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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KIMBERLY ELLEN RAMIREZ,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

Case No. EDCV 16-00948-KES

**MEMORANDUM OPINION AND
ORDER**

Plaintiff Kimberly Ellen Ramirez (“Plaintiff”) appeals the final decision of the Administrative Law Judge (“ALJ”) denying her application for Social Security Disability Insurance benefits (“DIB”) and supplemental security income (“SSI”). For the reasons discussed below, the ALJ’s decision is AFFIRMED.

**I.
BACKGROUND**

Plaintiff applied for DIB on October 18, 2012, alleging the onset of disability on January 20, 2012. Administrative Record (“AR”) 174-180. Plaintiff applied for SSI on January 7, 2013, alleging disability commencing December 29, 2011. AR 182-191. An ALJ conducted a hearing on October 28, 2014, at which Plaintiff, who

1 was represented by an attorney, appeared and testified. AR 38-65.

2 On March 6, 2015, the ALJ issued a written decision denying Plaintiff's
3 request for benefits. AR 22-37. The ALJ found that Plaintiff had the following
4 severe impairments: right breast infiltrating ductal carcinoma, status post
5 lumpectomy. AR 27. Notwithstanding her impairments, the ALJ concluded that
6 Plaintiff had the residual functional capacity ("RFC") to perform the full range of
7 medium work as defined in 20 C.F.R. §§ 404.1567(c) and 416.967(c). Based on this
8 RFC and the testimony of a vocational expert ("VE"), the ALJ found that Plaintiff
9 could return to her past relevant work as a hospital insurance clerk. AR 33.
10 Therefore, the ALJ concluded that Plaintiff is not disabled. Id.

11 II.

12 ISSUES PRESENTED

13 Issue No. 1: Whether the ALJ adequately considered Plaintiff's pain and
14 symptom testimony;

15 Issue No. 2: Whether the ALJ properly evaluated the opinions of state agency
16 consulting examiners B. Smith, M.D., and Eugene Campbell, Ph.D., both of whom
17 opined that Plaintiff's ability to understand and remember detailed instructions was
18 moderately limited.

19 Joint Stipulation ("JS") at 4.

20 III.

21 DISCUSSION

22 A. The ALJ Properly Evaluated Plaintiff's Testimony.

23 1. Applicable Law.

24 An ALJ's assessment of symptom severity and claimant credibility is entitled
25 to "great weight." See Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989);
26 Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is not required to
27 believe every allegation of disabling pain, or else disability benefits would be
28 available for the asking, a result plainly contrary to 42 U.S.C. § 423(d)(5)(A)."

1 Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012) (internal quotation marks
2 omitted).

3 In evaluating a claimant's subjective symptom testimony, the ALJ engages in
4 a two-step analysis. Lingerfelter v. Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007).
5 "First, the ALJ must determine whether the claimant has presented objective
6 medical evidence of an underlying impairment [that] could reasonably be expected
7 to produce the pain or other symptoms alleged." Id. at 1036. If so, the ALJ may not
8 reject claimant's testimony "simply because there is no showing that the
9 impairment can reasonably produce the degree of symptom alleged." Smolen v.
10 Chater, 80 F.3d 1273, 1282 (9th Cir. 1996).

11 Second, if the claimant meets the first test, the ALJ may discredit the
12 claimant's subjective symptom testimony only if he makes specific findings that
13 support the conclusion. Berry v. Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010).
14 Absent a finding or affirmative evidence of malingering, the ALJ must provide
15 "clear and convincing" reasons for rejecting the claimant's testimony. Lester, 81
16 F.3d at 834; Ghanim, 763 F.3d at 1163 & n.9. The ALJ must consider a claimant's
17 work record, observations of medical providers and third parties with knowledge of
18 claimant's limitations, aggravating factors, functional restrictions caused by
19 symptoms, effects of medication, and the claimant's daily activities. Smolen, 80
20 F.3d at 1283-84 & n.8. "Although lack of medical evidence cannot form the sole
21 basis for discounting pain testimony, it is a factor that the ALJ can consider in his
22 credibility analysis." Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005).

23 The ALJ may also use ordinary techniques of credibility evaluation, such as
24 considering the claimant's reputation for lying and inconsistencies in his statements
25 or between his statements and his conduct. Smolen, 80 F.3d at 1284; Thomas, 278
26 F.3d at 958-59.¹

27 _____
28 ¹ The Social Security Administration ("SSA") recently published SSR 16-3p,
(Cont.)

1 **2. Plaintiff’s Testimony.**

2 At the October 28, 2014 hearing, Plaintiff testified that she lives in a house
3 with two adult children and her grandchildren. AR 45-46. She testified that she had
4 surgery for breast cancer in March 2013. AR 51. Plaintiff’s primary doctor has
5 prescribed Prozac and Celexa for Plaintiff’s depression and anxiety. AR 56-57. She
6 also takes Femora, a drug used to treat breast cancer, and Motrin (800mg), for
7 migraines she experiences “maybe a couple of times a week.” AR 57-58. Plaintiff
8 testified that she has persistent pain in her fingers, wrists, legs, knees, and feet,
9 which she began experiencing after chemotherapy treatment. AR 52. She also
10 testified that her arms regularly go numb. AR 50. She often lays down and props
11 herself up to feel better. AR 52. Her medications cause hot flashes and night sweats
12 that wake her up three to four times a night. AR 53.

13 Plaintiff testified that her daily routine generally consists of dressing herself,
14 cleaning her room and doing her own laundry, and occasionally cooking simple
15 meals. AR 54-55. She waters plants outside, and helps watch her grandchildren
16 while one of her daughters is at school. AR 55. She is able to leave the house for
17 walks occasionally, but often gets tired and experiences pain. AR 56.

18 Plaintiff testified that during a work day, she estimates she could sit for a
19 couple of hours, but she could not stand for very long because she experiences pain
20 and begins to feel tired after prolonged standing. AR 54.

21
22 2016 SSR LEXIS 4, Policy Interpretation Ruling Titles II and XVI: Evaluation of
23 Symptoms in Disability Claims. SSR 16-3p eliminates use of the term “credibility”
24 from SSA policy, as the SSA’s regulations do not use this term, and clarifies that
25 subjective symptom evaluation is not an examination of a claimant’s character.
26 Murphy v. Comm’r of Soc. Sec., 2016 U.S. Dist. LEXIS 65189, at *25-26 n.6 (E.D.
27 Tenn. May 18, 2016). SSR 16-3p took effect on March 16, 2016, approximately
28 one year after the ALJ issued his decision on March 6, 2015, and therefore is not
applicable to the ALJ’s decision in this case. Id.

1 **3. The ALJ’s Treatment of Plaintiff’s Credibility.**

2 The ALJ found that Plaintiff’s “medically determinable impairments could
3 reasonably be expected to cause some of the alleged symptoms; however,
4 [Plaintiff’s] statements concerning the intensity, persistence, and limiting effects of
5 these symptoms are not entirely credible.” AR 30.

6 The ALJ found that the medical record did not support Plaintiff’s allegations
7 of disabling pain. He noted that Plaintiff’s treatment for breast cancer was
8 “temporary and successful,” and that the treatment “did not cause significant side
9 effects or limitations.” AR 31. The ALJ summarized the following medical
10 evidence to support his findings:

- 11 • July 2011: Plaintiff was diagnosed with breast cancer. AR 30-31,
12 citing AR 263, 374.
- 13 • February 2012: Plaintiff underwent a right axillary sentinel lymph
14 node biopsy, a right partial mastectomy, and a right axillary lymph
15 node dissection. AR 31, citing AR 378-79.
- 16 • June 2012: Plaintiff completed four cycles of chemotherapy. *Id.*, citing
17 AR 263, 265.
- 18 • October 2012: Plaintiff completed postoperative and
19 postchemotherapy radiation therapy, after a brief treatment break due
20 to a skin reaction and breast edema. *Id.*, citing AR 263-64
- 21 • December 2012: Plaintiff reported “a significant reduction in the
22 erythema and swelling of her right breast, but she complained of right
23 axillary and upper arm pain unchanged since the surgery, and
24 parathesias, especially in her hands, which was controlled by
25 Vicodin.” *Id.*, citing AR 260. On physical examination, all systems
26 were normal, except for occasional nausea, which was controlled by
27 medication with good results. *Id.*, citing AR 261.
- 28 • January 2013: Plaintiff complained of breast tenderness. *Id.*, citing AR

1 400.

- 2 • February 2013: An MRI of Plaintiff's breasts revealed benign findings.
3 Id., citing AR 364-65.
- 4 • March 2013: Plaintiff's oncologist noted that Plaintiff responded well
5 to radiation or other therapy, had mild redness in the breast due to
6 radiation therapy, and would be on Femara for five years with good
7 prognosis. Id., citing AR 359-60.
- 8 • May 2013: Plaintiff continued to report right breast pain, intermittent
9 numbness and tingling, nausea/gastric reflux, knee pain when rising
10 from a seated position; and a cough for three months. Id., citing AR
11 404-05. A review of systems and physical exam, however, were
12 normal except for tenderness of the right breast. Id.
- 13 • June 2013: Plaintiff reported hot flashes since starting Femara, and that
14 medication was helping her gastric reflux. Again, a review of systems
15 and physical exam were normal, except for mild redness and
16 tenderness in the right breast. Id., citing AR 402-03.
- 17 • July 2013: Plaintiff complained of continued hot flashes and was
18 prescribed a catapres patch. She also complained of joint and right
19 upper quadrant pain. Her review of systems and physical exam were
20 normal except for a history of depression. AR 32, citing AR 350-52.
21 A mammogram that month was also benign. Id., citing AR 460.

22 Upon review of this evidence, the ALJ concluded that following surgery,
23 Plaintiff "had a good response to chemotherapy and radiation, there [was] no
24 evidence of malignancy following the therapies, and she had a good prognosis with
25 Femara." AR 32. Further, the ALJ observed that Plaintiff had various physical
26 complaints at her appointments, but "review of systems [was] generally normal, and
27 the physical examinations [were] generally benign except for some mild findings in
28 the right breast." Id. Meanwhile, "[m]edications appear effective in controlling

1 [Plaintiff's] pain and gastric symptoms." Id.

2 The ALJ also noted that there was little evidence of tenderness or range of
3 motion deficits that would prevent Plaintiff from performing her daily activities.
4 AR 32. The ALJ further determined that examinations of Plaintiff did not show
5 significant limitations to overall functionality and demonstrated her complaints of
6 pain were temporary. Id. While Plaintiff described performing daily activities
7 slower, she still could take care of her personal hygiene, do simple cooking, do
8 chores such as laundry, cleaning, and watering her garden. Id. Plaintiff also testified
9 that she could still drive and run errands. Id.

10 The ALJ also noted that Plaintiff did not allege difficulty sitting or standing
11 to her physicians during or following her treatment, nor did she allege overall body
12 pain or frequent migraine headaches. Id. Plaintiff also listed light exercise as a form
13 of physical activity (id., citing AR 351) and in many of her examinations denied
14 any complaints. Id. Thus, the ALJ found "there is insufficient objective medical
15 evidence to support the claimant's complaints." Id., citing 20 C.F.R. §§ 404.1529,
16 416-929.

17 **4. Analysis.**

18 First, Plaintiff argues that the ALJ erred in finding that the objective medical
19 evidence does not support Plaintiff's testimony regarding the severity of her
20 symptoms. JS at 7. The Court disagrees.

21 The ALJ's determination that the objective evidence is inconsistent with
22 Plaintiff's testimony regarding the severity and extent of her limitations is
23 supported by substantial evidence. As noted above, the ALJ thoroughly discussed
24 both Plaintiff's testimony and the medical evidence. He referenced several pieces of
25 medical evidence revealing relatively benign findings of breast tenderness, with all
26 other systems and physical examinations normal. The ALJ cited various
27 examinations and noted that while Plaintiff consistently complained of right breast
28 and arm pain, hot flashes, and nausea, the record did not support Plaintiff's

1 testimony that she suffered from overall body pain and frequent migraine
2 headaches.

3 Moreover, the ALJ did not rely solely on the lack of supporting medical
4 evidence. As discussed below, the ALJ gave two other clear and convincing reasons
5 to discount Plaintiff's credibility concerning the severity and limiting effects of her
6 pain. The ALJ was permitted to consider the lack of supporting medical evidence as
7 a factor confirming his other reasons. See Burch, 400 F.3d at 681; Rollins v.
8 Massanari, 261 F.3d 853, 857 (9th Cir. 2001) ("While subjective pain testimony
9 cannot be rejected on the sole ground that it is not fully corroborated by objective
10 medical evidence, the medical evidence is still a relevant factor in determining the
11 severity of the claimant's pain and its disabling effects."); Social Security Ruling
12 96-7p (same).

13 Second, Plaintiff contends that the ALJ improperly considered her ability to
14 perform daily activities in determining her credibility. JS at 8-9. The Court
15 disagrees. There is substantial evidence to support the ALJ's determination that
16 Plaintiff's daily activities are inconsistent with her testimony regarding the severity
17 of her symptoms. Plaintiff testified that she was able to attend to her personal
18 hygiene, do household chores, cook simple meals, and help watch her
19 grandchildren. AR 32, citing AR 54-55. She previously acknowledged that she is
20 able to drive, shop, and run errands. Id., citing AR 314. She also has indicated that
21 she engages in light exercise. Id., citing AR 351. The extent and nature of
22 Plaintiff's daily activities was an acceptable factor for the ALJ to consider in
23 assessing her credibility. 20 C.F.R. § 404.1529. If "a claimant is able to perform
24 household chores and other activities that involve many of the same physical tasks
25 as a particular type of job, it would not be farfetched for an ALJ to conclude that
26 the claimant's pain does not prevent the claimant from working." Fair v. Bowen,
27 885 F.2d 597, 603 (9th Cir.1989).

28 Third, Plaintiff argues that the improperly considered the statements Plaintiff

1 made regarding the reason she stopped working in 2008. JS at 9. Plaintiff states that
2 she “was let go in 2008, but alleged disability in 2012, so ALJ’s reasoning is not
3 logical.” Id. During an examination with consultative examiner Douglas W. Larson,
4 Ph.D in April 2013, Plaintiff said that she stopped working because of her medical
5 problems. AR 313. However, at the hearing Plaintiff testified that she stopped
6 working because she was laid off, and had sought work afterward. AR 47-49.

7 The ALJ’s consideration of Plaintiff’s inconsistent statements about the
8 reasons she left her last job is supported by substantial evidence. By citing these
9 inconsistent statements, the ALJ provided a clear and convincing reason for
10 discounting Plaintiff’s credibility. Had this been the only reason given, it would still
11 have been sufficient to support an adverse credibility determination. Light v. Soc.
12 Sec. Admin., 119 F.3d 789, 792 (9th Cir. 1997) (An “ALJ’s finding that a claimant
13 generally lacked credibility is a permissible basis to reject excess pain testimony.”);
14 see also Fair, 885 F.2d at 603 (“If a claimant ... is found to have been less than
15 candid in other aspects of his testimony, that may properly be taken into account in
16 determining whether his claim of disabling pain should be believed.”)

17 Finally, Plaintiff argues that “it must be noted that [Plaintiff] grids out as
18 disabled at age 55 with even a ‘light’ and unskilled residual functional capacity.” JS
19 at 8, citing 20 C.F.R. P. 404, Subpt. P App. 2 §§ 202.04. However, the ALJ found
20 Plaintiff limited to medium work. AR 30. Pursuant to the Medical-Vocational
21 Guidelines (the grids), a person Plaintiff’s age (55 years old at the decision date),
22 limited to medium work, is not disabled unless she has no previous work
23 experience and less than a high school education. Id. at §§ 203.10-203.17. Neither
24 of those exceptions describe Plaintiff. See AR 314 (plaintiff graduated from high
25 school and attended two years of college); AR 59 (plaintiff previously worked as a
26 hospital insurance clerk). It appears that Plaintiff is arguing that she should have
27 been assessed with a more restrictive RFC based on her pain and symptom
28 testimony, which the ALJ improperly discredited. As discussed above, the Court

1 finds that the ALJ did not err in discrediting Plaintiff's testimony, and therefore
2 assigned a proper RFC of medium work. Therefore, the grids do not direct a
3 different result.

4 **B. The ALJ Properly Evaluated Dr. Smith's and Dr. Campbell's Opinions.**

5 **1. Applicable Law.**

6 Three types of physicians may offer opinions in Social Security cases:
7 (1) those who directly treated the plaintiff, (2) those who examined but did not treat
8 the plaintiff, and (3) those who did neither, but reviewed the plaintiff's medical
9 records. Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). A treating physician's
10 opinion is generally entitled to more weight than that of an examining physician,
11 and an examining physician's opinion is generally entitled to more weight than that
12 of a non-examining physician. Id. Thus, the ALJ must give specific and
13 legitimate reasons for rejecting a treating physician's opinion in favor of a non-
14 treating physician's contradictory opinion or an examining physician's opinion
15 in favor of a non-examining physician's opinion. Orn v. Astrue, 495 F.3d 625,
16 632 (9th Cir. 2007) (citing Reddick v. Chater, 157 F.3d 715, 725 (9th Cir.
17 1998)); Lester, 81 F.3d at 830-31 (citing Murray v. Heckler, 722 F.2d 499, 502
18 (9th Cir.1983)).

19 The weight given a physician's opinion depends on whether it is consistent
20 with the record and accompanied by adequate explanation, the nature and extent of
21 the treatment relationship, and the doctor's specialty, among other things. 20
22 C.F.R. § 416.927(c)(3)-(6). Medical opinions that are inadequately explained or
23 lack supporting clinical or laboratory findings are entitled to less weight. See
24 Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995) (holding that ALJ properly
25 rejected physician's determination where it was "conclusory and unsubstantiated by
26 relevant medical documentation"); Crane v. Shalala, 76 F.3d 251, 253 (9th Cir.
27 1996) (ALJ permissibly rejected "check-off reports that did not contain any
28 explanation of the bases of their conclusions").

1 In determining a claimant's RFC, the ALJ should consider those
2 limitations for which there is support in the record, but need not consider
3 properly rejected evidence. Bayliss v. Barnhart, 427 F.3d 1211, 1217 (9th Cir.
4 2005) ("Preparing a function-by-function analysis for medical conditions or
5 impairments that the ALJ found neither credible nor supported by the record is
6 unnecessary."); Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1197
7 (9th Cir. 2004) ("The ALJ was not required to incorporate evidence from the
8 opinions of Batson's treating physicians, which were permissibly discounted.").

9 The ALJ must "explain the weight given to the opinions" of the state agency
10 physicians and psychologists. 20 C.F.R. §§ 404.1547(e)(2)(ii); 416.927(e)(2)(ii).
11 State agency medical and psychological consultants are highly qualified experts,
12 and ALJs "must consider findings of State agency medical and psychological
13 consultants ... as opinion evidence." That treatment, consideration, and need for
14 explanation includes assessment of RFC. Social Security Ruling 96-6p.

15 **2. Summary of Drs. Smith and Campbell's Opinions.**

16 Drs. Smith and Campbell, non-examining state agency consultants, reviewed
17 Plaintiff's medical records and provided their psychiatric opinions concerning
18 Plaintiff's disability. AR 66-120.

19 On April 23, 2013, Dr. Smith reviewed Plaintiff's medical records and
20 provided his medical opinions regarding Plaintiff's functional mental impairments.
21 In assessing Plaintiff's medically determinable impairments, Dr. Smith opined that
22 Plaintiff has moderate difficulties in maintaining concentration, persistence, and
23 pace. AR 70. In his mental RFC assessment, Dr. Smith opined that Plaintiff is
24 moderately limited in her ability to (1) understand, remember, and carry out
25 detailed instructions and (2) maintain attention and concentration for extended
26 periods. AR 73-74. Dr. Smith clarified that Plaintiff's moderate limitations would
27 not interfere with her ability to understand and remember simple instructions,
28 perform simple tasks, and maintain a regular schedule. Id. Based on his mental RFC

1 assessment, Dr. Smith further opined that Plaintiff could not return to her past
2 relevant work as a billing clerk² because she was limited to unskilled work. AR 75.
3 He diagnosed Plaintiff with “organic mental disorders” and “mood disorders.” AR
4 70. Dr. Campbell reviewed the file on October 2, 2013, and affirmed Dr. Smith’s
5 opinion. AR 101.

6 **3. The ALJ’s Treatment of Drs. Smith and Campbell’s Opinions.**

7 The ALJ gave great weight to Douglas W. Larson, Ph.D., a state consulting
8 psychologist who examined Plaintiff on April 9, 2013. AR 29. At her consultative
9 examination, Plaintiff told Dr. Larson that she was not currently receiving mental
10 health services or taking antidepressant medications, but that she had taken Prozac
11 in the past with partial relief. AR 314. She reported that she could perform such
12 activities as dressing, bathing, performing chores, yard work, cooking, shopping,
13 running errands, going out with her family, and driving, though slower than before
14 due to health issues. AR 314. Dr. Larson described Plaintiff as pleasant and
15 cooperative, generally coherent and organized with normal speech rate and tone
16 with mildly depressed and anxious mood and affect, and fair insight and judgment.
17 AR 315. On testing, Dr. Larson found that her IQ results were moderately scattered
18 from borderline to low average due to depression and cognitive problems. AR 316.
19 He diagnosed her with a cognitive disorder and a mood disorder. AR 317.

20 Dr. Larson concluded that Plaintiff had no impairments with respect to her
21 ability to understand, remember, and complete simple commands, and was only
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23 ² The billing clerk position discussed by Dr. Smith has a specific vocational
24 preparation (“SVP”) level of 4, which he identified as semi-skilled. (See DOT
25 214.382-014, AR 75.) In contrast, the VE classified Plaintiff’s past relevant work as
26 a hospital insurance clerk (DOT 214.362-022). That position has a SVP of 5, which
27 is considered skilled. See AR 59. This distinction is irrelevant, as the ALJ found
28 that Plaintiff could perform the skilled position that the VE identified, which would
encompass similar semi-skilled work.

1 mildly limited in all other aspects of mental functions, including the ability to
2 understand, remember, and complete complex commands and maintain persistence
3 and pace in a normal workplace setting. AR 317. The ALJ gave Dr. Larson’s
4 opinion great weight “because he supported it with clinical findings,” and the
5 opinion was consistent with Plaintiff’s ability to perform extensive daily activities,
6 the absence of treatment by a mental health specialist, and the absence of references
7 in the treatment notes to mental health symptoms such as disturbed mood or
8 behavior limitations. AR 29.

9 The ALJ considered, but gave little weight to Drs. Smith and Campbell’s
10 opinions that Plaintiff is moderately (as opposed to mildly) limited in her ability to
11 carry out detailed instructions and maintain attention and concentration for
12 extended periods. The ALJ found that their opinion was “inconsistent with Dr.
13 Larson’s clinical findings, the absence of mental health treatment and lack of
14 regular psychiatric complaints, and [Plaintiff’s] description of her daily activities.”
15 AR 29.

16 **4. Analysis.**

17 First, Plaintiff argues that the opinions of Drs. Smith and Campbell are not
18 inconsistent with Dr. Larson’s clinical findings because they reviewed Dr. Larson’s
19 opinion prior to rendering their own, they had access to other medical evidence
20 when rendering their opinions, and that Dr. Larson’s exams revealed results in the
21 borderline to low range of cognitive functioning. JS at 16, citing AR 317.

22 The ALJ is “the final arbiter with respect to resolving ambiguities in the
23 medical evidence.” Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir. 2008). “If
24 the record would support more than one rational interpretation, [a reviewing court]
25 defer[s] to the ALJ’s decision.” Bayliss v. Barnhart, 427 F.3d 1211, 1214 n.1 (9th
26 Cir. 2005). See also Parra v. Astrue, 481 F.3d 742, 750 (9th Cir. 2007) (questions of
27 credibility and resolution of conflicts in the testimony are functions solely for the
28 agency).

1 The ALJ’s determination that Dr. Larson’s assessment of Plaintiff’s ability to
2 understand and remember complex commands (i.e., mildly impaired) is inconsistent
3 with Drs. Smith and Campbell’s assessment of Plaintiff’s ability to understand and
4 remember detailed instructions (i.e., moderately impaired) is a rational
5 interpretation of the medical evidence. The ALJ properly credited Dr. Larson’s
6 examining opinion over the opinions of both non-examining psychologists. See
7 Lester, 81 F.3d at 830.

8 Plaintiff’s argument that Drs. Smith and Campbell “had access to other
9 medical evidence when rendering their opinions” is also unavailing. The only
10 record suggesting functional mental impairment was Dr. Larson’s report, which
11 Drs. Smith and Campbell reviewed and gave “great weight.” AR 70-72, 110-113.
12 The ALJ reasonably determined that Drs. Smith and Campbell relied primarily on
13 Dr. Larson’s report to assess Plaintiff’s mental impairments.

14 Second, Plaintiff argues that her ability to engage in regular daily activities
15 “does not illustrate the ability to perform complex work on a sustained basis.” JS at
16 16. “Inconsistency between a physician’s opinion and a claimant’s daily activities
17 suffices as a specific and legitimate reason for discounting the physician’s opinion
18 if supported by substantial evidence from the record as a whole.” Lindquist v.
19 Colvin, 588 Fed. App’x 544, 546 (9th Cir. 2014) (citing Morgan v. Comm’r of Soc.
20 Sec. Admin., 169 F.3d 595, 600-02 (9th Cir. 1999)). The regular performance of
21 certain daily activities can demonstrate inconsistencies with a Plaintiff’s description
22 of her mental abilities as well as her physical abilities. Plaintiff’s reports that she is
23 able to drive (AR 47, 83, 314), provide child care to her grandchildren (AR 55), and
24 manage her personal finances (AR 315) evidence some ability to perform tasks
25 requiring more cognitive skills than “simple” tasks. The ALJ properly discounted
26 Drs. Smith and Campbell’s opinions as inconsistent with the range of daily
27 activities Plaintiff reported that she could perform.

28 Moreover, at step four in the sequential analysis, the claimant retains the

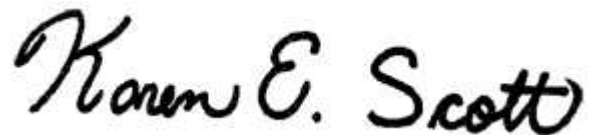
1 burden of proving he or she is unable to perform past relevant work. Drouin v.
2 Sullivan, 966 F.2d 1255, 1257 (9th Cir. 1992). Plaintiff ultimately failed to provide
3 the ALJ with any medical opinion that she cannot do skilled work, which is the skill
4 level typically required to work as a hospital insurance clerk per the Dictionary of
5 Occupational Titles (“DOT”) and the VE’s testimony. (DOT 214.362-022; AR 59
6 [VE testimony indicating that the position has a SVP level of 5, which is considered
7 skilled].) The ALJ did not err in crediting the medical opinions of Dr. Larson rather
8 than those of Drs. Smith and Campbell when determining that Plaintiff’s functional
9 mental impairments did not preclude skilled work.

10 **IV.**

11 **CONCLUSION**

12 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered
13 AFFIRMING the decision of the Commissioner denying benefits.

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15 DATED: February 23, 2017

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18 KAREN E. SCOTT
19 United States Magistrate Judge
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