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

Case No. 5:16-CV-02317 (VEB)

DIANE F. WILLIAMS,

Plaintiff,

vs.

NANCY BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

DECISION AND ORDER

I. INTRODUCTION

In November of 2012, Plaintiff Diane Williams applied for Disability Insurance benefits and Supplemental Security Income benefits under the Social Security Act. The Commissioner of Social Security denied the applications.¹

¹ On January 23, 2017, Nancy Berryhill took office as Acting Social Security Commissioner. The Clerk of the Court is directed to substitute Acting Commissioner Berryhill as the named defendant in this matter pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure.

1 Plaintiff, by and through her attorney, Lawrence D. Rohlfing, Esq.
2 commenced this action seeking judicial review of the Commissioner’s denial of
3 benefits pursuant to 42 U.S.C. §§ 405 (g) and 1383 (c)(3).

4 The parties consented to the jurisdiction of a United States Magistrate Judge.
5 (Docket No. 12, 13, 24, 25). On August 18, 2017, this case was referred to the
6 undersigned pursuant to General Order 05-07. (Docket No. 22).

7 8 **II. BACKGROUND**

9 Plaintiff applied for benefits on November 26, 2012, alleging disability
10 beginning July 12, 2011. (T at 167-75).² The applications were denied initially and
11 on reconsideration. Plaintiff requested a hearing before an Administrative Law
12 Judge (“ALJ”).

13 On March 19, 2015, a hearing was held before ALJ Nancy Stewart. (T at 33).
14 Plaintiff appeared with an attorney and testified. (T at 37-51). The ALJ also
15 received testimony from Kristan Cicero, a vocational expert. (T at 51-53).

16 On May 22, 2015, the ALJ issued a written decision denying the applications
17 for benefits. (T at 16-32). The ALJ’s decision became the Commissioner’s final
18

19 ² Citations to (“T”) refer to the administrative record transcript at Docket No. 17.

1 decision on September 9, 2016, when the Appeals Council denied Plaintiff's request
2 for review. (T at 10-15).

3 On November 7, 2016, Plaintiff, acting by and through her counsel, filed this
4 action seeking judicial review of the Commissioner's denial of benefits. (Docket No.
5 1). The Commissioner interposed an Answer on April 4, 2017. (Docket No. 16).
6 The parties filed a Joint Stipulation on July 17, 2017. (Docket No. 22).

7 After reviewing the pleadings, Joint Stipulation, and administrative record,
8 this Court finds that the Commissioner's decision should be affirmed and this case
9 be dismissed.

11 III. DISCUSSION

12 A. Sequential Evaluation Process

13 The Social Security Act ("the Act") defines disability as the "inability to
14 engage in any substantial gainful activity by reason of any medically determinable
15 physical or mental impairment which can be expected to result in death or which has
16 lasted or can be expected to last for a continuous period of not less than twelve
17 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a
18 claimant shall be determined to be under a disability only if any impairments are of
19 such severity that he or she is not only unable to do previous work but cannot,

1 considering his or her age, education and work experiences, engage in any other
2 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),
3 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and
4 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

5 The Commissioner has established a five-step sequential evaluation process
6 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step
7 one determines if the person is engaged in substantial gainful activities. If so,
8 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the
9 decision maker proceeds to step two, which determines whether the claimant has a
10 medically severe impairment or combination of impairments. 20 C.F.R. §§
11 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

12 If the claimant does not have a severe impairment or combination of
13 impairments, the disability claim is denied. If the impairment is severe, the
14 evaluation proceeds to the third step, which compares the claimant's impairment(s)
15 with a number of listed impairments acknowledged by the Commissioner to be so
16 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),
17 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or
18 equals one of the listed impairments, the claimant is conclusively presumed to be
19 disabled. If the impairment is not one conclusively presumed to be disabling, the

1 evaluation proceeds to the fourth step, which determines whether the impairment
2 prevents the claimant from performing work which was performed in the past. If the
3 claimant is able to perform previous work, he or she is deemed not disabled. 20
4 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant’s residual
5 functional capacity (RFC) is considered. If the claimant cannot perform past relevant
6 work, the fifth and final step in the process determines whether he or she is able to
7 perform other work in the national economy in view of his or her residual functional
8 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
9 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

10 The initial burden of proof rests upon the claimant to establish a *prima facie*
11 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
12 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
13 is met once the claimant establishes that a mental or physical impairment prevents
14 the performance of previous work. The burden then shifts, at step five, to the
15 Commissioner to show that (1) plaintiff can perform other substantial gainful
16 activity and (2) a “significant number of jobs exist in the national economy” that the
17 claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

1 **B. Standard of Review**

2 Congress has provided a limited scope of judicial review of a Commissioner’s
3 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,
4 made through an ALJ, when the determination is not based on legal error and is
5 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir.
6 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).

7 “The [Commissioner’s] determination that a plaintiff is not disabled will be
8 upheld if the findings of fact are supported by substantial evidence.” *Delgado v.*
9 *Heckler*, 722 F.2d 570, 572 (9th Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial
10 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119
11 n 10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d
12 599, 601-02 (9th Cir. 1989). Substantial evidence “means such evidence as a
13 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*
14 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch inferences and
15 conclusions as the [Commissioner] may reasonably draw from the evidence” will
16 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir. 1965). On review,
17 the Court considers the record as a whole, not just the evidence supporting the
18 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir.
19 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

1 entitled to benefits. (T at 27). As noted above, the ALJ's decision became the
2 Commissioner's final decision when the Appeals Council denied Plaintiff's request
3 for review. (T at 10-15).

4 **D. Disputed Issue**

5 As set forth in the Joint Stipulation (Docket No. 22, at p. 5), Plaintiff offers a
6 single argument in support of her claim that the Commissioner's decision should be
7 reversed - she challenges the ALJ's credibility determination.

8
9 **IV. ANALYSIS**

10 A claimant's subjective complaints concerning his or her limitations are an
11 important part of a disability claim. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d
12 1190, 1195 (9th Cir. 2004)(citation omitted). The ALJ's findings with regard to the
13 claimant's credibility must be supported by specific cogent reasons. *Rashad v.*
14 *Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative evidence of
15 malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear
16 and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General
17 findings are insufficient: rather the ALJ must identify what testimony is not credible
18 and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834;
19 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

1 However, subjective symptomatology by itself cannot be the basis for a
2 finding of disability. A claimant must present medical evidence or findings that the
3 existence of an underlying condition could reasonably be expected to produce the
4 symptomatology alleged. See 42 U.S.C. §§423(d)(5)(A), 1382c (a)(3)(A); 20 C.F.R.
5 § 404.1529(b), 416.929; SSR 96-7p.

6 In this case, Plaintiff stated as follows: She has weakness in her legs and feet
7 and knee pain bilaterally. (T at 39). Degenerative arthritis in her hips and lower
8 back is limiting and painful. (T at 39). She has vision problems, uses a back brace,
9 and uses a cane. (T at 38-39). She lives with her boyfriend, who assists with
10 household chores. (T at 48, 246). Her activities are limited by pain. (T at 237, 246).
11 Vision problems and grasping difficulties prevent her from sewing and doing crafts.
12 (T at 47). Lifting is difficult. (T at 246). Using a computer is challenging because
13 of problems with her vision and hands. (T at 46). Medication side effects impact her
14 ability to concentrate. (T at 240).

15 The ALJ concluded that Plaintiff's medically determinable impairments could
16 reasonably be expected to cause the alleged symptoms, but that her statements
17 regarding the intensity, persistence, and limiting effects of the symptoms were not
18 fully credible. (T at 23).

1 For the reasons that follow, this Court finds the ALJ’s decision consistent with
2 applicable law and supported by substantial evidence.

3 No treating or examining physician assessed disabling limitations or opined
4 that Plaintiff was disabled. Both consultative examiners (Dr. Albert Savage and Dr.
5 Bahaa Girgis) concluded that Plaintiff had no limitation with regard to gross or fine
6 motor skills and found her RFC *less* restricted than the ALJ’s assessment (*i.e.*, the
7 ALJ gave some credence to Plaintiff’s subjective complaints and found her to be
8 more limited than the consultative examiners did). (T at 402-08, 417-27). *See*
9 *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (holding that examining
10 physician’s “opinion alone constitutes substantial evidence, because it rests on his
11 own independent examination of [claimant]”).

12 Likewise, the State Agency review consultants concluded that Plaintiff was
13 capable of work at the medium exertion level, which is less restrictive than the
14 ALJ’s findings. (T at 26). *See* 20 CFR § 404.1527 (f)(2)(i) (“State agency medical
15 and psychological consultants and other program physicians, psychologists, and
16 other medical specialists are highly qualified physicians, psychologists, and other
17 medical specialists who are also experts in Social Security disability evaluation.”).

18 The ALJ also reasonably concluded that the medical record did not support
19 the degree of disability alleged by Plaintiff. (T at 25). Examination notes reported

1 no evidence of diabetic retinopathy, neuropathy, or radiculopathy. (T at 404-06, 420-
2 21). Plaintiff's treating physicians reported full muscle strength, normal gait, and
3 mild tenderness in her back. (T at 368, 374, 376). Diagnostic tests, including MRI
4 results, revealed only mild findings. (T at 350-52, 361-62, 387-88, 449-50, 455,
5 457).

6 Although lack of supporting medical evidence cannot form the sole basis for
7 discounting pain testimony, it is a factor the ALJ may consider when analyzing
8 credibility. *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). In other words, an
9 ALJ may properly discount subjective complaints where, as here, they are
10 contradicted by medical records. *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d
11 1155, 1161 (9th Cir. 2008); *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir.
12 2002).

13 The ALJ also noted that some of Plaintiff's more severe complaints were not
14 contemporaneously documented in the record to the degree one would expect if the
15 severity of the symptoms were as she alleged. For example, while Plaintiff claimed
16 limitations arising from hand and wrist symptoms, the treatment records do not
17 document significant clinical findings as to the range of motion in her upper
18 extremities or sustained complaints of severe issues regarding these areas. (T at 275,
19

1 297, 399, 405, 420). Plaintiff also claimed vision problems, but vision tests were
2 normal (T at 404, 425) and Plaintiff apparently sought no vision treatment.

3 When assessing a claimant's credibility, the ALJ may employ "ordinary
4 techniques of credibility evaluation." *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217,
5 1224 n.3 (9th Cir. 2010)(quoting *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir.
6 1996)). Moreover "[e]vidence of 'conservative treatment' is sufficient to discount a
7 claimant's testimony regarding the severity of an impairment." *Parra v. Astrue*, 481
8 F.3d 742, 751 (9th Cir. 2007).

9 Plaintiff challenges the ALJ's credibility determination and offers an
10 alternative reading of the evidence that highlights the aspects of the record that tend
11 to support her claims. However, where, as here, substantial evidence supports the
12 ALJ's credibility determination, this Court may not overrule the Commissioner's
13 interpretation even if "the evidence is susceptible to more than one rational
14 interpretation." *Magallanes*, 881 F.2d 747, 750 (9th Cir. 1989); *see also Morgan v.*
15 *Commissioner*, 169 F.3d 595, 599 (9th Cir. 1999)("[Q]uestions of credibility and
16 resolutions of conflicts in the testimony are functions solely of the
17 [Commissioner]."); *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008)("If
18 the ALJ's credibility finding is supported by substantial evidence, the court may not
19 engage in second-guessing.").

1 the assessments of the treating and examining medical providers and medical
2 experts, and afforded the subjective claims of symptoms and limitations an
3 appropriate weight when rendering a decision that Plaintiff is not disabled. This
4 Court finds no reversible error and because substantial evidence supports the
5 Commissioner's decision, the Commissioner is GRANTED summary judgment and
6 that Plaintiff's motion for judgment summary judgment is DENIED.

7
8 **VI. ORDERS**

9 IT IS THEREFORE ORDERED that:

10 Judgment be entered AFFIRMING the Commissioner's decision and
11 DISMISSING this action, and it is further ORDERED that

12 The Clerk of the Court file this Decision and Order, serve copies upon counsel
13 for the parties, and CLOSE this case.

14 DATED this 10th day of April 2018,

15
16 /s/Victor E. Bianchini
17 VICTOR E. BIANCHINI
18 UNITED STATES MAGISTRATE JUDGE
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