



1 First, the ALJ noted that Plaintiff's subjective complaints of back and shoulder  
2 pain are not "objectively demonstrated by the clinical findings." (AR 29.) An ALJ may  
3 consider whether the objective medical evidence supports the degree of limitation alleged  
4 by a claimant, but this "cannot form the sole basis for discounting [subjective] testimony."  
5 *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005). Because none of the ALJ's other  
6 reasons legitimately impugn Plaintiff's credibility, this reason, assuming it is accurate, does  
7 not suffice to support the ALJ's adverse credibility determination. Moreover, even if the  
8 objective medical evidence does not support Plaintiff's back and shoulder complaints, this  
9 reason does not detract from Plaintiff's testimony as to her significant hand and arm  
10 problems.

11 Next, the ALJ found that, aside from the issues with her upper extremities,  
12 Plaintiff's "musculoskeletal complaints have been treated conservatively, with modalities  
13 including medications, epidural injections and ganglion sympathetic blocks." (AR 30.)  
14 Even if the ALJ properly characterized Plaintiff's treatment as conservative, there is  
15 additional evidence, submitted to the Appeals Council (AR 7), that undermines this  
16 conclusion. Plaintiff's treating spinal/neurological surgeon wrote that Plaintiff has a  
17 "longstanding progressively worsening history of low back pain radiating to her legs which  
18 is now causing significant functional disability" and was a candidate for surgery.  
19 (AR 380.) In addition, as with the ALJ's first reason for discounting Plaintiff's credibility,  
20 conservative treatment of Plaintiff's back pain does not undermine her significant  
21 complaints about her upper extremities.

22 Third, the ALJ found that Plaintiff "was not only inconsistent in her testimony  
23 with respect to her hand pain, her other complaints to her various physicians have not been  
24 consistent." (AR 30.) The ALJ does not specifically identify any inconsistencies in  
25 Plaintiff's testimony about her hand pain. The ALJ asked Plaintiff many specific questions  
26 about her pain symptoms, and Plaintiff's testimony spans more than seven pages of the  
27 hearing transcript. (AR 402-10.) Although Plaintiff's testimony may not have been utterly  
28 precise, she explained that her pain "varies," stating "[i]t's hard to tell. I just have pain all

1 the time.” (AR 410.) Indeed, the Ninth Circuit has recognized that pain is a highly  
2 subjective phenomenon that is difficult to describe. *Fair v. Bowen*, 885 F.2d 597, 601  
3 (9th Cir. 1989) (noting that the existence and degree of pain “is a completely subjective  
4 phenomenon,” “ordinary language permits the expression of only the most rudimentary  
5 distinctions among levels of pain,” and “such descriptions provide only a dim insight into  
6 the claimant’s subjective experience of pain”). Plaintiff’s allegedly inconsistent testimony  
7 about her experience of pain does not clearly and convincingly undermine her credibility.

8           The ALJ provided more detail about her finding that Plaintiff’s “other  
9 complaints to her various physicians have not been consistent.” The ALJ noted that  
10 Plaintiff told Drs. Chan and Khan that she has experienced low back pain “for some 15  
11 years at a pain level of 10 out of 10,” but “[t]hese complaints were not recorded by  
12 physicians who had earlier examined [her].” In addition, the ALJ found that Plaintiff’s  
13 ability to “maintain[] gainful employment to as late as 2001” undermined her claims of  
14 longstanding, extreme back pain. (AR 30.) The ALJ failed to note, however, that Plaintiff  
15 had complained of pain in her lower back area as early 1995. (AR 237-38.) A treating  
16 physician believed she had “a chronic herniated lumbar disc with radiculopathy” in  
17 February 1996, and an MRI revealed a “broad-based” disc protrusion and disc bulge.  
18 Around the same time, other physicians recommended a surgical discectomy and epidural  
19 injections. (AR 238.) In addition, many of Plaintiff’s medical records relate to her  
20 workers’ compensation claim for an injury to her wrists, possibly explaining Plaintiff’s  
21 failure to mention her back pain more often. (*See, e.g.*, 201-11, 213-54, 262-71.)  
22 Moreover, Plaintiff’s more recent medical records document “longstanding progressively  
23 worsening history of low back pain radiating to her legs which is now causing significant  
24 functional disability,” with supporting objective evidence. (AR 380; *see* AR 377-79, 384-  
25 85.) In sum, the Court does not find that Plaintiff’s inconsistent reports of her back pain  
26 clearly and convincingly undermine her credibility.

27           Finally, the ALJ found that Plaintiff’s daily activities “reflect[] significant  
28 functioning, even with her upper extremities.” (AR 30.) The ALJ noted that Plaintiff

1 (1) “has custody and cares for her three young grandchildren,” and “takes them to school  
2 and to doctors’ appointments”; (2) “resided in a two story home for three years”; (3) “does  
3 yard work . . . , sorts laundry[,] and shops”; and (4) engaged in “self employment beginning  
4 in 2004 by picking up trash for her former landlord.” (AR 30.) The Commissioner  
5 concedes that there is no evidence that Plaintiff does yard work, as Plaintiff testified that  
6 the property owner did the yard work. (AR 402.) The Court finds that none of the ALJ’s  
7 other reasons clearly and convincingly undermine Plaintiff’s credibility, as they do not  
8 contradict her allegations or demonstrate an ability to perform substantial gainful activity.  
9 *See Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007); *Reddick v. Chater*, 157 F.3d 715, 722  
10 (9th Cir. 1998).

11 First, although Plaintiff cares for her three grandchildren, there is no evidence  
12 that she does so to an extent that contradicts her allegations or demonstrates a capacity to  
13 perform substantial gainful activity. There is scant testimony about Plaintiff’s  
14 grandchildren. Plaintiff stated that she takes them to doctors’ appointments and drops them  
15 off and picks them up at school, and that she typically stays in bed or is “constantly in  
16 pain” in between doing so. She does not take her medications until after she takes the  
17 children to school because they make her sleepy. (AR 397-99.) In addition, the children  
18 help her perform tasks such as cutting coupons. (AR 401.) The limited information in the  
19 record about Plaintiff’s care for her grandchildren does not clearly and convincingly  
20 undermine her credibility.

21 Next, the ALJ noted that Plaintiff resides in a two-story home. (AR 30.)  
22 Again, there is no evidence that permits this circumstance to malign Plaintiff’s credibility.  
23 The only mention of stairs in Plaintiff’s testimony appears to be a reference that her family  
24 members help her roll the laundry “down the stairs” after she sorts it. (AR 401.) The ALJ  
25 never asked Plaintiff if she experiences difficulty going up or down stairs. Moreover,  
26 Plaintiff never stated that her upper extremity or back impairments limit her ability to go  
27 up or down stairs. That Plaintiff lives in a two-story home is, on the record created,  
28 inconsequential to the ALJ’s credibility determination.

1 Third, the ALJ found that Plaintiff's ability to sort laundry and shop  
2 undermine her allegations. These observations do not undermine Plaintiff's allegations or  
3 reflect an ability to perform substantial gainful activity. First, there is scant evidence about  
4 Plaintiff's ability to do laundry. She stated she does not do her own laundry, but her  
5 mother, sister, or daughter help her and roll it down the stairs after she "sort[s] it out." (AR  
6 401.) This vague, brief testimony does not impugn Plaintiff's credibility. Similarly,  
7 Plaintiff's testimony that she does grocery shopping "[o]nce a month if [she] could" does  
8 not undermine her allegations. (AR 401.)

9 The final reason the ALJ provided for discounting Plaintiff's credibility was  
10 that she engaged in "self employment beginning in 2004 by picking up trash for her former  
11 landlord." (AR 30.) Plaintiff testified that her former landlord offered to pay her "\$30 or  
12 \$60 a month" in exchange for picking up any trash she saw "lying around" on the property.  
13 She did this for one year or less, and she testified that her "kids would help and pick up the  
14 papers." (AR 411-12.) The ALJ's characterization of this arrangement as "self  
15 employment" does not withstand scrutiny. This arrangement provides little, if any, insight  
16 into Plaintiff's credibility or her ability to perform substantial gainful activity. Even if  
17 Plaintiff was capable of occasionally picking up trash without her grandchildren's help,  
18 "[o]ne does not need to be 'utterly incapacitated' in order to be disabled." *Vertigan v.*  
19 *Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001) (quoting *Fair*, 885 F.2d at 603).

20 In sum, the ALJ's credibility determination reflects an improper selective  
21 consideration of the evidence. See *Edlund v. Massanari*, 253 F.3d 1152, 1159 (9th Cir.  
22 2001) (an ALJ may not "selectively focus[ ] on . . . [evidence] which tend[s] to suggest  
23 non-disability"); *Reddick*, 157 F.3d at 722-23 (ALJ erred by "by not fully accounting for  
24 the context of materials or all parts of the testimony and reports. His paraphrasing of  
25 record material is not entirely accurate regarding the content or tone of the record.").

26 Plaintiff's other argument is that the ALJ erred in rejecting the opinion of her  
27 treating physician, Dr. Rottermann. Dr. Rottermann treated Plaintiff as part of her workers'  
28 compensation claim, from January 9, 2003, through at least November 2006. (AR 243,

1 262.) Dr. Rottermann opined, among other things, that Plaintiff could perform no  
2 repetitive actions such as grasping or fine manipulation with either hand; “work on a  
3 regular and continuous basis [would] cause [Plaintiff’s] condition to deteriorate”; Plaintiff  
4 could sit, stand and walk for only twenty minutes at a time; and Plaintiff’s condition would  
5 cause her to miss three or more days of work per month. (AR 258-61.) An ALJ may  
6 discredit a treating physician’s opinion by providing specific and legitimate reasons for  
7 doing so. *Batson v. Commissioner*, 359 F.3d 1190, 1194-95 (9th Cir. 2004). None of the  
8 ALJ’s reasons for rejecting Dr. Rottermann’s opinion meet this standard.

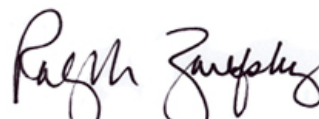
9           The ALJ cited several reasons for discrediting Dr. Rottermann’s opinion.  
10 First, the ALJ stated that his opinions were “conclusory,” “without specifics [as] to  
11 [Plaintiff’s] functional capability,” “unsupported by objective findings,” and “inconsistent  
12 with the opinions of examiners of record.” (AR 30.) Dr. Rottermann extensively  
13 documented his multiple examinations of Plaintiff and reviewed and summarized  
14 Plaintiff’s other medical records. (AR 213-54, 262-71.) The ALJ’s characterization of his  
15 opinion as “conclusory” and “unsupported” fails to meet the level of specificity required  
16 to reject a treating physician’s opinion. *See Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th  
17 Cir. 1988) (“To say that medical opinions are not supported by sufficient objective findings  
18 or are contrary to the preponderant conclusions mandated by the objective findings does  
19 not achieve the level of specificity our prior cases have required . . . . The ALJ must do  
20 more than offer his conclusions. He must set forth his own interpretations and explain why  
21 they, rather than the doctors’, are correct.”). There may be some validity to the ALJ’s  
22 finding that Dr. Rottermann’s opinion as to Plaintiff’s sitting, standing, and walking  
23 limitations were unsupported, as Dr. Rottermann focused almost exclusively on Plaintiff’s  
24 upper extremities. However, this reason does not detract from Dr. Rottermann’s opinion  
25 as to Plaintiff’s other symptoms, and the more recent evidence of Plaintiff’s back problems  
26 may further inform the ALJ’s assessment of Plaintiff’s sitting, standing, and walking  
27 limitations.

1 Next, the ALJ stated that Dr. Rottermann's opinions were "seemingly  
2 predicated on [Plaintiff's] subjective complaints." (AR 30.) Because the ALJ's rejection  
3 of Plaintiff's credibility was improper, this reason does not suffice to undermine  
4 Dr. Rottermann's opinion. Moreover, Dr. Rottermann diagnosed Plaintiff with reflex  
5 sympathetic dystrophy and complex regional pain syndrome ("RSDS/CRPS"). (E.g., AR  
6 224, 264.) The medical expert admitted that the clinical findings supporting such a  
7 diagnosis would be "mostly subjective." (AR 437.) The Social Security Agency has  
8 acknowledged the difficulty in assessing these conditions and provided guidance for doing  
9 so. Social Security Ruling ("SSR") 03-02p. According to the Agency, the "constellation  
10 of symptoms and signs" associated with RSDS/CRPS may occur following even a very  
11 minor injury, and the diagnosis "requires the presence of complaints of persistent, intense  
12 pain that results in impaired mobility of the affected region" along with objective signs  
13 including swelling and autonomic instability (such as changes in sweating or skin  
14 temperature). The Agency cautions that "conflicting evidence in the medical record is not  
15 unusual in cases of RSDS due to the transitory nature of its objective findings and the  
16 complicated diagnostic process involved." *Id.* In this case, Dr. Rottermann supported his  
17 diagnosis with objective findings including perspiration and "slight coldness" in the left  
18 hand and swelling in the bilateral upper extremities. (AR 233, 251, 267.) On remand, the  
19 ALJ must consider the complex and subjective nature of RSDS/CRPS in evaluating  
20 Dr. Rottermann's opinion.

21 In accordance with the foregoing, the decision is reversed. The matter is  
22 remanded to the Commissioner, who shall properly assess Plaintiff's subjective complaints  
23 and Dr. Rottermann's opinion, and otherwise proceed as appropriate.

24 IT IS SO ORDERED.

25 DATED: December 13, 2011

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RALPH ZAREFSKY  
28 UNITED STATES MAGISTRATE JUDGE