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

Case No. 8:15-CV-1797 (VEB)

<p>HILDA L. BODIFORD,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>NANCY BERRYHILL, Acting Commissioner of Social Security,</p> <p style="text-align: center;">Defendant.</p>

DECISION AND ORDER

I. INTRODUCTION

In August of 2012, Plaintiff Hilda L. Bodiford applied for Supplemental Security Income benefits under the Social Security Act. The Commissioner of Social Security denied the application.¹

¹ On January 23, 2017, Nancy Berryhill took office as Acting Social Security Commissioner. The Clerk of the Court is directed to substitute Acting Commissioner Berryhill as the named defendant in this matter pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure.

1 Plaintiff, by and through her attorney, Lawrence D. Rohlfing, Esq.
2 commenced this action seeking judicial review of the Commissioner’s denial of
3 benefits pursuant to 42 U.S.C. §§ 405 (g) and 1383 (c)(3).

4 The parties consented to the jurisdiction of a United States Magistrate Judge.
5 (Docket No. 11, 12, 41). On September 27, 2017, this case was referred to the
6 undersigned pursuant to General Order 05-07. (Docket No. 40).

7 8 **II. BACKGROUND**

9 Plaintiff applied for benefits on August 16, 2012, alleging disability beginning
10 June 1, 2012. (T at 173-76).² The application was denied initially and on
11 reconsideration. Plaintiff requested a hearing before an Administrative Law Judge
12 (“ALJ”).

13 On January 16, 2014, a hearing was held before ALJ Keith Dietterle. (T at
14 45). Plaintiff appeared with her attorney and testified. (T at 49-67, 73-74). The ALJ
15 also received testimony from Dr. Irvin S. Belzer, a medical expert (T at 67-75), and
16 Ronald Hatakeyama, a vocational expert. (T at 75-79).

17 On April 4, 2014, the ALJ issued a written decision denying the application
18 for benefits. (T at 26-44). The ALJ’s decision became the Commissioner’s final

19 ² Citations to (“T”) refer to the administrative record at Docket No. 16.

1 decision on September 10, 2015, when the Appeals Council denied Plaintiff's
2 request for review. (T at 1-7).

3 On November 4, 2015, Plaintiff, acting by and through her counsel, filed this
4 action seeking judicial review of the Commissioner's denial of benefits. (Docket No.
5 1). The Commissioner interposed an Answer on May 17, 2016. (Docket No. 16).
6 The parties filed a Joint Stipulation on September 21, 2017. (Docket No. 39).

7 After reviewing the pleadings, Joint Stipulation, and administrative record,
8 this Court finds that the Commissioner's decision must be affirmed and this case be
9 dismissed.

10 **III. DISCUSSION**

11 **A. Sequential Evaluation Process**

12 The Social Security Act ("the Act") defines disability as the "inability to
13 engage in any substantial gainful activity by reason of any medically determinable
14 physical or mental impairment which can be expected to result in death or which has
15 lasted or can be expected to last for a continuous period of not less than twelve
16 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a
17 claimant shall be determined to be under a disability only if any impairments are of
18 such severity that he or she is not only unable to do previous work but cannot,
19 considering his or her age, education and work experiences, engage in any other

1 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),
2 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and
3 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

4 The Commissioner has established a five-step sequential evaluation process
5 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step
6 one determines if the person is engaged in substantial gainful activities. If so,
7 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the
8 decision maker proceeds to step two, which determines whether the claimant has a
9 medically severe impairment or combination of impairments. 20 C.F.R. §§
10 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

11 If the claimant does not have a severe impairment or combination of
12 impairments, the disability claim is denied. If the impairment is severe, the
13 evaluation proceeds to the third step, which compares the claimant's impairment(s)
14 with a number of listed impairments acknowledged by the Commissioner to be so
15 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),
16 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or
17 equals one of the listed impairments, the claimant is conclusively presumed to be
18 disabled. If the impairment is not one conclusively presumed to be disabling, the
19 evaluation proceeds to the fourth step, which determines whether the impairment

1 prevents the claimant from performing work which was performed in the past. If the
2 claimant is able to perform previous work, he or she is deemed not disabled. 20
3 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant’s residual
4 functional capacity (RFC) is considered. If the claimant cannot perform past relevant
5 work, the fifth and final step in the process determines whether he or she is able to
6 perform other work in the national economy in view of his or her residual functional
7 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
8 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

9 The initial burden of proof rests upon the claimant to establish a *prima facie*
10 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
11 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
12 is met once the claimant establishes that a mental or physical impairment prevents
13 the performance of previous work. The burden then shifts, at step five, to the
14 Commissioner to show that (1) plaintiff can perform other substantial gainful
15 activity and (2) a “significant number of jobs exist in the national economy” that the
16 claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

17 **B. Standard of Review**

18 Congress has provided a limited scope of judicial review of a Commissioner’s
19 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,
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1 made through an ALJ, when the determination is not based on legal error and is
2 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir.
3 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).

4 “The [Commissioner’s] determination that a plaintiff is not disabled will be
5 upheld if the findings of fact are supported by substantial evidence.” *Delgado v.*
6 *Heckler*, 722 F.2d 570, 572 (9th Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial
7 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119
8 n 10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d
9 599, 601-02 (9th Cir. 1989). Substantial evidence “means such evidence as a
10 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*
11 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch inferences and
12 conclusions as the [Commissioner] may reasonably draw from the evidence” will
13 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir. 1965). On review,
14 the Court considers the record as a whole, not just the evidence supporting the
15 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir.
16 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

17 It is the role of the Commissioner, not this Court, to resolve conflicts in
18 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
19 interpretation, the Court may not substitute its judgment for that of the

1 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th
2 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be
3 set aside if the proper legal standards were not applied in weighing the evidence and
4 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d
5 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the
6 administrative findings, or if there is conflicting evidence that will support a finding
7 of either disability or non-disability, the finding of the Commissioner is conclusive.
8 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

9 **C. Commissioner’s Decision**

10 The ALJ determined that Plaintiff had not engaged in substantial gainful
11 activity since August 16, 2012, the alleged onset date. (T at 31). The ALJ found that
12 Plaintiff’s osteoarthritis of the left hip, degenerative disc disease of the lumbar spine,
13 and obesity were “severe” impairments under the Act. (Tr. 31).

14 However, the ALJ concluded that Plaintiff did not have an impairment or
15 combination of impairments that met or medically equaled one of the impairments
16 set forth in the Listings. (T at 34).

17 The ALJ determined that Plaintiff retained the residual functional capacity
18 (“RFC”) to perform light work as defined in 20 CFR § 416.967 (b), with the
19 following limitations: standing and walking limited to 4 hours in an 8-hour workday,

1 with a 5 to 10 minute break every 2 hours during the workday; occasional and
2 frequent lifting/carrying 20 pounds; occasional use of the left lower extremity for
3 pushing/pulling/operating foot controls; occasional balancing, stooping, kneeling,
4 crouching, crawling; unable to climb ladders, ropes, or scaffolds; unable to work
5 around unprotected height and dangerous or fast moving machinery; unable to
6 operate a motor vehicle. (T at 34).

7 The ALJ noted that Plaintiff had no past relevant work. (T at 38). Considering
8 Plaintiff's age (31 years old on the alleged onset date), education (limited), work
9 experience (no past relevant work), and residual functional capacity, the ALJ found
10 that jobs exist in significant numbers in the national economy that Plaintiff can
11 perform. (T at 38).

12 Accordingly, the ALJ determined that Plaintiff was not disabled within the
13 meaning of the Social Security Act between August 16, 2012 (the alleged onset date)
14 and April 4, 2014 (the date of the decision) and was therefore not entitled to
15 benefits. (T at 39-40). As noted above, the ALJ's decision became the
16 Commissioner's final decision when the Appeals Council denied Plaintiff's request
17 for review. (T at 1-7).

1 **IV. ANALYSIS**

2 Plaintiff asserts a single argument in support of her claim that the
3 Commissioner’s decision should be overturned. She challenges the ALJ’s
4 credibility determination.

5 A claimant’s subjective complaints concerning his or her limitations are an
6 important part of a disability claim. *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d
7 1190, 1195 (9th Cir. 2004)(citation omitted). The ALJ’s findings with regard to the
8 claimant’s credibility must be supported by specific cogent reasons. *Rashad v.*
9 *Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative evidence of
10 malingering, the ALJ’s reasons for rejecting the claimant’s testimony must be “clear
11 and convincing.” *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). “General
12 findings are insufficient: rather the ALJ must identify what testimony is not credible
13 and what evidence undermines the claimant’s complaints.” *Lester*, 81 F.3d at 834;
14 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

15 However, subjective symptomatology by itself cannot be the basis for a
16 finding of disability. A claimant must present medical evidence or findings that the
17 existence of an underlying condition could reasonably be expected to produce the
18 symptomatology alleged. See 42 U.S.C. §§423(d)(5)(A), 1382c (a)(3)(A); 20 C.F.R.
19 § 404.1529(b), 416.929; SSR 96-7p.

1 In this case, Plaintiff's subjective complaints were as follows: She cannot sit,
2 stand, or walk for extended periods. (T at 227). Dressing and standing are a
3 challenge. (T at 231). She is often confined to bed by her symptoms, has no energy,
4 and has difficulty bending. (T at 262). Pain makes it difficult to sleep, impacts her
5 concentration, causes problems with completing tasks, and makes social interaction
6 difficult. (T at 212, 216, 249). She uses a cane. (T at 250). Sitting is limited to 30
7 minutes at a time. (T at 55).

8 The ALJ concluded that Plaintiff's medically determinable impairments could
9 reasonably be expected to cause the alleged symptoms, but that her statements
10 regarding the intensity, persistence, and limiting effects of the symptoms were not
11 fully credible. (T at 37). In sum, the ALJ found that Plaintiff's mental and physical
12 impairments precluded her from some work settings, but did not render her wholly
13 incapable of sustaining any and all work activity. (T at 34).

14 For the reasons that follow, this Court finds the ALJ's decision consistent with
15 applicable law and supported by substantial evidence. The ALJ relied on
16 assessments from Dr. Irvin Belzer, who testified as a medical expert at the
17 administrative hearing, and Dr. M. Sohn, a non-examining State Agency review
18 consultant. Both physicians concluded that Plaintiff could perform a range of light
19 work, consistent with the ALJ's RFC determination. (T at 38, 71, 86-89).

1 State Agency review physicians are highly qualified experts and their
2 opinions, if supported by other record evidence, may constitute substantial evidence
3 sufficient to support a decision to discount a treating physician’s opinion. *See Saelee*
4 *v. Chater*, 94 F.3d 520, 522 (9th Cir. 1996); *see also* 20 CFR § 404.1527
5 (f)(2)(i)(“State agency medical and psychological consultants and other program
6 physicians, psychologists, and other medical specialists are highly qualified
7 physicians, psychologists, and other medical specialists who are also experts in
8 Social Security disability evaluation.”).

9 Moreover, “an ALJ may give greater weight to the opinion of a non-
10 examining expert who testifies at a hearing subject to cross-examination.” *Andrews*
11 *v. Shalala*, 53 F.3d 1035, 1042 (9th Cir. 1995) (citing *Torres v. Secretary of H.H.S.*,
12 870 F.2d 742, 744 (1st Cir. 1989)). The clinical record indicated that Plaintiff had
13 full muscle strength in all major muscle groups of the lower extremity with no
14 sensory deficits. (T at 387, 401, 403, 405, 407, 410). *See Meanel v. Apfel*, 172 F.3d
15 1111, 1114 (9th Cir. 1999)(noting that lack of muscle atrophy is a valid factor for
16 consideration as to credibility).

17 Although lack of supporting medical evidence cannot form the sole basis for
18 discounting pain testimony, it is a factor the ALJ may consider when analyzing
19 credibility. *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). In other words, an

1 ALJ may properly discount subjective complaints where, as here, they are
2 contradicted by medical records. *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d
3 1155, 1161 (9th Cir. 2008); *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir.
4 2002).

5 The ALJ also noted that Plaintiff had a poor work history, which detracted
6 from her credibility. (T at 37). In particular, Plaintiff stated that she stopped
7 working in August 2010 because of her impairments (T at 195), but her earnings
8 record showed no reported income from 2007 through 2010. (T at 186). *Thomas v.*
9 *Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002)(poor work history is a proper basis
10 for discounting credibility). In addition, the ALJ relied on the fact that Plaintiff
11 performed a variety of activities of daily living inconsistent with the level of
12 impairment alleged, such as light household chores, reading, preparing simple meals,
13 and shopping. (T at 56, 60-61, 211-19, 244-52).

14 When assessing a claimant’s credibility, the ALJ may employ “ordinary
15 techniques of credibility evaluation.” *Turner v. Comm’r of Soc. Sec.*, 613 F.3d 1217,
16 1224 n.3 (9th Cir. 2010)(quoting *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir.
17 1996)). Activities of daily living are a relevant consideration in assessing a
18 claimant’s credibility. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).
19 Although the claimant does not need to “vegetate in a dark room” to be considered

1 disabled, *Cooper v. Brown*, 815 F.2d 557, 561 (9th Cir. 1987), the ALJ may discount
2 a claimant’s testimony to the extent his or her activities of daily living “contradict
3 claims of a totally debilitating impairment.” *Molina v. Astrue*, 674 F.3d 1104, 1112-
4 13 (9th Cir. 2011).

5 Plaintiff offers various interpretations of the evidence, asserting alternative
6 readings of the record that tend to cast her claims in a more favorable light.
7 However, where, as here, substantial evidence supports the ALJ’s credibility
8 determination, this Court may not overrule the Commissioner's interpretation even if
9 “the evidence is susceptible to more than one rational interpretation.” *Magallanes*,
10 881 F.2d 747, 750 (9th Cir. 1989); *see also Morgan v. Commissioner*, 169 F.3d 595,
11 599 (9th Cir. 1999)(“[Q]uestions of credibility and resolutions of conflicts in the
12 testimony are functions solely of the [Commissioner].”)

1 **V. CONCLUSION**

2 After carefully reviewing the administrative record, this Court finds
3 substantial evidence supports the Commissioner’s decision, including the objective
4 medical evidence and supported medical opinions. It is clear that the ALJ thoroughly
5 examined the record, afforded appropriate weight to the medical evidence, including
6 the assessments of the treating and examining medical providers and medical
7 experts, and afforded the subjective claims of symptoms and limitations an
8 appropriate weight when rendering a decision that Plaintiff is not disabled. This
9 Court finds no reversible error and because substantial evidence supports the
10 Commissioner’s decision, the Commissioner is GRANTED summary judgment and
11 that Plaintiff’s motion for judgment summary judgment is DENIED.

1 **VI. ORDERS**

2 IT IS THEREFORE ORDERED that:

3 Judgment be entered AFFIRMING the Commissioner’s decision and
4 DISMISSING this action, and it is further ORDERED that

5 The Clerk of the Court file this Decision and Order and serve copies upon
6 counsel for the parties.

7 DATED this 20th day of December, 2017,

8 /s/Victor E. Bianchini
9 VICTOR E. BIANCHINI
10 UNITED STATES MAGISTRATE JUDGE