

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STACY L. FIELDS,)	Case No. EDCV 16-0317-JPR
)	
Plaintiff,)	
)	MEMORANDUM DECISION AND ORDER
v.)	AFFIRMING COMMISSIONER
)	
NANCY A. BERRYHILL, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner’s final decision denying her application for Social Security disability insurance benefits (“DIB”). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). The matter is before the Court on the parties’ Joint Stipulation, filed November 17, 2016, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner’s decision is affirmed.

1 **II. BACKGROUND**

2 Plaintiff was born in 1968. (Administrative Record ("AR")
3 36.) She completed 12th grade and two semesters of college.
4 (Id.) She worked as a financial-services representative and a
5 peer facilitator. (AR 37-38.)

6 On August 9, 2012, Plaintiff applied for DIB, alleging that
7 she had been unable to work since March 2, 2009,¹ because of
8 bipolar disorder, "[r]espiratory [sic]/[o]xygen complication,"
9 arthritis, depression, anxiety, spinal stenosis, lower-back and
10 pelvic-bone pain, asthma, and persistent and uncontrollable
11 bladder leakage. (AR 78-79.) After her application was denied
12 initially and on reconsideration, she requested a hearing before
13 an Administrative Law Judge. (AR 113, 120, 126.) A hearing was
14 held on July 11, 2014, at which Plaintiff, who was represented by
15 counsel, testified, as did a vocational expert. (See AR 29-77.)
16 In a written decision issued August 25, 2014, the ALJ found
17 Plaintiff not disabled. (AR 6-24.) On September 10, 2014,
18 Plaintiff sought Appeals Council review (AR 5), which was denied
19 on December 18, 2015 (AR 1-3). This action followed.

23
24 ¹ In her Application Summary, Plaintiff alleged an onset
25 date of March 1, 2009. (AR 170.) The ALJ used March 2, 2009, as
26 the onset date. (AR 9.) The parties refer to both dates in
27 their Joint Stipulation. (See J. Stip. at 2-3.) Because the ALJ
28 applied res judicata based on previous agency denials of
Plaintiff's apparently similar applications for disability
benefits and found that as a result she was ineligible for
benefits before May 21, 2011 (AR 9), a finding she does not
challenge, the exact onset date does not matter.

1 **III. STANDARD OF REVIEW**

2 Under 42 U.S.C. § 405(g), a district court may review the
3 Commissioner's decision to deny benefits. The ALJ's findings and
4 decision should be upheld if they are free of legal error and
5 supported by substantial evidence based on the record as a whole.
6 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra
7 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
8 evidence means such evidence as a reasonable person might accept
9 as adequate to support a conclusion. Richardson, 402 U.S. at
10 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).
11 It is more than a scintilla but less than a preponderance.
12 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
13 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
14 substantial evidence supports a finding, the reviewing court
15 "must review the administrative record as a whole, weighing both
16 the evidence that supports and the evidence that detracts from
17 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
18 720 (9th Cir. 1996). "If the evidence can reasonably support
19 either affirming or reversing," the reviewing court "may not
20 substitute its judgment" for the Commissioner's. Id. at 720-21.

21 **IV. THE EVALUATION OF DISABILITY**

22 People are "disabled" for purposes of receiving Social
23 Security benefits if they are unable to engage in any substantial
24 gainful activity owing to a physical or mental impairment that is
25 expected to result in death or has lasted, or is expected to
26 last, for a continuous period of at least 12 months. 42 U.S.C.
27 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.
28 1992).

1 A. The Five-Step Evaluation Process

2 The ALJ follows a five-step evaluation process to assess
3 whether a claimant is disabled. 20 C.F.R. § 404.1520(a)(4);
4 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995) (as
5 amended Apr. 9, 1996). In the first step, the Commissioner must
6 determine whether the claimant is currently engaged in
7 substantial gainful activity; if so, the claimant is not disabled
8 and the claim must be denied. § 404.1520(a)(4)(i).

9 If the claimant is not engaged in substantial gainful
10 activity, the second step requires the Commissioner to determine
11 whether the claimant has a "severe" impairment or combination of
12 impairments significantly limiting her ability to do basic work
13 activities; if not, the claimant is not disabled and the claim
14 must be denied. § 404.1520(a)(4)(ii).

15 If the claimant has a "severe" impairment or combination of
16 impairments, the third step requires the Commissioner to
17 determine whether the impairment or combination of impairments
18 meets or equals an impairment in the Listing of Impairments at 20
19 C.F.R. part 404, subpart P, appendix 1; if so, disability is
20 conclusively presumed. § 404.1520(a)(4)(iii).

21 If the claimant's impairment or combination of impairments
22 does not meet or equal an impairment in the Listing, the fourth
23 step requires the Commissioner to determine whether the claimant
24 has sufficient RFC to perform her past work; if so, she is not
25 disabled and the claim must be denied. § 404.1520(a)(4)(iv).

26 The claimant has the burden of proving she is unable to perform
27 past relevant work. Drouin, 966 F.2d at 1257. If the claimant
28 meets that burden, a prima facie case of disability is

1 established. Id. If that happens or if the claimant has no past
2 relevant work, the Commissioner then bears the burden of
3 establishing that the claimant is not disabled because she can
4 perform other substantial gainful work available in the national
5 economy. § 404.1520(a)(4)(v); Drouin, 966 F.2d at 1257. That
6 determination comprises the fifth and final step in the
7 sequential analysis. § 404.1520(a)(4)(v); Lester, 81 F.3d at 828
8 n.5; Drouin, 966 F.2d at 1257.

9 B. The ALJ's Application of the Five-Step Process

10 At step one, the ALJ found that Plaintiff had not engaged in
11 substantial gainful activity since March 2, 2009, the alleged
12 onset date. (AR 11.) At step two, he concluded that Plaintiff
13 had severe impairments of degenerative joint disease of the
14 lumbar spine, degenerative disc disease of the lumbar spine at
15 L5-S1, bilateral patellofemoral syndrome, thoracic myofascial
16 strain, asthma, obesity, possible fibromyalgia, history of
17 gastric bypass surgery with chronic anemia, and bipolar disorder.
18 (AR 12.) At step three, he determined that her impairments did
19 not meet or equal a listing. (Id.)

20 At step four, the ALJ found that Plaintiff had the RFC to
21 perform light work except that she could not climb ladders,
22 ropes, or scaffolds; could no more than frequently kneel, crouch,
23 crawl, balance, or be exposed to extreme heat or wetness; could
24 no more than occasionally stoop, climb ramps and stairs, be
25 exposed to workplace hazards and pulmonary irritants, or interact
26 with the public; was limited to no more than occasional changes
27 in her workplace setting; and was precluded from performing
28 complex work activity. (AR 13-14.) The ALJ found that Plaintiff

1 was "likely to be absent from the workplace about one day a
2 month." (AR 14.)

3 Based on the VE's testimony, the ALJ concluded that
4 Plaintiff could not perform her past relevant work. (AR 22-23.)
5 At step five, he relied on the VE's testimony to find that given
6 Plaintiff's RFC for light work "impeded by additional
7 limitations," she could perform three "representative" light,
8 unskilled occupations in the national economy. (AR 23-24.)
9 Accordingly, he found Plaintiff not disabled. (AR 24.)

10 **V. DISCUSSION**

11 Plaintiff alleges that the ALJ improperly rejected the
12 opinion of treating psychiatrist Dr. Staci Johnson that she would
13 not be able to "adapt to new or stressful situations" or
14 "complete a 40-hour workweek without decompensating." (J. Stip.
15 at 5.) She does not challenge any of the ALJ's other findings or
16 conclusions. For the reasons discussed below, remand is not
17 warranted.

18 A. Applicable Law

19 Three types of physicians may offer opinions in Social
20 Security cases: (1) those who directly treated the plaintiff, (2)
21 those who examined but did not treat the plaintiff, and (3) those
22 who did neither. Lester, 81 F.3d at 830. A treating physician's
23 opinion is generally entitled to more weight than an examining
24 physician's, and an examining physician's opinion is generally
25 entitled to more weight than a nonexamining physician's. Id.

26 This is so because treating physicians are employed to cure
27 and have a greater opportunity to know and observe the claimant.
28 Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996). If a

1 treating physician's opinion is well supported by medically
2 acceptable clinical and laboratory diagnostic techniques and is
3 not inconsistent with the other substantial evidence in the
4 record, it should be given controlling weight. § 404.1527(c)(2).
5 If a treating physician's opinion is not given controlling
6 weight, its weight is determined by length of the treatment
7 relationship, frequency of examination, nature and extent of the
8 treatment relationship, amount of evidence supporting the
9 opinion, consistency with the record as a whole, the doctor's
10 area of specialization, and other factors. § 404.1527(c)(2)-(6).

11 When a treating physician's opinion is not contradicted by
12 other evidence in the record, it may be rejected only for "clear
13 and convincing" reasons. See Carmickle v. Comm'r, Soc. Sec.
14 Admin., 533 F.3d 1155, 1164 (9th Cir. 2008) (citing Lester, 81
15 F.3d at 830-31). When it is contradicted, the ALJ must provide
16 only "specific and legitimate reasons" for discounting it. Id.
17 (citing Lester, 81 F.3d at 830-31). Furthermore, "[t]he ALJ need
18 not accept the opinion of any physician, including a treating
19 physician, if that opinion is brief, conclusory, and inadequately
20 supported by clinical findings." Thomas v. Barnhart, 278 F.3d
21 947, 957 (9th Cir. 2002); accord Batson v. Comm'r of Soc. Sec.
22 Admin., 359 F.3d 1190, 1195 (9th Cir. 2004).

23 B. Relevant Background

24 On June 18, 2009, state-agency medical consultant Dr. Nara
25 A. Paculdo, a psychiatrist, completed a psychiatric evaluation.²

26 _____
27 ² Because Plaintiff did not file her current DIB application
28 until 2012, Dr. Paculdo's consultative examination must have been
(continued...)

1 (AR 256-60.) Plaintiff reported that she was sad, depressed, and
2 anxious. (AR 256.) She stated that she "was not able to work
3 because there were too many people around and she did not want to
4 talk to anyone." (AR 257.) She could not concentrate. (Id.)
5 She was able to cook, clean, run errands, shop, and take her
6 children to school. (AR 258.) In a mental-status examination,
7 Plaintiff had "unimpaired" memory and "intact" concentration.
8 (AR 258-59.) Dr. Paculdo diagnosed anxiety and depressive
9 disorders. (AR 259.) Dr. Paculdo found that Plaintiff's ability
10 to understand, remember, and carry out simple or complex job
11 instructions was not significantly limited. (Id.) Her ability
12 to relate and interact with supervisors, coworkers, and the
13 public was not significantly impaired. (Id.) She was not
14 significantly limited in her ability to maintain concentration
15 and persistence for a normal work period and to withstand the
16 stress and pressures associated with an eight-hour workday. (AR
17 259-60.) Dr. Paculdo found that her prognosis was "good" and she
18 was "able to return to the national labor force from a
19 psychiatric point of view." (AR 260.)

20 On May 5, 2011, state-agency consultant Dr. Reynaldo
21 Abejuela, a specialist in psychiatry and neurology, completed a
22 psychiatric evaluation.³ (AR 1147-54.) Plaintiff complained
23 that she suffered from depression, anxiety, and multiple physical
24 ailments. (AR 1147.) She reported that she had problems

25
26 ² (...continued)
for her earlier DIB claim.

27 ³ This evaluation also was likely conducted in connection
28 with the earlier DIB claim.

1 concentrating and focusing but was not seeking psychiatric help
2 because she could not afford it.⁴ (AR 1148.) In a mental-status
3 examination, Plaintiff was cooperative and nonhostile. (AR
4 1150.) Her thought content was logical and coherent, and she
5 "recalled three out of three objects after three and five
6 minutes." (Id.) The examination revealed "mild depression and
7 mild anxiety" (AR 1152) and an "occupational and social
8 functioning impairment of none to mild from the psychiatric
9 standpoint" (AR 1153). Plaintiff had "mild mental difficulties"
10 maintaining social functioning. (AR 1153.) She had no mental
11 restrictions in her daily activities and no repeated episodes of
12 emotional deterioration in "work-like" situations. (Id.) Her
13 concentration, persistence, and pace were mildly impaired, as
14 were her responses to coworkers, supervisors, the public, and
15 usual work situations. (Id.) Dr. Abejuela opined that
16 Plaintiff's symptoms would "abate in the next few months even
17 without treatment." (AR 1154.) Her psychiatric prognosis was
18 "fair to good." (Id.)

19 Between 2006 and 2011, Plaintiff was treated by Dr.
20 Elizabeth D. Duenas. (See AR 383-84 (list of medications
21 prescribed by Dr. Duenas between 2006 and 2011).) She was
22 treated primarily for physical ailments but reported symptoms of
23 depression and anxiety, which were controlled or improved with
24 medication. (See, e.g., AR 408 (Apr. 2009: depression controlled
25 with medication), 388 (Aug. 2010: mood improved with

26
27 ⁴ Although Plaintiff apparently temporarily lost coverage in
28 (See AR 1111.)

1 medication).)

2 In a function report dated October 20, 2012, Plaintiff noted
3 that she took care of her 12-year-old daughter but that her other
4 children helped with that task. (AR 229, 236.) She could pay
5 attention for only "maybe a good 2 minutes" before "dozing off."
6 (AR 233.) For the question, "Do you finish what you start?" she
7 checked, "No." (Id.) She noted that she had never been fired or
8 laid off from a job because of problems getting along with other
9 people. (AR 234.) A third-party function report completed by
10 her daughter echoed much of Plaintiff's own report. (See AR 217-
11 25.) She noted that Plaintiff was not able to take care of her
12 younger daughter "at all." (AR 218.)

13 On December 8, 2012, state-agency consulting psychiatrist
14 Dr. Thaworn Rathana-Nakintara completed a psychiatric evaluation.
15 (AR 1067-71.) Dr. Rathana-Nakintara noted that Plaintiff's chief
16 complaint was "feeling sad and very angry." (AR 1067.) She
17 reported taking medications for her symptoms, which helped.
18 (Id.) In a mental-status examination, Dr. Rathana-Nakintara
19 noted that Plaintiff was alert and oriented to person, place,
20 time, and situation. (AR 1069.) Dr. Rathana-Nakintara tested
21 Plaintiff's memory and noted that she was "able to register 3 out
22 of 3 items" immediately and "3 out of 3 items at 5 minutes."
23 (Id.) Dr. Rathana-Nakintara diagnosed "Mood Disorder" and
24 "Cannabis Dependence, in sustained remission." (AR 1070.)
25 Plaintiff had no difficulty interacting with the clinic staff or
26 the doctor, maintaining focus and attention, or maintaining
27 concentration, persistence, and pace. (Id.) She had no
28 limitations performing simple or complex tasks, performing work

1 activities on a consistent basis without special supervision,
2 "completing a normal workday or work week," accepting
3 instructions from supervisors, or interacting with coworkers and
4 the public. (AR 1070-71.) She was "adhering and responding well
5 to treatment." (AR 1071.) Her prognosis was "good." (Id.)

6 On December 14, 2012, Dr. B.A. Smith, a state-agency
7 consulting psychiatrist, reviewed Plaintiff's medical records and
8 completed a case analysis. (AR 86-87.) Dr. Smith noted that
9 Plaintiff had one episode of decompensation in June 2012, but no
10 other episodes. (AR 86.) Dr. Smith found that Plaintiff had "no
11 impairment in functioning." (Id.) Plaintiff had "mild"
12 restrictions in her activities of daily living and no difficulty
13 maintaining social functioning and concentration, persistence, or
14 pace. (Id.)

15 Meanwhile, Plaintiff started seeing Dr. Johnson, her
16 treating psychiatrist, on December 7, 2012. (AR 1091.)
17 Plaintiff's medical records show that she met with Dr. Johnson
18 four times: on December 7, 2012, January 17, 2013, March 14,
19 2013, and August 2, 2013. (See AR 1091-92 (Dec. 7, 2012 visit),
20 1096-97 (Jan. 17, 2013 visit), 1097-98 (Mar. 14, 2013 visit),
21 1136 (Aug. 2, 2013 visit).) Plaintiff had appointments on May 9,
22 June 5, September 27, and November 20, 2013, but she did not show
23 up for them. (AR 1104-05, 1138, 1145.)

24 On December 7, 2012, Dr. Johnson established a series of
25 treatment goals related to Plaintiff's living arrangements, money
26 management, mental-health management, and medication. (AR 1091-
27 92.) Dr. Johnson completed a psychiatric assessment and
28 diagnosed Plaintiff with bipolar disorder. (AR 1116-18.) She

1 assigned Plaintiff a "current" global assessment of functioning
2 ("GAF") score of 55 and noted that Plaintiff's highest GAF score
3 during the past year was 61.⁵ (AR 1116.) Plaintiff complained
4 of "depression/anxiety, mood instability, irritability, poor
5 sleep, [and] manic symptoms." (Id.) In a mental-status
6 examination, Plaintiff's mood was "anxious," but she had "good"
7 concentration and "intact" short- and long-term memory, and she
8 was oriented to person, place, purpose, and time. (AR 1118.)
9 Plaintiff reported a good response to medication; Dr. Johnson
10 recommended adjusting her medications and stressed the importance
11 of medication compliance. (Id.) Plaintiff was also assessed by
12 Cynthia Marez, a social worker, the same day. (See AR 1106-15,
13 1131.) Marez diagnosed bipolar and anxiety disorders and
14 assigned Plaintiff a GAF score of 49. (AR 1106.)

15 On January 17, 2013, Dr. Johnson noted Plaintiff's symptoms
16 of "depression/anxiety, mood instability, poor sleep, [and] manic
17 symptoms." (AR 1096.) In a mental-status examination,
18 Plaintiff's affect was "anxious [but] congruent" and her
19 attention and concentration were "fair." (Id.) Dr. Johnson

21 ⁵ GAF scores assess a person's overall psychological
22 functioning on a scale of 1 to 100. See Diagnostic and
23 Statistical Manual of Mental Disorders 32 (revised 4th ed. 2000).
24 A GAF score of 51 to 60 indicates moderate symptoms or difficulty
25 in social, occupational, or school functioning. See DSM-IV 34.
26 A GAF score of 61 to 70 indicates "some mild symptoms (e.g.,
27 depressed mood and mild insomnia) OR some difficulty in social,
28 occupational, or school functioning . . . but generally
functioning pretty well, has some meaningful interpersonal
relationships." DSM-IV 34. GAF scores have been excluded from
the latest edition of DSM because of concerns about their
reliability and lack of clarity, however. See DSM-V 15-16 (5th
ed. 2013).

1 recommended that Plaintiff continue with her current medications
2 but with revised dosages. (AR 1097.) On March 14, 2013,
3 Plaintiff reported to Dr. Johnson that she was "ok" and had a
4 "good response to [her] current medications," but she admitted to
5 "some anxiety" and "attribute[d] it to being newly diagnosed with
6 fibromyalgia and being told that [she] no longer ha[d] lupus."

7 (Id.) In a mental-status examination, she was able to
8 concentrate and presented as appropriate or normal in all tested
9 areas. (AR 1098.) She reported a "good response to medication,"
10 and her affect apparently improved to "neutral, congruent."

11 (Id.)

12 Dr. Johnson completed a "Narrative Report" on May 16, 2013.
13 (AR 1090.) The report was a one-page preprinted form that listed
14 potential diagnostic criteria, symptoms, and other information
15 and had blank spaces for diagnoses, prescribed medications, and
16 comments. (Id.) Dr. Johnson diagnosed bipolar disorder. (Id.)
17 In a section asking Dr. Johnson to circle the "criteria that
18 apply" to Plaintiff, she noted that Plaintiff's thought was
19 "ruminative," her memory was "intact," her judgment was mildly
20 impaired, and she showed evidence of insomnia, depression,
21 anxiety, compulsive behavior, and "manic syndrome." (Id.) She
22 did not circle "confusion," "phobias," "panic episodes,"
23 "suicidal/homicidal ideation," "decreased energy," "isolation,"
24 or "inappropriate affect." (Id.) Dr. Johnson wrote "N/A" next
25 to "psychosis." (Id.) She circled "anxious" to describe
26 Plaintiff's attitude – but not "hostile," "uncooperative,"
27 "fearful," or "tearful" – and "chronic" as her prognosis. (Id.)
28 Dr. Johnson assessed that Plaintiff could "interact

1 appropriately" with family, strangers, coworkers, and
2 supervisors. (Id.) She could maintain a sustained level of
3 concentration and sustain repetitive tasks for an extended
4 period, but she could not "adapt to new or stressful situations."
5 (Id.) For the question, "Can [Plaintiff] complete [a] 40 hr.
6 work week without decompensating?" Dr. Johnson circled, "no."
7 (Id.) Dr. Johnson left the comment section blank. (Id.)

8 On August 2, 2013, Plaintiff reported feeling "not so good."
9 (AR 1136.) She noted that her medications "were effective" but
10 that she "ran out" of them because she missed an appointment.
11 (Id.) In a mental-status examination that day, Dr. Johnson noted
12 that Plaintiff was anxious but able to concentrate. (Id.)

13 Meanwhile, on June 28, 2013, state-agency consultant Dr.
14 Raman Gill Chahal⁶ completed the mental-health portion of
15 Plaintiff's case analysis on reconsideration. (AR 102-04.) Dr.
16 Chahal found that Plaintiff had "moderate" difficulty maintaining
17 social functioning, concentration, persistence, or pace. (AR
18 103.) He agreed with Dr. Smith's assessment that she had "mild"
19 restrictions in her activities of daily living and no repeated
20 episodes of decompensation of extended duration. (Id.) Dr.
21 Chahal found that Plaintiff's subjective complaints were not
22 supported by the objective medical evidence. (AR 104.) He found
23 that there was an "[i]ssue of credibility" because of
24 "inconsistent" reports of symptoms and history. (Id.) He noted

26 ⁶ Dr. Chahal has a specialty code of "37" (AR 104),
27 indicating "[p]sychiatry," see Program Operations Manual System
28 DI 24501.004, U.S. Soc. Sec. Admin. (May 5, 2015), [http://
policy.ssa.gov/poms.nsf/lnx/0424501004](http://policy.ssa.gov/poms.nsf/lnx/0424501004).

1 that she "reports difficulties in social interaction but
2 interacts appropriately with various [treatment] providers and
3 their staff." (Id.)

4 In a mental-RFC assessment, Dr. Chahal opined that Plaintiff
5 could maintain concentration and persistence "on detailed tasks
6 for 2 hour periods and on simple tasks for 4 hour intervals to
7 complete a workday/[week] on a sustained basis." (AR 108.) She
8 was "moderately limited" in her ability to maintain attention and
9 concentration for extended periods; perform activities within a
10 schedule, maintain regular attendance, and be punctual within
11 customary tolerances; and complete a normal workday and workweek
12 without interruptions from psychologically based symptoms and
13 perform at a consistent pace without an unreasonable number and
14 length of rest periods. (Id.) She had no limitations in
15 "understanding and memory" and no significant limitations in the
16 areas of "sustained concentration and persistence." (Id.) Dr.
17 Chahal found that Plaintiff had moderate limitations in her
18 ability to interact appropriately with the general public but had
19 no other significant limitations in the area of social
20 interaction. (AR 109.) Because of her depression, anxiety, and
21 the "psychological impact of chronic pain and fatigue," Plaintiff
22 "may have difficulties in serving the general public," but she
23 could "interact in a superficial work related manner with
24 coworkers and supervisors." (Id.) Dr. Chahal found that
25 although Plaintiff was "moderately limited" in her ability to
26 respond appropriately to changes in the work setting, she had no
27 other significant "adaptation" limitations, and she could adapt
28 to "occasional changes in her work setting and routine." (Id.)

1
2 At the July 11, 2014 hearing, Plaintiff testified that she
3 was diagnosed with bipolar disorder in 2003. (AR 47.) She
4 reported that she has "very short patience" and that her "anxiety
5 levels run extremely high." (Id.) She testified that she had
6 difficulty interacting with the public (AR 52), was "stand-
7 offish" with coworkers (AR 53), and would not be able to get
8 along with supervisors (id.). She had problems focusing and
9 paying attention. (Id.)

10 C. Analysis

11 The ALJ found that Plaintiff was able to perform light work
12 with certain postural and exposure limitations, was limited to no
13 more than occasional changes in workplace setting, could no more
14 than occasionally interact with the public, and was precluded
15 from performing complex workplace activity. (AR 13-14.) The ALJ
16 found that Plaintiff was "likely to be absent from the workplace
17 about one day a month." (AR 14.) He considered Plaintiff's
18 statements and Adult Function Report and concluded that they were
19 only partially credible. (AR 15-16.) He considered the Third
20 Party Function Report completed by Plaintiff's daughter and found
21 it not credible. (AR 16-17.)⁷ He summarized the medical
22 opinions of the state-agency consultants, consultative examiners,
23 and Dr. Johnson. (AR 17-22.) As to Plaintiff's alleged mental
24 impairment, he accorded "great weight" to the opinions of state-
25 agency doctors Smith, Chahal, and Abejuela and "little weight" to
26

27
28 ⁷ Plaintiff has not challenged the ALJ's assessment of her
credibility or his rejection of the third-party report.

1 the opinions of Drs. Rathana-Nakintara and Johnson. (AR 21-22.)
2 Because Dr. Johnson's opinion that Plaintiff would not be able to
3 adapt to new or stressful situations or complete a 40-hour
4 workweek without decompensating was contradicted by other medical
5 opinions in the record, the ALJ had to give only specific and
6 legitimate reasons for rejecting all or part of it. See
7 Carmickle, 533 F.3d at 1164. As discussed below, the ALJ did so.

8 As an initial matter, the ALJ partially accommodated Dr.
9 Johnson's finding that Plaintiff could not adapt to new or
10 stressful situations by limiting her to only occasional changes
11 in the workplace. But in any event, he provided specific and
12 legitimate reasons for rejecting the opinion to the extent he did
13 so.

14 The ALJ gave "little weight" to Dr. Johnson's opinion in
15 part because it was "brief, conclusory, and inadequately
16 supported by clinical findings." (AR 21.) Indeed, the opinion
17 was rendered on a one-page preprinted form that listed potential
18 diagnostic criteria, symptoms, and other information and provided
19 blank spaces for diagnoses, prescribed medications, and comments.
20 (See AR 1090.) Dr. Johnson simply circled "no" in response to
21 the question, "Can [Plaintiff] complete [a] 40 hr. work week
22 without decompensating?" (Id.) She did not provide any
23 explanation for that finding or her finding that Plaintiff could
24 not adapt to new or stressful situations, also in response to a
25 preprinted form question. (See id.) The ALJ was entitled to
26 discount the opinion on that basis. See Crane v. Shalala, 76
27 F.3d 251, 253 (9th Cir. 1996) (ALJ permissibly rejected
28 psychological evaluations "because they were check-off reports

1 that did not contain any explanation of the bases of their
2 conclusions"); De Guzman v. Astrue, 343 F. App'x 201, 209 (9th
3 Cir. 2009) (ALJ was "free to reject" doctor's check-off report
4 that did not explain basis for conclusions); see also Batson, 359
5 F.3d at 1195 ("[A]n ALJ may discredit treating physicians'
6 opinions that are conclusory, brief, and unsupported by the
7 record as a whole . . . or by objective medical findings[.]").

8 The ALJ found that Dr. Johnson's opinion was not supported
9 by "medically acceptable clinical findings." (AR 22.) Indeed,
10 Dr. Johnson's opinion that Plaintiff would not be able to adapt
11 to new or stressful situations or complete a 40-hour workweek was
12 not supported by any clinical findings – either in Dr. Johnson's
13 own treatment notes, contrary to Plaintiff's argument otherwise
14 (see J. Stip. at 7-8), or the rest of the record.

15 As the ALJ noted, Dr. Johnson's opinion was contradicted by
16 Plaintiff's "grossly normal" mental-status examinations and was
17 internally inconsistent. (AR 22.) In a December 2012 mental-
18 status examination, Plaintiff presented as anxious but had "good"
19 concentration and "intact" memory and was oriented to person,
20 place, purpose, and time. (AR 1118.) In a mental-status
21 examination from January 2013, Plaintiff's mood and affect were
22 "appropriate," her affect was "anxious," and her attention and
23 concentration were "fair." (AR 1096.) In a May 2013
24 examination, she was "[a]ble to [c]oncentrate" and presented as
25 appropriate or normal in all testing areas. (AR 1098.) In an
26 August 2013 examination, Plaintiff was anxious but able to
27 concentrate. (AR 1136.) The ALJ was permitted to discount Dr.
28 Johnson's opinion because it was inconsistent with her own

1 mental-status examination findings. (AR 22); see Rollins v.
2 Massanari, 261 F.3d 853, 856 (9th Cir. 2001) (ALJ permissibly
3 rejected treating physician's opinion when opinion was
4 contradicted by or inconsistent with treatment reports). Dr.
5 Johnson also consistently noted that Plaintiff's medications were
6 mostly effective, and she did not recommend any more intensive or
7 invasive treatment. (See, e.g., AR 1136 (noting medications were
8 effective), 1118 (noting good response to medication), 1098
9 (same), 1097 (same).) The ALJ properly relied on the apparent
10 lack of consistent treatment history and examination findings to
11 discount Dr. Johnson's opinion. See Connett v. Barnhart, 340
12 F.3d 871, 875 (9th Cir. 2003) (treating physician's opinion
13 properly rejected when treatment notes "provide[d] no basis for
14 the functional restrictions he opined should be imposed on
15 [plaintiff]"). Further, the ALJ noted that Dr. Johnson's opinion
16 was internally "inconsistent." (AR 22.) Indeed, Dr. Johnson
17 noted that Plaintiff could maintain a sustained level of
18 concentration, sustain repetitive tasks for an extended period,
19 and interact appropriately with others (AR 1090), which is
20 inconsistent with her opinion that Plaintiff could not complete a
21 40-hour workweek without decompensating – at least absent some
22 explanation of why not.⁸

24 ⁸ Plaintiff argues that POMS DI 25020.010 ¶ 2 contains an
25 "implicit" acknowledgment that the "ability to adapt to new or
26 stressful situations" and "complete a 40-hour workweek" are
27 "separate and distinct work requirements" from "maintaining
28 concentration," "sustaining performance of repetitive tasks," and
"interacting appropriately with others." (J. Stip. at 10.)
Assuming Plaintiff means POMS DI 25020.010 B.2, which lists the
(continued...)

1 Further, there is no evidence in the rest of the medical
2 record to support a finding that Plaintiff would be unable to
3 adapt to new or stressful situations or complete a normal
4 workweek without decompensating. Dr. Paculdo found that
5 Plaintiff was not significantly limited in her ability to
6 maintain concentration and persistence for a normal work period
7 and to withstand the stress and pressures associated with an
8 eight-hour workday. (AR 259-60.) Dr. Abejuela opined that
9 Plaintiff had no repeated episodes of emotional deterioration in
10 worklike situations and that her concentration, persistence, and
11 pace were only mildly impaired. (AR 1153.) Dr. Duenas noted
12 improvement in Plaintiff's anxiety and depression with the use of
13 medication. (AR 388, 408.) Dr. Smith noted that Plaintiff had
14 no repeated episodes of decompensation of extended duration. (AR
15 86.) Dr. Chahal opined that Plaintiff could maintain
16 concentration and persistence on detailed tasks for two-hour
17 periods and on simple tasks for four-hour intervals and could

18
19 ⁸ (...continued)

20 "Mental Abilities Needed For Any Job," her argument is without
21 merit. Notably, the ability to "complete a 40-hour workweek"
22 without decompensating – or, in other words, without
23 "interruptions from psychologically based symptoms" – appears in
24 the same sentence as the ability to "perform at a consistent pace
25 without an unreasonable number and length of rest periods," as a
26 single functional requirement. See POMS DI 25020.010 B.2.a.
27 Thus, the ALJ properly noted the inconsistency in Dr. Johnson's
28 findings that Plaintiff could not work a 40-hour workweek without
decompensating yet was able to maintain a sustained level of
concentration without any limitations. (AR 22.) And although
"the ability to respond appropriately to changes in (a routine)
work setting" is listed as a separate requirement to consider,
the ability to deal with "new or stressful" situations is not.
Id.

1 complete a workday or week on a sustained basis.⁹ (AR 108.) The
2 ALJ could permissibly reject Dr. Johnson's contrary opinion. See
3 Batson, 359 F.3d at 1195.

4 The ALJ noted that Plaintiff "reported decreased symptoms
5 with prescription medication." (AR 22.) As discussed above,
6 Drs. Duenas and Johnson both noted improvement in Plaintiff's
7 symptoms with use of medication. Improvement with treatment and
8 medication can be substantial evidence supporting an ALJ's
9 nondisability determination. See Warre v. Comm'r of Soc. Sec.
10 Admin., 439 F.3d 1001, 1006 (9th Cir. 2006) ("Impairments that
11 can be controlled effectively with medication are not disabling
12 for the purpose of determining eligibility for . . . benefits.");
13 Thomas, 278 F.3d at 957; Allen v. Comm'r of Soc. Sec., 498 F.
14 App'x 696, 697 (9th Cir. 2012). And because Plaintiff's symptoms
15 were largely controlled with medication, she would be able to
16 work without decompensating, contrary to Dr. Johnson's opinion.

17 Further, the ALJ properly gave no weight to Dr. Johnson's
18 conclusion that Plaintiff was unable to work because it was "an
19 opinion on an issue reserved to the Commissioner." (AR 21.)
20 Indeed, Dr. Johnson's opinion that Plaintiff was unable to
21 complete a 40-hour workweek without decompensating was
22 essentially an opinion on Plaintiff's ultimate disability status,
23
24

25
26 ⁹ Dr. Rathana-Nakintara similarly found that Plaintiff could
27 complete a normal workday or week without decompensating (see AR
28 1070-71), although the ALJ gave the doctor's opinion "little
weight," apparently because it assessed no limitations of any
kind (AR 21).

1 which the ALJ was not obligated to accept.¹⁰ See
2 § 404.1527(d)(1) ("A statement by a medical source that you are
3 'disabled' or 'unable to work' does not mean that we will
4 determine that you are disabled."); SSR 96-5p, 1996 WL 374183, at
5 *5 (July 2, 1996) (treating-source opinions that person is
6 disabled or unable to work "can never be entitled to controlling
7 weight or given special significance"); see also McLeod v.
8 Astrue, 640 F.3d 881, 885 (9th Cir. 2011) (as amended) ("A
9 disability is an administrative determination of how an
10 impairment, in relation to education, age, technological,
11 economic, and social factors, affects ability to engage in
12 gainful activity."). To the extent Dr. Johnson meant that
13 Plaintiff was disabled or unable to work, the ALJ properly
14 discounted her opinion.

15 Finally, the ALJ was entitled to rely on the opinion of Dr.
16 Abejuela, which he gave "great weight." (AR 21.) Because Dr.
17 Abejuela personally observed and examined Plaintiff and his
18 findings were consistent with the objective evidence, his opinion
19 constitutes substantial evidence supporting the ALJ's decision.
20 See Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001)
21 (finding that examining physician's "opinion alone constitutes
22 substantial evidence, because it rests on his own independent
23 examination of [plaintiff]"); Andrews v. Shalala, 53 F.3d 1035,
24 1041 (9th Cir. 1995) (opinion of nontreating source based on
25 independent clinical findings may itself be substantial

26
27 ¹⁰ Plaintiff concedes that Dr. Johnson "effectively opined
28 that [Plaintiff] would be incapable of working a 40-hour
workweek." (J. Stip. at 5.)

1 evidence).

2 Plaintiff argues that she was assessed with a GAF of 49,
3 "indicat[ing] serious symptoms." (J. Stip. at 7.) But the
4 report cited by Plaintiff to support that argument is from a
5 social worker, not an acceptable medical source. (AR 1107-09);
6 see SSR 06-03p, 2006 WL 2329939, at *2 (Aug. 9, 2006) ("licensed
7 clinical social workers" are not acceptable medical sources).
8 Further, the lower GAF score was contradicted by Dr. Johnson, who
9 assigned Plaintiff a GAF score of 55 the very same day. (AR
10 1106, 1116.) The higher GAF score assessed by Dr. Johnson as
11 well as the weight of the contrary medical evidence in the rest
12 of the record was a germane reason to discount social-worker
13 Marez's assessment. See Fentress v. Colvin, No. 3:13-cv-05078-
14 KLS, 2014 WL 1116780, at *4 (W.D. Wash. Mar. 20, 2014) (ALJ
15 properly rejected opinion of nonacceptable medical sources
16 because record contained "little if any objective clinical
17 support for the level of functional restriction they assessed");
18 cf. Bayliss v. Barnhart, 427 F.3d 1211, 1218 (9th Cir. 2005)
19 ("[i]nconsistency with medical evidence" is germane reason for
20 discounting lay opinion).

21 Because the ALJ provided specific and legitimate reasons for
22 giving Dr. Johnson's opinion limited weight, remand is not
23 warranted.

24

25

26

27

28

1 **VI. CONCLUSION**

2 Consistent with the foregoing, and under sentence four of 42
3 U.S.C. § 405(g),¹¹ IT IS ORDERED that judgment be entered
4 AFFIRMING the decision of the Commissioner, DENYING Plaintiff's
5 request for remand, and DISMISSING this action with prejudice.

6 

7 DATED: April 21, 2017

8 _____
9 JEAN ROSENBLUTH
10 U.S. Magistrate Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25 _____
26 ¹¹ That sentence provides: "The [district] court shall have
27 power to enter, upon the pleadings and transcript of the record,
28 a judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."