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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SHERRY LYNNE FAUST,	)	No. SA CV13-01803-AS
	)	
Plaintiff,	)	<b>MEMORANDUM AND OPINION</b>
v.	)	
	)	
CAROLYN W. COLVIN,	)	
Acting Commissioner of the	)	
Social Security Administration,	)	
	)	
Defendant.	)	
	)	

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**PROCEEDINGS**

Plaintiff Sherry Lynne Faust ("Plaintiff"), a former insurance agent and waitress, asserts disability since January 1, 2007, based on alleged physical and mental impairments. (A.R. 133-40). The Administrative Law Judge ("ALJ") examined the records and heard testimony from Plaintiff and a vocational expert on July 26, 2012. (A.R. 31-48). The ALJ denied Plaintiff benefits in a written decision. (A.R. 14-30). The Appeals Council denied review of the ALJ's decision. (A.R. 1-3).

1 On November 20, 2013, Plaintiff filed a Complaint, pursuant to  
2 42 U.S.C. §§ 405(g) and 1383(c), alleging that the Social Security  
3 Administration erred in denying her disability benefits. (Docket  
4 Entry No. 3). On March 24, 2014, Defendant filed an Answer to the  
5 Complaint (Docket Entry No. 12), and the Certified Administrative  
6 Record ("A.R.") (Docket Entry No. 13). The parties have consented to  
7 proceed before a United States Magistrate Judge (Docket Entry Nos. 7,  
8 10). On June 4, 2014, the parties filed a Joint Stipulation ("Joint  
9 Stip.") setting forth their respective positions on Plaintiff's claim  
10 (Docket Entry No. 23).

11  
12 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**  
13

14 "Social Security disability benefits claimants have the burden  
15 of proving disability." Bellamy v. Sec'y Health & Human Serv., 755  
16 F.3d 1380, 1380 (9th Cir. 1985). A claimant is disabled if she has  
17 the "inability to engage in any substantial gainful activity by  
18 reason of any medically determinable physical or mental  
19 impairment...which has lasted or can be expected to last for a  
20 continuous period of not less than 12 months." 42 U.S.C.  
21 § 423(d)(1)(A). In order to determine whether a claimant is  
22 disabled, ALJs follow a five-step process set forth in 20 C.F.R.  
23 § 404.1520(a)(4). "The claimant bears the burden of proving steps  
24 one through four." Parra v. Astrue, 481 F.3d 742, 746 (9th Cir.  
25 2007).

26  
27 At step one, the ALJ must determine whether or not claimant is  
28 actually engaged in any "substantial gainful activity," as defined by

1 20 C.F.R. § 404.1572. If claimant is not so engaged, the evaluation  
2 continues to step two. See 20 C.F.R. § 404.1520(a)(4)(i).

3  
4 At step two, the ALJ determines whether the claimed physical or  
5 mental impairments are severe. 20 C.F.R. § 404.1520(a)(4)(ii). When  
6 determining severity, "the ALJ must consider the combined effect of  
7 all of the claimant's impairments on her ability to function, without  
8 regard to whether each alone was sufficiently severe." Smolen v.  
9 Chater, 80 F.3d 1273, 1290 (9th Cir. 1996) (citing 42 U.S.C.  
10 § 423(d)(2)(B)). Impairments are considered severe unless the  
11 evidence "establishes a slight abnormality that has 'no more than a  
12 minimal effect on an individual's ability to work.'" Id. at 1290  
13 (quoting Yuckert v. Bowen, 841 F.2d 303, 306 (9th Cir. 1988)). "[I]f  
14 the ALJ concludes that the claimant does have a medically severe  
15 impairment, the ALJ proceeds to the next step in the sequence." Webb  
16 v. Barnhart, 433 F.3d 683, 686 (9th Cir. 2005); See 20 C.F.R.  
17 § 404.1520(a)(4)(ii).

18  
19 At step three, the ALJ considers whether the claimant's severe  
20 impairments are disabling. 20 C.F.R. § 404.1520(a)(4)(iii). The  
21 claimant is considered disabled if her purported conditions meet or  
22 are medically equivalent to a listing found in 20 C.F.R. Part 404,  
23 Subpart P, Appendix 1. Burch v. Barnhart, 400 F.3d 676, 679 (9th  
24 Cir. 2005). "[An] impairment is medically equivalent to a listed  
25 impairment in appendix 1 if it is at least equal in severity and  
26 duration to the criteria of any listed impairment." 20 C.F.R.  
27 404.1526. While the objective medical evidence of equivalence may  
28 not meet a listing, "[m]edical equivalence must be based on medical

1 findings." Tackett v. Apfel, 180 F.3d 1094, 1100 (9th Cir. 1999)  
2 (citing 20 C.F.R. § 404.1526).

3  
4 If the ALJ concludes that claimant is not disabled at step  
5 three, the ALJ moves to step four and considers whether the claimant  
6 can return to her past relevant work. Burch, 400 F.3d at 679; See 20  
7 C.F.R. § 404.1520(a)(4)(iv). In order to do so, the ALJ determines  
8 claimant's Residual Functional Capacity ("RFC"). 20 C.F.R.  
9 § 404.1520(a)(4)(iv). A claimant's RFC is "what [claimant] can still  
10 do despite [claimant's] limitations," and is "based on all the  
11 relevant medical and other evidence in [the] case record." 20 C.F.R.  
12 416.945(a)(1). If the claimant's RFC dictates that she can return to  
13 her past relevant work, she is not considered disabled. Burch, 400  
14 F.3d at 679.

15  
16 If the claimant proves in step four that she cannot return to  
17 her past relevant work, the ALJ proceeds to step five. 20 C.F.R.  
18 § 404.1520(a)(4)(v). At step five "the burden of proof shifts to the  
19 Secretary to show that the claimant can do other kinds of work."  
20 Embrey v. Bowden, 849 F.2d 418, 422 (9th Cir. 1988). At this point,  
21 ALJs "can call upon a vocational expert to testify as to: (1) what  
22 jobs the claimant, given his or her [RFC], would be able to do; and  
23 (2) the availability of such jobs in the national economy." Tackett,  
24 180 F.3d at 1101. If claimant does not have the RFC to work in any  
25 available jobs, she is considered disabled. 20 C.F.R.  
26 § 404.1520(a)(4)(v).

27 ///

28 ///

1 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

2  
3 In applying for disability insurance benefits, Plaintiff alleged  
4 the following disabling severe impairments: chronic back pain,  
5 arthritis, depression, high blood pressure, and menopause. (A.R.  
6 164). Additionally, at the hearing before the ALJ on July 26, 2012,  
7 Plaintiff testified that depression also impaired her ability to  
8 work. (A.R. 40-42). The alleged onset date of these impairments was  
9 January 1, 2007. (A.R. 19, 35, 133, 161). At the July 26, 2012  
10 hearing before the ALJ, Plaintiff testified that she had lower back  
11 pain that would traverse her left leg and even stretch as far as her  
12 left foot. (A.R. 38). Plaintiff claimed that she could not stand or  
13 sit for more than an hour due to the purported discomfort. (A.R. 38-  
14 39). Plaintiff also testified that she had difficulties interacting  
15 with people due to her depression. (A.R. 35)  
16

17 The ALJ applied the five-step process to the record in  
18 Plaintiff's case. (A.R. 17-27). At step one, the ALJ determined  
19 that Plaintiff is not engaged in any "substantially gainful  
20 activity." (A.R. 19). At step two, the ALJ examined the objective  
21 medical evidence, heard Plaintiff's testimony, and found that she has  
22 the following severe impairments: hypertension, osteoarthritis,  
23 depressive disorder, and a history of drug and alcohol abuse.<sup>1</sup> (A.R.  
24 19). The ALJ also found Plaintiff's obesity to be a severe  
25

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26 <sup>1</sup> Although the ALJ found hypertension to be a severe impairment, the  
27 ALJ noted that "[i]f the evidence regarding the impairments alleged  
28 by the claimant was strictly considered, hypertension would not be  
found to be both medically determinable and severe." (A.R. 23). The  
ALJ based this statement on the findings by Plaintiff's doctors that  
her hypertension was benign and caused no functional limitations.  
(A.R. 242, 246, 248-50, 283).

1 impairment. (A.R. 23). The ALJ did not find Plaintiff's diagnosed  
2 diabetes to be severe because "the condition has been managed with  
3 oral medications." (A.R. 20, 42-43, 281).

4  
5 At step three, the ALJ found that Plaintiff's severe impairments  
6 did not meet or equal a listing found in 20 C.F.R. Part 404, Subpart  
7 P, Appendix 1. (A.R. 20). Based on the objective medical evidence,  
8 the ALJ determined that Plaintiff's "medically determinable  
9 impairments could reasonably be expected to cause the alleged  
10 symptoms." (A.R. 22). The ALJ also found, however, that Plaintiff's  
11 "statements concerning the intensity, persistence and limiting  
12 effects of these symptoms are not credible." (A.R. 22).

13  
14 Before proceeding to step four, the ALJ found that Plaintiff had  
15 the RFC to perform light work with the following limitations:

16 lift/carry twenty pounds occasionally, ten pounds  
17 frequently; stand/walk for a total of six hours of an eight  
18 hour day; sit for a total of six hours of an eight hour  
19 day; occasionally climb ladders, ropes, scaffolds; perform  
20 simple tasks with simple work related decisions.

21 (A.R. 21). The ALJ based the finding of Plaintiff's RFC on the  
22 opinion of Dr. John Godes, a consultative medical examiner. (A.R.  
23 24, 268-73).

24 At step four, the ALJ determined that Plaintiff was unable to  
25 return to her past work as an insurance agent or policy holder  
26 information clerk. (A.R. 25). The ALJ made this determination after  
27 comparing Plaintiff's RFC with the requirements of her past relevant  
28

1 work, and after hearing testimony from a vocational expert. (A.R.  
2 25, 44-47).

3  
4 At step five, based on testimony from the vocational expert, who  
5 had considered Plaintiff's limitations, the ALJ concluded that  
6 Plaintiff had the RFC to work as a mail clerk or as a housekeeper.  
7 (A.R. 26, 46-47). Additionally, the ALJ found that these jobs exist  
8 in significant numbers in the national economy. (A.R. 26, 46-47). As  
9 a result of these findings, the ALJ concluded that Plaintiff was not  
10 disabled under 42 U.S.C. § 423(d)(1)(A).

#### 11 12 STANDARD OF REVIEW

13  
14 This court reviews the Administration's decisions to determine  
15 if: (1) the Administration's findings are supported by substantial  
16 evidence; and (2) The Administration used proper legal standards.  
17 Smolen, 80 F.3d at 1279. "Substantial evidence is more than a  
18 scintilla, but less than a preponderance." Andrews v. Shalala, 53  
19 F.3d 1035, 1039 (9th Cir. 1995). To determine whether substantial  
20 evidence supports a finding, "a court must consider [] the record as  
21 a whole, weighing both evidence that supports and evidence that  
22 detracts from the [Commissioner's] conclusion." Reddick v. Chater,  
23 157 F.3d 715, 720 (9th Cir. 1998). As a result, "[i]f evidence can  
24 reasonably support either affirming or reversing the ALJ's  
25 conclusion, [a] court may not substitute its judgment for that of the  
26 ALJ." Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1196 (9th  
27 Cir. 2004).

1 **PLAINTIFF'S CONTENTIONS**

2  
3 Plaintiff contends that (1) the Appeals Council erred in finding  
4 that the new evidence submitted by Plaintiff did not warrant a  
5 remand; and (2) the ALJ erred in his assessment of Plaintiff's  
6 credibility. (See Joint Stip. 2.)  
7

8 **DISCUSSION**

9  
10 After consideration of the record as a whole, the Court finds  
11 that the Commissioner's findings are supported by substantial  
12 evidence and are free from material<sup>1</sup> legal error.  
13

14 **A. The ALJ Did Not Err in Evaluating Plaintiff's Credibility**

15  
16 Plaintiff contends that the ALJ erred in evaluating her  
17 credibility, and that because of this error, the ALJ failed to find  
18 her disabled. (Joint Stip. 14-17, 21-24). As a result, Plaintiff  
19 implicitly faults the ALJ's findings regarding step three of his  
20 analysis, arguing that the ALJ should have found her severe  
21 impairments disabling.  
22

23 If a claimant asserts that pain is the primary reason a severe  
24 impairment is disabling, the claimant's testimony regarding her  
25

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26 <sup>1</sup> The harmless error rule applies to the review of administrative  
27 decisions regarding disability. See McLeod v. Astrue, 640 F.3d 881,  
28 886-88 (9th Cir. 2011); Burch v. Barnhart, 400 F.3d 676, 679 (9th  
Cir. 2005) (stating that an ALJ's decision will not be reversed for  
errors that are harmless).



1 subjective symptoms may be crucial to the ALJ's evaluation. See  
2 Johnson v. Shalala, 60 F.3d 1428, 1433 (9th Cir 1995). The ALJ must  
3 make "an explicit credibility finding whenever the claimant's  
4 credibility is a critical factor in the Secretary's determination."  
5 Rashad v. Sullivan, 903 F.2d 1229, 1231 (9th Cir. 1990). In order to  
6 determine whether a claimant's testimony is credible, the ALJ engages  
7 in a two-step analysis. Garrison v. Colvin, 759 F.3d 995, 1014 (9th  
8 Cir. 2014).

9  
10 First, the claimant "must produce objective medical evidence of  
11 an underlying impairment 'which could reasonably be expected to  
12 produce the pain or other symptoms alleged.'" Bunnell v. Sullivan,  
13 947 F.2d 341, 344 (9th Cir. 1991) (quoting 42 U.S.C. §  
14 423(d)(5)(A)(1988)). In producing evidence of the underlying  
15 impairment, "the claimant need not produce objective medical evidence  
16 of the pain or fatigue itself, or the severity thereof." Smolen, 80  
17 F.3d at 1282. Instead, the claimant "need only show that [the  
18 impairment] could reasonably have caused some degree of the symptom."  
19 Id.

20  
21 Second, once the claimant has produced the requisite objective  
22 medical evidence, the "ALJ may reject the claimant's testimony  
23 regarding the severity of her symptoms." Smolen, 80 F.3d at 1284.  
24 Absent affirmative evidence of malingering, however, the ALJ may only  
25 reject a plaintiff's testimony "by offering specific, clear and  
26 convincing reasons for doing so." Id. In assessing a claimant's  
27 alleged symptoms, an ALJ may consider: "(1) ordinary techniques of  
28 credibility evaluation, such as claimant's reputation for lying,

1 prior inconsistent statements concerning the symptoms, and other  
2 testimony by the claimant that appears to be less than candid; (2)  
3 unexplained or inadequately explained failure to seek treatment or to  
4 follow a prescribed course of treatment; and (3) the claimant's daily  
5 activities." Id. An ALJ may also consider "the claimant's work  
6 record and observations of treating and examining physicians and  
7 other third parties." Id.

8  
9 Here, the ALJ examined the Administrative Record and heard  
10 testimony from Plaintiff. Based on the record, the ALJ determined  
11 that Plaintiff had "produce[d] objective medical evidence of an  
12 underlying impairment 'which could reasonably be expected to produce  
13 the pain or other symptoms alleged.'" (A.R. 22). However, the ALJ  
14 rejected plaintiff's testimony regarding the disabling effects of her  
15 symptoms and offered specific, clear and convincing reasons for doing  
16 so. (A.R. 22-25). The reasons given by the ALJ are supported by the  
17 record.

18  
19 "[E]vidence of 'conservative treatment' is sufficient to  
20 discount a claimant's testimony regarding the severity of an  
21 impairment." Parra v. Astrue, 481 F.3d 742, 751 (9th Cir.  
22 2007)(holding that Plaintiff's use of over-the-counter pain  
23 medications to treat pain was inconsistent with Plaintiff's claims  
24 that pain was disabling). Here, the ALJ found that "the infrequent  
25 treatment received since the alleged onset date was routine,  
26 conservative and non-emergency."<sup>2</sup> (A.R. 22). These facts are

27  
28 <sup>2</sup> While Plaintiff's clinical visits may be described as frequent,  
she did not present for back pain in each instance, but sought

1 supported by the administrative record. The ALJ noted that Plaintiff  
2 found "moderate relief" from lower back pain through conservative  
3 treatment such as taking Advil, and exercising. (A.R. 23, 239, 242).  
4 Plaintiff's clinical visits for both physical and psychological  
5 examinations were routine and yielded no abnormalities. (A.R. 22,  
6 211-14, 216, 227-33, 261-63, 277-305, 311-17, 320-21). Furthermore,  
7 the ALJ included in his decision the fact that Plaintiff claimed she  
8 was diagnosed with rheumatoid arthritis in 2001, but never sought out  
9 treatment. (A.R. 22, 211). Accordingly, the ALJ properly discounted  
10 Plaintiff's testimony based on the evidence of her conservative  
11 treatment

12  
13 The ALJ may rely on "ordinary techniques of credibility  
14 evaluation" in considering Plaintiff's credibility. Smolen, 80 F.3d  
15 at 1284. As a result, "the adjudicator may discredit the claimant's  
16 allegations based on inconsistencies in the testimony or on relevant  
17 character evidence." Bunnell, 947 F.2d at 346. The ALJ's review of  
18 the record revealed that Plaintiff "ha[d] made inconsistent  
19 statements regarding matters relevant to the issue of disability."  
20 (A.R. 24). Specifically, the ALJ correctly noted that Plaintiff  
21 "reported that she was fired from her position at Chevron...yet she  
22 admitted on disability report that she quit the job in August 2006."

23  
24 treatment for other medical issues. (A.R. 227-37, 246-47, 248-50,  
25 277-79, 281-83, 284-88, 311-13, 315-317). Therefore, while the  
26 actual number of clinical visits remained high, the occasions on  
27 which she sought out treatment for her severe impairments remained  
28 infrequent. (A.R. 211-13, 239-41, 251-53, 292-294, 295-305).  
Additionally, despite her continued medical appointments, her  
treatment for all of her conditions remained "routine, conservative,  
and non-emergency." (A.R. 211-13, 227-37, 239-41, 246-47, 248-50,  
251-53, 277-79, 281-83, 284-88, 292-294, 295-305, 311-13, 315-317).

1 (A.R. 24, 166). Additionally, the ALJ pointed out that Plaintiff  
2 admitted to the medical examiner that she was fired from her job at  
3 the Chevron station for absenteeism resulting from her drug use.  
4 (A.R. 23-24, 217). Based on these findings, the ALJ properly  
5 concluded that, "the inconsistencies suggest that the information  
6 provided by the claimant generally may not be entirely reliable."  
7 (A.R. 24).

8  
9 "Contradiction with the medical record is a sufficient basis for  
10 rejecting the claimant's subjective testimony." Carmickle v. Comm'r  
11 Soc. Sec. Admin., 533 F.3d 1155, 1161 (9th Cir. 2008); See also Burch  
12 v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005) ("Although lack of  
13 medical evidence cannot form the sole basis for discounting pain  
14 testimony, it is a factor that the ALJ can consider in his  
15 credibility analysis."). In addition to other inconsistencies, the  
16 ALJ found Plaintiff's credibility to be "highly suspect based on the  
17 discrepancy between the claimant's subjective complaints and the  
18 objective medical evidence." (A.R. 22). The ALJ noted that despite  
19 Plaintiff's complaints of myriad disabling conditions, one medical  
20 examination revealed "no abnormal findings except for two swollen and  
21 tender fingers." (A.R. 22, 211-13). Furthermore, the ALJ pointed to  
22 the fact that during medical evaluation, Plaintiff displayed "no  
23 sensory abnormalities, no motor dysfunction, normal gait and stance,  
24 no pain upon palpitation of spine and extremities, [and] no muscle  
25 spasm."<sup>3</sup> (A.R. 22, 212-213). Additionally, despite claiming a  
26

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27 <sup>3</sup> While some later medical records show that Plaintiff did claim  
28 "tenderness upon palpitation" of her lower spine, (A.R. 213, 242,  
252, 293, 298), others make no mention of tenderness or pain. (A.R.

1 diagnosis of rheumatoid arthritis, Plaintiff tested negative for the  
2 condition. (A.R. 22, 224). The ALJ properly relied on the lack of  
3 objective medical evidence supporting Plaintiff's testimony in making  
4 an adverse credibility determination.

5  
6 The Court finds that the ALJ stated legally sufficient reasons  
7 for his adverse credibility finding.

8  
9 **B. The New Evidence Submitted by Plaintiff to the Appeals**  
10 **Council Does Not Warrant A Remand**

11  
12 Plaintiff contends that the Appeals Council erred by failing to  
13 remand Plaintiff's case because new evidence submitted to the Appeals  
14 Council purportedly undermines the sufficiency of the evidence to  
15 support the ALJ's decision. (Joint Stip. 2-5, 11-14)

16  
17 "[T]he administrative record includes [new] evidence submitted  
18 to and considered by the Appeals Council." Brewes v. Comm'r of Soc.  
19 Sec. Admin., 682 F.3d 1157, 1162 (9th Cir. 2012). The Appeals  
20 Council, after considering the new evidence, "denies review or, if it  
21 accepts a case for review, issues its own findings on the merits."  
22 Id. "When the Appeals Council declines review, 'the ALJ's decision  
23 becomes the final decision of the commissioner.'" Id. (quoting  
24 Taylor v. Comm'r of Soc. Sec. Admin., 659 F.3d 1228, 1231 (9th Cir.  
25 2011)). The district court will then consider new evidence submitted  
26 to the Appeals Council in determining whether the denial of benefits  
27  
28 240, 250, 282, 288). Plaintiff also only exhibited muscle spasm  
during a single examination. (A.R. 252).

1 was supported by substantial evidence, as long as the Appeals Council  
2 has not rejected the evidence. See Lay v. Astrue, 373 Fed.Appx. 804,  
3 806 (9th Cir. 2010).

4  
5 To determine whether substantial evidence supports a decision,  
6 "a court must consider . . . the record as a whole, weighing both  
7 evidence that supports and evidence that detracts from the  
8 [Commissioner's] conclusion." Reddick, 157 F.3d at 720. Plaintiff  
9 contends that because the new evidence she submitted to the Appeals  
10 Council shows "nerve root compression," her condition is *per se*  
11 disabling under 20 C.F.R. Pt. 404, Subpart P, Appendix 1, 1.04.

12  
13 Appendix 1, 1.04 provided that a claimant is disabled if they  
14 exhibit:

15  
16 "evidence of nerve root compression characterized by neuro-  
17 anatomic distribution of pain, limitation of motion of the  
18 spine, motor loss accompanied by sensory or reflex loss  
19 and, *if there is involvement of the lower back*, positive  
20 straight leg rais[e]."

21  
22 20 C.F.R. Pt. 404, Subpart P, Appendix 1, 1.04 (emphasis added).  
23 However, because Plaintiff exhibited normal stance and gait, no  
24 limitations of spinal motion, no motor loss, and a negative straight  
25 leg raise, she is not disabled under that provision. (A.R. 212-13,  
26 252, 270-72, 293, 298). Therefore, Plaintiff does not meet a listing  
27 under Appendix 1. Although the x-rays and MRIs that were submitted  
28 to the Appeals Council provide "objective medical evidence of an

1 underlying impairment," Bunnell, 947 F.2d at 344, they do not provide  
2 a basis to challenge the ALJ's finding that Plaintiff's "medically  
3 determinable impairments could reasonably be expected to cause the  
4 alleged symptoms." (A.R. 22). The analysis returns to whether "the  
5 ALJ's credibility finding is supported by substantial evidence in the  
6 record." Thomas v. Barnhart, 278 F.3d 947, 959 (9th Cir. 2002). As  
7 stated above, the ALJ found reason to doubt Plaintiff's credibility  
8 using "ordinary techniques of credibility evaluation," Smolen, 80  
9 F.3d at 1284, and after finding "evidence of conservative treatment,"  
10 Parra, 481 F.3d at 751, inconsistencies in plaintiff's statements,  
11 and discrepancies between her subjective complaints and the objective  
12 medical evidence. Carmickle, 533 F.3d at 1166. Because the new  
13 evidence does not change the facts relied on by the ALJ in making his  
14 adverse credibility determination, that finding remains properly  
15 supported by substantial evidence.<sup>4</sup>

16  
17 Furthermore, "new evidence is part of the administrative record,  
18 which the district court must consider in determining whether the  
19 Commissioner's decision is supported by substantial evidence."  
20 Brewes, 682 F.3d at 1159-60. A review of the record, including the  
21 new x-rays and MRIs that were submitted after the ALJ's decision,  
22 tends to undermine rather than bolster Plaintiff's credibility.  
23 "[I]f a claimant complains about disabling pain but fails to seek

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24  
25 <sup>4</sup> Plaintiff also argues that remand is required because the ALJ was  
26 unable to consider her obesity in conjunction with the evidence of  
27 nerve root compression. (Joint Stip. 15). However, this argument is  
28 premised on Plaintiff's claim that evidence of "nerve root  
compression" meets or equals a listing. (Joint Stip. 12). As set  
forth above, Plaintiff's reliance on Appendix 1, 1.04, is misplaced.  
Therefore, a remand to consider Plaintiff's obesity in conjunction  
with this evidence is not required.

1 treatment, or fails to follow prescribed treatment, for the pain, an  
2 ALJ may use such failure as a basis for finding the complaint  
3 unjustified or exaggerated." Orn v. Astrue, 495 F.3d 625, 638 (9th  
4 Cir. 2007). The record reveals that Plaintiff was scheduled for an  
5 x-ray and MRI appointment by Dr. Sarah Hwang, but failed to show, or  
6 provide any explanation for her failure to do so. (A.R. 295). It  
7 was only *after* the ALJ found Plaintiff not disabled, and over a year  
8 after Dr. Hwang scheduled the appointment, that Plaintiff reported  
9 for the tests. These facts support the ALJ's finding that Plaintiff  
10 treated her condition conservatively, and demonstrate that Plaintiff  
11 was "in less pain than she claim[ed]." Dodrill v. Shalala, 12 F.3d  
12 915, 918 (9th Cir. 1993).

#### 13 14 **CONCLUSION**

15  
16 The legally valid reasons given by the ALJ for discounting  
17 Plaintiff's credibility sufficiently allow the Court to conclude that  
18 the ALJ's credibility finding was based on permissible grounds. The  
19 Court therefore defers to the ALJ's credibility determination. See  
20 Lasich v. Astrue, 252 Fed. App'x 823, 825 (9th Cir. 2007) (court will  
21 defer to ALJ's credibility determination when the proper process is  
22 used and proper reasons for the decision are provided); accord Flaten  
23 v. Sec'y of Health and Human Serv., 44 F.3d 1453, 1464 (9th Cir.  
24 1995). Where the ALJ has made specific findings justifying a  
25 decision to disbelieve Plaintiff's symptom allegations and those  
26 findings are supported by substantial evidence in the record, "we may  
27 not engage in second guessing." Thomas, 278 F.3d at 958-59.



**ORDER**

For all of the foregoing reasons, the decision of the Administrative Law Judge is affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: October 29, 2014.

/s/ \_\_\_\_\_  
ALKA SAGAR  
UNITED STATES MAGISTRATE JUDGE