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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

KATHLEEN D., ¹)	Case No. 8:20-cv-01260-JDE
)	
Plaintiff,)	MEMORANDUM OPINION AND
)	ORDER
v.)	
)	
ANDREW SAUL,)	
Commissioner of Social Security,)	
)	
Defendant.)	

Plaintiff Kathleen D. (“Plaintiff”) filed a Complaint on July 15, 2020, seeking review of the Commissioner’s denial of her application for supplemental security income (“SSI”). The parties filed a Joint Submission (“Jt. Stip.”) regarding the issues in dispute on May 13, 2021. The matter now is ready for decision.

¹ Plaintiff’s name has been partially redacted in accordance with Fed. R. Civ. P. 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 I.

2 BACKGROUND

3 Plaintiff filed for SSI on November 9, 2013, alleging disability
4 commencing September 1, 2009. Administrative Record (“AR”) 18, 197-202,
5 662, 669. On July 20, 2016, after her application was denied (AR 79-83, 88-92),
6 Plaintiff, represented by counsel, testified before an Administrative Law Judge
7 (“ALJ”), as did a vocational expert (“VE”). AR 18, 31-47. On July 28, 2016,
8 the ALJ issued a decision finding Plaintiff was not disabled. AR 18-25.²

9 After the Appeals Council denied Plaintiff’s request for review (AR 1-6),
10 Plaintiff appealed to United States District Court for the Central District of
11 California. AR 770-72. On August 22, 2018, Magistrate Judge Suzanne H.
12 Segal reversed and remanded the matter for further proceedings to consider
13 Plaintiff’s carpal tunnel syndrome as a severe impairment. AR 773-84; Kathleen
14 D. v. Berryhill, 2018 WL 4042904, *3-4 (C.D. Cal. Aug. 22, 2018). On
15 September 26, 2018, the Appeals Council vacated the Commissioner’s prior
16 decision and remanded the case to an ALJ for further proceedings consistent
17 with the District Court’s order. AR 787.

18 A different ALJ convened a second hearing on February 19, 2020. AR
19 688-726. Plaintiff, again represented by counsel, testified at the hearing, as did
20 another VE. Id. On March 25, 2020, the ALJ issued a written decision finding
21 Plaintiff was not disabled. AR 662-76. The ALJ found Plaintiff had not engaged
22 in substantial gainful activity since the November 9, 2013 application filing
23 date, and had the severe impairments of bilateral carpal tunnel syndrome with
24 history of surgery in 2003; left-hand arthritis; hypertension; obesity;
25 osteoarthritis of the hips; cervical spine degenerative disc disease and stenosis;

26
27 ² Many of the underlying administrative documents appear in duplicate in the
28 record. Compare AR 1-6 with AR 764-66, and AR 18-25 with AR 751-58.

1 left foot calcaneal plantar spur, pes planus and plantar fasciitis; right-knee
2 meniscus tear and arthritis as of July 18, 2019; and left-knee meniscus tear as of
3 December 2019. AR 644-66. The ALJ also found Plaintiff did not have an
4 impairment or combination of impairments that met or medically equaled a
5 listed impairment. AR 666.

6 The ALJ then made two residual functional capacity (“RFC”) findings.
7 First, the ALJ found that from the protective filing date through July 17, 2019,
8 Plaintiff had the RFC to perform light work³ except (AR 667):

9 [Plaintiff] could lift and/or carry twenty pounds occasionally, ten
10 pounds frequently; [Plaintiff] could sit for six hours and stand or
11 walk for six hours out of an eight-hour workday; [Plaintiff] could
12 frequently climb, balance, stoop, kneel, crouch or crawl; [Plaintiff]
13 could frequently handle and finger with the bilateral hands.

14 The ALJ then found that, beginning July 18, 2019, Plaintiff still had the
15 ability to perform light work with the same limitations except her ability to
16 stand and/or walk was further reduced (AR 673):

17 [Plaintiff] can lift and/or carry twenty pounds occasionally, ten
18 pounds frequently; [Plaintiff] can sit for six hours of an eight-hour
19 workday; [Plaintiff] can stand and/or walk for four hours out of an
20 eight-hour workday; [Plaintiff] can frequently climb, balance, stoop,
21

22 ³ “Light work” is defined as
23 lifting no more than 20 pounds at a time with frequent lifting or
24 carrying of objects weighing up to 10 pounds. Even though the weight
25 lifted may be very little, a job is in this category when it requires a good
26 deal of walking or standing, or when it involves sitting most of the time
27 with some pushing and pulling of arm or leg controls. To be considered
28 capable of performing a full or wide range of light work, [a claimant]
must have the ability to do substantially all of these activities.

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

1 kneel, crouch or crawl; [Plaintiff] can frequently handle and finger
2 with the bilateral hands.

3 The ALJ then made two findings regarding Plaintiff's ability to perform
4 her past relevant work as a General Office Clerk (Dictionary of Occupational
5 Titles 291.362-010). AR 674-75. Considering Plaintiff's age, education, work
6 experience, RFC, and the VE's testimony, the ALJ concluded Plaintiff was
7 capable of performing that work: (1) from the application filing date through
8 July 17, 2019, as generally performed in the national economy and as actually
9 performed by Plaintiff; and (2) from July 18, 2019, only as actually performed
10 by Plaintiff. *Id.* Thus, the ALJ found Plaintiff was not under a "disability," as
11 defined in the Social Security Act, since November 9, 2013, the date the
12 application was filed. AR 675-76.

13 The ALJ's remand decision became the final decision of the
14 Commissioner because neither Plaintiff filed exceptions nor did the Appeals
15 Council initiate review.⁴ Dkt. 1 at 2.

16 II.

17 LEGAL STANDARDS

18 A. Standard of Review

19 Under 42 U.S.C. § 405(g), this court may review the Commissioner's
20 decision to deny benefits. The ALJ's findings and decision should be upheld if
21

22 ⁴ When an ALJ issues a decision after remand from a district court, the
23 claimant has 30 days to file exceptions with the Appeals Council requesting review
24 the ALJ's decision. 20 C.F.R. § 404.984(b). Even where the claimant declines to file
25 exceptions, the Appeals Council may, within 60 days of the decision, sua sponte,
26 assume jurisdiction of the case. 20 C.F.R. § 416.1484(b). "If no exceptions are filed
27 and the Appeals Council does not assume jurisdiction of [the] case, the decision of the
28 administrative law judge becomes the final decision of the Commissioner after
remand." 20 C.F.R. § 416.1484(d); see also Hay v. Saul, 2020 WL 2745715, *3 (E.D.
Cal. May 27, 2020).

1 they are free from legal error and supported by substantial evidence based on
2 the record as a whole. Brown-Hunter v. Colvin, 806 F.3d 487, 492 (9th Cir.
3 2015) (as amended); Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007).
4 Substantial evidence means such relevant evidence as a reasonable person
5 might accept as adequate to support a conclusion. Lingenfelter v. Astrue, 504
6 F.3d 1028, 1035 (9th Cir. 2007). It is more than a scintilla, but less than a
7 preponderance. Id. To assess whether substantial evidence supports a finding,
8 the court “must review the administrative record as a whole, weighing both the
9 evidence that supports and the evidence that detracts from the Commissioner’s
10 conclusion.” Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998). “If the
11 evidence can reasonably support either affirming or reversing,” the reviewing
12 court “may not substitute its judgment” for that of the Commissioner. Id. at
13 720-21; see also Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012) (“Even
14 when the evidence is susceptible to more than one rational interpretation, [the
15 court] must uphold the ALJ’s findings if they are supported by inferences
16 reasonably drawn from the record.”), superseded by regulation on other
17 grounds as stated in Thomas v. Saul, 830 F. App’x 196, 198 (9th Cir. 2020).

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

23 **B. The Five-Step Sequential Evaluation**

24 When a claim reaches an ALJ, the ALJ conducts a five-step sequential
25 evaluation to determine at each step if the claimant is or is not disabled. See
26 Ford v. Saul, 950 F.3d 1141, 1148-49 (9th Cir. 2020); Molina, 674 F.3d at 1110.

27 First, the ALJ considers whether the claimant currently works at a job
28 that meets the criteria for “substantial gainful activity.” Molina, 674 F.3d at

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

13 After determining the claimant’s RFC, the ALJ proceeds to the fourth
14 step and determines whether the claimant has the RFC to perform her past
15 relevant work, either as she “actually” performed it when she worked in the
16 past, or as that same job is “generally” performed in the national economy. See
17 Stacy v. Colvin, 825 F.3d 563, 569 (9th Cir. 2016). If the claimant cannot
18 perform her past relevant work, the ALJ proceeds to a fifth and final step to
19 determine whether there is any other work, in light of the claimant’s RFC, age,
20 education, and work experience, that the claimant can perform and that exists
21 in “significant numbers” in either the national or regional economies. See
22 Tackett v. Apfel, 180 F.3d 1094, 1100-01 (9th Cir. 1999). If the claimant can
23 do other work, she is not disabled; but if the claimant cannot do other work
24 and meets the duration requirement, the claimant is disabled. See id. at 1099.

25 The claimant generally bears the burden at steps one through four to
26 show she is disabled or meets the requirements to proceed to the next step and
27 bears the ultimate burden to show she is disabled. See, e.g., Ford, 950 F.3d at
28 1148; Molina, 674 F.3d at 1110. However, at Step Five, the ALJ has a

1 “limited” burden of production to identify representative jobs that the claimant
2 can perform and that exist in “significant” numbers in the economy. See Hill v.
3 Astrue, 698 F.3d 1153, 1161 (9th Cir. 2012); Tackett, 180 F.3d at 1100.

4 III.

5 DISCUSSION

6 The parties present one disputed issue: Did the ALJ properly reject
7 Plaintiff’s testimony concerning pain, symptoms, and level of limitation.⁵

8 A. Applicable Law

9 Where a claimant produces objective medical evidence of an impairment
10 that could reasonably be expected to produce the pain or other symptoms
11 alleged, absent evidence of malingering, “the ALJ may reject the claimant’s
12 testimony about the severity of those symptoms only by providing specific,
13 clear, and convincing reasons for doing so.” Lambert v. Saul, 980 F.3d 1266,
14 1277 (9th Cir. 2020) (citations and internal quotation marks omitted); Moisa v.
15 Barnhart, 367 F.3d 882, 885 (9th Cir. 2004). The ALJ’s findings “must be
16 sufficiently specific to allow a reviewing court to conclude that the [ALJ]
17 rejected [the] claimant’s testimony on permissible grounds and did not

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19 ⁵ Before the ALJ’s decision, SSR 16-3p went into effect. See SSR 16-3p, 2016
20 WL 1119029 (Mar. 16, 2016). SSR 16-3p provides that “we are eliminating the use of
21 the term ‘credibility’ from our sub-regulatory policy, as our regulations do not use this
22 term.” Id. Moreover, “[i]n doing so, we clarify that subjective symptom evaluation is
23 not an examination of an individual’s character” and requires that the ALJ consider
24 all of the evidence in an individual’s record when evaluating the intensity and
25 persistence of symptoms. Id.; see also Trevizo v. Berryhill, 871 F.3d 664, 678 n.5 (9th
26 Cir. 2017) (as amended). Thus, the adjudicator “will not assess an individual’s overall
27 character or truthfulness in the manner typically used during an adversarial court
28 litigation. The focus of the evaluation of an individual’s symptoms should not be to
determine whether he or she is a truthful person.” SSR 16-3p, 2016 WL 1119029, *10.
SSR 16-3p’s elimination of the word “credibility” from the Agency’s subjective-
symptom evaluation “does not, however, alter the standards by which courts will
evaluate an ALJ’s reasons for discounting a claimant’s testimony.” Elizabeth B. v.
Comm’r Soc. Sec., 2020 WL 1041498, *3 (W.D. Wash. Mar. 4, 2020).

1 arbitrarily discredit the claimant’s testimony.” Moisa, 367 F.3d at 885 (citation
2 omitted). But if the ALJ’s assessment of the claimant’s testimony is reasonable
3 and is supported by substantial evidence, it is not the Court’s role to “second-
4 guess” it. See Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001). Finally,
5 the ALJ’s finding may be upheld even if not all the ALJ’s reasons for rejecting
6 the claimant’s testimony are upheld. See Batson v. Comm’r Soc. Sec. Admin.,
7 359 F.3d 1190, 1197 (9th Cir. 2004).

8 **B. Subjective Complaint Evidence**

9 1. Written Submissions

10 In conjunction with her application for benefits, Plaintiff submitted
11 documents supporting her claim of disability, including an Adult Function
12 Report dated January 26, 2014. AR 225-33.

13 2. July 2016 Hearing Testimony

14 The July 2016 hearing is summarized as follows. Plaintiff attended
15 junior college but did not obtain a degree. AR 34. She last worked at the Auto
16 Club as a cashier, posted payments, and ordered stock. AR 35. She left that job
17 because her hands became too uncomfortable. AR 36. She did not file for state
18 disability or unemployment at that time because she had a previous workers’
19 compensation settlement through Albertson’s for \$42,000, and it was her
20 understanding she could not pursue further relief. AR 36.

21 At the time of the hearing, Plaintiff lived with her husband in a van
22 outfitted with a roll bed. AR 35, 37-38. The night before the hearing, she
23 parked their van in front of her son’s house in Mission Viejo. AR 38. When
24 she is not at her son’s house, she parks their van in Riverside near the
25 university student housing. AR 38. Her husband used to work at a nursery, but
26 he was injured and receives workers’ compensation. AR 35.

27 Plaintiff can no longer work because her hands hurt all the time. AR 39-
28 40. She uses her hands very seldomly because doing so worsens the pain. AR

1 39. She can use her hands to wash and fix her hair, wash her body, eat, drink,
2 and dress. AR 39. However, she cannot lift or carry anything. AR 40. Her
3 hand pain started in 2001 or 2002. AR 39. She had a carpal tunnel release in
4 2003. AR 39. Hand pain is the only reason she cannot work. AR 39.

5 She is allergic to anti-inflammatories and does not take any medication
6 for her condition. AR 39.

7 In February 2014 she met with a doctor for about 10 minutes. AR 40.
8 The examination consisted of raising her hands, tilting her wrist, raising her
9 arms over her head, and raising her arms from her side to her shoulders. Id.
10 The doctor questioned her about her back, but she explained her issue was
11 with her hands. AR 41. Nurses had her shake and squeeze something to see
12 how strong she was, and she experienced severe pain. Id.

13 3. February 2020 Hearing Testimony

14 Plaintiff last worked for Auto Club in September 2009. AR 696. She had
15 some earnings after that, in 2010, working as a dresser for Fulton Theatre
16 Company, however that only represented two or three weeks of work. AR 696-
17 97. At the Auto Club, she worked as an insurance cashier, but she also helped
18 in the membership department. AR 697. Her job required her to stand and
19 walk about half of the time, sit about half the time, and lift less than 10
20 pounds. AR 698-99.

21 She also worked at Longs Drugs as a “fill-in” cashier for less than a year
22 before her job at the Auto Club. AR 699-701. That position was more taxing
23 because she had to stand and twist the whole time. AR 700-01. She did not
24 stock the shelves, and she slid items instead of lifting them. AR 701-02. She
25 never lifted anything more than a gallon of water, about eight pounds. AR 702.

26 She cannot work anymore because the day progresses, pain increases in
27 her hands, neck, hips, knees, feet, hips, and through her spine. AR 703. She
28 cannot recall how long she has had neck pain. AR 703. She used to be able to

1 “crack” her neck with her arms to provide some relief. AR 703. She never
2 received treatment for her neck; medical professionals just diagnosed her with
3 neck problems and offered cortisone. AR 703. But her body cannot accept
4 cortisone because of her adrenal gland issue. AR 703. Anti-inflammatories
5 cause nausea and pain in her stomach, as well as a rash. AR 703, 710.

6 The meniscus in her right knee is torn, and she also has a mild tear in her
7 left-knee meniscus and bursitis. AR 704. She has not had any treatment for her
8 knees, as medical professionals said she was too old for surgery and only
9 offered her cortisone. Id. She wears inserts for her plantar fasciitis, which
10 caused her left-knee bursitis. AR 704-05. She also received “a” cortisone
11 injection in her feet in early 2018. Id.

12 Plaintiff lives with her husband and son, her son’s wife, and their four-
13 year old son. AR 705-06. Plaintiff makes her bed, but otherwise does not do
14 chores. AR 706. Her husband does not work because he has a back injury that
15 rendered him permanently disabled. Id. Plaintiff’s son and his wife both work.
16 AR 707. She wants to care for their child, but physically cannot. Id.

17 Plaintiff drove to the hearing. AR 707. Driving causes her hands to
18 “fizz,” itch, tingle, and burn, and if she hits bumps, they hurt. AR 709. She
19 rubs her hands on her pant seams to obtain relief. AR 709. She drives with her
20 palm when she has thumb pain. AR 709. She drives slowly, which angers
21 other drivers on the freeway. AR 707, 709. This causes her to be afraid, so she
22 sometimes grips the steering wheel tightly, which causes more pain. AR 709.

23 Plaintiff has had hand pain for many years. AR 710. She uses topical
24 anti-inflammatory on her knees, feet, and neck, but not on her hands because
25 she is worried she might get some in her mouth. AR 710.

26 She can do laundry and shops for groceries with her husband. AR 707.
27 She also cooks, but she cannot open cans, jars, or bottles, or empty the pots
28 because they are too heavy. AR 708, 710-11. Cooking is “not an easy thing [for

1 her] to do.” AR 708. With her left hand, she can stir, eat, and write. AR 711.
2 She can type on a computer but hitting the keys and using the mouse causes
3 pain. AR 711. She can use a cell phone if she must, but she has to use the
4 speaker and texting “takes [her] forever.” AR 712.

5 At some point, doctors diagnosed her with fibromyalgia, but she does
6 not believe she really had it. AR 712-13. Regarding her possibly fibromyalgia,
7 she has pain in the joints and muscle tiredness “from being forced to get
8 through [her] day.” AR 713.

9 Additionally, she has high blood pressure. AR 713. She took lisinopril
10 but did not feel right on that medication, so she stopped taking it. AR 714. Her
11 doctor told her she needed to take it, suggested that she might die if she did not
12 take it, and warned her that he would call an ambulance because her blood
13 pressure was so high. Id. She refused the ambulance and drove herself to the
14 hospital instead, where her blood pressure was brought down, resulting in her
15 release. Id. At a follow-up appointment, doctors doubled her blood-pressure
16 medication amlodipine, but she had a reaction to that medication and stopped
17 taking it. AR 714-15. Finally, another doctor prescribed spironolactone and
18 she took that for a little over six months. AR 715-17.

19 The primary issue that keeps her from working is her hands. AR 717-18.
20 She has difficulty gripping and not dropping things, or even moving a mouse
21 and clicking it. AR 718. She has hand problems all day. Id. Eventually, her
22 husband told her to retire, so she did even though she could not afford it. Id.

23 **3. Analysis**

24 The ALJ provided a detailed summary of Plaintiff’s January 2014 Adult
25 Function Report, and the July 2016 and February 2020 hearings. AR 667-68.
26 After consideration of Plaintiff’s subjective complaints and the evidence, the
27 ALJ found the medically determinable impairments could reasonably be
28 expected to cause the alleged symptoms, but her statements “concerning the

1 intensity, persistence[,] and limiting effects of [the] symptoms” were not
2 entirely consistent with the medical evidence and other evidence in the record.
3 AR 37. The ALJ found Plaintiff’s subjective complaints inconsistent with:
4 (1) the objective evidence; (2) her daily activities; (3) the type and frequency of
5 her treatment; and (4) the “grossly conservative” nature of her treatment since
6 the application date. AR 669-72, 674.

7 To start, the Court notes the ALJ did not reject Plaintiff’s testimony in
8 full, but found it “not entirely” consistent with the record, constrained the
9 RFCs to a limited range of light work, including further reducing the RFC for
10 the time period following July 2019. AR 667, 673. Those determinations
11 necessarily partially credited Plaintiff’s subjective complaints. To the extent the
12 ALJ did not fully credit Plaintiff’s complaints, she provided legally sufficient
13 reasons for doing so.

14 First, even though SSI is not payable prior to the month following the
15 month in which the application was filed, the ALJ noted Plaintiff alleged an
16 onset date of September 1, 2009, and therefore reviewed the complete medical
17 history including evidence prior to Plaintiff’s November 9, 2013 application
18 date. AR 669-70. The ALJ provided a detailed a detailed summary of the
19 medical evidence of record and noted that it documented a number of mild
20 diagnostic findings and overall normal physical examinations. AR 669-74.
21 “Although lack of medical evidence cannot form the sole basis for discounting
22 pain testimony,” it is a factor that the ALJ can consider in her analysis. Burch
23 v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005); see also Rollins, 261 F.3d at
24 857. For example, a physical examination in February and April of 2014
25 showed normal findings. AR 307-11, 316-17. A few years later, a February
26 2016 physical examination revealed bilateral wrist pain, but otherwise
27 “normal” and “unremarkable” findings. AR 320. In April 2016, a physical
28 examination revealed symmetrical reflexes, normal sensation, full motor

1 strength, normal coordination and that generally Plaintiff was “in no apparent
2 distress.” AR 329-30. June 2016 x-rays of the bilateral wrists revealed normal
3 findings, no soft-tissue abnormalities, with an overall impressions of “[n]ormal
4 bilateral wrists,” “normal” right hand, and left hand “[o]steoarthritic changes
5 involving the distal interphalangeal joints of the third and fourth digits, more
6 advanced in the third,” but “[o]therwise normal.” AR 987-88. The ALJ further
7 noted results of other x-rays and diagnostic findings that revealed overall mild
8 findings. AR 670-72. Plaintiff contends the ALJ unreasonably determined this
9 evidence was inconsistent with her testimony in light of other medical records.
10 Jt. Stip. at 19. However, as mentioned, “[i]f the evidence can support either
11 affirming or reversing the ALJ’s conclusion, [the Court] may not substitute our
12 judgment for that of the ALJ.” Robbins v. Soc. Sec. Admin., 466 F.3d 880,
13 882 (9th Cir. 2006); Reddick, 157 F.3d at 725 (ALJ can satisfy substantial
14 evidence requirement “by setting out a detailed and thorough summary of the
15 facts and conflicting clinical evidence, stating [her] interpretation thereof, and
16 making findings”). The ALJ properly considered the inconsistency between the
17 medical findings and Plaintiff’s subjective allegation of disability as one of
18 other valid factors supporting the decision. See Burch, 400 F.3d at 681.

19 Second, the ALJ relied on Plaintiff’s daily activities. AR 669, 672, 674.
20 The ALJ acknowledged Plaintiff’s activities were somewhat limited but found
21 “some of the physical and mental abilities and social interactions required in
22 order to perform these activities are the same as those necessary for obtaining
23 and maintaining employment and are inconsistent with the presence of an
24 incapacitating or debilitating condition.” AR 669. The ALJ noted Plaintiff’s
25 personal grooming, ability prepare meals, occasionally drive and shop, run
26 errands, walk, and b the primary caregiver for her husband. AR 669, 672, 674.

27 The Court is cognizant that the Ninth Circuit has “repeatedly warned
28 that ALJs must be especially cautious in concluding that daily activities are

1 inconsistent with testimony about pain, because impairments that would
2 unquestionably preclude work and all the pressures of a workplace
3 environment will often be consistent with doing more than merely resting in
4 bed all day.” Garrison v. Colvin, 759 F.3d 995, 1016 (9th Cir. 2014); Vertigan
5 v. Halter, 260 F.3d 1044, 1050 (9th Cir. 2001) (“This court has repeatedly
6 asserted that the mere fact that a plaintiff has carried on certain daily activities,
7 such as grocery shopping, driving a car, or limited walking for exercise, does
8 not in any way detract from her credibility as to her overall disability.”). The
9 Court concludes that the ALJ was appropriately cautious in considering
10 Plaintiff’s activities of daily living, including by finding that only some of her
11 activities were not entirely consistent with her allegation of disability, and by
12 making the specific finding that those activities were also necessary for
13 obtaining and maintaining employment. The Court agrees that some of the
14 activities have bearing on the assessment of Plaintiff’s subjective symptoms.
15 Notably, Plaintiff’s ability to serve as the primary caregiver for her
16 permanently disabled husband conflicts with her claim that she herself is also
17 totally disabled. AR 669, 706, 1600. See, e.g., Bray v. Commissioner, 554 F.3d
18 1219, 1227 (9th Cir. 2009) (upholding credibility determination where claimant
19 was a caregiver for two years, cleaned, cooked, walked, and drove); Rollins,
20 261 F.3d at 857 (the ability to care for children may undermine complaints of
21 severe limitations); Morgan v. Comm’r Soc. Sec. Admin., 169 F.3d 595, 600
22 (9th Cir. 1999) (same, where claimant’s activities included occasional care for
23 a friend’s child); Leigh v. Acting Comm’r of Soc. Sec. Admin., 2019 WL
24 6768915, *7 (D. Ariz. Dec. 12, 2019) (claimant’s ability to serve as her
25 husband’s primary caregiver following his “major back surgery” casted doubt
26 on whether her limitations were as restrictive as alleged); Teverbaugh v.
27 Berryhill, 2018 WL 3570233, *4 (S.D. Cal. July 24, 2018) (claimant’s service
28 as part-time caregiver of her disabled grandson constituted a legally sufficient

1 reason to support adverse credibility determination); Beck v. Colvin, 2014 WL
2 4251611, at *7 (C.D. Cal. Aug. 27, 2014) (claimant’s service as her mother’s
3 full-time caregiver while suffering almost all the medical complains she later
4 alleged made her disabled undermined claim of disability); Butler v. Astrue,
5 773 F. Supp. 2d 975, 982-83 (D. Or. 2011) (claimant’s testimony that she
6 cooked for her disabled significant other and helped him with showering and
7 dressing “directly contradicted her contentions about how disabling her pain
8 and other limitations were”). Accordingly, the ALJ properly relied on
9 Plaintiff’s activities of daily living in partially discounting her testimony.⁶

10 Third, the ALJ found that Plaintiff had not generally received the type or
11 frequency of medical treatment one would expect given her alleged level of
12 limitation. AR 669. Indeed, the ALJ noted instances where Plaintiff was non-
13 compliant or not taking any medication, a point which Plaintiff confirmed at
14 the hearings. AR 39 (testimony that she does not take any medication), 314
15 (treatment note indicating “[patient] states that she is non[-]compliant with her
16 medication”), 320 (treatment note indicating Plaintiff is “not taking any
17 medications at this time”), 670, 703 (testimony that she has “never had
18 treatment for the neck”), 704 (testimony that she has not had any treatment for
19 her knees), 714 (testimony that she declined doctor’s recommendation to take
20

21 ⁶ Plaintiff complains that the ALJ cited only one medical record stating she is
22 the “primary caregiver for her husband” and contends that the record “provides no
23 context into the level of care involved.” Jt. Stip. 9; AR 669, 1600. Plaintiff does not
24 dispute the statement, but simply contends that it does not “appear” that her husband
25 is totally incapacitated. Jt. Stip. at 9. This conflicts, at least partially, with her own
26 testimony that her husband is “permanently disabled” by his back injury. AR 706. As
27 noted, this Court’s role in reviewing an assessment of the evidence, is not to re-weigh
28 the evidence or “second-guess” the ALJ’s weighing of the evidence, but rather is to
determine if the ALJ’s assessment of the claimant’s testimony is reasonable and is
supported by substantial evidence and, if discounted, supported by specific, clear, and
convincing reasons for doing so. See, e.g., Rollins, 261 F.3d at 857.

1 an ambulance), 715. The ALJ properly considered this factor. See Burch, 400
2 F.3d at 681 (ALJ is permitted to consider lack of treatment in his assessment of
3 subjective complaints); 20 C.F.R. § 416.930 (claimants must “follow treatment
4 prescribed by [their] medical source(s) if this treatment is expected to restore
5 [their] ability to work”); see also Colter v. Colvin, 554 F. App’x 594, 596 (9th
6 Cir. 2014) (ALJ properly discounted claimant’s testimony in part because her
7 testimony was undermined by her own admissions).

8 Plaintiff takes issue with the ALJ’s final finding that her treatment is
9 conservative, citing instances of steroid injections in her feet: one to her left
10 foot January 29, 2019, and one in her right heel on May 14, 2019. Jt. Stip. at
11 10 (citing AR 1201, 1226, 1233). Plaintiff also concedes, and she testified to the
12 same, that she turned down other injections offered by her providers. Jt. Stip.
13 at 10; AR 703-05. Although many courts have rejected findings of conservative
14 treatment where claimants received injections (see, e.g., Lapeirre-Gutt v.
15 Astrue, 382 F. App’x 662, 664 (9th Cir. 2010) (finding treatment consisting of
16 “copious” amounts of narcotic pain medication, occipital nerve blocks, and
17 trigger point injections not conservative); Christie v. Astrue, 2011 WL
18 4368189, *4 (C.D. Cal. Sept. 16, 2011) (rejecting ALJ’s finding that medical
19 care was “conservative” where claimant’s pain management treatment
20 included steroid injections, trigger point injections, epidural shots, and narcotic
21 pain medication), some courts have upheld such findings where claimants had
22 limited injections and in consideration of their overall treatment. See, e.g.,
23 Hanes v. Colvin, 651 F. App’x 703, 705 (9th Cir. 2016) (credibility
24 determination supported in part by evidence of conservative treatment
25 consisting primarily of minimal medication, limited injections, physical
26 therapy, and exercise); Kathy G. v. Saul, 2019 WL 6682381, *4 (C.D. Cal.
27 Dec. 6, 2019) (finding no material error in ALJ’s classification of claimant’s
28 treatment as conservative when taken as a whole where Plaintiff underwent

1 only one epidural steroid injection); Jones v. Comm’r of Soc. Sec., 2014 WL
2 228590, at *7-10 (E.D. Cal. Jan. 21, 2014) (affirming ALJ’s finding that
3 claimant received conservative treatment, which included physical therapy,
4 anti-inflammatory and narcotic medications, trial epidural steroid injections,
5 and massage therapy). Although, as a whole, Plaintiff’s treatment appears
6 conservative even considering her feet injections, the Court need not reach the
7 issue as other sufficient valid reasons exist for discounting her testimony. See
8 Reyes v. Berryhill, 716 F. App’x 714, 714 (9th Cir. 2018) (where ALJ provided
9 valid reasons for discounting claimant’s testimony, “[a]ny error in other
10 reasons provided by the ALJ was harmless”); Batson, 359 F.3d at 1197;
11 Williams v. Comm’r, Soc. Sec. Admin., 2018 WL 1709505, *3 (D. Or. Apr. 9,
12 2018) (“Because the ALJ is only required to provide a single valid reason for
13 rejecting a claimant’s pain complaints, any one of the ALJ’s reasons would be
14 sufficient to affirm the overall . . . determination.”).

15 The Court finds the ALJ provided sufficiently specific, clear, and
16 convincing reasons for finding Plaintiff’s testimony not entirely consistent with
17 the record, that is, the normal, unremarkable findings in the objective
18 evidence, Plaintiff’s activities of daily living, and overall lack of, or
19 noncompliance with, treatment. Those grounds are sufficient to affirm the
20 ALJ’s decision on the issue. Accordingly, reversal is not warranted.

21 **IV.**

22 **ORDER**

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

25 Dated: July 13, 2021

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27 _____
28 JOHN D. EARLY
United States Magistrate Judge