

1 I.

2 BACKGROUND

3 Plaintiff protectively filed for DIB and SSI on October 31, 2018, alleging
4 disability commencing on July 31, 2018. Administrative Record (“AR”) 61,
5 75, 89, 90. On August 10, 2020, after her applications were denied (AR 111,
6 133), Plaintiff, represented by counsel, and a vocational expert (“VE”) testified
7 before an Administrative Law Judge (“ALJ”). AR 36-60.

8 On October 1, 2020, the ALJ concluded Plaintiff was not disabled. AR
9 27. The ALJ found Plaintiff met the insurance requirements of the Social
10 Security Act (“SSA”) through December 31, 2022, and had not engaged in
11 substantial gainful activity since the alleged onset date. AR 17. The ALJ then
12 found Plaintiff had severe impairments of “lumbar degenerative disc disease,
13 cervical degenerative disc disease with osteoarthritis, thoracic degenerative disc
14 disease, mild left hip degenerative joint disease, congestive heart failure status
15 post heart transplant, hypertension, obesity, coccidiomycosis (valley fever),
16 anemia and obesity,” but found diabetes mellitus, amphetamine use disorder,
17 juvenile rheumatoid arthritis, chronic kidney disease, obstructive sleep apnea,
18 and umbilical hernia were not severe. AR 17-19. The ALJ found Plaintiff’s
19 anxiety and depression were non-severe under the “paragraph B” criteria of 20
20 C.F.R., Part 404, Subpart P, Appendix 1. AR 19-20. The ALJ found Plaintiff
21 did not have an impairment or combination of impairments that met or
22 equaled a listed impairment (AR 20), and had the residual functional capacity
23 (“RFC”) to perform light work except:

24 [T]he claimant can stand and walk for a total combined time of
25 four hours in a workday. The claimant can occasionally tolerate
26 ramps and stairs but cannot use ladders, ropes or scaffolding. The
27 claimant can occasionally perform balancing, stooping, kneeling,
28 crouching and crawling. The claimant cannot work around heavy

1 machinery with fast moving parts or at unprotected heights. The
2 claimant cannot work in environments with concentrated exposure
3 to fumes, odors, dusts, ga[s]ses or other respiratory irritants. The
4 claimant cannot work in environments with concentrated exposure
5 to extreme heat or cold.

6 AR 21.³

7 The ALJ found Plaintiff capable of performing her past relevant work as
8 a data entry clerk (Dictionary of Occupational Titles (“DOT”) 203.582-054) as
9 actually and generally performed. AR 24-25. The ALJ further determined that
10 in addition to her past relevant work, there are jobs that exist in significant
11 numbers in the national economy that Plaintiff can perform. AR 25.
12 Considering Plaintiff’s age, education, work experience, RFC, and the VE’s
13 testimony, the ALJ found Plaintiff could perform the representative
14 occupations of change account clerk (DOT 205.367-014); addresser (DOT
15 209.587-010); and press clippings cutter and paster (DOT 249.587-014). AR
16 26. Thus, the ALJ concluded Plaintiff was not under a “disability,” as defined
17 in the SSA, from the alleged onset date through the date of the decision. AR
18 26-27.

19 The Appeals Council denied Plaintiff’s request for review on February 3,
20 2021, making the ALJ’s decision the agency’s final decision. AR 1-3.

22 ³ “Light work” is defined as:

23 lifting no more than 20 pounds at a time with frequent lifting or
24 carrying of objects weighing up to 10 pounds. Even though the weight
25 lifted may be very little, a job is in this category when it requires a good
26 deal of walking or standing, or when it involves sitting most of the time
27 with some pushing and pulling of arm or leg controls. To be considered
28 capable of performing a full or wide range of light work, [a claimant]
must have the ability to do substantially all of these activities.

20 C.F.R. §§ 404.1567(b), 416.967(b); see also *Aide R. v. Saul*, 2020 WL 7773896, *2
n.6 (C.D. Cal. Dec. 30, 2020).

1 II.

2 LEGAL STANDARDS

3 A. **Standard of Review**

4 Under 42 U.S.C. § 405(g), this Court may review the Commissioner’s
5 decision to deny benefits. The ALJ’s findings and decision should be upheld if
6 they are free from legal error and supported by substantial evidence based on
7 the record as a whole. Brown-Hunter v. Colvin, 806 F.3d 487, 492 (9th Cir.
8 2015) (as amended); Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007).
9 Substantial evidence means such relevant evidence as a reasonable person
10 might accept as adequate to support a conclusion. Lingenfelter v. Astrue, 504
11 F.3d 1028, 1035 (9th Cir. 2007). It is more than a scintilla, but less than a
12 preponderance. Id.

13 To assess whether substantial evidence supports a finding, the court
14 “must review the administrative record as a whole, weighing both the evidence
15 that supports and the evidence that detracts from the Commissioner’s
16 conclusion.” Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998). “If the
17 evidence can reasonably support either affirming or reversing,” the reviewing
18 court “may not substitute its judgment” for that of the Commissioner. Id. at
19 720-21; see also Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012) (“Even
20 when the evidence is susceptible to more than one rational interpretation, [the
21 court] must uphold the ALJ’s findings if they are supported by inferences
22 reasonably drawn from the record.”), superseded by regulation on other
23 grounds as stated in Thomas v. Saul, 830 F. App’x 196, 198 (9th Cir. 2020).

24 Lastly, even if an ALJ errs, the decision will be affirmed where such
25 error is harmless (Molina, 674 F.3d at 1115), that is, if it is “inconsequential to
26 the ultimate nondisability determination,” or if “the agency’s path may
27 reasonably be discerned, even if the agency explains its decision with less than
28 ideal clarity.” Brown-Hunter, 806 F.3d at 492 (citation omitted); Smith v.

1 Kijakazi, 14 F.4th 1108, 1111 (9th Cir. 2021) (observing that even where the
2 “modest burden” of the substantial evidence standard is not met, the court
3 “will not reverse an ALJ’s decision where the error was harmless”).

4 **B. Standard for Determining Disability Benefits**

5 When the claimant’s case has proceeded to consideration by an ALJ, the
6 ALJ conducts a five-step sequential evaluation to determine at each step if the
7 claimant is or is not disabled. See Ford v. Saul, 950 F.3d 1141, 1148-49 (9th
8 Cir. 2020); Molina, 674 F.3d at 1110.

9 First, the ALJ considers whether the claimant currently works at a job
10 that meets the criteria for “substantial gainful activity.” Molina, 674 F.3d at
11 1110. If not, the ALJ proceeds to a second step to determine whether the
12 claimant has a “severe” medically determinable physical or mental impairment
13 or combination of impairments that has lasted for more than twelve months.
14 Id. If so, the ALJ proceeds to a third step to determine whether the claimant’s
15 impairments render the claimant disabled because they “meet or equal” any of
16 the “listed impairments” set forth in the Social Security regulations at 20
17 C.F.R. Part 404, Subpart P, Appendix 1. See Rounds v. Comm’r Soc. Sec.
18 Admin., 807 F.3d 996, 1001 (9th Cir. 2015). If the claimant’s impairments do
19 not meet or equal a “listed impairment,” before proceeding to the fourth step
20 the ALJ assesses the claimant’s RFC, that is, what the claimant can do on a
21 sustained basis despite the limitations from her impairments. See 20 C.F.R. §§
22 404.1520(a)(4), 416.920(a)(4); Social Security Ruling (“SSR”) 96-8p.

23 After determining the claimant’s RFC, the ALJ proceeds to the fourth
24 step and determines whether the claimant has the RFC to perform her past
25 relevant work, either as she “actually” performed it when she worked in the
26 past, or as that same job is “generally” performed in the national economy. See
27 Stacy v. Colvin, 825 F.3d 563, 569 (9th Cir. 2016). If the claimant cannot
28 perform her past relevant work, the ALJ proceeds to a fifth and final step to

1 determine whether there is any other work, in light of the claimant’s RFC, age,
2 education, and work experience, that the claimant can perform and that exists
3 in “significant numbers” in either the national or regional economies. See
4 Tackett v. Apfel, 180 F.3d 1094, 1100-01 (9th Cir. 1999). If the claimant can
5 do other work, she is not disabled; but if the claimant cannot do other work
6 and meets the duration requirement, the claimant is disabled. See id. at 1099.

7 The claimant generally bears the burden at each of steps one through
8 four to show she is disabled, or she meets the requirements to proceed to the
9 next step; and the claimant bears the ultimate burden to show she is disabled.
10 See, e.g., Ford, 950 F.3d at 1148; Molina, 674 F.3d at 1110. However, at Step
11 Five, the ALJ has a “limited” burden of production to identify representative
12 jobs that the claimant can perform and that exist in “significant” numbers in
13 the economy. See Hill v. Astrue, 698 F.3d 1153, 1161 (9th Cir. 2012); Tackett,
14 180 F.3d at 1100.

15 III.

16 DISCUSSION

17 The parties present two disputed issues (Jt. Stip. at 3):

18 Issue No. 1: Whether the ALJ properly concluded that Plaintiff’s sleep
19 apnea is a non-severe impairment; and

20 Issue No. 2: Whether the ALJ properly concluded that Plaintiff has no
21 severe mental impairments.

22 A. Sleep Apnea as a Non-Severe Impairment

23 Plaintiff contends the ALJ committed harmful error by finding her sleep
24 apnea to be a non-severe impairment at Step Two, arguing that her sleep apnea
25 has more than a minimal effect on her work-related abilities. Jt. Stip. at 6.
26 Defendant counters the ALJ did not commit error because Plaintiff prevailed
27 at Step Two, meaning the ALJ accounted for Plaintiff’s sleep apnea when
28 formulating her RFC. Id. at 6-7. Further, Defendant claims the ALJ presented

1 other legitimate reasons supported by substantial evidence for finding
2 Plaintiff's sleep apnea to be a non-severe impairment. Id. at 7-9.

3 1. Applicable Law

4 "In step two of the disability determination, an ALJ must determine
5 whether the claimant has a medically severe impairment or combination of
6 impairments." Keyser v. Comm'r Soc. Sec. Admin., 648 F.3d 721, 725 (9th
7 Cir. 2011). A claimant has a severe impairment when the evidence establishes
8 that an impairment has more than a minimal effect on an individual's ability to
9 perform basic work activities. Webb v. Barnhart, 433 F.3d 683, 686 (9th Cir.
10 2005); Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir. 1996); 20 C.F.R. §§
11 404.1522(a), 416.922(a) ("An impairment or combination of impairments is
12 not severe if it does not significantly limit your physical or mental ability to do
13 basic work activities."). The regulations define "basic work activities" as "the
14 abilities and aptitudes necessary to do most jobs," which include physical
15 functions such as walking, standing, sitting, pushing, and carrying, and mental
16 functions such as understanding and remembering simple instructions;
17 responding appropriately in a work setting; and dealing with changes in a work
18 setting. 20 C.F.R. §§ 404.1522(b), 416.922(b).

19 The Step Two analysis is "merely a threshold determination meant to
20 screen out weak claims." Buck v. Berryhill, 869 F.3d 1040, 1048 (9th Cir.
21 2017) (citing Bowen v. Yuckert, 482 U.S. 137, 146-47 (1987)). As such, once
22 the ALJ finds the claimant has at least one severe impairment at Step Two, the
23 ALJ must consider all the claimant's impairments when formulating the
24 claimant's RFC, including those impairments the ALJ determined to be non-
25 severe. Buck, 869 F.3d at 1048-49. Thus, even if an ALJ erred by finding a
26 particular impairment to be non-severe at Step Two, the error is harmless so
27 long as the limitations of that impairment are considered when formulating the
28 claimant's RFC. Scott H. v. Kijakazi, 2022 WL 392293, at *9 (D. Alaska Feb.

1 9, 2022); see also Parton v. Saul, 845 F. App'x 592, 594 (9th Cir. 2021)
2 (“When Step Two is decided in the claimant’s favor, any error is harmless and
3 cannot be the basis for remand.”); Heller v. Comm’r of Soc. Sec. Admin., 2018
4 WL 4377162, at *5 (D. Ariz. Sept. 14, 2018) (finding that under Buck, “the
5 ALJ’s RFC formulation should be exactly the same regardless of whether an
6 impairment is severe or not”).

7 2. Analysis

8 As noted, the ALJ found Plaintiff’s sleep apnea to be a non-severe
9 impairment at Step Two. AR 18. In making this finding, the ALJ first observed
10 that Plaintiff did not allege any significant limitations relating to this condition
11 at the administrative hearing. Id. The ALJ further reasoned that while Plaintiff
12 has moderate obstructive sleep apnea, she previously showed good results with
13 a CPAP machine and reports she is able to sleep for 6-8 hours a night. Id.
14 (citing AR 2286, 2506, 2513, 2720). Regardless of the severity of the
15 impairment, the ALJ noted she fully accounted for Plaintiff’s sleep apnea
16 when formulating Plaintiff’s RFC by incorporating hazard precautions and
17 environmental limitations into the RFC determination. AR 18.

18 As an initial matter, the ALJ’s reasons for finding Plaintiff’s sleep apnea
19 to be not severe are supported by substantial evidence. First, if a claimant fails
20 to raise an impairment at the administrative level, the ALJ is not affirmatively
21 obligated to consider that impairment. Domingue v. Barnhart, 388 F.3d 462,
22 463 (5th Cir. 2004) (finding ALJ’s conclusion that claimant’s depression was
23 not a severe impairment to be supported by substantial evidence because
24 claimant did not contend that her depression was a severe impairment at the
25 administrative level); Feliciano Rivera v. Comm’r of Soc. Sec., 2022 WL
26 702416, at *4 (D.P.R. Mar. 9, 2022). Here, the ALJ correctly noted that
27 Plaintiff did not address her sleep apnea during the administrative hearing. AR
28 18; see generally AR 38-60. Nor did Plaintiff list sleep apnea as an impairment

1 on her applications for DIB and SSI. AR 75-76, 92. Accordingly, the ALJ did
2 not err in finding Plaintiff's sleep apnea to be non-severe because the ALJ was
3 not obligated to consider the impairment under the present circumstances.
4 Second, substantial evidence supports an ALJ's finding that an impairment is
5 not severe when medical records show that the claimant's impairment has
6 been controlled by treatment. See Huff v. Astrue, 275 F. App'x 713, 717 (9th
7 Cir. 2008) (finding ALJ did not err in finding claimant's depression to be non-
8 severe because the ALJ reasonably relied on physician's finding that claimant's
9 depression had improved with treatment); Kenneth K. v. Berryhill, 2018 WL
10 6991256, at *4 (D. Or. Dec. 19, 2018) (finding ALJ's determination that
11 claimant's diabetes was not a severe impairment was supported by substantial
12 evidence because medical records showed her diabetes was "controlled"),
13 report and recommendation adopted by, 2019 WL 165700 (D. Or. Jan. 10,
14 2019). Here, the ALJ pointed to evidence in the record showing that Plaintiff
15 had been compliant with her CPAP treatment and had reported sleeping 6-8
16 hours a night in July 2020. AR 18 (citing AR 2720-21). Such evidence of
17 improvement constitutes substantial evidence to support the ALJ's finding that
18 Plaintiff's sleep apnea was not severe.⁴ The ALJ thus did not commit error by
19 finding Plaintiff's sleep apnea to be a non-severe impairment at Step Two.

20 Regardless, even if the ALJ did err, any error the ALJ committed would
21 nonetheless be considered harmless. Under Buck, if a claimant prevails at Step
22 Two, any alleged error committed during the ALJ's Step Two analysis is

23
24 ⁴ Plaintiff cites to AR 2724 to argue that Plaintiff's sleep apnea had not improved
25 with treatment because she still suffered from headaches and shortness of breath
26 despite using her CPAP machine. Jt. Stip. at 10. In that treatment note, however, the
27 physician observed that Plaintiff continued to get headaches despite using the CPAP,
28 but that there was "no particular pattern there." AR 2724. This note suggests the
physician was unsure whether Plaintiff's sleep apnea was related to her headaches.
As such, this note does not undermine the ALJ's finding that Plaintiff's sleep apnea
improved with treatment.

1 harmless and cannot serve as the basis for a remand so long as the RFC
2 formulation accounts for all the claimant's impairments. 869 F.3d at 1049.
3 Here, having determined that Plaintiff suffered from numerous severe
4 impairments, the ALJ proceeded with the five-step sequential analysis and
5 ultimately concluded that Plaintiff was not disabled. AR 17-27. The ALJ also
6 considered Plaintiff's sleep apnea when formulating the RFC by incorporating
7 certain restrictions to account for limitations resulting from Plaintiff's sleep
8 apnea. AR 18. Although Plaintiff argues the ALJ's RFC assessment is
9 insufficient because it does not "fully and adequately account for Plaintiff's
10 sleep apnea symptoms" (Jt. Stip. at 5), as noted, the ALJ is only required to
11 consider the impairment when formulating Plaintiff's RFC on a Step Two
12 challenge. Accordingly, because Plaintiff prevailed at Step Two and because
13 substantial evidence shows that the ALJ accounted for Plaintiff's sleep apnea
14 when formulating her RFC, any error the ALJ may have committed in finding
15 Plaintiff's sleep apnea non-severe at Step Two was harmless.

16 The ALJ's finding that Plaintiff's sleep apnea was non-severe is
17 supported by substantial evidence. Further, even if the ALJ did err in that
18 regard, any such error was harmless because the ALJ did not end the review at
19 Step Two but instead proceeded with the five-step sequential analysis and
20 properly considered and accounted for Plaintiff's sleep apnea when
21 formulating Plaintiff's RFC at Step Four.

22 **B. Mental Impairments as Non-Severe**

23 Plaintiff asserts the ALJ erred by finding her anxiety and depression to
24 be non-severe at Step Two, arguing that the ALJ improperly relied on opinion
25 evidence predating Plaintiff's most recent treatment records showing more
26 severe mental symptoms. Jt. Stip. at 11-12. Defendant counters that the ALJ
27 properly applied the "paragraph B" criteria and thus reasonably found
28 Plaintiff's anxiety and depression to be non-severe. Id. at 13-15.

1 1. Applicable Law

2 An ALJ’s finding that a claimant’s mental impairments are non-severe is
3 supported by substantial evidence if the ALJ properly considered the
4 claimant’s mental health records when assessing the claimant’s mental
5 functioning under the “paragraph B” criteria. See Woods v. Kijakazi, --- F.4th
6 ---, 2022 WL 1195334, at *8 (9th Cir. Apr. 22, 2022) (citing 20 C.F.R. pt. 404,
7 subpt. P, app. 1 § 12.00.A.2.b.). In evaluating the severity of a mental
8 impairment, an ALJ must use the “paragraph B” criteria from Section 12.00E
9 of the Appendix 1 listing of impairments. 20 C.F.R. §§ 404.1520a(c)(2)-(3),
10 416.920a(c)(2)-(3). Accordingly, an ALJ will use the paragraph B “four broad
11 functional areas” and “rate the degree of [the claimant’s] functional limitation .
12 . . .” to “[1] [u]nderstand, remember, or apply information; [2] interact with
13 others; [3] concentrate, persist, or maintain pace; and [4] adapt or manage
14 oneself.” 20 C.F.R. §§ 404.1520a(c)(3), 416.920a(c)(3). In rating the degree of
15 limitation in each of the four functional areas, an ALJ “will use the following
16 five-point scale: None, mild, moderate, marked, and extreme.” 20 C.F.R. §§
17 404.1520a(c)(4), 416.920a(c)(4). If the ALJ rates the claimant’s limitations as
18 “none” or “mild” in each of the four areas, the ALJ “will generally conclude
19 that [the claimant’s] impairment(s) is not severe, unless the evidence otherwise
20 indicates that there is more than a minimal limitation in [the claimant’s] ability
21 to do basic work activities.” 20 C.F.R. §§ 404.1520a(d)(1), 416.920a(d)(1).
22 Legal error occurs when an ALJ neglects to document her application of the
23 paragraph B criteria or fails to include a specific finding as to the degree of
24 limitation in any of the four functional areas. Lee v. Kijakazi, 2022 WL
25 913057, at *4 (S.D. Cal. Mar. 29, 2022) (citing Keyser, 648 F.3d at 726).

26 2. ALJ’s Findings

27 In her decision, the ALJ concluded that Plaintiff’s depression and
28 anxiety were non-severe impairments after considering the paragraph B

1 criteria. AR 19-20. First, the ALJ found Plaintiff had no limitations in
2 understanding, remembering, or applying information because Plaintiff did not
3 previously indicate issues with memory and because she was able to perform
4 personal care, prepare meals, manage finances, take medications, shop, drive,
5 and play games. Id. at 19 (citing AR 277-284, 2189). The ALJ also reasoned
6 the record showed Plaintiff was able to provide information about her health,
7 follow instructions from medical providers, and had no significant issues with
8 memory upon formal examination. AR 19 (citing AR 2190, 2291 (“memory
9 within normal limits”), 2588, 2721 (“Recent and remote memory are good
10 conversationally but fair by subjective report.”)). Second, the ALJ found
11 Plaintiff had no limitations in interacting with others. AR 19. The ALJ
12 supported this finding by citing evidence showing that Plaintiff lives with a
13 friend, attends church, and goes to the library, and that medical providers
14 found her to be pleasant and cooperative with appropriate mood and affect. Id.
15 (citing AR 277-284, 2189, 2269, 2469). Third, the ALJ determined that
16 Plaintiff had mild limitations in her ability to concentrate, persist, or maintain
17 pace. AR 19. The ALJ cited to Plaintiff’s aforementioned activities of daily
18 living (AR 277-284, 2189) and the lack of medical records showing
19 distractibility or an inability to complete testing assessing concentration and
20 attention (AR 2190-91, 2721) to support this finding. Id. Fourth, the ALJ
21 concluded that Plaintiff had a mild limitation in her ability to adapt or manage
22 herself. Id. The ALJ reasoned the objective evidence in the record showed
23 Plaintiff had appropriate grooming and hygiene, and also had no problem
24 getting along well with providers. Id. (citing AR 2467, 2469-70, 2506).

25 The ALJ thus concluded that because Plaintiff’s medically determinable
26 mental impairments cause no more than a “mild” limitation in any of the
27 functional areas, and because the evidence does not otherwise indicate there is
28 more than a minimal limitation in Plaintiff’s ability to do basic work activities,

1 Plaintiff's mental impairments are non-severe. AR 20. In making these
2 findings, the ALJ found the opinions of Gregory Nicholson, M.D. (AR 2187-
3 2192), P. Solomon, Ph. D. (AR 68), and M. Lin, M.D. (AR 106-07),
4 persuasive. Id.

5 3. Analysis

6 As an initial matter, any alleged error by the ALJ in classifying Plaintiff's
7 mental impairments as non-severe at Step Two is not a basis for reversal
8 because the ALJ resolved Step Two in Plaintiff's favor and accounted for the
9 impairments in the RFC. See Buck, 869 F.3d at 1048-49. The ALJ's finding as
10 to Plaintiff's mental impairments at Step Two thus could not have prejudiced
11 Plaintiff. See id. at 1049. Rather, the dispositive question is whether the ALJ's
12 ensuing analysis of Plaintiff's mental impairments, for purposes of the RFC
13 assessment, accurately reflected Plaintiff's limitations based on relevant
14 evidence in the record. See id. (observing that in assessing the RFC, the ALJ
15 "must consider limitations and restrictions by all of an individual's
16 impairments, even those that are not 'severe'"). Here, Plaintiff does not argue
17 that the ALJ's error impacted the RFC determination, and instead singularly
18 argues that the ALJ's failure to find Plaintiff's mental impairments as severe at
19 Step Two constituted harmful error in and of itself. See Jt. Stip. at 11-13, 16-
20 17. Nor does Plaintiff present any limitations associated with her mental
21 impairments she contends should have been included in her RFC. See id.
22 Plaintiff's failure to raise these arguments alone could serve as a basis for
23 affirming the ALJ's finding at Step Two. Cf. Kay N. v. Saul, 2021 WL
24 1612088, at *3 (C.D. Cal. Apr. 26, 2021) (considering argument that ALJ erred
25 in finding claimant's mental impairments as non-severe at Step Two because
26 the claimant argued in the joint submission that the ALJ's finding would
27 impact her RFC assessment). Nonetheless, the Court will address the ALJ's
28 consideration of Plaintiff's mental impairments under the paragraph B criteria.

1 Plaintiff first argues the ALJ erred in evaluating Plaintiff’s mental
2 impairments because the ALJ “heavily” relied on “outdated opinion evidence
3 that predates Plaintiff’s most relevant mental health treatment records.” Jt.
4 Stip. at 11, 12. Specifically, Plaintiff contends the ALJ improperly relied on the
5 opinions of Drs. Nicholson, Solomon, and Lin in making her findings, all of
6 whom evaluated Plaintiff before Nicholas Chesher, Ph. D., treated Plaintiff in
7 July 2020. Id. Dr. Chesher diagnosed Plaintiff with “Major Depressive
8 Disorder, recurrent, severe, without psychotic features, with anxious distress,”⁵
9 (AR 2721-22), which Plaintiff claims shows that her “mental impairments had
10 become far more pronounced and symptomatic in 2020.” Id. at 12-13.

11 Plaintiff is mistaken, however, in arguing the ALJ solely relied on
12 “outdated” opinions in evaluating the paragraph B criteria; rather the ALJ
13 cited to Dr. Chesher’s notes to support her paragraph B findings. For instance,
14 the ALJ cited to Dr. Chesher’s opinion that “[r]ecent and remote memory are
15 good conversationally but fair by subjective report” (AR 2721) to support her
16 finding that Plaintiff exhibited no “significant issues with memory upon formal
17 examination.” AR 19. The ALJ also cited to Dr. Chesher’s opinion that
18 Plaintiff’s attention and concentration are intact (AR 2721) to support her
19 finding that Plaintiff had a mild limitation in her ability to concentrate, persist,
20 or maintain pace. Id. As such, the ALJ considered Dr. Chesher’s notes, and
21 thus Plaintiff’s most recent medical records, when assessing the severity of
22 Plaintiff’s mental impairments under the paragraph B criteria. Moreover, the
23 ALJ’s finding that Drs. Nicholson, Solomon, and Lin’s opinions were
24 persuasive does not undermine the ALJ’s paragraph B analysis, as the ALJ

25
26 ⁵ Plaintiff also contends Dr. Chesher diagnosed her with Obsessive Compulsive
27 Disorder (“OCD”). Jt. Stip. at 12 (citing AR 2721). While this is true, Dr. Chesher
28 wrote in a subsequent treatment note he had “rule[d] out” the OCD diagnosis. AR
2722. As such, the Court will not consider that diagnosis in its analysis.

1 properly considered the findings of all four mental health clinicians when
2 evaluating the severity of Plaintiff's mental impairments. The ALJ's paragraph
3 B findings are supported by substantial evidence. See Wells v. Colvin, 2016
4 WL 1070665, at *2 (N.D. Cal. Mar. 18, 2016) (finding that because substantial
5 evidence supported the ALJ's paragraph B findings, whether the ALJ erred in
6 assigning physician's opinion "little weight" was not relevant to the Step Two
7 issue of determining whether claimant's depression was a severe impairment).

8 Plaintiff also argues the ALJ erred in finding Plaintiff's mental
9 impairments to be non-severe because Plaintiff's medical history shows
10 Plaintiff was "consistently diagnosed with depression and anxiety." Jt. Stip. at
11 16-17. An ALJ, however, is entitled to find a mental impairment to be non-
12 severe even if the claimant has received a formal diagnosis for that
13 impairment. See Jose S. v. Kijakazi, 2022 WL 837416, at *2 (C.D. Cal. Mar.
14 21, 2022) ("[A] diagnosis alone does not establish disability."); Draiman v.
15 Berryhill, 2018 WL 895445, at *7 (C.D. Cal. Feb. 13, 2018) (finding that
16 claimant's "diagnoses of Major Depressive Disorder and Generalized Anxiety
17 Disorder are insufficient to demonstrate that she has a severe mental
18 impairment" at Step Two). The key inquiry is thus not whether the claimant
19 has a diagnosis for a mental impairment, but rather whether there are findings
20 by the medical sources to support that the mental impairment is "severe"
21 under the paragraph B criteria. See David F. M. v. Saul, 2021 WL 2646905, at
22 *3 (C.D. Cal. June 25, 2021). Here, Plaintiff does not explain why the
23 diagnoses she cites to establish that her depression and anxiety are "severe"
24 under the paragraph B criteria, nor does she identify additional limitations that
25 should have been considered by the ALJ in making her determination.
26 Further, the ALJ provided an adequate explanation for each functional area
27 rating she gave under the paragraph B criteria to support her finding that
28 Plaintiff's mental impairments were not severe. AR 19. The ALJ cited to

1 Plaintiff's mental health records showing she had good memory and
2 concentration and appropriate grooming and hygiene, see Woods, 2022 WL
3 1195334, at *8; Carey v. Berryhill, 2017 WL 3457386, at *7 (S.D. Cal. Aug.
4 11, 2017) (finding there is substantial evidence in the objective medical record
5 supporting the ALJ's decision that claimant's mental health impairment is
6 non-severe), report and recommendation adopted, 2017 WL 4856874 (S.D.
7 Cal. Aug. 29, 2017), and also properly considered Plaintiff's ability to perform
8 personal care, drive, shop in stores, and handle finances to support her finding
9 that Plaintiff's mental impairments did not impose more than a minimal
10 limitation on her functioning. See Jose S., 2022 WL 837416, at *4 (finding that
11 claimant's ability to perform personal care, household chores, drive, shop, and
12 handle his finances was properly considered by the ALJ in concluding that
13 claimant's mental impairment of depression did not impose more than
14 minimal limitations on his functioning); Van Houten v. Berryhill, 2019 WL
15 691200, at *10-11 (E.D. Cal. Feb. 19, 2019). Accordingly, the ALJ reasonably
16 found Plaintiff's mental impairments to be non-severe despite her diagnoses of
17 depression and anxiety, and her findings are supported by substantial evidence.
18 See Woods, 2022 WL 1195334, at *8; David F. M., 2021 WL 2646905, at *3.

19 In sum, the ALJ's finding that Plaintiff's depression and anxiety were
20 non-severe impairments is supported by substantial evidence. The ALJ thus
21 did not err in finding these impairments non-severe, but even if the ALJ had
22 erroneously found Plaintiff's mental impairments to be non-severe, this would
23 be harmless error because Plaintiff ultimately prevailed at Step Two and her
24 RFC properly accounted for her mental impairments. Lee, 2022 WL 913057,
25 at *8 (citing Buck, 869 F.3d at 1048).

26 / / /

27 / / /

28 / / /

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV.
ORDER

IT THEREFORE IS ORDERED that Judgment be entered affirming the decision of the Commissioner and dismissing this action with prejudice.

Dated: May 04, 2022



JOHN D. EARLY
United States Magistrate Judge