Appendix 1? If so, the claimant is disabled. If
2 not, proceed to step four.

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

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

11 Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th
12 Cir. 2006) (citing 20 C.F.R. §§ 404.1520, 416.920); see also Molina, 674 F.3d at
13 1110 (same).

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

19 **B. Standard of Review**

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

1 To determine whether substantial evidence supports a finding, a court must
2 “consider the record as a whole, weighing both evidence that supports and
3 evidence that detracts from the [Commissioner’s] conclusion.” Aukland v.
4 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (quoting Penny v. Sullivan, 2 F.3d
5 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming
6 or reversing the ALJ’s conclusion, a court may not substitute its judgment for that
7 of the ALJ. Robbins, 466 F.3d at 882 (citing Flaten, 44 F.3d at 1457).

8 **IV. DISCUSSION**

9 Plaintiff contends that a remand or reversal is required because the ALJ
10 inadequately evaluated the credibility of her subjective complaints. (Plaintiff’s
11 Motion at 4-11). The Court disagrees.

12 **A. Pertinent Law**

13 An ALJ is not required to believe every allegation of disabling pain or other
14 non-exertional impairment. Orn v. Astrue, 495 F.3d 625, 635 (9th Cir. 2007)
15 (citing Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989)). “To determine whether
16 a claimant’s testimony regarding subjective pain or symptoms is credible, an ALJ
17 must engage in a two-step analysis.” Lingenfelter v. Astrue, 504 F.3d 1028,
18 1035-36 (9th Cir. 2007). “First, the ALJ must determine whether the claimant has
19 presented objective medical evidence of an underlying impairment ‘which could
20 reasonably be expected to produce the pain or other symptoms alleged.’” Id.
21 (quoting 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
24 symptoms only by offering specific, clear and convincing reasons for doing so.’”
25 Id. at 1036 (citations omitted). “In making a credibility determination, the ALJ
26 ‘must specifically identify what testimony is credible and what testimony
27 undermines the claimant’s complaints.’” Greger v. Barnhart, 464 F.3d 968, 972
28 (9th Cir. 2006) (citation omitted). The ALJ’s credibility findings “must be

1 sufficiently specific to allow a reviewing court to conclude the ALJ rejected the
2 claimant’s testimony on permissible grounds and did not arbitrarily discredit the
3 claimant’s testimony.” Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir. 2004).

4 To find a claimant not credible, an ALJ must rely either on reasons
5 unrelated to the subjective testimony (*e.g.*, reputation for dishonesty), internal
6 contradictions in the claimant’s statements and testimony, or conflicts between the
7 claimant’s testimony and the claimant’s conduct (*e.g.*, daily activities, work
8 record, unexplained or inadequately explained failure to seek treatment or to
9 follow prescribed course of treatment). Orn, 495 F.3d at 636; Robbins, 466 F.3d
10 at 883; Burch, 400 F.3d at 680-81; Social Security Ruling³ 96-7p. Although an
11 ALJ may not disregard a claimant’s testimony solely because it is not substantiated
12 affirmatively by objective medical evidence, the lack of medical evidence is a
13 factor that the ALJ can consider in his or her credibility assessment. Burch, 400
14 F.3d at 681.

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

20 **B. Analysis**

21 First, the ALJ properly discounted the credibility of plaintiff’s subjective
22 complaints as inconsistent with evidence that plaintiff worked after her alleged
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24 ³Although they do not carry the “force of law,” Social Security Rulings are binding on
25 ALJs. See 20 C.F.R. § 402.35(b)(1); Bray v. Commissioner of Social Security Administration,
26 554 F.3d 1219, 1224 (9th Cir. 2009) (citation and internal quotation marks omitted). Such
27 rulings “reflect the official interpretation of the [Social Security Administration] and are entitled
28 to some deference as long as they are consistent with the Social Security Act and regulations.”
Molina, 674 F.3d at 1113 n.5 (citations and internal quotation marks omitted); Heckler v.
Edwards, 465 U.S. 870, 873 n.3 (1984) (discussing weight and function of Social Security
rulings).

1 onset date. See, e.g., Orn, 495 F.3d at 639 (“[A claimant’s] daily activities may be
2 grounds for an adverse credibility finding ‘if [the] claimant is able to spend a
3 substantial part of [her] day engaged in pursuits involving the performance of
4 physical functions that are transferable to a work setting.’”) (citations omitted);
5 Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005) (“[I]f a claimant engages in
6 numerous daily activities involving skills that could be transferred to the
7 workplace, the ALJ may discredit the claimant’s allegations upon making specific
8 findings relating to those activities.”). For example, as the ALJ noted, despite her
9 alleged onset date of January 6, 2007, plaintiff reported that she engaged in
10 substantial gainful activity in 2007 (\$23,731.31 in earnings) and 2008 (\$11,924.96
11 in earnings). (AR 17, 20) (citing Exhibit 10D at 2 [AR 170]; Exhibit 4E at 1 [AR
12 198]). Moreover, at the hearing, plaintiff testified that she had worked full time at
13 a retirement home in 2010, and later worked part time from January to May 2011
14 doing “in-home care.” (AR 18, 20, 32-33). Contrary to plaintiff’s suggestion, the
15 ALJ did not “completely discard [plaintiff’s] claim.” (Plaintiff’s Motion at 8)
16 (emphasis added). Instead, the ALJ reasonably concluded that plaintiff’s ability to
17 work (sometimes on a full-time basis) during the alleged period of disability was
18 inconsistent with the alleged severity of plaintiff’s subjective symptoms. See
19 Verduzco v. Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999) (inconsistencies between
20 claimant’s testimony and actions cited as a clear and convincing reason for
21 rejecting the claimant’s testimony). To the extent plaintiff suggests that her
22 multiple months of employment during her alleged period of disability is not
23 probative of lack of credibility, the Court will not second guess the ALJ’s
24 reasonable determination to the contrary, even if such evidence could give rise to
25 inferences more favorable to plaintiff. Rollins, 261 F.3d at 857 (citation omitted).

26 Second, the ALJ properly discredited plaintiff’s subjective complaints, in
27 part, 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, as the ALJ noted, contrary
5 to plaintiff’s claim that she was disabled, in part, due to diabetes, plaintiff told the
6 state-agency examining physician that her diabetes had been “treated and
7 controlled” for five years. (AR 19-20; compare AR 191 with AR 368).

8 Finally, the ALJ properly discredited plaintiff’s subjective symptom
9 testimony due, in part, to the absence of supporting objective medical evidence.
10 Burch, 400 F.3d at 681; Rollins, 261 F.3d at 857 (“While subjective pain
11 testimony cannot be rejected on the sole ground that it is not fully corroborated by
12 objective medical evidence, the medical evidence is still a relevant factor in
13 determining the severity of the claimant’s pain and its disabling effects.”) (citation
14 omitted). For example, as the ALJ noted, despite plaintiff’s complaints of
15 numbness in her fingers, plaintiff admitted, and the medical evidence reflects, that
16 plaintiff’s diabetes was stable with medication. (AR 19-20, 368) (citing Exhibit
17 2F at 5, 14, 25, 32, 40, 54, 63 [AR 291, 300, 311, 318, 326, 340, 349]; Exhibit 7F
18 at 16, 25 [AR 437, 446]); see, e.g., Warre v. Commissioner of Social Security
19 Administration, 439 F.3d 1001, 1006 (9th Cir. 2006) (“Impairments that can be
20 controlled effectively with medication are not disabling for the purpose of
21 determining eligibility for SSI benefits.”) (citations omitted). As the ALJ also
22 noted, both the state-agency examining physician and the medical consultant
23 found plaintiff able to do light work, which was consistent with the examining
24 physician’s independent examination of plaintiff and plaintiff’s medical records as
25 a whole. (AR 19-20; AR 368-73 [state-agency examining physician]; AR 375-82
26 [state-agency reviewing physician]) (citing Exhibit 1F at 16, 21, 29-30, 50-52 [AR

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1 248, 253, 261-62, 282-84]; Exhibit 2F at 9, 29 [AR 295, 315]; Exhibit 7F at 9, 11-
2 12 [AR 430, 432-33]).

3 Accordingly, a remand or reversal on this basis is not warranted.

4 **V. CONCLUSION**

5 For the foregoing reasons, the decision of the Commissioner of Social
6 Security is affirmed.

7 LET JUDGMENT BE ENTERED ACCORDINGLY.

8 DATED: October 28, 2014

9 /s/

10 _____
11 Honorable Jacqueline Chooljian
12 UNITED STATES MAGISTRATE JUDGE
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