

1 **I. STANDARD OF REVIEW**

2 Our review is limited: On appeal, we ask only whether substantial evidence supports the
3 Commissioner’s factual findings and whether the Commissioner applied the correct legal
4 standards. 42 U.S.C. § 405(g). Substantial evidence is more than a scintilla of evidence but may
5 be less than a preponderance. *See Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017). We will
6 uphold the ALJ’s decision if it is rational, even if there is another rational interpretation of the
7 evidence, because we may not substitute our judgment for that of the Commissioner. *Id.* We
8 review only the reasons provided by the Commissioner in the disability determination and may
9 not affirm based on a ground upon which the Commissioner did not rely. *See Revels*, 874 F.3d at
10 654.

11 **II. ANALYSIS**

12 The ALJ determines eligibility for Social Security benefits in a five-step sequential
13 evaluation process, asking: (1) whether the claimant is engaged in substantial gainful activity;
14 (2) whether the claimant has a medical impairment (or combination of impairments) that qualifies
15 as severe; (3) whether the claimant’s medical impairment meets or exceeds the severity of one of
16 the impairments listed in the regulations; (4) whether the claimant can perform her past relevant
17 work; and (5) whether the claimant can perform other specified types of work. *See Barnes v.*
18 *Berryhill*, 895 F.3d 702, 704 n.3 (9th Cir. 2018); 20 C.F.R. § 416.920. The burden of proof is on
19 the claimant during the first four steps of the inquiry but shifts to the Commissioner at the fifth
20 step. *See Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987).

21 At step one, the ALJ found that claimant had not engaged in substantial gainful activity
22 since January 5, 2014. AR 22. At step two, the ALJ found that claimant had the severe
23 impairments of osteoarthritis of the cervical spine, bilateral ankles, and bilateral feet;
24 musculoskeletal strain of the neck and back; plantar fasciitis; and, gastroesophageal reflux
25 disease. AR 22-23. At step three, the ALJ found that claimant did not have an impairment or
26 combination of impairments that met or exceeded the severity of the listed impairments. AR 23.
27 Before proceeding to step four, the ALJ found that claimant had the RFC to perform a wide range
28 of medium work, with some limitations. AR 23-27. At step four, the ALJ found that claimant

1 could not perform past relevant work. AR 27. At step five, the ALJ found that significant
2 numbers of jobs exist in the national economy that claimant can perform. AR 27-28. Claimant
3 argues on appeal that the Commissioner did not meet her burden of proof at step five, that the
4 ALJ improperly weighed medical evidence, and that the ALJ failed to make a proper credibility
5 determination regarding claimant’s testimony.

6 **A. Residual Functional Capacity to Perform Medium Work**

7 Claimant contends that the ALJ erred in determining at step five that she could do medium
8 work because she cannot do the lifting, bending and stooping required for medium work—or the
9 standing and walking. Claimant contends that she should have been evaluated under the light and
10 sedentary categories, which she claims would have led to a determination that she is disabled.

11 Claimant’s first argument, that she does not have the residual functional capacity (“RFC”)
12 to perform medium work, is not actually a challenge to the step-five analysis. It is a challenge to
13 the ALJ’s RFC determination, which takes place before proceeding to step four. This challenge
14 relates to claimant’s arguments regarding the weight of medical evidence. Therefore, we consider
15 the claimant’s RFC challenge before turning to the ALJ’s vocational determination at step five.

16 A claimant’s RFC is what she can still do despite her physical, mental, and other
17 limitations. *See Mayes v. Massanari*, 276 F.3d 453, 460 (9th Cir. 2001) (citing 20 C.F.R. pt. 404,
18 subpt. P, app. 2, 200.00(c)). The ALJ’s determination of a claimant’s RFC must be based on
19 medical opinions and the totality of the record. *See* 20 C.F.R. §§ 416.927(b), 416.946(c). In
20 determining an RFC, the ALJ is responsible for “determining credibility, resolving conflicts in
21 medical testimony, and for resolving ambiguities.” *Garrison v. Colvin*, 759 F.3d 995, 1010 (9th
22 Cir. 2014) (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)).

23 The ALJ found that “claimant’s medically determinable impairments could reasonably be
24 expected to cause the alleged symptoms,” but decided that claimant’s symptoms were not
25 disabling to the degree alleged. AR 24. The ALJ then proceeded to give a detailed analysis
26 supporting that RFC determination, stating, in part:

27 In terms of the claimant’s musculoskeletal disorders, overall, very
28 few positive clinical signs such as diminished ranges of motion in
the joints, reduced strength or decreased sensation in the

1 extremities, abnormal gain, and positive orthopedic tests, were
2 documented in the treatment records during the adjudicative period
3 ([AR 292-323, 338-57, 361-4, 367-96]). In fact her neck,
4 extremities, and gait were often noted to be normal during the
5 period from June 2013 through April 2015 ([AR 299, 304, 345,
6 375]). Her back was also observed to be normal on April 14, 2015
7 ([AR 375]). In addition, there is little objective evidence that she
8 requires any assistance device for ambulation.

9 AR 25. The ALJ went on to consider claimant's lack of treatment beyond pain medication and
10 the lack of laboratory tests documenting claimant's alleged radicular symptoms. *Id.* The ALJ
11 also considered the consultative examination, which was conducted by Dr. Sharma on August 16,
12 2014. AR 25.

13 The ALJ considered claimant's activities, which included washing dishes, doing laundry,
14 light cleaning, driving, and working part-time making meals and doing light housework. AR 25.
15 The ALJ also considered that claimant had no symptoms at the hearing. AR 25-26. And the ALJ
16 considered that claimant received unemployment compensation throughout 2014, which required
17 her to certify that she was willing and able to engage in work activity. AR 25.

18 The ALJ considered the medical opinions of Dr. Greene, Dr. Sharma, Dr. Talcherkar, and
19 Dr. Wells. AR 26-27. Dr. Greene, a non-examining consultant, opined that claimant could
20 perform medium work with no more than frequent stooping and crouching. AR 75-85. The ALJ
21 gave this opinion substantial weight, noting that it was supported by "the generally adequate
22 physical functioning that the claimant exhibited," and was consistent with claimant's "routine and
23 conservative" treatments, the absence of laboratory findings, and claimant's activities. AR 26
24 (citing AR 34-61, 246-8, 292-323, 338-57, 361-4, 367-96).

25 Dr. Sharma, an examining consultant, opined that claimant could perform medium work
26 with only occasional bending and stooping. AR 328-37. Dr. Talcherkar, a non-examining
27 consultant, concurred with Dr. Sharma's opinion and added that claimant was also limited to only
28 occasional crouching. AR 62-73. The ALJ gave these opinions some weight, noting their
consistency with Dr. Greene's opinion that claimant could perform medium work. AR 26.
However, the ALJ found that the opinions of Dr. Sharma and Dr. Talcherkar "understate the
claimant's ability to bend, stoop, and crouch." *Id.* The ALJ found the portions of the opinions

1 evaluating claimant's ability to bend, stoop and crouch to be undercut by "the absence of positive
2 findings or signs concerning the claimant's back," "the routine and conservative nature" of
3 claimant's treatment, and "the absence of positive laboratory findings." *Id.*

4 Dr. Wells, a treating podiatrist, opined that claimant was restricted to less than sedentary
5 exertion, with very little standing and walking. AR 365-6, 397-401. The ALJ gave Dr. Wells's
6 opinion little weight, noting that it was contradicted by claimant's "generally adequate physical
7 functioning," "routine and conservative" treatments, and activities. AR 26-27.

8 The ALJ ultimately found that claimant had the RFC "to perform medium work with
9 some postural and environmental limitations." AR 27.

10 **1. Medical Opinion Evidence**

11 The weight given to medical opinions depends in part on whether the opinions are
12 proffered by treating, examining, or non-examining professionals. *See Lester v. Chater*, 81 F.3d
13 821, 830 (9th Cir. 1995). Ordinarily, more weight is given to the opinion of a treating
14 professional, who has a greater opportunity to become acquainted with and observe the patient as
15 an individual. *See id.* An ALJ may reject an uncontradicted opinion of a treating or examining
16 medical professional only for "clear and convincing" reasons. *Id.* If a treating professional's
17 opinion is contradicted by an examining professional's opinion that is supported by different
18 independent clinical findings, the ALJ may resolve the conflict. *See Andrews v. Shalala*, 53 F.3d
19 1035, 1041 (9th Cir. 1995). A contradicted opinion of a treating or examining professional may
20 be rejected for "specific and legitimate" reasons. *See Lester*, 81 F.3d at 830. In any event, the
21 ALJ need not give weight to conclusory opinions supported by minimal clinical findings. *See*
22 *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999) (rejecting treating physician's conclusory,
23 minimally supported opinion). The opinion of a non-examining professional, without other
24 evidence, is insufficient to reject the opinion of a treating or examining professional. *See Lester*,
25 81 F.3d at 831.

26 Additionally, when weighing medical opinions, an ALJ is required to consider factors laid
27 out in 20 C.F.R. § 404.1527(c). The required factors include the length of the treatment
28 relationship and the frequency of examination, the nature and extent of the treatment relationship,

1 the extent to which the opinion is supported by evidence, the consistency of the opinion with the
2 record as a whole, and whether the medical source is a specialist. 20 C.F.R. § 404.1527(c).

3 In this case, the ALJ gave the greatest weight to the opinion of a non-examining
4 physician, Dr. Greene. Dr. Greene's opinion was consistent with the opinion of the examining
5 physician Dr. Sharma to the extent that both found claimant to have the RFC to do medium work.
6 As laid out above, the opinion that claimant can do medium work is well-supported by record
7 evidence.

8 Dr. Greene also opined without concurrence from the examining physician that claimant
9 could perform "frequent stooping and crouching." AR 26. To support rejecting the examining
10 physician's opinion that claimant was limited to "occasional bending and stooping," AR 26, the
11 ALJ must rely upon other evidence in the record that supports her determination. *See Lester*, 81
12 F.3d at 831. Here, the ALJ relied on medical records indicating that claimant's back, neck, and
13 gait were normal, and that claimant was generally in good physical shape. AR 26 (citing AR 292-
14 323, 338-57, 361-4, 367-96). Claimant had a physical exam on April 14, 2015, during which a
15 doctor described her neck as "non-tender," her spine as "normal without deformity or
16 tenderness," and her musculoskeletal system as "normal" with no "defects," "decreased range of
17 motion," or "atrophy" in the head, neck, spine, ribs, pelvis, or extremities. AR 375. Thus, there
18 is medical evidence in the record that support the non-examining physician's opinion. The record
19 evidence as to claimant's work activity and daily activities provides additional support for the
20 conclusion that claimant was capable of frequent stooping and crouching. AR 34-61, 246-8.
21 Thus, the ALJ properly weighed Dr. Greene's opinion that claimant was capable of frequent
22 stooping and crouching; it is supported by other evidence in the record.¹ *See Lester*, 81 F.3d at
23 831.

24 Claimant argues that her treating podiatrist's opinion should have been given more

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26 ¹ Furthermore, even if the ALJ had erred in failing to limit claimant to only occasional stooping
27 and crouching, the ultimate disability determination would remain the same because claimant
28 could still perform the cleaner II and hand packer jobs discussed below. *See Molina v. Astrue*,
674 F.3d 1104, 1115 (9th Cir. 2012) ("[A]n ALJ's error is harmless where it is inconsequential to
the ultimate nondisability determination.") (internal citations and quotation marks omitted).

1 weight. However, as discussed above, the ALJ may decide to give a treating physician's opinion
2 less weight than a nontreating physician's opinion. *See Andrews*, 53 F.3d at 1041. In this case,
3 the ALJ gave specific and legitimate reasons for according the treating physician's opinion little
4 weight and the conflicting examining and non-examining physicians' opinions more weight. *See*
5 AR 24-27. The ALJ's determinations regarding the weight of the medical opinions informing the
6 ALJ's ultimate RFC determination are supported by substantial evidence.

7 **2. Credibility Finding**

8 Claimant argues that her credibility was discounted without specific reasons supported by
9 the record. ECF No. 17 at 12. "An ALJ is not required to believe every allegation of disabling
10 pain or other non-exertional impairment." *Orn v. Astrue*, 495 F.3d 625, 635 (9th Cir. 2007)
11 (internal citations omitted). An ALJ must engage in a two-step analysis to determine whether a
12 claimant's testimony concerning subjective pain or symptoms is credible. *See Garrison v.*
13 *Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014). "First, the ALJ must determine whether the claimant
14 has presented objective medical evidence of an underlying impairment which could reasonably be
15 expected to produce the pain or other symptoms alleged." *Id.* (internal quotation marks omitted).
16 "[T]he claimant is not required to show her impairment could reasonably be expected to cause the
17 severity of the symptom she has alleged; she need only show that it could reasonably have caused
18 some degree of the symptom." *Id.* Second, if there is no evidence of malingering, the ALJ may
19 reject a claimant's testimony about the severity of the pain "only by offering specific, clear and
20 convincing reasons for doing so." *Id.* at 1015; *see also Trevizo v. Berryhill*, 871 F.3d 664, 679
21 (9th Cir. 2017) (reaffirming the application of the two-step analysis in *Garrison* after Social
22 Security Ruling 16-3p (2016)).

23 Factors that an ALJ may consider in assessing a claimant's subjective pain and symptom
24 testimony include the claimant's daily activities; the location, duration, intensity and frequency of
25 the pain or symptoms; factors that cause or aggravate the symptoms; the type, dosage,
26 effectiveness or side effects of any medication; other measures or treatment used for relief;
27 functional restrictions; and other relevant factors. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1040
28 (9th Cir. 2007); *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002). In assessing the

1 claimant’s credibility, the ALJ may also consider “(1) ordinary techniques of credibility
2 evaluation, such as the claimant’s reputation for lying, prior inconsistent statements concerning
3 the symptoms, and other testimony by the claimant that appears less than candid; (2) unexplained
4 or inadequately explained failure to seek treatment or to follow a prescribed course of treatment;
5 and (3) the claimant’s daily activities.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir.
6 2008) (internal quotation marks and citations omitted).

7 The ALJ followed the two-step analysis and found that claimant’s “medically
8 determinable impairments could reasonably be expected to cause the alleged symptoms,” but that
9 claimant’s statements about “the intensity, persistence and limiting effects of these symptoms are
10 not entirely consistent” with the record. AR 24. Specifically, the ALJ found claimant’s
11 statements not entirely consistent with medical records, medical opinions, conservative treatment,
12 unemployment compensation, part-time work, and daily activities. AR 24-7. Thus, the ALJ
13 offered “specific, clear and convincing reasons” for partially discounting claimant’s statements
14 about the limiting effects of her symptoms. *Garrison*, 759 F.3d at 1015.

15 Contrary to claimant’s assertions, the ALJ did consider all the medical evidence that
16 claimant asserts should have been reviewed. *Compare* ECF No. 17 at 20-23 (asserting that the
17 ALJ failed to consider certain medical evidence) *with* AR 24-27 (evaluating the medical
18 evidence). For example, claimant argues that the ALJ ignored x-rays contained in the record
19 because the ALJ referenced a dearth of recent x-rays in support of claimant’s musculoskeletal
20 disorders. AR 25. However, the ALJ considered the reports of x-rays in the record and
21 specifically cited them in her findings. AR 23-24.²

22 Furthermore, the extensive medical evidence summarized above provides clear and
23 convincing reasons supported by substantial evidence for the ALJ’s credibility determination.
24 *See Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008). The ALJ

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26 ² Similarly, claimant’s argument that the ALJ ignored her physical therapy is not supported by the
27 record because a one-page consent form for chiropractic care dated June 9, 2004, AR 289, does
28 not discredit the ALJ’s finding that claimant’s musculoskeletal disorders were not as aggressively
treated as one would expect if claimant was experiencing the level of debilitation that she claimed
during the relevant period, AR 25.

1 considered claimant’s osteoarthritis of the cervical spine, bilateral ankles, and bilateral feet;
2 musculoskeletal strain of the neck and back; plantar fasciitis; gastroesophageal reflux disease;
3 hypertension and hyperlipidemia; diverticulosis; and, joint problems in the shoulders, hands, and
4 knees. AR 22-27. Specifically, the ALJ considered the claimant’s medical records, which
5 showed that claimant had few positive clinical signs of musculoskeletal disorders, and noted that
6 her neck, back, extremities and gait were often described as normal. AR 25 (citing medical
7 records at AR 292-323, 338-57, 361-4, 367-96). The ALJ further considered and gave weight to
8 the medical opinions of Dr. Greene, Dr. Sharma, and Dr. Talcherkar, who opined, after examining
9 claimant and/or reviewing claimant’s medical records, that claimant had the capacity to perform
10 medium work with some limitations. AR 26 (citing medical opinions and records at AR 62-73,
11 75-85, 292-323, 328-57, 361-4, 367-96). Thus, the ALJ’s assessment was supported by
12 substantial evidence, and she gave clear and convincing reasons for her partially adverse
13 credibility determination. AR 26; *see Carmickle*, 533 F.3d at 1162.

14 For all of these reasons, the ALJ’s RFC determination is supported by substantial
15 evidence and contains no reversible error.

16 **B. Vocational Determination**

17 Claimant alleges that the ALJ should have applied the Medical-Vocational Guidelines,
18 also known as the grids, to find that she is disabled, and that claimant cannot perform the jobs of
19 cleaner II, hospital cleaner, or hand packer. The ALJ’s evaluation process at step five proceeded
20 as follows:

21 Once a claimant has established that he or she suffers from a severe
22 impairment that prevents the claimant from doing any work he or
23 she has done in the past, the claimant has made a prima facie
24 showing of disability. At this point—step five—the burden shifts
25 to the Commissioner to show that the claimant can perform some
26 other work that exists in “significant numbers” in the national
27 economy, taking into consideration the claimant’s residual
28 functional capacity, age, education, and work experience. 20 CFR §
404.1560(b)(3). There are two ways for the Commissioner to meet
the burden of showing that there is other work in “significant
numbers” in the national economy that claimant can perform: (a) by
the testimony of a vocational expert, or (b) by reference to the
Medical-Vocational Guidelines at 20 C.F.R. pt. 404, subpt. P, app.
2. . . . At step five, the ALJ can call upon a vocational expert to
testify as to: (1) what jobs the claimant, given his or her residual

1 functional capacity, would be able to do; and (2) the availability of
2 such jobs in the national economy. . . . In some cases, it is
3 appropriate for the ALJ to rely on the Medical-Vocational
4 Guidelines [(“the grids”)] to determine whether a claimant can
5 perform some work that exists in “significant numbers” in the
6 national economy. . . . The Commissioner’s need for efficiency
7 justifies use of the grids at step five where they *completely and*
8 *accurately* represent a claimant’s limitations. In other words, a
9 claimant must be able to perform the *full range* of jobs in a given
10 category, i.e., sedentary work, light work, or medium work.

11 *Tackett v. Apfel*, 180 F.3d 1094, 1100-01 (9th Cir. 1999) (internal citations omitted).

12 Claimant seeks the determination that she can only perform light or sedentary work, and
13 thus that she is disabled per the grids—given her age, education, and skill set. ECF No. 17 at 11-
14 12. As discussed above, the ALJ’s RFC determination is supported by substantial evidence.
15 Thus, claimant’s argument that she is limited to light or sedentary categories of work must fail.

16 The ALJ’s use of a vocational expert was proper in this case because claimant had some
17 non-exertional limitations and thus could not perform the full range of jobs in the category of
18 medium work. *See Tackett*, 180 F.3d at 1001. The jobs that the ALJ found to be available to
19 claimant, relying on the vocational expert, met the ALJ’s limitations related to exertion, stooping
20 and crouching, and climbing.³ The cleaner II job is medium exertion with occasional stooping,
21 no crouching, and no exposure to high places or moving mechanical parts. CLEANER II,
22 DICOT 919.687-014. The hospital cleaner job is medium exertion with frequent stooping,
23 occasional crouching, and no exposure to high places or moving mechanical parts. CLEANER,
24 HOSPITAL, DICOT 323.687-010. The hand packer job is medium exertion with no stooping, no
25 crouching, and no exposure to high places or moving mechanical parts. PACKAGER, HAND,
26 DICOT 920.587-018. Therefore, the ALJ met her burden at step five and properly relied on both
27 the testimony of the vocational expert and the Dictionary of Occupational Titles and its
28 companion publications to determine that claimant can perform jobs that exist in significant
numbers in the national economy.

³ The ALJ found that claimant “can lift, carry, push, and pull 25 pounds frequently and 50 pounds
occasionally. She is limited to no more than frequent stooping and crouching. She cannot climb
ladders, ropes, or scaffolds or work around unprotected heights or moving mechanical parts.” AR
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III. CONCLUSION AND ORDER

Claimant Linda Streeter’s motion for summary judgment on appeal from the administrative decision of the Commissioner of Social Security is denied, and the decision of the Commissioner of Social Security is affirmed. The clerk of court is directed to (1) enter judgment in favor of defendant and (2) close this case.

IT IS SO ORDERED.

Dated: March 5, 2019


UNITED STATES MAGISTRATE JUDGE

No. 204