



1 out of an eight-hour workday with normal breaks; [plaintiff] can sit for six hours out of an eight-hour  
2 workday with normal breaks; [plaintiff] can perform complex tasks; [plaintiff] can perform work that  
3 requires frequent changes in the work setting; [plaintiff] is limited to jobs with no more than normal and  
4 ordinary pressures of common work; [and plaintiff] is restricted from highly stressful jobs, such as high  
5 production quotas and dynamic teamwork.” [AR 18]. Based on the testimony of a vocational expert (“VE”),  
6 the ALJ determined that plaintiff could perform her past relevant work as an office manager. [AR 25].  
7 Accordingly, the ALJ found that plaintiff was not disabled at any time from the date her SSI application was  
8 filed through the date of the ALJ’s decision. [AR 26].

### 9 **Standard of Review**

10 The Commissioner’s denial of benefits should be disturbed only if it is not supported by substantial  
11 evidence or is based on legal error. Brown-Hunter v. Colvin, 806 F.3d 487, 492 (9th Cir. 2015); Thomas  
12 v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002). “Substantial evidence” means “more than a mere scintilla,  
13 but less than a preponderance.” Bayliss v. Barnhart, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005). “It is such  
14 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Burch v.  
15 Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (internal quotation marks omitted). The court is required to  
16 review the record as a whole and to consider evidence detracting from the decision as well as evidence  
17 supporting the decision. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006); Verduzco v. Apfel,  
18 188 F.3d 1087, 1089 (9th Cir. 1999). “Where the evidence is susceptible to more than one rational  
19 interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be upheld. Thomas v.  
20 Barnhart, 278 F.3d 947, 954 (9th Cir. 2002) (citing Morgan v. Comm’r of Soc. Sec. Admin., 169 F.3d 595,  
21 599 (9th Cir. 1999)).

### 22 **Discussion**

#### 23 **Medical opinion evidence**

24 Plaintiff contends that the ALJ erred in evaluating the opinions of her psychiatric treating sources,  
25 J. Kellogg, M.D., and nurse practitioner Dana Lambrose. [JS 13].

26 A treating or examining physician’s opinion is not binding on the Commissioner with respect to the  
27 existence of an impairment or the ultimate issue of disability. Tonapetyan v. Halter, 242 F.3d 1144, 1148  
28 (9th Cir. 2001). Where, however, a treating physician’s medical opinion as to the nature and severity of an

1 individual's impairment is well-supported and not inconsistent with other substantial evidence in the record,  
2 that opinion is entitled to controlling weight. Edlund v. Massanari, 253 F.3d 1152, 1157 (9th Cir. 2001);  
3 Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir. 2001); see 20 C.F.R. §§ 404.1527(c)(2),  
4 416.927(c)(2); Social Security Ruling (“SSR”) 96-2p, 1996 WL 374188, at \*1-\*2. Even when not entitled  
5 to controlling weight, “treating source medical opinions are still entitled to deference and must be weighed”  
6 in light of (1) the length of the treatment relationship; (2) the frequency of examination; (3) the nature and  
7 extent of the treatment relationship; (4) the supportability of the diagnosis; (5) consistency with other  
8 evidence in the record; and (6) the area of specialization. Edlund, 253 F.3d at 1157 & n.6 (quoting SSR 96-  
9 2p and citing 20 C.F.R. § 404.1527); Holohan, 246 F.3d at 1202.

10 The ALJ must provide clear and convincing reasons, supported by substantial evidence in the record,  
11 for rejecting an uncontroverted treating source opinion. If contradicted by that of another doctor, a treating  
12 or examining source opinion may be rejected for specific and legitimate reasons that are based on substantial  
13 evidence in the record. Batson v. Comm’r of Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004);  
14 Tonapetyan, 242 F.3d at 1148-1149; Lester v. Chater, 81 F.3d 821, 830-831 (9th Cir. 1995). “The opinion  
15 of a nonexamining physician cannot by itself constitute substantial evidence that justifies the rejection of  
16 the opinion of either an examining physician or a treating physician.” Lester, 81 F.3d at 831.

17 The record in this case contains conflicting medical treating, examining, and nonexamining source  
18 opinions. Accordingly, the ALJ was entitled to reject the treating and examining source opinions so long  
19 as he articulated specific and legitimate reasons supported by substantial evidence for doing so.

20 In reaching his June 25, 2015 decision denying benefits, the ALJ considered treating and examining  
21 source records from Progeny Psychiatric Group, where plaintiff began outpatient psychiatric treatment in  
22 May 2014. [See AR 376-402]. Plaintiff was seen monthly for psychotherapy and medication management,  
23 usually by nurse practitioner Dana Lambrose but occasionally by other clinicians who were not physicians.  
24 None of those treatment reports indicate that plaintiff was seen by Dr. Kellogg or by another physician, nor  
25 do Ms. Lambrose’s reports contain any indication that a physician reviewed Ms. Lambrose’s reports. [See  
26 AR 376-398].

27 On June 1, 2015, Ms. Lambrose and Dr. Kellogg completed a mental medical source questionnaire  
28 indicating that plaintiff is precluded from every rated ability and aptitude necessary for unskilled work for

1 15% or more of an eight-hour workday, including “carry[ing] out very short and simple instructions,” and  
2 “sustain[ing] an ordinary routine without special supervision.” [AR 401]. They also indicated that plaintiff  
3 would find all of the rated work demands “stressful,” including “getting to work regularly,” “making  
4 decisions,” “completing tasks,” and dealing with supervisors and the public. [AR 402]. Ms. Lambrose and  
5 Dr. Kellogg opined that plaintiff had a range of symptoms and disorders, including bipolar syndrome and  
6 severe panic attacks. [AR 400].

7 The ALJ permissibly found that the questionnaire completed by Dr. Kellogg and Ms. Lambrose was  
8 inconsistent with the treatment reports from Progeny Psychiatric Group as well as with the findings and  
9 conclusions of the examining psychiatrist, Dr. Aguilar. For example, the questionnaire states that plaintiff’s  
10 highest Global Assessment of Function (“GAF”) score in the past year was 45. [AR 400]. On May 27,  
11 2014, however, Ms. Lambrose recorded plaintiff’s GAF score as 75.<sup>1</sup> [AR 397]. See Morgan, 169 F.3d at  
12 603 (holding that the ALJ permissibly rejected the treating and examining sources’ opinions in favor of a  
13 nonexamining source opinion based on inconsistencies within, and between, the treating and examining

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14  
15 <sup>1</sup> Under the fourth edition of the American Psychiatric Association’s Diagnostic and Statistical  
16 Manual of Mental Disorders, a clinician’s GAF score provides “a rough estimate of an individual’s  
17 psychological, social, and occupational functioning used to reflect the individual’s need for  
18 treatment.” Garrison v. Colvin, 759 F.3d 995, 1003 n.4 (9th Cir. 2014) (quoting Vargas v. Lambert,  
19 159 F.3d 1161, 1164 n. 2 (9th Cir.1998) and citing SSR 85-15); see Diagnostic and Statistical  
20 Manual of Mental Disorders, 31–34 (4th ed. rev. 2000) (“DSM-IV”). “[T]he fifth edition of the  
21 Diagnostic and Statistical Manual of Mental Disorders issued May 27, 2013, abandoned the GAF  
22 scale in favor of standardized assessments for symptom severity, diagnostic severity, and disability  
23 . . . .” Wilson v. Colvin, 72 F. Supp. 3d 1159, 1164 & n. 2 (D. Or. 2014) (citing Diagnostic and  
24 Statistical Manual of Mental Disorders, 16 (5th ed. 2013) (“DSM-V”)); see Lees v. Colvin, 2014  
25 WL 2896004, at \*2 (W.D. Wash. June 25, 2014) (“The most recent version of the DSM does not  
26 include a GAF rating for assessment of mental disorders.”) (citing DSM–V at 16-17). The  
27 Commissioner “continues to receive and consider GAF scores from acceptable medical sources as  
28 opinion evidence, [but] a GAF score cannot alone be used to raise or lower someone’s level of  
function, and, unless the reasons behind the rating and the applicable time period are clearly  
explained, it does not provide a reliable longitudinal picture of the claimant’s mental functioning for  
a disability analysis.” Lees, 2014 WL 2896004, at \*2 (internal quotation marks omitted).

Under the DSM-IV, a GAF score between 41 and 50 signifies serious symptoms or any  
serious impairment in social, occupational, or school functioning; s GAF score between 51 and 60  
describes moderate symptoms or any moderate difficulty in social, occupational, or school  
functioning; and a GAF score between 71 and 80 indicates that if symptoms are present, they are  
transient and expectable reactions to psychosocial stressors, representing no more than a slight  
impairment in social, occupational, or school functioning. See Garrison, 759 F.3d at 1003 n. 4;  
DSM-IV at 31-34.

1 source reports). Additionally, the treating source reports provide little objective or clinical support for the  
2 conclusions expressed by Ms. Lambrose and Dr. Kellogg. See Bayliss, 427 F.3d at 1217 (noting that “an  
3 ALJ need not accept the opinion of a doctor if that opinion is brief, conclusory, and inadequately supported  
4 by clinical findings,” and holding that the ALJ properly rejected a treating physician's opinion in part  
5 because it was contradicted by the doctor's treatment notes); Connett v. Barnhart, 340 F.3d 871, 874-875  
6 (9th Cir. 2003) (holding that the ALJ did not err in rejecting the controverted opinion of a treating physician  
7 whose restrictive functional assessment was not supported by his treatment notes). Ms. Lambrose’s  
8 treatment notes briefly record her observations and plaintiff’s statements, and in general tend to show some  
9 variation in plaintiff’s well-being related to her medication compliance and admitted use of illicit  
10 substances. For example, in July 2014, Ms. Lambrose recorded that plaintiff’s mood was “euthymic,” and  
11 her behavior was “cooperative and calm,” noting “significant improvement” and an effective regimen of  
12 medication. [AR 390]. Yet in August 2014, Ms. Lambrose observed that plaintiff’s mood was “labile” and  
13 her behavior was “restless,” and plaintiff reported that she was “checking into a detox this evening –  
14 methamphetamine addiction.” [AR 387]. In September 2014, plaintiff said that she was six weeks sober and  
15 was going to the gym every day. [AR 387]. In October 2014, plaintiff told Ms. Lambrose “I have my brain  
16 back again. I can think and get things done.” [AR 381]. In November 2014, Ms. Lambrose found that  
17 plaintiff was “happy” and “cooperative,” showed “significant improvement,” and was “sleeping well.” [AR  
18 380]. On December 8, 2014, however, plaintiff called the clinic saying that she looked and felt like a  
19 “wreck” and could not attend her appointment. Ms. Lambrose instructed her to go to the emergency room  
20 for evaluation. [AR 379]. A report from December 29, 2014 noted that plaintiff was “happy” and “stable,”  
21 and that her medications “are effective per expectations.” Plaintiff disclosed that she was planning on  
22 “entering rehab in one month . . . .” [AR 377]. In February 2015, plaintiff was noted to be “non-adherent”  
23 with medications prescribed for schizophrenia and insomnia (Saphris and Trazodone); she reported that she  
24 was not experiencing psychosis or insomnia and “no longer wishes to take them.” [AR 376]. Plaintiff  
25 exhibited “good response” to her other prescribed medications, Wellbutrin, Prozac, Vitamin B12, and  
26 Adderall, which were prescribed “to control[] PTSD symptoms, depression, and inattentiveness.” [AR 376].

27 The ALJ permissibly determined that Dr. Kellogg and Ms. Lambrose’s questionnaire is  
28 “inadequately supported by clinical findings” and that the treating source reports “document[ed]

1 significantly improved symptoms during periods of medication compliance and abstinence from illegal  
2 substances,” undermining the conclusions expressed in their questionnaire. [AR 24].

3 The ALJ also relied on the June 2014 opinion of the consultative psychiatric examiner, Norma R.  
4 Aguilar, M.D., who interviewed plaintiff and conducted a mental status examination. Plaintiff reported that  
5 she had abused prescription narcotics until a month earlier and had started psychiatric treatment at about  
6 the same time, with a “fair response” to prescribed medication and weekly psychotherapy sessions. [AR  
7 278]. Dr. Aguilar found that plaintiff was “cooperative” with normal speech, a “slightly depressed” mood  
8 and a “slightly constricted” affect, without delusions or hallucinations, with grossly normal memory,  
9 concentration, information fund and judgment. [AR 279-280]. Dr. Aguilar diagnosed PTSD and “Alcohol  
10 and Other Substance Abuse, in partial remission.” [AR 280]. She opined that plaintiff was moderately  
11 limited in her ability to respond to work pressure and mildly limited in her ability to respond to changes in  
12 a routine work setting and daily living, but had no limitation following simple or detailed job instructions,  
13 interacting with others, or complying with job rules. [AR 280-281]. Dr. Aguilar gave plaintiff a GAF score  
14 of 55-60, denoting moderate symptoms or moderate or any moderate difficulty in social, occupational, or  
15 school functioning. [AR 22]. Dr. Aguilar opined that plaintiff’s “prognosis is poor at present but fair with  
16 stabilization and abstinence from drugs.” [AR 281]. The ALJ concluded that Dr. Aguilar’s report was  
17 consistent with the evidence as a whole and gave it “great weight.” [AR 24].

18 Additionally, the ALJ gave some weight to the July 2014 opinion of a nonexamining state agency  
19 psychologist who concluded that plaintiff was only mildly impaired in activities of daily living, social  
20 functioning, and maintaining concentration, persistence or pace, and that she did not have any severe mental  
21 impairment. [AR 24, 79].

22 The ALJ’s evaluation of the medical evidence is supported by substantial evidence in the record.  
23 The ALJ assessed plaintiff’s medical records as a whole, including treating source notes concerning  
24 plaintiff’s therapy sessions, medications, and response to treatment, as well as the reports of the  
25 Commissioner’s consultative examining and nonexamining sources. The ALJ did not err in giving little  
26 weight to the questionnaire signed by Ms. Lambrose and Dr. Kellogg.

27 **Credibility finding**

28 Plaintiff contends that the ALJ failed to articulate legally sufficient reasons for rejecting her

1 testimony regarding her subjective symptoms. [JS 21-24].

2 If the record contains objective evidence of an underlying physical or mental impairment that is  
3 reasonably likely to be the source of a claimant's subjective symptoms, the ALJ is required to consider all  
4 subjective testimony as to the severity of the symptoms. Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir.  
5 2004); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991) (en banc); see also 20 C.F.R. §§ 404.1529(a),  
6 416.929(a) (explaining how pain and other symptoms are evaluated). Absent affirmative evidence of  
7 malingering, the ALJ must then provide specific, clear and convincing reasons for rejecting a claimant's  
8 subjective complaints. Vasquez v. Astrue, 547 F.3d 1101, 1105 (9th Cir. 2008); Carmickle v. Comm'r, Soc.  
9 Sec. Admin., 533 F.3d 1155, 1160-1161 (9th Cir. 2008); Moisa, 367 F.3d at 885. "In reaching a credibility  
10 determination, an ALJ may weigh inconsistencies between the claimant's testimony and his or her conduct,  
11 daily activities, and work record, among other factors." Bray v. Comm'r of Social Sec. Admin., 554 F.3d  
12 1219, 1221, 1227 (9th Cir. 2009); Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir.1997). The ALJ's  
13 credibility findings "must be sufficiently specific to allow a reviewing court to conclude the ALJ rejected  
14 the claimant's testimony on permissible grounds and did not arbitrarily discredit the claimant's testimony."  
15 Moisa, 367 F.3d at 885. If the ALJ's interpretation of the claimant's testimony is reasonable and is  
16 supported by substantial evidence, it is not the court's role to "second-guess" it. Rollins v. Massanari, 261  
17 F.3d 853, 857 (9th Cir. 2001).

18 At the administrative hearing, plaintiff testified that she is unable to work due to anxiety, PTSD,  
19 guilt, shame, physical pain, depression, night terrors and panic attacks. [AR 43-45]. According to plaintiff,  
20 she has crying spells when she realizes she does not fit in with the mainstream world. [AR 45]. She reported  
21 difficulty concentrating and initiating tasks, and she described her behavior as erratic. [AR 41, 46]. She says  
22 she has anxiety attacks that "used to last for weeks or months." [AR 48]. The medications that she takes for  
23 her psychiatric conditions make her feel sleepy, and she has to take a nap every day. [AR 50]. She testified  
24 that she cannot get out of bed due to pain, and wears a diaper at night. [AR 45]. She further testified that  
25 she has a history of illegal drug use, and that she once went a period of six months without using illegal  
26 drugs. [AR 50-51]. She testified that she experienced anxiety when she was not using drugs. [AR 51].

27 The ALJ found that plaintiff had severe impairments consisting of back strain and alcohol and drug  
28 dependence in remission, but that plaintiff's allegations as to the intensity, duration and functionally limiting

1 effects of those impairments were not fully credible. [AR 20-24]. The ALJ gave legally sufficient reasons  
2 for rejecting plaintiff's credibility.

3 First, the ALJ rejected plaintiff's credibility because "the objective medical evidence does not  
4 support the alleged severity of symptoms." [AR 24]. "Although lack of medical evidence cannot form the  
5 sole basis of discounting pain testimony, it is a factor that the ALJ can consider in his credibility analysis."  
6 Burch, 400 F.3d at 681; Rollins, 261 F.3d at 857 (noting that "[w]hile subjective pain testimony cannot be  
7 rejected on the sole ground that it is not fully corroborated by objective medical evidence, the medical  
8 evidence is still a relevant factor in determining the severity of the claimant's pain and its disability effects").  
9 No physician testified that plaintiff is as physically limited as she maintains, or that she is disabled by her  
10 pain or anxiety. Rather, John Sedgh, M.D., a board-certified internist, examined plaintiff and reported that  
11 her cervical spine, lumber spine, shoulders, elbows, wrists, hands, hips, ankles, motor strength, sensation,  
12 reflexes, cranial nerves, and gait were all within normal limits. [AR 266-269]. See Parra v. Astrue, 481 F.3d  
13 742, 750 (9th Cir. 2007) (holding that the ALJ permissibly discounted the claimant's complaints of bursitis-  
14 related knee pain based on laboratory tests showing knee function within normal limits). Dr. Sedgh opined  
15 that plaintiff "can lift and carry 50 pounds occasionally and 25 pounds frequently. She can stand and walk  
16 six hours in an eight-hour day with normal breaks. She can sit for six hours in an eight-hour day. Kneeling,  
17 crouching and stooping should be limited to frequent. She can reach above shoulder level and perform fine  
18 and gross manipulation without limitations." [AR 269].

19 Moreover, as noted above, the ALJ permissibly determined that the treating source objective and  
20 clinical findings were inconsistent with the existence of a disabling mental disorder and instead indicated  
21 that plaintiff responded well to treatment when she was compliant with her medications and abstained from  
22 illegal substance abuse. [See AR 22-24]. The ALJ properly relied on the lack of corroborating medical  
23 evidence as a factor in his credibility assessment. See, e.g., Stubbs-Danielson v. Astrue, 539 F.3d 1169,  
24 1175 (9th Cir. 2008) (noting that the medical evidence, including medical reports which found that the  
25 claimant could perform a limited range of work, supported the ALJ's credibility determination).

26 Next, the ALJ noted that plaintiff "has not generally received the type of medical treatment one  
27 would expect for a totally disabled individual." [AR 20]. "[A] conservative course of treatment can  
28 undermine allegations of debilitating pain." Carmickle, 533 F.3d at 1162; Orn v. Astrue, 495 F.3d 625, 638



1 (9th Cir. 2007). Plaintiff alleged that she was unable to get out of bed due to pain. [AR 18]. Aside from  
2 a May 2015 spinal health evaluation recommending a back brace that “immediately reduced [plaintiff]’s  
3 low back pain to minimal levels” [AR 399], the record contains little evidence that plaintiff complained of  
4 or sought treatment for such pain in recent years. The ALJ permissibly discounted plaintiff’s subjective pain  
5 complaints based on her history of conservative treatment. See Tommasetti v. Astrue, 533 F.3d 1035, 1039  
6 (9th Cir. 2008) (holding that the ALJ permissibly inferred that the claimant’s “pain was not as all-disabling  
7 as he reported in light of the fact that he did not seek an aggressive treatment program” and “responded  
8 favorably to conservative treatment including physical therapy and the use of anti-inflammatory medication,  
9 a transcutaneous electrical nerve stimulation unit, and a lumbosacral corset”) (citing Parra, 481 F.3d at  
10 750–751 (stating that “evidence of ‘conservative treatment’ is sufficient to discount a claimant’s testimony  
11 regarding severity of an impairment”); Orn v. Astrue, 495 F.3d 625, 638 (9th Cir. 2007) (“Our case law is  
12 clear that if a claimant complains about disabling pain but . . . fails to follow prescribed treatment[] for the  
13 pain, an ALJ may use such failure as a basis for finding the complaint unjustified or exaggerated.”); Warre  
14 v. Comm’r of the Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir. 2005) (“Impairments that can be  
15 controlled effectively with medication are not disabling.”); Osenbrock v. Apfel, 240 F.3d 1157, 1166 (9th  
16 Cir. 2001) (holding that the ALJ properly rejected the claimant’s testimony because he did not use “Codeine  
17 or Morphine based analgesics that are commonly prescribed for severe and unremitting pain”).

18 Finally, the ALJ summarized plaintiff’s testimony and written statements regarding her daily  
19 activities. [See AR 18-20]. Although plaintiff reported that her ability to carry out daily activities varied,  
20 she reported that at times she was able to care for pets, prepare occasional meals, perform personal grooming  
21 activities (but sometimes needed reminders), do laundry at the laundromat (where she said that she  
22 sometimes had panic attacks), spend time with her boyfriend or others on a one-on-one basis, occasionally  
23 attend church, and spend time reading. [See AR 18-20, 47-50, 176-183, 204-212]. The ALJ determined that  
24 plaintiff’s “ability to participate in such activities [of daily living] undermined the credibility of [her]  
25 allegations of disabling functional limitations.” [AR 20].

26 The Ninth Circuit has “repeatedly warned that ALJs must be especially cautious in concluding that  
27 daily activities are inconsistent with testimony about pain, because impairments that would unquestionably  
28 preclude work and all the pressures of a workplace environment will often be consistent with doing more

1 than merely resting in bed all day,” and it has held that an ALJ erred in concluding that a claimant’s daily  
2 activities that “included talking on the phone, preparing meals, cleaning her room, and helping to care for  
3 her daughter” were inconsistent with the claimant’s pain complaints. Garrison v. Colvin, 759 F.3d 995,  
4 1015-1016 (9th Cir. 2014); see Molina v. Astrue, 674 F.3d 1104, 1112-1113 (9th Cir. 2012) (stating that  
5 an ALJ may consider “whether the claimant engages in daily activities inconsistent with the alleged  
6 symptoms” and whether “the claimant reports participation in everyday activities indicating capacities that  
7 are transferable to a work setting,” and noting that “[e]ven where those activities suggest some difficulty  
8 functioning, they may be grounds for discrediting the claimant's testimony to the extent that they contradict  
9 claims of a totally debilitating impairment”). The ALJ erred in relying on plaintiff’s reported daily activities  
10 because those activities were not inconsistent with her subjective complaints, did not suggest that she was  
11 capable of meeting the demands of a work on a sustained basis, and did not indicate capabilities that are  
12 transferrable to a work setting. See Garrison, 759 F.3d at 1015-1016; Molina, 674 F.3d at 1112-1113.

13 Where, as here, an ALJ provides legally sufficient reasons supporting his credibility determination,  
14 the ALJ’s reliance on erroneous reasons is harmless “[s]o long as there remains substantial evidence  
15 supporting the ALJ's conclusions on credibility and the error does not negate the validity of the ALJ's  
16 ultimate credibility conclusion . . . .” Carmickle, 533 F.3d at 1162 (internal quotation marks, ellipsis, and  
17 alteration omitted); see generally McLeod v. Astrue, 640 F.3d 881, 886-888 (9th Cir. 2011) (holding that  
18 the harmless error rule ordinarily applied in civil cases applies in social security disability cases, and that  
19 the burden is on the party attacking the agency’s determination to show that prejudice resulted from the  
20 error) (citing Shinseki v. Sanders, 556 U.S. 396, 406-409 (2009)). Since the ALJ articulated two other  
21 legally sufficient reasons supporting his adverse credibility finding, his reliance on plaintiff’s daily activities  
22 was harmless.

### 23 **Past relevant work finding**

24 Plaintiff argues that the ALJ erred at step four in determining that she could perform her past  
25 relevant work as an office manager. [See AR 25]. Specifically, plaintiff contends that the requirements of  
26 that job as set forth in the Dictionary of Occupational Titles (“DOT”) are inconsistent with her RFC. [JS  
27 4-7]. Among several other limitations, plaintiff’s RFC restricts her “from highly stressful jobs, such as high  
28 production quotas and dynamic teamwork.” [AR 18].

1 A social security disability claimant bears the burden of proving that she cannot perform either the  
2 “actual functional demands and job duties of a particular past relevant job” or the “functional demands and  
3 job duties of the occupation as generally required by employers throughout the national economy.” Pinto  
4 v. Massanari, 249 F.3d 840, 845 (9th Cir. 2001) (quoting SSR 82-62); see also Burch, 400 F.3d at 679; Villa  
5 v. Heckler, 797 F.2d 794, 798 (9th Cir. 1986). The ALJ’s obligation is “to make the requisite factual  
6 findings to support” the conclusion that the claimant can perform past relevant work. “This is done by  
7 looking at the residual functional capacity and the physical and mental demands of the claimant’s past  
8 work.” Pinto, 249 F.3d at 844-845 (quoting 20 C.F.R. §§ 404.1520(e) and 416.920(e)). Because the claimant  
9 bears the burden of proving her inability to perform past relevant work, the ALJ is not required to elicit or  
10 rely on VE testimony in order to support a finding of non-disability at step four. Where, however, the ALJ’s  
11 step-four finding rests on a determination that the claimant can perform her past relevant work “as generally  
12 performed,” rather than as actually performed in a particular past job, the DOT or VE must be consulted to  
13 determine the “functional demands and job duties of the occupation as generally required by employers  
14 throughout the national economy.” Pinto, 249 F.3d at 845-846; see SSR 00-4p, 2000 WL 1898704, \*2 (“In  
15 making disability determinations, we rely primarily on the DOT (including its companion publication, the  
16 SCO) for information about the requirements of work in the national economy. We use these publications  
17 at steps 4 and 5 of the sequential evaluation process. We may also use VEs and VSs at these steps to resolve  
18 complex vocational issues.”) (footnote omitted). If the ALJ wishes to rely on a VE’s testimony, the VE  
19 “merely has to find that a claimant can or cannot continue his or her past relevant work as defined by the  
20 regulations . . . .” Pinto, 249 F.3d at 845. Even with such VE testimony, however, the ALJ is not “in any  
21 way relieved of his burden to make the appropriate findings to insure that the claimant really can perform  
22 his or her past relevant work.” Pinto, 249 F.3d at 845.

23 An ALJ may not rely on a VE’s testimony regarding the requirements of a job as generally  
24 performed at either step four or step five without first determining whether that testimony conflicts with the  
25 DOT. See Massachi v. Astrue, 486 F.3d 1149, 1152 (9th Cir. 2007); Pinto, 249 F.3d at 845-846. If an  
26 apparent or obvious conflict exists, the ALJ may not rely on the VE’s testimony without asking the VE to  
27 explain the conflict and then determining whether the VE’s explanation for the conflict is reasonable.  
28 Gutierrez v. Colvin, 844 F. 3d 804, 807 (9th Cir. 2016); Zavalin v. Colvin, 778 F.3d 842, 846 (9th Cir.

1 2015); Massachi v. Astrue, 486 F.3d 1149, 1152 (9th Cir. 2007); SSR 00-4p, 2000 WL 1898704, at \*2-\*4.  
2 An “obvious or apparent” conflict “means that the [VE’s] testimony must be at odds with the [DOT] listing  
3 of job requirements that are essential, integral, or expected.” Gutierrez, 844 F. 3d at 808. If no obvious or  
4 apparent conflict exists between the specific skills identified by the DOT and the VE’s testimony, the ALJ  
5 need not inquire further. Gutierrez, 844 F.3d at 807-808 (rejecting the argument that the ALJ erred at step  
6 five by not asking the VE more specific questions about the claimant’s ability to perform a job because there  
7 was no obvious or apparent conflict); see also Edwards v. Astrue, 2013 WL 1891764 at \*6 (N.D. Cal. May  
8 6, 2013) (“Error in failing to follow [SSR] 00-4p is harmless only if 1) there was no conflict; or 2) the VE  
9 provided sufficient support for his conclusion to justify any potential conflicts.”) (citing Massachi, 486  
10 F.3d at 1154 n. 19).

11 At the administrative hearing, the ALJ presented a hypothetical question to the VE as to whether  
12 there are jobs in significant numbers in the economy for someone with plaintiff’s various physical and  
13 mental limitations, given her age, education and work history. The VE testified that someone with those  
14 limitations could perform plaintiff’s past work as an office manager. The VE classified that work as  
15 sedentary, skilled work as generally performed pursuant to the DOT, and as sedentary, semiskilled work  
16 as described by and actually performed by plaintiff. [See AR 25, 55, 227]. The ALJ determined that the  
17 VE’s testimony was consistent with the DOT and accepted it, finding that plaintiff retained the ability to  
18 perform her past relevant work as an office manager both as actually and generally performed. [AR 25].

19 The DOT describes the duties of an office manager as follows:

20 Coordinates activities of clerical personnel in establishment or organization: Analyzes and  
21 organizes operations and procedures, such as typing, bookkeeping, preparation of payrolls,  
22 flow of correspondence, filing, requisition of supplies, and other clerical services. Evaluates  
23 office production, revises procedures, or devises new forms to improve efficiency of  
24 workflow. Establishes uniform correspondence procedures and style practices. Formulates  
25 procedures for systematic retention, protection, retrieval, transfer, and disposal of records.  
26 Plans office layouts and initiates cost reduction programs. Reviews clerical and personnel  
27 records to ensure completeness, accuracy and timeliness. Prepares activities reports for  
28 guidance of management using computer. Prepares employee ratings and conducts employee

1 benefit and insurance programs, using computer. Coordinates activities of various clerical  
2 departments or workers within department. May prepare organizational budget and monthly  
3 finance reports. May hire, train and supervise clerical staff. May compile, store, and retrieve  
4 managerial data, using computer.

5 DOT job no. 169.167-034, *available at* 1991 WL 647430.

6 Plaintiff contends that her RFC limitation against dynamic teamwork precludes her from performing  
7 her past relevant work as an office manager as generally performed according to the DOT that job would  
8 require her “to work and coordinate with other team members” and necessarily would entail “performing  
9 a variety of duties, dealing with people, and making judgments and decisions . . . that can easily be  
10 described as ‘dynamic.’” [JS 7, 11].

11 Plaintiff’s contention lacks merit. There is no apparent or obvious conflict between plaintiff’s RFC  
12 and the DOT description of the job of office manager. The RFC states that plaintiff “is restricted from highly  
13 stressful jobs, such as high production quotas and dynamic teamwork.” [AR 18]. During the administrative  
14 hearing, the ALJ asked the VE whether plaintiff could perform her past work, considering a limitation  
15 against “any highly stressful jobs, *such as* high production quotas, teamwork, dynamic teamwork where  
16 members of the team have to depend upon each other.” [AR 54 (italics added)]. The VE considered the  
17 limitation and identified the office manager job as a job plaintiff could perform. [AR 55]. In context, it is  
18 clear that the ALJ placed a limitation on plaintiff’s ability to do a “highly stressful” job, not a blanket  
19 restriction on all jobs that require various duties and interaction with other people, as plaintiff contends. A  
20 limitation against “dynamic teamwork” does not preclude plaintiff from all occupations requiring  
21 interactions with others, nor does it preclude plaintiff from all occupations requiring teamwork.

22 Further, the DOT description of office manager does not indicate that it is a highly stressful job that  
23 requires dynamic teamwork as an “essential, integral, or expected” job duty. Gutierrez, 844 F. 3d at 808  
24 Plaintiff offers no support for her conclusory assertion that working and coordinating with other team  
25 members is necessarily dynamic teamwork. See, e.g., Luster v. Colvin, 2013 WL 4479090, at \*5 (C.D. Cal.  
26 Aug. 19, 2013) (holding that plaintiff’s “unsupported assertions do not establish that there is any conflict”  
27 between the DOT description of the job of counter clerk “and the VE’s testimony that an individual  
28 precluded from fast-paced work and hypervigilance can perform the job of counter clerk.”); Jones v. Colvin,

1 2015 WL 1266789, \*6 (C.D. Cal. Mar. 18, 2015) (“Plaintiff cites no legal authority for her contention that  
2 the ALJ should not have relied on [the VE and the DOT], and the Court is aware of no legal authority that  
3 permits an ALJ to reject VE testimony and the DOT whenever he feels it conflicts with ‘common sense’  
4 and his own personal experience.”).

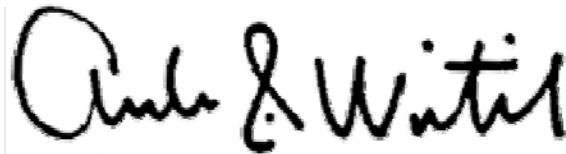
5 Since plaintiff fails to demonstrate an “obvious or apparent” conflict, the ALJ had no duty to inquire  
6 further of the VE and did not err in relying on the VE’s testimony to find that plaintiff could perform her  
7 past relevant work as an office manager as generally performed according to the DOT. Even if the ALJ  
8 erred in that respect, moreover, any error is harmless because plaintiff has not argued or shown that the RFC  
9 assigned by the ALJ precluded her from performing her past relevant work as an office manager as she  
10 actually performed that job. See Villa, 797 F.2d at 798 (stating that at step four, “[t]he claimant has the  
11 burden of proving an inability to return to his former type of work and . . . to his former job”).

12 **Conclusion**

13 For the reasons stated above, the Commissioner’s decision is supported by substantial evidence and  
14 is free of reversible legal error. Accordingly, the Commissioner’s decision is **affirmed**.

15 **IT IS SO ORDERED.**

16  
17 February 21, 2017



18  
19 ANDREW J. WISTRICH  
United States Magistrate Judge