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

ANNETTE M. M.,¹

Plaintiff,

v.

ANDREW SAUL,
Commissioner of Social Security,

Defendant.

Case No. 5:20-cv-00360-AFM

**MEMORANDUM OPINION AND
ORDER AFFIRMING DECISION
OF THE COMMISSIONER**

Plaintiff filed this action seeking review of the Commissioner's final decision denying her applications for disability insurance benefits. In accordance with the Court's case management order, the parties have filed briefs addressing the merits of the disputed issues. The matter is now ready for decision.

BACKGROUND

On November 30, 2016, Plaintiff applied for disability insurance benefits, alleging disability beginning November 5, 2015. Plaintiff's application was denied initially and upon reconsideration. (Administrative Record ["AR"] 95-100, 101-106.)

¹ Plaintiff's name has been partially redacted in accordance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 A hearing took place on March 28, 2019 before an Administrative Law Judge
2 (“ALJ”). Plaintiff, who was represented by counsel, and a vocational expert (“VE”)
3 testified at the hearing. (AR 37-65.)

4 In a decision dated April 11, 2019, the ALJ found that Plaintiff suffered from
5 the following severe impairments: “degenerative joint disease of the bilateral hips,
6 status post total replacement; bilateral carpal tunnel syndrome, status post carpal
7 tunnel release; and degenerative joint disease of the bilateral knees, right shoulder,
8 and right hand.” (AR 20.) After finding that Plaintiff’s impairments did not meet or
9 equal any listed impairment (AR 21), the ALJ assessed Plaintiff with the residual
10 functional capacity (“RFC”) to perform a limited range of light work as follows:
11 lifting, pushing, and pulling is limited to 10 pounds frequently and occasionally;
12 occasional overhead reaching with the dominant right upper extremity; frequent
13 handling and fingering with the dominant right upper extremity; occasional climbing
14 ramps and stairs; never climbing ladders, ropes, or scaffolds, kneeling, or crawling;
15 frequent balancing, stooping, and crouching; and no exposure to hazards such as
16 machinery or unprotected heights. (AR 22.) Relying on the testimony of the VE, the
17 ALJ concluded that Plaintiff was unable to perform her past relevant work, but was
18 able to perform other work existing in significant numbers in the national economy.
19 (AR 29-31.) Accordingly, the ALJ found Plaintiff not disabled. (AR 31.)

20 The Appeals Council subsequently denied Plaintiff’s request for review (AR
21 1-5), rendering the ALJ’s decision the final decision of the Commissioner.

22 **DISPUTED ISSUE**

23 Whether the ALJ erred in her assessment of Plaintiff’s subjective complaints.

24 **STANDARD OF REVIEW**

25 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to
26 determine whether the Commissioner’s findings are supported by substantial
27 evidence and whether the proper legal standards were applied. *See Treichler v.*
28 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014). Substantial

1 evidence means “more than a mere scintilla” but less than a preponderance. *See*
2 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Lingenfelter v. Astrue*, 504 F.3d
3 1028, 1035 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a
4 reasonable mind might accept as adequate to support a conclusion.” *Richardson*, 402
5 U.S. at 401. In the social security context, the threshold for substantial evidence is
6 “not high.” *Biestek v. Berryhill*, 139 S. Ct. 1149, 1154 (2019). This Court must
7 review the record as a whole, weighing both the evidence that supports and the
8 evidence that detracts from the Commissioner’s conclusion. *Lingenfelter*, 504 F.3d
9 at 1035. Where evidence is susceptible of more than one rational interpretation, the
10 Commissioner’s decision must be upheld. *See Orn v. Astrue*, 495 F.3d 625, 630 (9th
11 Cir. 2007).

12 DISCUSSION

13 Where, as here, a claimant has presented evidence of an underlying impairment
14 that could reasonably be expected to produce pain or other symptoms, the ALJ must
15 “evaluate the intensity and persistence of [the] individual’s symptoms ... and
16 determine the extent to which [those] symptoms limit his ... ability to perform work-
17 related activities” SSR 16–3p, 2016 WL 1119029, at *4. Absent a finding that the
18 claimant is malingering, an ALJ must provide specific, clear and convincing reasons
19 before rejecting a claimant’s testimony about the severity of her symptoms. *Trevizo*
20 *v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017) (citing *Garrison v. Colvin*, 759 F.3d
21 995, 1014-1015 (9th Cir. 2014)). “General findings [regarding a claimant’s
22 credibility] are insufficient; rather, the ALJ must identify what testimony is not
23 credible and what evidence undermines the claimant’s complaints.” *Burrell v. Colvin*,
24 775 F.3d 1133, 1138 (9th Cir. 2014) (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th
25 Cir. 1995)). The ALJ’s findings “must be sufficiently specific to allow a reviewing
26 court to conclude the adjudicator rejected the claimant’s testimony on permissible
27 grounds and did not arbitrarily discredit a claimant’s testimony regarding pain.”
28

1 *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015) (quoting *Bunnell v.*
2 *Sullivan*, 947 F.2d 341, 345-346 (9th Cir. 1991) (en banc)).

3 Factors an ALJ may consider in evaluating the claimant’s subjective symptoms
4 include conflicts between the claimant’s testimony and the claimant’s conduct – such
5 as daily activities, work record, or an unexplained failure to pursue or follow
6 treatment – as well as ordinary techniques of credibility evaluation, such as internal
7 contradictions in the claimant’s statements and testimony. *See Ghanim v. Colvin*, 763
8 F.3d 1154, 1163 (9th Cir. 2014). In addition, an ALJ may not disregard a claimant’s
9 testimony solely because it is not substantiated by objective medical evidence,
10 although the lack of medical evidence is a factor that the ALJ can consider in making
11 a credibility assessment. *Burch v. Barnhart*, 400 F.3d 676, 680-681 (9th Cir. 2005).

12 In discounting Plaintiff’s allegations and testimony concerning her symptoms,
13 the ALJ here found that Plaintiff’s “statements concerning the intensity, persistence
14 and limiting effects of these symptoms are not entirely consistent with the medical
15 evidence and other evidence in the record for the reasons explained in this decision.”
16 (AR 26.) The Ninth Circuit has observed that a version of this boilerplate statement
17 is routinely included in an ALJ’s decision “as an introduction to the ALJ’s credibility
18 determination” after which the ALJ “typically identify what parts of the claimant’s
19 testimony were not credible and why.” *Treichler*, 775 F.3d at 1103.

20 The ALJ provided two additional reasons for the credibility determination:
21 (1) the claimant’s subjective statements “are inconsistent with the objective medical
22 evidence” (AR 26), and (2) “claimant’s daily activities are inconsistent with the
23 claimant’s statements about the intensity and persistence of symptoms” (AR 27).

24 An ALJ may not rely solely on lack of objective evidence to support a
25 credibility determination. *See Burch*, 400 F.3d at 681; *Rollins v. Massanari*, 261 F.3d
26 853, 856 (9th Cir. 2001). However, it is also true that a contradiction between a
27 claimant’s subjective complaints and specific medical evidence may constitute a
28 distinct basis for discounting the claimant’s subjective symptom allegations. *See Sills*

1 v. *Astrue*, 2013 WL 782076, at *3 (C.D. Cal. Mar. 1, 2013) (“there is an analytical
2 difference between a lack of corroborating medical evidence and a contradiction
3 between subjective claims and existing medical evidence”) (citing *Morgan v.*
4 *Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 599-600 (9th Cir. 1999). Accordingly,
5 an ALJ may properly rely upon a contradiction between a claimant’s allegations and
6 the medical evidence in reaching a credibility determination. *See Carmickle v.*
7 *Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) (“Contradiction with
8 the medical record is a sufficient basis for rejecting the claimant’s subjective
9 testimony.”); *Garcia v. Comm’r of Soc. Sec. Admin.*, 498 F. App’x 710, 711 (9th Cir.
10 2012) (claimant’s testimony properly discounted based on contradiction between that
11 testimony and his doctor).

12 Here, the ALJ’s decision does not clearly describe a contradiction with the
13 medical evidence – as opposed to a lack of support in the objective medical record.
14 Notably, although the ALJ used the word “inconsistent,” the decision did not cite
15 medical evidence that affirmatively contradicted Petitioner’s subjective complaints.
16 *Cf. Morgan*, 169 F.3d at 599-600 (finding ALJ provided clear and convincing reasons
17 for rejecting claimant’s testimony where ALJ noted that, “contrary to Morgan’s
18 claims of lack of improvement, Dr. Reaves reported that Morgan’s mental symptoms
19 improved with the use of medication”). Instead, the ALJ’s discussion focuses on the
20 lack of objective evidence and points to “mild” and “unremarkable” findings from
21 examinations and imaging. (AR 26-27.) Thus, notwithstanding the Commissioner’s
22 arguments, the Court concludes that the first reason for the ALJ’s adverse credibility
23 finding is based upon the lack of supporting objective evidence – which by itself is
24 legally insufficient.

25 The ALJ also gave a second reason, i.e., that Plaintiff’s daily activities are
26 inconsistent with her subjective complaints. Specifically, the decision states, “the
27 claimant alleged requiring assistance from her husband and her adult [child] for daily
28 functioning . . . However, at one point or another in the record, either in forms

1 completed in connections with the application and an appeal, in medical reports or
2 records, or in claimant's testimony, the claimant has described activities of daily
3 living, which are not limited to the extent one would expect, which are not limited to
4 the extent one would expect, given the complaints of disabling systems and
5 limitations." (AR 27.) The ALJ then noted that Plaintiff reported she can dress and
6 bathe herself, do household chores, run errands, shop, cook, go places by herself, take
7 of four foster children and do activities around the house. (*Id.*) The ALJ found these
8 activities to be inconsistent with the alleged timing and persistence of Plaintiff's pain
9 symptoms, limitations and loss of functionality. (*Id.*)

10 Plaintiff argues that the ALJ's decision does not fairly and accurately describe
11 what Plaintiff herself has said she can do. Plaintiff states that her testimony and
12 statements in reports show that she cannot do these activities on a regular and reliable
13 basis and that she frequently requires the assistance of her husband and her adult
14 daughter. In addition, Plaintiff argues that her daily activities do not equate to the
15 ability to do full-time employment. As a result, Plaintiff argues that her daily
16 activities are not inconsistent with her statements about her symptoms and functional
17 limitations.

18 The Court concludes that Plaintiff's arguments regarding daily activities are
19 not well taken. The case law holds that daily activities are relevant when evaluating
20 subjective symptom allegations, even when those activities do not indicate an ability
21 to do work in a job. *See Molina v. Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012) (a
22 claimant's activities may undercut a claimant's subjective symptom testimony when
23 inconsistent with "claims of a totally debilitating impairment"); *Turner v. Comm'r of*
24 *Soc. Sec.*, 613 F.3d 1217, 1225 (9th Cir. 2010); *Valentine v. Comm'r Soc. Sec.*
25 *Admin.*, 574 F.3d 685, 693 (9th Cir. 2009). Therefore, although a claimant's
26 performance of household duties may not directly correspond to specific work tasks,
27 they may still provide a basis for discounting subjective symptoms if the daily
28 activities reveal more functionality than alleged. *See Valentine*, 574 F.3d at 693.

1 In the present case, the ALJ summarized Plaintiff’s testimony regarding her
2 subjective symptoms, including that Plaintiff “alleged she is unable to work due to
3 pain all over her body at all her joints She further alleged having difficulty
4 sitting, standing, and walking for longer than 15 to 30 minutes at a time before having
5 to rest due to pain symptoms.” (AR 26.) The ALJ then contrasted the alleged
6 debilitating pain with Plaintiff’s admitted ability to perform a number of daily
7 activities, namely dress, bathe, do household chores, run errands, shop, cook, drive a
8 car, take care of four foster children, and generally do activities around the house.
9 (AR 27, citing AR 439, 771, 1182.) Based on this evidence, the ALJ found that
10 Plaintiff’s “daily activities are inconsistent with [Plaintiff’s] statements about the
11 alleged intensity and persistence of her purported pain symptoms, limitations, and
12 loss of functioning.” (AR 27.) The ALJ’s finding is supported by substantial
13 evidence discussed herein and cited in the decision. In addition, the ALJ specifically
14 contrasted Plaintiff’s claims about disabling, extreme pain throughout her entire body
15 with admitted daily activities that indicate Plaintiff can do more than she claimed.
16 While Plaintiff points to other evidence about the extent of her daily routine, the
17 ALJ’s decision accurately and fairly cited evidence in the record. That decision must
18 be upheld – even if the evidence is susceptible to more than one rational interpretation
19 – because the ALJ’s findings are supported by substantial evidence. *See Burch*, 400
20 F.3d at 679.

21 Accordingly, the Court concludes that the ALJ properly provided a specific,
22 clear and convincing reason for discounting Plaintiff’s statements and testimony
23 about the severity of her symptoms. *See Trevizo*, 871 F.3d at 678.

24 IT IS THEREFORE ORDERED that Judgment be entered affirming the
25 decision of the Commissioner of Social Security.

26 DATED: 12/30/2020



27 ALEXANDER F. MacKINNON
28 UNITED STATES MAGISTRATE JUDGE