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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NAOMI JEAN BATES,)	NO. ED CV 14-1718-E
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social Security,)	
)	
Defendant.)	
)	

PROCEEDINGS

Plaintiff filed a Complaint on August 25, 2014, seeking review of the Commissioner's denial of benefits. The parties filed a consent to proceed before a United States Magistrate Judge on September 29, 2014.

Plaintiff filed a motion for summary judgment on January 26, 2015. Defendant filed a motion for summary judgment on April 27, 2015. The Court has taken both motions under submission without oral argument. See L.R. 7-15; "Order," filed September 3, 2014.

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1 BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION

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3 Plaintiff asserted disability since July 20, 2008, based on a
4 variety of alleged physical and psychiatric impairments
5 (Administrative Record ("A.R.") 70-81, 104-13, 241-42, 263).
6 Following a previous stipulated remand, the Administrative Law Judge
7 ("ALJ") examined the medical record and heard testimony from
8 Plaintiff, a medical expert and a vocational expert (A.R. 4-1065).
9

10 The ALJ found Plaintiff has severe "cervical spondylosis, lumbar
11 degenerative disc disease of the lumbar spine; asthma; hypothyroidism
12 Hashimoto;¹ obesity; lupus; fibromyalgia;² sleep apnea; Sjogren's
13 . . . syndrome³" (A.R. 7). The ALJ also found, however, that
14 Plaintiff retains the residual functional capacity to perform a
15 limited range of light work (A.R. 7). In making this finding, the ALJ
16 discounted the credibility of Plaintiff and Plaintiff's husband (A.R.
17

18 ¹ "In Hashimoto's disease, also known as chronic
19 lymphocytic thyroiditis, a person's immune system attacks his or
20 her thyroid gland, and the resulting inflammation often leads to
21 an underactive thyroid, also known as hypothyroidism. Treatment
22 of Hashimoto's disease with thyroid hormone replacement is
23 usually simple and effective." Bertel v. Astrue, 2012 WL
3679201, at *7 n.12 (D. Nev. July 30, 2012), adopted, 2012 WL
3562547 (D. Nev. Aug. 17, 2012) (citations and quotations
omitted).

24 ² Fibromyalgia has been described as "a common, but
25 elusive and mysterious, disease" whose "symptoms are entirely
26 subjective." Sarchet v. Chater, 78 F.3d 305, 306 (7th Cir.
1996). "Some people may have such a severe case of fibromyalgia
as to be totally disabled from working; but most do not." Id.

27 ³ "Sjogren is an autoimmune disease causing dryness of
28 the mouth, eyes and other tissues." Rohrbach v. Colvin, 2015 WL
1006678, at *5 n.4 (C.D. Cal. March 5, 2015).

1 8-9). In reliance on the testimony of the vocational expert, the ALJ
2 determined that there exist significant numbers of jobs performable by
3 a person having the identified residual functional capacity (A.R. 11-
4 13). The ALJ therefore denied disability benefits (A.R. 13-14).
5

6 STANDARD OF REVIEW

7

8 Under 42 U.S.C. section 405(g), this Court reviews the
9 Administration's decision to determine if: (1) the Administration's
10 findings are supported by substantial evidence; and (2) the
11 Administration used correct legal standards. See Carmickle v.
12 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
13 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner,
14 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such
15 relevant evidence as a reasonable mind might accept as adequate to
16 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401
17 (1971) (citation and quotations omitted); see Widmark v. Barnhart, 454
18 F.3d 1063, 1066 (9th Cir. 2006).
19

20 If the evidence can support either outcome, the court may
21 not substitute its judgment for that of the ALJ. But the
22 Commissioner's decision cannot be affirmed simply by
23 isolating a specific quantum of supporting evidence.
24 Rather, a court must consider the record as a whole,
25 weighing both evidence that supports and evidence that
26 detracts from the [administrative] conclusion.

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1 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and
2 quotations omitted).

3
4 **DISCUSSION**

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6 After consideration of the record as a whole, Defendant's motion
7 is granted and Plaintiff's motion is denied. The Administration's
8 findings are supported by substantial evidence and are free from
9 material⁴ legal error. Plaintiff's contrary arguments are unavailing.

10
11 **I. Substantial Evidence Supports the Conclusion Plaintiff Can Work.**

12
13 The medical evidence provides little support for Plaintiff's
14 claim of disability and substantial support for the ALJ's rejection of
15 that claim. Extensive medical testing during the alleged period of
16 disability revealed little or no objective basis for many of
17 Plaintiff's subjective complaints (A.R. 396 (normal CT head scan in
18 September of 2008); 397 (normal x-ray of right hand in September of
19 2008); 399 (normal chest x-ray in June of 2008); 512-14 (normal EEG in
20 January of 2010); 515-16 (normal EEG in October of 2009); 517-19
21 (normal EEG in September of 2009); 520-21 (normal EKG in August of
22 2009); 531 (normal chest x-ray in March of 2010); 535 (normal cervical
23 spine x-ray in November of 2009); 536 (normal MRI of head in September
24 of 2009); 635 (normal colonoscopy in March of 2011); 636-37 (normal

25
26 ⁴ The harmless error rule applies to the review of
27 administrative decisions regarding disability. See Garcia v.
28 Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v.
Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart,
400 F.3d 676, 679 (9th Cir. 2005).

1 endoscopy in March of 2011); 640-41 (normal x-rays of hands, wrists,
2 pelvis and hips in June of 2011); 979 (normal pelvic ultrasound in
3 June of 2013); 1038 (normal CT of head in March of 2010)).
4

5 Plaintiff claimed she quit work in 2008 because of, inter alia,
6 problems with her lungs (A.R. 104). Plaintiff has had asthma since
7 childhood, however, and her treatment records show that her asthma was
8 stable without acute flare-ups as of November of 2008 (A.R. 333, 370).
9

10 Plaintiff complains of symptoms allegedly related to autoimmune
11 problems (including Sjogren's syndrome). Plaintiff's treating
12 rheumatologist did not believe that Sjogren's syndrome or any other
13 alleged autoimmune problems disabled Plaintiff from employment (A.R.
14 352).
15

16 Cervical spine and lumbar spine CT scans and MRIs did show some
17 disc desiccation, some mild degenerative changes, some disc protrusion
18 and mild disc bulges (A.R. 532-34, 606, 972-74, 1049). Plaintiff's
19 most recent lumbar spine MRI in July of 2013 actually shows
20 improvement over the previous MRI, however (A.R. 976-77). None of
21 Plaintiff's treating physicians appear to have opined that any of
22 these alleged orthopedic problems would disable Plaintiff from all
23 employment. Dr. Chukwuemeka Ezike, the medical expert, opined
24 Plaintiff retains a residual functional capacity consistent with the
25 capacity the ALJ found to exist (A.R. 87-92). The state agency
26 physicians concurred (A.R. 551-60, 584-93). Where, as here, the
27 opinions of non-examining physicians do not contradict "all other
28 evidence in the record," an ALJ properly may rely on these opinions.

1 See Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995); Curry v.
2 Sullivan, 925 F.2d 1127, 1130 n.2 (9th Cir. 1990).

3
4 With respect to Plaintiff's alleged psychiatric problems,
5 examining psychiatrist Dr. Linda Smith opined in October of 2009 that
6 Plaintiff had no psychiatric impairment of her ability to work (A.R.
7 562-69). Dr. Smith also stated that "[i]t appears she is attempting
8 to claim to have 'PTSD' but I do not see any evidence of this. It
9 appears she is attempting to claim that she might disassociate at
10 times, but she really cannot describe this either in any credible
11 fashion" (A.R. 568). State agency physicians similarly opined
12 Plaintiff has no significant mental impairment (A.R. 570-83).

13
14 Although some of the evidence appears to be in conflict, it is
15 the prerogative of the ALJ to resolve conflicts in the record. See
16 Lewis v. Apfel, 236 F.3d 503, 509 (9th Cir. 2001). When evidence "is
17 susceptible to more than one rational interpretation," the Court must
18 uphold the administrative decision. See Andrews v. Shalala, 53 F.3d
19 at 1039-40; accord Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir.
20 2002); Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997). The
21 Court will uphold the ALJ's rational interpretation of the evidence in
22 the present case notwithstanding any conflicts in the record.

23
24 The vocational expert testified that a person with the residual
25 functional capacity the ALJ found to exist could perform jobs existing
26 in significant numbers in the national economy (A.R. 92-98). The
27 vocational expert's testimony furnishes substantial evidence there
28 exist significant numbers of jobs Plaintiff can perform. See Burkhart

1 v. Bowen, 856 F.2d 1335, 1340 (9th Cir. 1988); see also Barker v.
2 Secretary, 882 F.2d 1474, 1478-80 (9th Cir. 1989); see generally
3 Johnson v. Shalala, 60 F.3d 1428, 1435-36 (9th Cir. 1995) (ALJ
4 properly may rely on vocational expert to identify jobs claimant can
5 perform); 42 U.S.C. § 423(d)(2)(A).

6
7 **II. The ALJ Did Not Materially Err in Discounting the Credibility of**
8 **Plaintiff or Plaintiff's Husband.**

9
10 An ALJ's assessment of a claimant's credibility is entitled to
11 "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir.
12 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). Where, as
13 here, the ALJ finds that the claimant's medically determinable
14 impairments reasonably could be expected to cause some degree of the
15 alleged symptoms of which the claimant subjectively complains, any
16 discounting of the claimant's complaints must be supported by
17 specific, cogent findings. See Berry v. Astrue, 622 F.3d 1228, 1234
18 (9th Cir. 2010); Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995);
19 but see Smolen v. Chater, 80 F.3d 1273, 1282-84 (9th Cir. 1996)
20 (indicating that ALJ must offer "specific, clear and convincing"
21 reasons to reject a claimant's testimony where there is no evidence of

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1 malingering).⁵ An ALJ's credibility findings "must be sufficiently
2 specific to allow a reviewing court to conclude the ALJ rejected the
3 claimant's testimony on permissible grounds and did not arbitrarily
4 discredit the claimant's testimony." See Moisa v. Barnhart, 367 F.3d
5 882, 885 (9th Cir. 2004) (internal citations and quotations omitted);
6 see also Social Security Ruling 96-7p. As discussed below, the ALJ
7 stated sufficient reasons for deeming Plaintiff's subjective
8 complaints less than fully credible.

9
10 In discounting Plaintiff's credibility, the ALJ placed principal
11 reliance on perceived inconsistencies between Plaintiff's allegedly
12 incapacitating symptomatology and her daily activities (A.R. 8-9).
13 With regard to her alleged symptomatology, Plaintiff claimed: she must
14 spend "90 percent" of her time in bed in her pajamas; she suffers pain
15 everywhere in her body; she wakes up "with swollen body parts and
16 cannot use them"; she cannot put on her socks and shoes or button her
17 clothes on her own; she drops things regularly and falls down
18 regularly; she has panic attacks; and she exists in a constant state
19 of anxiety (A.R. 75, 78-79, 106, 108-09, 263). Yet, the record
20 reflects a wide range of daily activities inconsistent with the

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23 ⁵ In the absence of an ALJ's reliance on evidence of
24 "malingering," most recent Ninth Circuit cases have applied the
25 "clear and convincing" standard. See, e.g., Burrell v. Colvin,
26 775 F.3d 1133, 1136-37 (9th Cir. 2014); Chaudhry v. Astrue, 688
27 F.3d 661, 670, 672 n.10 (9th Cir. 2012); Molina v. Astrue, 674
28 F.3d 1104, 1112 (9th Cir. 2012); Taylor v. Commissioner, 659 F.3d
1228, 1234 (9th Cir. 2011); see also Ballard v. Apfel, 2000 WL
1899797, at *2 n.1 (C.D. Cal. Dec. 19, 2000) (collecting earlier
cases). In the present case, the ALJ's findings are sufficient
under either standard, so the distinction between the two
standards (if any) is academic.

1 incapacity Plaintiff claims. For example, during all of part of the
2 alleged period of disability, Plaintiff took care of her grandson for
3 four hours each day, swept, dusted, did dishes, cooked for and looked
4 after her 17 year old son, and shopped for groceries two to three
5 hours at a time (A.R. 274-76, 1008). The ALJ properly relied on the
6 inconsistencies between Plaintiff's claims and her demonstrated
7 activities in discounting Plaintiff's credibility. See, e.g., Thune
8 v. Astrue, 499 Fed. App'x 701, 703 (9th Cir. 2012) (ALJ properly
9 discredited pain allegations as contradicting claimant's testimony
10 that she gardened, cleaned, cooked, and ran errands); Stubbs-Danielson
11 v. Astrue, 539 F.3d 1169, 1175 (9th Cir. 2008) (claimant's "normal
12 activities of daily living, including cooking, house cleaning, doing
13 laundry, and helping her husband in managing finances" was sufficient
14 explanation for rejecting claimant's credibility); Burch v. Barnhart,
15 400 F.3d 676, 680 (9th Cir. 2005) ("In determining credibility, an ALJ
16 may engage in ordinary techniques of credibility evaluation, such as
17 considering . . . inconsistencies in claimant's testimony.").

18
19 Accordingly, the ALJ stated sufficient reasons to allow this
20 Court to conclude that the ALJ discounted Plaintiff's credibility on
21 permissible grounds. See Moisa v. Barnhart, 367 F.3d at 885. The
22 Court therefore defers to the ALJ's credibility determination. See
23 Lasich v. Astrue, 252 Fed. App'x 823, 825 (9th Cir. 2007) (court will
24 defer to ALJ's credibility determination when the proper process is
25 used and proper reasons for the decision are provided); accord Flaten
26 v. Secretary of Health & Human Services, 44 F.3d 1453, 1464 (9th Cir.
27 1995).

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1 The ALJ also properly discounted the credibility of Plaintiff's
2 husband. As the ALJ pointed out, the husband's statements "mirrored
3 the claimant's allegations" (A.R. 9; see A.R. 281-88). An ALJ may
4 discount lay witness statements where the statements are similar to
5 the claimant's testimony and the ALJ has given legally sufficient
6 reasons for discounting the claimant's testimony. See Valentine v.
7 Commissioner Social Sec. Admin., 574 F.3d 685, 694 (9th Cir. 2009)
8 ("In light of our conclusion that the ALJ provided clear and
9 convincing reasons for rejecting Valentine's own subjective
10 complaints, and because Ms. Valentine's testimony was similar to such
11 complaints, it follows that the ALJ gave germane reasons for rejecting
12 her testimony"). Because the ALJ's discounting of Plaintiff's
13 testimony was proper, the ALJ's discounting of the husband's similar
14 statements was also proper. See id.

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1 **CONCLUSION**

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3 For all of the foregoing reasons,⁶ Plaintiff's motion for summary
4 judgment is denied and Defendant's motion for summary judgment is
5 granted.

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7 LET JUDGMENT BE ENTERED ACCORDINGLY.

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9 DATED: May 14, 2015.

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11 _____/S/
12 CHARLES F. EICK
13 UNITED STATES MAGISTRATE JUDGE
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25 ⁶ The Court has considered and rejected each of
26 Plaintiff's arguments. Neither Plaintiff's arguments nor the
27 circumstances of this case show any "substantial likelihood of
28 prejudice" resulting from any error allegedly committed by the
Administration. See generally McLeod v. Astrue, 640 F.3d 881,
887-88 (9th Cir. 2011) (discussing the standards applicable to
evaluating prejudice).