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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LEANNA MAY BURGUM,
Plaintiff,

v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

Case No. CV 16-01510-RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff Leanna May Burgum (“Plaintiff”) challenges the Commissioner’s denial of her application for a period of disability and disability insurance benefits. For the reasons stated below, the decision of the Commissioner is **AFFIRMED**.

II. PROCEEDINGS BELOW

On December 14, 2013, Plaintiff applied for disability insurance benefits (DIB), alleging onset of disability on December 1, 2013. (Administrative Record (“AR”) 159). Her application was denied on initial review, and upon reconsideration, after which Plaintiff requested a hearing before an administrative law judge (“ALJ”). (*Id.* at 77, 86, 90.) On August 26, 2015, the ALJ held a hearing

1 at which Plaintiff, represented by counsel, testified. (*Id.* at 29-54.) An impartial
2 vocational expert also testified. (*Id.* at 36-38, 49-53.) On October 8, 2015, the ALJ
3 found that Plaintiff had not been under a disability, pursuant to the Social Security
4 Act,¹ from the alleged onset date through the decision date. (*Id.* at 23.) The ALJ’s
5 decision became the Commissioner’s final decision when the Appeals Council
6 denied Plaintiff’s request for review. (*Id.* at 1.) Plaintiff filed this action on July
7 11, 2016. (Dkt. No. 1.)

8 The ALJ followed a five-step sequential evaluation process to assess whether
9 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,
10 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged
11 in substantial gainful activity since December 1, 2013, the alleged onset date
12 (“AOD”). (AR 15.) At **step two**, the ALJ found that Plaintiff has the severe
13 impairments of arthritis in bilateral hands, degenerative joint disease in bilateral
14 knees status post joint replacement, chronic obstructive pulmonary disease, and
15 obesity. (*Id.*) At **step three**, the ALJ found that Plaintiff “does not have an
16 impairment or combination of impairments that meets or medically equals the
17 severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix
18 1.” (*Id.* at 17.)

19 Before proceeding to step four, the ALJ found that Plaintiff has the residual
20 functional capacity (“RFC”) to:

21 Perform a range of light work as defined in 20 CFR 404.1567(b).
22 Specifically, she can lift and/or carry 20 pounds occasionally and 10
23 pounds frequently; she can stand and/or walk for four hours of an
24 eight hour workday for 30 minutes at a time, then would need to rest
25 at a workstation before standing and walking again; she has no
limitations with sitting; pushing and/or pulling is unlimited other than

26 ¹ Persons are “disabled” for purposes of receiving Social Security benefits if they
27 are unable to engage in any substantial gainful activity owing to a physical or
28 mental impairment expected to result in death, or which has lasted or is expected to
last for a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

1 for lifting and carrying; she can do frequent handling and fingering
2 with her bilateral upper extremities; she should avoid concentrated
3 exposure to respiratory irritants; she can frequently bend and/or stoop;
4 she can occasionally climb ramps and/or stairs; she cannot climb
ladders, ropes, or scaffolds; and, she can occasionally crouch and/or
crawl.

5 (AR 17.)

6 At **step four**, based on Plaintiff's RFC and the VE's opinion, the ALJ found
7 that Plaintiff is capable of performing past relevant work as an office manager,
8 administrative assistant, and contract clerk. (AR 22-23.)

9 **III. STANDARD OF REVIEW**

10 Under 42 U.S.C. § 405(g), a district court may review the Commissioner's
11 decision to deny benefits. A court must affirm an ALJ's findings of fact if they are
12 supported by substantial evidence, and if the proper legal standards were applied.
13 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). "Substantial evidence"
14 means more than a mere scintilla, but less than a preponderance; it is such relevant
15 evidence as a reasonable person might accept as adequate to support a conclusion."
16 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*
17 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial
18 evidence requirement "by setting out a detailed and thorough summary of the facts
19 and conflicting clinical evidence, stating his interpretation thereof, and making
20 findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

21 "[T]he Commissioner's decision cannot be affirmed simply by isolating a
22 specific quantum of supporting evidence. Rather, a court must consider the record
23 as a whole, weighing both evidence that supports and evidence that detracts from
24 the Secretary's conclusion." *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir.
25 2001) (citations and internal quotations omitted). "Where evidence is susceptible
26 to more than one rational interpretation, the ALJ's decision should be upheld."
27 *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing *Burch v.*
28 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see also Robbins*, 466 F.3d at 882

1 (“If the evidence can support either affirming or reversing the ALJ’s conclusion, we
2 may not substitute our judgment for that of the ALJ.”). The Court may review only
3 “the reasons provided by the ALJ in the disability determination and may not affirm
4 the ALJ on a ground upon which he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630
5 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)).

6 **IV. DISCUSSION**

7 Plaintiff contends that the ALJ: (1) failed to properly consider the relevant
8 medical evidence of record in assessing Plaintiff’s RFC; and (2) failed to properly
9 consider Plaintiff’s subjective complaints and properly assess her credibility. (Joint
10 Stipulation (“Joint Stip.”) at 3.)

11 **A. The ALJ’s RFC Assessment is Supported by Substantial Evidence**

12 Plaintiff contends that the ALJ’s RFC is not supported by substantial
13 evidence because the ALJ failed to consider all relevant medical evidence of record,
14 including medical evidence which contradicts and is inconsistent with the ALJ’s
15 RFC assessment. Joint Stip. at 4. Specifically, Plaintiff cites to treatment records
16 from Dr. Ahluwalia, designated as Exhibit 15F in the administrative record (AR
17 364-402), which were scanned into the record prior to the administrative hearing,
18 but are not discussed in the ALJ’s decision. *Id.*

19 As described in the Joint Stipulation, Plaintiff submitted additional medical
20 records to the Appeals Council which were not before the ALJ. The Appeals
21 Council denied review of the ALJ’s decision. The Commissioner does not dispute
22 that the Court must consider Dr. Ahluwalia’s treatment notes in Exhibit 15F in
23 determining whether the ALJ’s decision is supported by substantial evidence. *See*
24 *Joint Stip. at 8; see also Brewes v. Comm’r of Social Sec. Admin.*, 682 F.3d 1157,
25 1162-63 (9th Cir. 2012) (where Appeals Council considers new evidence in
26 denying review of the ALJ’s decision, the new evidence becomes part of the
27 administrative record for purposes of the district court’s analysis in determining
28 whether the ALJ’s decision is supported by substantial evidence). Accordingly,

1 this Court considers the record as a whole, including the treatment records in
2 Exhibit 15F, in determining whether the ALJ's RFC assessment is supported by
3 substantial evidence. The Court concludes that it is.

4 **1. Applicable Legal Standards**

5 In making an RFC determination, the ALJ must consider all the relevant
6 evidence in the record, including medical records, lay evidence, and the effects of
7 symptoms, including pain, reasonably attributable to medically determinable
8 impairments. *See Robbins*, 466 F.3d at 883 (citing Soc. Sec. Ruling 96-8p (July 2,
9 1996), 1996 WL 374184, at *5). An ALJ's determination of a claimant's RFC
10 must be affirmed "if the ALJ applied the proper legal standard and his decision is
11 supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.2d 1211, 1217 (9th
12 Cir. 2005).

13 **2. Discussion**

14 In assessing Plaintiff's RFC, the ALJ properly took into account limitations
15 for which there was record support, specifically incorporating limitations based on
16 treatment history of Plaintiff's knees and hands. With respect to Plaintiff's knees,
17 the ALJ determined that Plaintiff can "stand and/or walk for four hours of an eight-
18 hour workday for 30 minutes at a time, then would need to rest at the workstation
19 before standing and walking again and occasional crouching and crawling." AR
20 19. These restrictions were based on medical records from a walk-in clinic that
21 treated Plaintiff (Exhibit 4F). With respect to Plaintiff's hands, including her
22 trigger finger, the ALJ similarly incorporated limitations based on treatment
23 history, including physical therapy, by assessing that Plaintiff was "limited [to]
24 light exertional work, frequent handling and fingering with her bilateral upper
25 extremities, and precluded from climbing ladders, ropes, or scaffolds." *Id.* at 20.
26 These limitations were also based on evidence in the record before the ALJ
27 (Exhibits 1F, 2F, 4F, 5F, 8F, 9F). Taking into account all of the record evidence,
28 the ALJ had substantial evidence to conclude that Plaintiff was capable of

1 performing light work as set forth in the RFC. *See Batson v. Comm’r of Soc. Sec.*
2 *Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004) (“[T]he Commissioner’s findings are
3 upheld if supported by inferences reasonably drawn from the record[.]”).²

4 Plaintiff contends that the additional evidence contained in Exhibit 15F does
5 not support the ALJ’s RFC assessment of light work and points to Dr. Ahluwalia’s
6 findings of osteoarthritis, Plaintiff’s reports of pain and inflammation in her hands
7 and knees, and x-rays of Plaintiff’s knees which revealed “moderate degenerative
8 medial joint space narrowing.” (AR 371-72, 374-75, 382, 390). However, the
9 Court’s review of Dr. Ahluwalia’s treatment records in Exhibit 15F finds that they
10 are generally consistent with other record evidence and provide no additional
11 information that undermines the legal sufficiency of the ALJ’s RFC assessment.
12 The treatment records in Exhibit 15F that pertain to the ALJ’s RFC assessment
13 reveal findings of mild osteoporosis (AR 367-70) and generalized osteoarthrosis
14 (AR 382). While certain treatment records indicate moderate degenerative findings
15 with respect to Plaintiff’s knees (AR 374-75) and “Heberden’s and Bouchard’s
16 nodes hands” (AR 382), this medical evidence does not significantly undermine or
17 contradict the otherwise consistent findings of mild osteoporosis that are found
18 throughout the medical record.³

19
20 ² Notably, at the administrative hearing, Plaintiff’s attorney characterized most of
21 the evidence regarding Plaintiff’s arthritis in her hands as “mild” and indicated that
22 the medical records, including x-rays, were consistent in making mild or minimal
23 findings from 2011 through 2014. AR 43-44 (“[m]ost [of the objective evidence] is
24 documented as mild”). This characterization of mild findings is consistent with the
25 Court’s own review of the medical records regarding Plaintiff’s hand impairments,
26 as well as knee impairments.

27 ³ In challenging the ALJ’s RFC assessment, Plaintiff also argues, in a conclusory
28 manner, that the ALJ committed error in finding Plaintiff’s right eye impairment,
hepatitis C, neuropathy, GURD, and irritable bowel syndrome to be non-severe
impairments. Joint Stip. at 6. The Court does not address these arguments because
Plaintiff has failed to argue these issues with any specificity in the Joint Stipulation.
See Carmickle v. Comm’r Soc. Sec. Admin., 533 F.3d 1155, 1161 n.2 (9th Cir.

1 **B. The ALJ Did Not Err In Evaluating Plaintiff’s Subjective**
2 **Complaints**

3 **1. Applicable Legal Standards**

4 “In assessing the credibility of a claimant’s testimony regarding subjective
5 pain or the intensity of symptoms, the ALJ engages in a two-step analysis.” *Molina*
6 *v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citing *Vasquez v. Astrue*, 572 F.3d
7 586, 591 (9th Cir. 2009)). “First, the ALJ must determine whether the claimant has
8 presented objective medical evidence of an underlying impairment which could
9 reasonably be expected to produce the pain or other symptoms alleged.” *Treichler*
10 *v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (quoting
11 *Lingenfelter*, 504 F.3d at 1036) (internal quotation marks omitted). If so, and if the
12 ALJ does not find evidence of malingering, the ALJ must provide specific, clear
13 and convincing reasons for rejecting a claimant’s testimony regarding the severity
14 of his symptoms. *Id.* The ALJ must identify what testimony was found not
15 credible and explain what evidence undermines that testimony. *Holohan*, 246 F.3d
16 at 1208. “General findings are insufficient.” *Lester*, 81 F.3d at 834.

17 **2. Discussion**

18 “After careful consideration of the evidence,” the ALJ found that Plaintiff’s
19 “medically determinable impairments could reasonably be expected to cause the
20 alleged symptoms,” but found that Plaintiff’s “statements concerning the intensity,
21 persistence and limiting effects of these symptoms are not entirely credible for the
22 reasons explained in this decision.” (AR 19.) In reaching this determination, the
23 ALJ relied on the following reasons: (1) lack of supporting objective evidence; and
24 (2) Plaintiff’s activities of daily living. (*Id.* at 18-19.)

25 First, the ALJ determined stated that “the medical record . . . casts doubt on
26 the credibility of [Plaintiff’s] allegations.” (AR 18.) The ALJ observed that

27 2008) (“We do not address this finding [by the ALJ] because [claimant] failed to
28 argue this issue with any specificity in his briefing.”).

1 “[a]lthough [Plaintiff] alleged severe and disabling pain, the medical record is
2 relatively sparse. [Plaintiff] has not sought the type of treatment one would expect
3 of a disabled individual. Given the allegations of such severe and disabling
4 impairments, one might expect to see a greater level of intervention and/or more
5 aggressive treatment options. On the contrary, what few medical records are
6 available indicate a rather mild and conservative course of treatment in the form of
7 medication, minimal physical therapy, and minimal finger surgery. This suggests
8 that [Plaintiff’s] symptoms may not be as severe as she alleged.” (*Id.*)

9 Next, the ALJ noted that Plaintiff “is able to perform her activities of daily
10 living with minimal difficulty. She reported she cares for her personal needs, cares
11 for her dogs, uses a computer for email and Facebook, prepares daily meals, dusts,
12 vacuums, cleans the bathroom, goes grocery shopping weekly, and attends outdoor
13 concerts in the summer.” (AR 18.) “Some of the physical and mental abilities and
14 social interactions required in order to perform these activities are the same as those
15 necessary for obtaining and maintaining employment. [Plaintiff’s] ability to
16 participate in such activities undermines her credibility regarding allegations of
17 disabling functional limitations.” (*Id.*)

18 The Court’s review of the evidence of record finds that the ALJ’s
19 observations regarding Plaintiff’s credibility are supported by clear and convincing
20 reasons. First, the ALJ’s determination that Plaintiff’s relatively sparse treatment
21 records suggested that Plaintiff’s symptoms were not as severe as alleged was a
22 sufficient reason for discounting Plaintiff’s credibility. *See Orteza v. Shalala*, 50
23 F.3d 748, 750 (9th Cir. 1995) (permissible for ALJ to consider “the unexplained
24 absence of treatment” in determining credibility); *see also Parra v. Astrue*, 481
25 F.3d 742, 750-51 (9th Cir. 2007) (evidence of conservative treatment is sufficient to
26 discount a claimant’s testimony regarding severity of an impairment); *see also*
27 *Meanel v. Apfel*, 172 F.3d 1111, 1114 (9th Cir. 1999) (rejecting plaintiff’s
28 complaint “that she experienced pain approaching the highest level imaginable” as

1 “inconsistent with the ‘minimal, conservative treatment’ that she received”).

2 Second, the ALJ’s characterization of Plaintiff’s daily activities was
3 supported by substantial evidence. *See Burch*, 400 F.3d at 681. Plaintiff’s own
4 function report, which stated that she could prepare meals with help, do
5 housekeeping (dusting, vacuuming, cleaning bathroom), go grocery shopping,
6 manage funds and pay bills, and use Facebook, conflicted with Plaintiff’s hearing
7 testimony. *Compare* AR 182-84 to AR 38-39, 46; *see Young v. Colvin*, 610 F.
8 App’x 615, 615-16 (9th Cir. 2015) (affirming denial of benefits where ALJ’s
9 characterization of claimant’s daily activities of attending to self-care, driving a car,
10 grocery shopping, organizing her household, using a computer, and managing her
11 finances was supported by substantial evidence). Plaintiff contends that “no
12 reasonable person could conclude that her activities of daily living” are in any way
13 “consistent with or supportive of the ability to perform her past relevant work....”
14 Joint Stip. at 14. Although the evidence of Plaintiff’s daily activities may be
15 interpreted differently, and more favorably to Plaintiff, the ALJ’s interpretation was
16 rational, and must be upheld “where the evidence is susceptible to more than one
17 rational interpretation.” *Burch*, 400 F.3d at 680-81 (citing *Magallanes v. Bowen*,
18 881 F.2d 747, 750 (9th Cir. 1989) (upholding ALJ’s determination that claimant’s
19 daily activities suggested claimant was “quite functional” as rational,
20 notwithstanding that evidence was susceptible to more than one rational
21 interpretation).

22 Accordingly, the Court concludes that the ALJ’s credibility finding is legally
23 valid and supported by substantial evidence.

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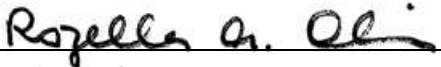
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V. CONCLUSION

IT IS ORDERED that Judgment shall be entered AFFIRMING the decision of the Commissioner denying benefits.

IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order and the Judgment on counsel for both parties.

DATED: August 31, 2017



ROZELLA A. OLIVER
UNITED STATES MAGISTRATE JUDGE

NOTICE

THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW, LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.