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

RUBY GARCIA,

Plaintiff,

v.

NANCY A. BERRYHILL, Deputy
Commissioner of Operations of Social
Security,

Defendant.

Case No. ED CV 17-01573-RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff Ruby Garcia (“Plaintiff”) challenges the Commissioner’s denial of her application for a period of disability, disability insurance benefits (“DIB”), and supplemental security income (“SSI”). For the reasons stated below, the decision of the Commissioner is AFFIRMED.

II. PROCEEDINGS BELOW

On July 26, 2013, Plaintiff filed a Title II application for a period of disability and DIB alleging disability beginning February 7, 2012. (Administrative Record (“AR”) 56, 80.) On August 1, 2013, Plaintiff also filed an application for SSI. (AR 68, 81.) Her applications were denied initially on February 5, 2014, and

1 upon reconsideration on April 24, 2014. (AR 120, 123, 130.) On June 3, 2014,
2 Plaintiff filed a written request for hearing, and a hearing was held on March 2,
3 2016. (AR 34, 137.) Represented by counsel, Plaintiff appeared and testified,
4 along with an impartial vocational expert. (AR 36-55.) On April 1, 2016, the
5 Administrative Law Judge (“ALJ”) found that Plaintiff had not been under a
6 disability, pursuant to the Social Security Act,¹ since February 7, 2012. (AR 28.)
7 The ALJ’s decision became the Commissioner’s final decision when the Appeals
8 Council denied Plaintiff’s request for review. (AR 1.) Plaintiff filed this action on
9 August 4, 2017. (Dkt. No. 1.)

10 The ALJ followed a five-step sequential evaluation process to assess whether
11 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,
12 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged
13 in substantial gainful activity since February 7, 2012, the alleged onset date
14 (“AOD”). (AR 18.) At **step two**, the ALJ found that Plaintiff had the following
15 severe combination of impairments: mild degenerative disc disease of the lumbar
16 spine; mild degenerative joint disease of the left knee; and posttraumatic stress
17 disorder. (*Id.*) At **step three**, the ALJ found that Plaintiff “does not have an
18 impairment or combination of impairments that meets or medically equals the
19 severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix
20 1.” (AR 19.)

21 Before proceeding to step four, the ALJ found that Plaintiff had the residual
22 functional capacity (“RFC”) to:

23 [P]erform medium work Specifically, she can lift and/or carry 50
24 pounds occasionally and 25 pounds frequently; no limitations on
25 sitting, standing or walking; no limitations on pushing or pulling,
climbing, balancing, kneeling, crouching or crawling; she is able to do

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 non-public simple repetitive tasks with only non-intense interaction
2 with coworkers.

3 (AR 20.) At **step four**, the ALJ found that Plaintiff is unable to perform any past
4 relevant work. (AR 26.) At **step five**, based on Plaintiff's RFC and the vocational
5 expert's testimony, the ALJ found that "there are jobs that exist in significant
6 numbers in the national economy that the claimant can perform." (AR 27.)
7 Accordingly, the ALJ determined that Plaintiff has not been under a disability from
8 the AOD through the date of decision. (AR 28.)

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 quotation marks omitted). "'Where evidence is
26 susceptible to more than one rational interpretation,' the ALJ's decision should be
27 upheld." *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing
28 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); see *Robbins*, 466 F.3d at

1 882 (“If the evidence can support either affirming or reversing the ALJ’s
2 conclusion, we may not substitute our judgment for that of the ALJ.”). The Court
3 may review only “the reasons provided by the ALJ in the disability determination
4 and may not affirm the ALJ on a ground upon which he did not rely.” *Orn v.*
5 *Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d
6 871, 874 (9th Cir. 2003)).

7 **IV. DISCUSSION**

8 Plaintiff raises a single issue for review: whether the ALJ properly
9 considered the opinion of Plaintiff’s examining psychiatrist when evaluating
10 Plaintiff’s ability to engage in the mental requirements of work. (*See* Joint
11 Submission (“JS”) 4, 7.) Plaintiff argues that substantial evidence does not support
12 the ALJ’s reasons for rejecting the opinion. (*See* JS 7, 9.) The Commissioner
13 argues that the ALJ properly evaluated the examining psychiatrist’s opinion. (*See*
14 JS 8-9) For the reasons below, the Court affirms.

15 **A. Applicable Legal Standards**

16 Courts give varying degrees of deference to medical opinions based on the
17 provider: (1) treating physicians who examine and treat; (2) examining physicians
18 who examine, but do not treat; and (3) non-examining physicians who do not
19 examine or treat. *Valentine v. Comm’r, Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th
20 Cir. 2009). Most often, the opinion of a treating physician is given greater weight
21 than the opinion of a non-treating physician, and the opinion of an examining
22 physician is given greater weight than the opinion of a non-examining physician.
23 *See Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014).

24 The ALJ must provide “clear and convincing” reasons to reject the ultimate
25 conclusions of a treating or examining physician. *Embrey v. Bowen*, 849 F.2d 418,
26 422 (9th Cir. 1988); *Lester*, 81 F.3d at 830-31. When a treating or examining
27 physician’s opinion is contradicted by another opinion, the ALJ may reject it only
28 by providing specific and legitimate reasons supported by substantial evidence in

1 the record. *Orn*, 495 F.3d at 633; *Lester*, 81 F.3d at 830; *Carmickle v. Comm’r,*
2 *Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008). “An ALJ can satisfy the
3 ‘substantial evidence’ requirement by ‘setting out a detailed and thorough summary
4 of the facts and conflicting evidence, stating his interpretation thereof, and making
5 findings.’” *Garrison*, 759 F.3d at 1012 (citation omitted).

6 **B. Discussion**

7 In addition to the opinion provided by consultative examining psychiatrist
8 Earbin Stanciell, M.D., the ALJ considered and assigned “significant weight” to the
9 opinions of a medical examiner and the two state agency medical consultants who
10 reviewed Plaintiff’s applications. (AR 26.) Because these opinions conflict with
11 Dr. Stanciell’s opinion, the ALJ must provide specific and legitimate reasons
12 supported by substantial evidence in order to reject the examining psychiatrist’s
13 opinion. *See Orn*, 495 F.3d at 633.

14 1. Opinion of Earbin Stanciell, M.D.

15 Dr. Stanciell performed a complete psychiatric evaluation of Plaintiff in
16 January 2014. (AR 362-66.) Plaintiff reported fear, paranoia, and an inability to go
17 out alone at night. (AR 362.) Plaintiff also reported that she had previously
18 received psychiatric treatment, but she was not taking any medications at that time.
19 (AR 363.) Upon examination, Plaintiff’s mood was tearful and anxious, her affect
20 was appropriate and congruent with mood, and her thought process included
21 paranoia focused on someone hurting her and hypervigilance. (AR 364.) The
22 mental status examination’s remaining findings were unremarkable. (*See* AR 24,
23 364.)

24 Dr. Stanciell diagnosed Plaintiff with posttraumatic stress disorder and
25 opined that Plaintiff would have moderate difficulties in maintaining social
26 functioning, moderate difficulties in her ability to perform work on a consistent
27 basis without special or additional supervision, moderate limitations in accepting
28 instructions from supervisors and interacting with coworkers and the public, and

1 moderate difficulties in her ability to handle the usual stresses, changes, and
2 demands of employment. (AR 365.) Dr. Stanciell stated that if Plaintiff were to
3 receive treatment, her limitations and abilities “would significantly improve.” (*Id.*)

4 2. Discussion

5 The ALJ gave “less weight” to Dr. Stanciell’s opinion, finding that the
6 assessment “is overly restrictive given the minimal findings on the mental status
7 examinations.” (AR 26.) Because Dr. Stanciell’s opinion regarding functional
8 limitations was not consistent with his own observations upon examination, the
9 ALJ properly rejected it. *See Valentine*, 574 F.3d at 692-93 (finding that an ALJ’s
10 rejection of a treating psychologist’s opinion because it was contradicted by the
11 doctor’s own treatment reports was a specific and legitimate reason supported by
12 substantial evidence).

13 The ALJ also observed that Plaintiff was not receiving psychiatric treatment
14 at the time of her examination, but Dr. Stanciell noted that Plaintiff’s mental
15 condition would “significantly” improve with treatment. (AR 26.) Plaintiff asserts
16 that after she received treatment, she did not improve. (JS 7.) Therefore, Plaintiff
17 argues that substantial evidence does not support the ALJ’s reliance on Dr.
18 Stanciell’s prediction of improvement with treatment. (*See JS 7, 9.*)

19 The ALJ observed that Plaintiff sought to reestablish psychiatric care in April
20 2014, and she complained of feeling anxious with fearful thoughts. (AR 24; *see*
21 AR 438.) The ALJ characterized Plaintiff’s initial mental status examination as
22 “unremarkable,” and Plaintiff received a diagnosis of bipolar I disorder, most recent
23 episode, poor control. (AR 24; *see* AR 439.) In June 2014, Plaintiff reported a
24 stable mood, decreased irritability, and anxious mood, but her examination was
25 otherwise unremarkable. (AR 24; *see* AR 432-33.) In July 2014, Plaintiff’s mood
26 swings were stabilizing. (AR 24; *see* AR 435.) Plaintiff was assessed as having
27 bipolar I disorder, most recent or current episode mixed, in partial or unspecified
28 remission, improved. (AR 24; *see* AR 436.) In September 2014, Plaintiff

1 continued to see a therapist, and she was encouraged to pursue low-stress jobs.
2 (AR 24; *see* AR 427.) In October 2014, Plaintiff stated that her anxiety was worse.
3 (AR 24; *see* AR 425.) By January 2015, Plaintiff was doing “much better” with
4 more tolerance and fewer mood swings. (AR 24; *see* AR 423.) In July 2015,
5 Plaintiff reported feeling depressed since her father’s recent death, and examination
6 findings included a depressed and anxious mood, hallucinations, and delusions.
7 (AR 24; *see* AR 419, 421.) Plaintiff was diagnosed with bipolar disorder and
8 posttraumatic stress disorder. (AR 24; *see* AR 421.) The ALJ observed that
9 subsequent treatment notes documented conservative treatment consisting of
10 medication management. (AR 24; *see* AR 1077-81 (treatment received in August
11 2015 through January 2016).)

12 Plaintiff contends that the ALJ did not address Plaintiff’s April 2014
13 diagnosis of bipolar disorder under poor control and her July 2015 diagnosis of
14 bipolar disorder and posttraumatic stress disorder. (JS 6-7.) But as summarized
15 above, the ALJ did expressly address these diagnoses. (*See* AR 24.) Moreover, the
16 ALJ found that Plaintiff’s posttraumatic stress disorder contributed to her severe
17 combination of impairments. (AR 18.)

18 Plaintiff also faults the ALJ for ignoring her severe sleep disturbance and
19 moderate symptoms in 13 of 28 symptom categories in July 2015. (JS 7; *see* AR
20 419.) As the Commissioner observes (JS 8-9), these notes reflect only Plaintiff’s
21 discredited subjective allegations,² not objective test results or observations by a
22 medical professional, and thus they need not be considered. *See Tommasetti v.*
23 *Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (an opinion that is based on a
24 claimant’s discredited subjective complaints may be rejected); *see also Khanishian*

25 ² Plaintiff does not challenge the ALJ’s adverse credibility finding, and thus that
26 issue is not before this Court. *See Guith v. Berryhill*, No. 1:16-CV-00625 GSA,
27 2017 WL 4038105, at *8 (E.D. Cal. Sept. 13, 2017) (“Plaintiff has not contested the
28 ALJ’s credibility determination and therefore, he has waived that argument.”)
(citing *Carmickle*, 533 F.3d at 1161 n.2).

1 v. *Astrue*, 238 F. App'x 250, 253 (9th Cir. 2007) (“[S]ince the treating physicians’
2 diagnoses of symptoms were based on the claimant’s subjective complaints that
3 were found not credible, and not on objective medical evidence, it was appropriate
4 to discount the treating physicians’ opinions.”).

5 Although Plaintiff contends that she “continued to be symptomatic with
6 significant disruption in function” with ongoing symptoms (JS 7), the ALJ’s
7 interpretation of the evidence is a rational one, and therefore it must be upheld. *See*
8 *Ryan*, 528 F.3d at 1198; *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190,
9 1193 (9th Cir. 2004) (“[T]he Commissioner’s findings are upheld if supported by
10 inferences reasonably drawn from the record, and if evidence exists to support more
11 than one rational interpretation, we must defer to the Commissioner’s decision.”
12 (citations omitted)).

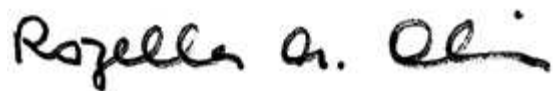
13 In sum, the Court finds that the ALJ’s reasons for discounting the opinion of
14 Dr. Stanciell are supported by substantial evidence.

15 **V. CONCLUSION**

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

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

20
21 DATED: September 12, 2018



22 _____
23 ROZELLA A. OLIVER
24 UNITED STATES MAGISTRATE JUDGE

25 **NOTICE**

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