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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

SHARON CORLEY,

No. CIV S-07-2180-CMK

Plaintiff,

vs.

MEMORANDUM OPINION AND ORDER

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

_____ /

Plaintiff, who is proceeding with retained counsel, brings this action for judicial review of a final decision of the Commissioner of Social Security under 42 U.S.C. § 405(g).

Pursuant to the consent of the parties, this case is before the undersigned for final decision on plaintiff's motion for summary judgment (Doc. 19) and defendant's cross-motion for summary judgment (Doc. 20).

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1 **I. PROCEDURAL HISTORY**

2 Plaintiff applied for social security benefits on January 13, 2005.¹ Plaintiff claims
3 that disability began on January 13, 2005. She claims that disability is caused by a combination
4 of degenerative disc disease of the lumbar spine, bilateral wrist problems, foot problems,
5 shoulder problems, and gout. Plaintiff's claim was initially denied. Following denial of
6 reconsideration, plaintiff requested an administrative hearing, which was held on January 16,
7 2007, before Administrative Law Judge ("ALJ") Plauche F. Villere, Jr. In a February 22, 2007,
8 decision, the ALJ concluded that plaintiff is not disabled based on the following relevant
9 findings:

- 10 1. The claimant has the following severe impairments: degenerative disc
11 disease of the lumbar spine, shoulder pain, wrist pain, and foot pain;
- 12 2. The claimant does not have an impairment or combination of impairments
13 set forth in the Listings of Impairments;
- 14 3. The claimant has the residual functional capacity to perform light work;
15 she can occasionally climb ramps and stairs; she can never climb ladders,
16 ropes, or scaffolds; she can frequently balance; she can occasionally stoop,
kneel, crouch, and crawl; and
4. Based on application of the Medical-Vocational Guidelines, plaintiff is not
disabled given her residual functional capacity, education, and age.

17 After the Appeals Council declined review on August 14, 2007, this appeal followed.

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25 ¹ Plaintiff filed two prior applications. Her first application was filed on June 25,
26 2001, and was denied in a decision issued on November 5, 2002. Plaintiff's second application
was filed on November 7, 2002, and was denied in a decision issued on October 21, 2004.

1 **II. SUMMARY OF THE EVIDENCE**

2 The certified administrative record (“CAR”) contains the following evidence,
3 summarized chronologically below:

4 March 5, 2005 – Plaintiff submitted an “Exertional Daily Activities
5 Questionnaire” form. See CAR 85-87. Plaintiff stated that she was receiving general assistance
6 benefits and was homeless. She stated that “pain rates in lower back is every day 8 to 10” and
7 that she cannot stand or sit for long periods of time due to pain. Specifically, plaintiff stated that
8 she can only sit or stand for 30 minutes at a time before she experiences “pinching and pulling”
9 pain in the lower back and both legs. She stated she could walk about two blocks with a cane,
10 which would take her 30 minutes. She stated that she cannot climb stairs. Plaintiff stated that
11 she could only carry up to 10 pounds.

12 April 14, 2005 – Agency examining doctor Navdeep Dhaliwal, M.D., conducted
13 an orthopedic examination and prepared a report. See CAR 113-15. Dr. Dhaliwal evaluated
14 plaintiff for complaints of low back pain and shoulder pain. The doctor reported that plaintiff
15 was taking the following medications for pain: Celebrex, Flexeril; Neurontin; Zantac; and
16 Motrin. While the doctor noted that plaintiff presented at the examination with a limp, she did
17 not have any difficulty getting on and off the examination table. Dr. Dhaliwal observed “some
18 inconsistencies on her examination” and that plaintiff “was somewhat exaggerating her
19 symptoms.” He reported that she could walk without a cane.

20 On physical examination, Dr. Dhaliwal noted that plaintiff exaggerated her
21 symptoms and was not cooperative. Plaintiff’s range of shoulder and spine motion was poor and
22 she complained of pain on straight leg raising. The doctor stated: “Her effort was poor but on
23 encouragement she had normal strength in upper and lower extremities.” He provided the
24 following assessment:

25 The claimant who presented today complains of low back pain. On
26 today’s examination her symptoms are somewhat exaggerated. Her
cooperation was very poor. She has loss of sensation in non-dermatomal

1 distribution on the right leg. On encouragement she had full strength but
2 her effort is poor. I had difficulty assessing her fully because of her poor
cooperation.

3 Dr. Dhaliwal stated that there are “no restrictions on any lifting, postural, manipulative, or
4 environmental limitations, just based on the examination today.”

5 April 25, 2005 – Agency consultative doctor George A. Jansen, M.D., submitted
6 an assessment based on Dr. Dhaliwal’s examination. See CAR 118. He stated:

7 ALJ 10-21-04 provides RFC for light. The current decision is not non-
8 severe, based upon the absence of objective physical findings to support
9 exertional restrictions, or functional, manipulative, and environmental
restrictions. Claimant’s credibility is tainted by her performance at CE.
(emphasis in original).

10 May 2005 – The record contains treatment records from Sacramento Primary Care
11 for various dates in May 2005. See CAR 119-22. These records are largely illegible. While
12 plaintiff discusses other Sacramento Primary Care records, she does not provide any summary of
13 treatment notes from May 2005 in her “Summary of Relevant Medical Evidence.”

14 June 15, 2005 – Dr. Jansen submitted a physical residual functional capacity
15 assessment. See CAR 123-32. He concluded that plaintiff could: occasionally lift 20 pounds
16 and frequently lift 10 pounds; sit, walk, and stand for six hours in an eight-hour day; and
17 push/pull without restriction. He opined that plaintiff could occasionally climb ramps and stairs,
18 but should never climb ropes, ladders, and scaffolds. Dr. Jansen concluded that plaintiff’s ability
19 to balance was unlimited, but that she should only occasionally stoop, kneel, crouch, or crawl.
20 He did not find any manipulative, visual, communicative, or environmental limitations. Dr.
21 Jansen’s ultimate conclusion was that the current “. . . RFC aligns [with] ALJ decision of 10-24-
22 04.”

23 June 2005 through December 2005 – The record contains additional treatment
24 notes from Sacramento Primary care from June 2005 through the end of that year. See CAR 153-
25 55. As with the records from May 2005, these records are largely illegible. Plaintiff does not
26 summarize any Sacramento Primary Care records from 2005.

1 January 20, 2006 – Robert A. Penman, M.D., reported on an x-ray of plaintiff’s
2 chest and hips. See CAR 151. Dr. Penman reported normal x-rays with no signs of abnormality.

3 April 14, 2006 – Fred Stargardter, M.D., reported on an x-ray of plaintiff’s right
4 foot. See CAR 146. Dr. Stargardter reported “[h]allux valgus deformity without any other
5 significant abnormality.” He observed that the osseous structures and joints are intact and that
6 the observed deformity was mild.

7 June 19, 2006 – Treatment notes from Sacramento Primary Care reveal that
8 plaintiff’s pain medication (Tylenol) prescription was refilled. See CAR 143.

9 July 14, 2006 – A treatment note from Sacramento Primary Care is largely
10 illegible, but plaintiff provides the following summary:

11 Treatment notes dated July 14, 2006, reflected complaints of foot
12 pain with a notation that Ms. Corley had an August 15, 2006, appointment
13 with podiatry. She also had bilateral wrist pain and it was noted that the
14 wrist splints were helpful. TR 142.

14 Plaintiff does not indicate any objective findings on physical examination.

15 August 15, 2006 – Treatment notes from Sacramento Primary Care show that, on
16 physical examination, plaintiff right foot was swollen “around the joint.” See CAR 141. The
17 note indicates an assessment of “possible gout.” Plaintiff was prescribed medication.

18 November 7, 2006 – Treatment notes from Sacramento Primary Care reflect that
19 plaintiff was seen for chronic neck and foot pain not resolving. See CAR 138. Plaintiff was
20 prescribed Tylenol.

21 January 8, 2007 – Plaintiff was treated at Sacramento Primary Care. See CAR
22 137. While the treatment note is largely illegible, plaintiff provides the following summary:

23 Treatment notes dated January 8, 2007 reflected that Ms. Corley
24 complained of hip pain, wrist pain, and back pain which radiated down her
25 right leg. The notes noted that Ms. Corley had a long history of sciatica
26 and had gone through physical therapy and pool therapy. The notes also
reflected that Ms. Corley used a cane for ambulation. On examination,
Ms. Corley had positive Tinel’s sign on both wrists, decreased grip
strength on the left wrist, poor recovery on back flexion 18" from floor. It

1 was also noted that she was unable to perform the heel/toe walk secondary
2 to pain. She was referred for an EMG. TR 137.

3 January 16, 2007 – Plaintiff testified at the administrative hearing. See CAR 156-
4 74. Plaintiff was represented by counsel at the hearing. The ALJ observed that plaintiff used a
5 cane and wrist braces on both wrists. Plaintiff testified that these were all prescribed by a doctor
6 and that, within the previous month, she had been using the wrist braces almost all the time due
7 to pain. Before that, plaintiff used the wrist braces only at night. She testified that she always
8 used the cane. Plaintiff stated that she sometimes needs assistance getting in and out of the
9 shower, but that she had no other grooming or hygiene problems. She also stated she could dress
10 herself. She stated that she can't vacuum, but can dust. She also stated that she did not think she
11 was capable of driving a car due to pain in her legs. She stated that she has a herniated disc with
12 sciatica at L4/5. She also stated that she has gout flare-ups. As to treatment, plaintiff testified
13 that painkillers ease her pain, but that her pain is still an 8 out of 10. Plaintiff stated that her
14 treatment consists only of medication, assistive devices, and follow-up visits with her doctors.
15 At the end of the hearing, the ALJ held the proceedings open for three weeks for plaintiff to
16 submit a residual functional capacity assessment from her treating doctors at Sacramento Primary
17 Care. Nothing, however, was ever submitted after the hearing.

18 19 **III. STANDARD OF REVIEW**

20 The court reviews the Commissioner's final decision to determine whether it is:
21 (1) based on proper legal standards; and (2) supported by substantial evidence in the record as a
22 whole. See Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). "Substantial evidence" is
23 more than a mere scintilla, but less than a preponderance. See Saelee v. Chater, 94 F.3d 520, 521
24 (9th Cir. 1996). It is "... such evidence as a reasonable mind might accept as adequate to
25 support a conclusion." Richardson v. Perales, 402 U.S. 389, 402 (1971). The record as a whole,
26 including both the evidence that supports and detracts from the Commissioner's conclusion, must

1 be considered and weighed. See Howard v. Heckler, 782 F.2d 1484, 1487 (9th Cir. 1986); Jones
2 v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not affirm the Commissioner’s
3 decision simply by isolating a specific quantum of supporting evidence. See Hammock v.
4 Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the administrative
5 findings, or if there is conflicting evidence supporting a particular finding, the finding of the
6 Commissioner is conclusive. See Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987).
7 Therefore, where the evidence is susceptible to more than one rational interpretation, one of
8 which supports the Commissioner’s decision, the decision must be affirmed, see Thomas v.
9 Barnhart, 278 F.3d 947, 954 (9th Cir. 2002), and may be set aside only if an improper legal
10 standard was applied in weighing the evidence, see Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th
11 Cir. 1988).

13 IV. DISCUSSION

14 In her motion for summary judgment, plaintiff argues: (1) the ALJ erred in
15 concluding that plaintiff had failed to rebut the presumption of continuing non-disability; (2) the
16 ALJ failed to adequately develop the record; and (3) the ALJ failed to properly assess non-
17 exertional limitations in reaching his residual functional capacity determination and, therefore,
18 erred in relying on the Medical-Vocational Guidelines in lieu of vocational expert testimony.

19 A. Presumption of Continuing Non-Disability

20 Plaintiff argues that the ALJ misapplied the rule of Chavez v. Bowen, 844 F.2d
21 691 (9th Cir. 1988), and Acquiescence Ruling (“AR”) 97-4(9) in concluding that plaintiff had not
22 overcome presumption of continuing non-disability. Specifically, she contends that, because her
23 wrist problems, foot problems, and gout had not been considered in the prior administrative
24 decisions, she successfully demonstrated “changed circumstances” sufficient to rebut the
25 presumption. As defendant notes, the presumption of continuing non-disability is an application
26 of administrative res judicata. In other words, a prior administrative determination as to residual

1 functional capacity, past relevant work, educational background, and/or vocational profile is
2 binding unless the circumstances have changed. See Chavez, 844 F.2d at 694.

3 In this case, the ALJ outlined the doctrine and stated: “As discussed below, I find
4 that the presumption of the claimant’s ‘continuing [non-]disability’ has not been overcome.” The
5 ALJ then went through the traditional five-step sequential analysis and concluded the evidence
6 did not establish that plaintiff was disabled and, for this reason, found that plaintiff had not
7 rebutted the presumption. Thus, contrary to plaintiff’s contention, the ALJ’s disability
8 determination in this case was not due to any misapplication of the continuing non-disability
9 doctrine. Rather, it was due to the ALJ’s independent analysis of the record and application of
10 the five-step sequential evaluation. Whether the ALJ properly considered plaintiff’s foot
11 problem, wrist problem, and gout in determining plaintiff’s current residual functional capacity is
12 discussed below.

13 **B. Duty to Develop the Record**

14 Plaintiff argues that the ALJ failed to develop the record by: (1) obtaining the
15 records produced in connection with her prior administrative proceedings; (2) obtaining an
16 updated residual functional capacity assessment; and (3) obtaining an updated consultative
17 examination. The ALJ has an independent duty to fully and fairly develop the record and assure
18 that the claimant’s interests are considered. See Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th
19 Cir. 2001). When the claimant is not represented by counsel, this duty requires the ALJ to be
20 especially diligent in seeking all relevant facts. See id. This requires the ALJ to “scrupulously
21 and conscientiously probe into, inquire of, and explore for all the relevant facts.” Cox v.
22 Califano, 587 F.2d 988, 991 (9th Cir. 1978). Ambiguous evidence or the ALJ’s own finding that
23 the record is inadequate triggers this duty. See Tonapetyan, 242 F.3d at 1150. The ALJ may
24 discharge the duty to develop the record by subpoenaing the claimant’s physicians, submitting
25 questions to the claimant’s physicians, continuing the hearing, or keeping the record open after
26 the hearing to allow for supplementation of the record. See id. (citing Tidwell v. Apfel, 161 F.3d

1 599, 602 (9th Cir. 1998)).

2 In this case, the record was neither ambiguous nor inadequate. As defendant
3 observes, the issue before the ALJ was whether plaintiff's medical records subsequent to the
4 prior decisions established a disabling impairment. Here, the record was sufficient for the ALJ to
5 answer this question. In particular, the ALJ had access to plaintiff's treatment records from
6 Sacramento Primary Care for the period after the second administrative decision in October 2004
7 through January 2007. While these records show that plaintiff was receiving treatment for
8 complaints of foot problems, wrist problems, and possible gout, the records do not reveal any
9 significant objective findings or actual diagnosis. The records demonstrate that plaintiff's
10 complaints were treated with minimal medication. As to the January 2007 treatment note, which
11 plaintiff states revealed objective findings consistent with disabling limitations, the note indicates
12 that plaintiff was referred for further testing, including x-rays. However, no such testing data
13 appears in the record.

14 Most significantly, the ALJ held the record open to allow plaintiff to submit a
15 medical source statement from her treating doctors at Sacramento Primary Care as to plaintiff's
16 residual functional capacity. This alone satisfied the duty to develop the record. See id.
17 Plaintiff, however, never submitted such a statement.

18 Given the scant objective findings, lack of treatment consistent with disabling
19 impairments, and plaintiff's failure to submit a medical source statement, the court agrees with
20 defendant that plaintiff did not meet her burden of establishing the existence of a severe
21 impairment causing disabling functional limitations. In other words, the record was sufficient for
22 the ALJ to conclude that plaintiff's condition had not changed since the prior determination even
23 though she alleged new impairments.

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1 **C. Residual Functional Capacity Assessment and Reliance on Grids**

2 Plaintiff contends that the ALJ failed to properly account for pain and
3 manipulative limitations in concluding that plaintiff had the residual functional capacity for light
4 work. Specifically, she contends the ALJ did not “properly evaluate and include the impact of
5 Ms. Corley’s wrist impairment, need to wear wrist braces, and pain.” She also contends that the
6 record establishes that “she experienced manipulative limitations, postural limitations, and pain
7 as a result of her impairments.” She states that “securing the prior files was especially important
8 in Ms. Corley’s case since the record before this court does not include a residual functional
9 capacity assessment by either an examining or treating physician.” Plaintiff concludes that,
10 because the record establishes non-exertional limitations, the ALJ erred in relying on the
11 Medical-Vocational Guidelines and should have obtained vocational expert testimony.

12 1. Plaintiff’s Limitations

13 Residual functional capacity is what a person “can still do despite [the
14 individual’s] limitations.” 20 C.F.R. §§ 404.1545(a), 416.945(a) (2003); see also Valencia v.
15 Heckler, 751 F.2d 1082, 1085 (9th Cir. 1985) (residual functional capacity reflects current
16 “physical and mental capabilities”). Thus, residual functional capacity describes a person’s
17 exertional capabilities in light of his or her limitations.² In this case, plaintiff contends that the
18 ALJ’s finding that she has the residual functional capacity for light work does not properly

19 ² Exertional capabilities are the primary strength activities of sitting, standing,
20 walking, lifting, carrying, pushing, or pulling and are generally defined in terms of ability to
21 perform sedentary, light, medium, heavy, or very heavy work. See 20 C.F.R., Part 404, Subpart
22 P, Appendix 2, § 200.00(a). “Sedentary work” involves lifting no more than 10 pounds at a time
23 and occasionally lifting or carrying articles like docket files, ledgers, and small tools. See 20
24 C.F.R. §§ 404.1567(a) and 416.967(a). “Light work” involves lifting no more than 20 pounds at
25 a time with frequent lifting or carrying of objects weighing up to 10 pounds. See 20 C.F.R. §§
26 404.1567(b) and 416.967(b). “Medium work” involves lifting no more than 50 pounds at a time
with frequent lifting or carrying of objects weighing up to 25 pounds. See 20 C.F.R. §§
404.1567(c) and 416.967(c). “Heavy work” involves lifting no more than 100 pounds at a time
with frequent lifting or carrying of objects weighing up to 50 pounds. See 20 C.F.R. §§
404.1567(d) and 416.967(d). “Very heavy work” involves lifting objects weighing more than
100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more.
See 20 C.F.R. §§ 404.1567(e) and 416.967(e).

1 account for various non-exertional imitations such as need to use wrist braces and pain.

2 Apparently based largely on plaintiff’s subjective complaints, the ALJ gave
3 plaintiff the benefit of the doubt and concluded that her wrist problems, foot problems, and low
4 back problems constituted severe impairments. As discussed above, there is no objective
5 evidence that any of these impairments resulted in disabling limitations. Contrary to plaintiff’s
6 assertion that the record does not contain a residual functional capacity assessment from an
7 examining source completed after the prior determination in October 2004, the record contains
8 Dr. Dhaliwal’s April 2005 assessment. Specifically, Dr. Dhaliwal concluded that there are “no
9 restrictions on any lifting, postural, manipulative, or environmental limitations, just based on the
10 examination today.” Dr. Jansen concurred and concluded that plaintiff had the residual
11 functional capacity for light work. Despite the ALJ holding the record open, plaintiff never
12 submitted a medical source statement from a treating physician offering a contrary opinion.

13 Given the lack of objective evidence, the only basis for plaintiff’s contention that
14 she has non-exertional limitations (such as evidenced by the use of wrist braces) is plaintiff’s
15 testimony. In finding that plaintiff could perform light work, the ALJ rejected her testimony as
16 not credible, and plaintiff does not challenge that finding. Even if she did, the ALJ did not err in
17 his credibility assessment. The Commissioner determines whether a disability applicant is
18 credible, and the court defers to the Commissioner’s discretion if the Commissioner used the
19 proper process and provided proper reasons. See Saelee v. Chater, 94 F.3d 520, 522 (9th Cir.
20 1996). An explicit credibility finding must be supported by specific, cogent reasons. See Rashad
21 v. Sullivan, 903 F.2d 1229, 1231 (9th Cir. 1990). General findings are insufficient. See Lester v.
22 Chater, 81 F.3d 821, 834 (9th Cir. 1995). Rather, the Commissioner must identify what
23 testimony is not credible and what evidence undermines the testimony. See id. Moreover, unless
24 there is affirmative evidence in the record of malingering, the Commissioner’s reasons for
25 rejecting testimony as not credible must be “clear and convincing.” See id.; see also Carmickle
26 v. Commissioner, 533 F.3d 1155, 1160 (9th Cir. 2008) (citing Lingenfelter v Astrue, 504 F.3d

1 1028, 1936 (9th Cir. 2007), and Gregor v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006)).

2 If there is objective medical evidence of an underlying impairment, the
3 Commissioner may not discredit a claimant’s testimony as to the severity of symptoms merely
4 because they are unsupported by objective medical evidence. See Bunnell v. Sullivan, 947 F.2d
5 341, 347-48 (9th Cir. 1991) (en banc). As the Ninth Circuit explained in Smolen v. Chater:

6 The claimant need not produce objective medical evidence of the
7 [symptom] itself, or the severity thereof. Nor must the claimant produce
8 objective medical evidence of the causal relationship between the
9 medically determinable impairment and the symptom. By requiring that
the medical impairment “could reasonably be expected to produce” pain or
another symptom, the Cotton test requires only that the causal relationship
be a reasonable inference, not a medically proven phenomenon.

10 80 F.3d 1273, 1282 (9th Cir. 1996) (referring to the test established in
11 Cotton v. Bowen, 799 F.2d 1403 (9th Cir. 1986)).

12 The Commissioner may, however, consider the nature of the symptoms alleged,
13 including aggravating factors, medication, treatment, and functional restrictions. See Bunnell,
14 947 F.2d at 345-47. In weighing credibility, the Commissioner may also consider: (1) the
15 claimant’s reputation for truthfulness, prior inconsistent statements, or other inconsistent
16 testimony; (2) unexplained or inadequately explained failure to seek treatment or to follow a
17 prescribed course of treatment; (3) the claimant’s daily activities; (4) work records; and
18 (5) physician and third-party testimony about the nature, severity, and effect of symptoms. See
19 Smolen, 80 F.3d at 1284 (citations omitted). It is also appropriate to consider whether the
20 claimant cooperated during physical examinations or provided conflicting statements concerning
21 drug and/or alcohol use. See Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002). If the
22 claimant testifies as to symptoms greater than would normally be produced by a given
23 impairment, the ALJ may disbelieve that testimony provided specific findings are made. See
24 Carmickle, 533 F.3d at 1161 (citing Swenson v. Sullivan, 876 F.2d 683, 687 (9th Cir. 1989)).

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1 As to credibility, the ALJ stated:

2 After considering the evidence of record, the undersigned finds that the
3 claimant's statements concerning the intensity, persistence, and limiting
effect of [her impairments] are not entirely credible.

4 * * *

5 At the hearing, the claimant testified that she was prescribed a cane and
6 she uses it all the time even inside. She stated that she has wrist pain and
7 she wears bilateral wrist brace[s]. She stated because of increased pain
8 she now wears [the wrist braces] all day and at night. She stated that she
9 goes shopping, does less cooking, can't do dishes, and light dusting. She
10 visits friends once a month. She stated that she does not drive; her driver's
11 license was suspended for DUI. She stated she probably won't drive
again; she is so used to [rapid transit]. The claimant stated that she has a
herniated disc with sciatica, pain in back and legs. She has carpal tunnel
syndrome on right, and painful gout. She stated that she takes medication
for her gout, her high blood pressure is controlled and she takes pain
medication for her back pain. She stated that she can't stoop, squat, kneel,
climb, reach, push, pull, crawl, or twist because of pain.

12 The claimant has alleged that she was unable to work due to back pain.
13 She stated that standing and sitting too long causes pain. Although the
14 records have demonstrated some abnormalities involving the cervical and
15 lumbar spine, they objective findings do not demonstrate persistent
abnormalities in motor functioning, or bony destruction or similar
abnormalities that would meet or equal any of the pertinent
muskuloskeletal or neurological disorders set forth in the listing.

16 After considering the evidence of record, the undersigned finds that the
17 claimant's medically determinable impairments could reasonably be
18 expected to produce the alleged symptoms, but that the claimant's
statements concerning the intensity, persistence, and limiting effects of
these symptoms are not entirely credible.

19 While the claimant has had numerous physical complaints and sees her
20 physician on a regular basis, the minimal clinical findings do not justify
21 the claimant's contention that they keep her from working. While she has
22 received treatment for the alleged muskuloskeletal pain, the treatments
23 have been essentially routine and conservative in nature. The treatment
24 she has received for all of her impairments have been office visits for
25 routine complaints and check-ups. There are no emergency room
26 treatments, no surgeries, or hospitalization. She has not received or been
referred to for trigger point injections, acupuncture, or chiropractic
treatment. Her doctor has treated her for various complaints of shoulder,
back, and wrist pain. Findings have revealed positive Tinel's right wrist.
Muscle strength was 5/5, [deep tendon reflexes] were normal, reflexes
were within normal limits. There is no evidence of atrophy, weakness,
deformity, muscle tenderness, or spasms, anatomically consistent
sensation changes, or reflex changes. The claimant stated that the wrist

1 splints helped her. An x-ray of the hip was normal.

2 * * *

3 The undersigned notes that the claimant's physician has not defined any
4 exertional or other physical limitations resulting from these disorders. The
5 claimant has not required any surgery or other treatment to relieve pain.
6 There is no evidence that the claimant's doctor suggested other modalities
7 of treatment. Furthermore, the medical evidence failed to support the
8 intensity of the claimant's symptoms, and aggravating factors.

9 The evidence consistently shows that the claimant's subjective complaints
10 are much worse than the objective findings as evidenced by the record.
11 The undersigned has considered the claimant's testimony and finds it
12 partially credible, but not as limited as alleged. . . .

13 The court finds that this analysis is proper and based on substantial evidence. In particular, the
14 ALJ appropriately noted plaintiff's routine course of treatment with medication and lack of other
15 modalities to control her pain. As to gout, the only mention of this disorder was an assessment of
16 "possible gout" in August 2006. As to wrist problems, plaintiff stated that the wrist braces help
17 and there is no objective indication that plaintiff's wrist impairment requires the constant use of
18 braces or that plaintiff is functionally limited due to wrist problems. Further, plaintiff was
19 uncooperative during the consultative examination by Dr. Dhaliwal, who concluded that plaintiff
20 demonstrated symptom exaggeration.

21 Based on the foregoing, the court finds that the ALJ properly concluded that
22 plaintiff did not have limitations which preclude light work.

23 2. Application of the Grids

24 The Commissioner may apply the Medical-Vocational Guidelines ("Grids") in
25 lieu of taking the testimony of a vocational expert only when the Grids accurately and completely
26 describe the claimant's abilities and limitations. See Jones v. Heckler, 760 F.2d 993, 998 (9th
Cir. 1985); see also Heckler v. Campbell, 461 U.S. 458, 462 n.5 (1983). Thus, the
Commissioner generally may not rely on the Grids if a claimant suffers from non-exertional
limitations because the Grids are based on strength factors only. See 20 C.F.R., Part 404,
Subpart P, Appendix 2, § 200.00(b). "If a claimant has an impairment that limits his or her

1 ability to work without directly affecting his or her strength, the claimant is said to have non-
2 exertional . . . limitations that are not covered by the Grids.” Penny v. Sullivan, 2 F.3d 953, 958
3 (9th Cir. 1993) (citing 20 C.F.R., Part 404, Subpart P, Appendix 2, § 200.00(d), (e)). The
4 Commissioner may, however, rely on the Grids even when a claimant has combined exertional
5 and non-exertional limitations, if non-exertional limitations do not impact the claimant’s
6 exertional capabilities.³ See Bates v. Sullivan, 894 F.2d 1059, 1063 (9th Cir. 1990); Polny v.
7 Bowen, 864 F.2d 661, 663-64 (9th Cir. 1988).

8 Based on the opinions of Drs. Dhaliwal and Jansen, the ALJ concluded that
9 plaintiff could perform light work subject to limitations in her ability to climb ramps, stairs,
10 ladders, ropes, and scaffolds. The ALJ also concluded that plaintiff was limited in her ability to
11 stoop, kneel, crouch, and crawl. The question is whether these limitations preclude application
12 of the Grids. As indicated above, the Grids may be used despite non-exertional imitations (for
13 example, as here, limitations on postural activities such as stooping, climbing, etc.) if the non-
14 exertional imitations do not impact the primary strength activities. In this case, the ALJ
15 concluded that plaintiff had the exertional capability to perform strength activities (i.e., sitting,
16 standing, lifting, carrying, pushing, pulling) of light work. Thus, use of the Grids was
17 appropriate if the identified non-exertional limitations did not impact plaintiff’s ability to
18 perform light work.

19 In this regard, defendant states:

20 . . . The nonexertional limitations the ALJ assessed – only
21 occasionally climbing ramps or stairs and never climbing ladders, ropes or
22 scaffolds; only occasionally stooping, kneeling, crouching or crawling; and
23 only frequently balancing – were of a nature that did not significantly
24 impact either the light or sedentary occupational bases (AR 15, 18-19).

25 ³ Exertional capabilities are the primary strength activities of sitting, standing,
26 walking, lifting, carrying, pushing, or pulling and are generally defined in terms of ability to
perform sedentary, light, medium, heavy, or very heavy work. See 20 C.F.R., Part 404, Subpart
P, Appendix 2, § 200.00(a). Non-exertional activities include mental, sensory, postural,
manipulative, and environmental matters which do not directly affect the primary strength
activities. See 20 C.F.R., Part 404, Subpart P, Appendix 2, § 200.00(e).

1 See, SSR 83-14: Titles II and XVI: "Capability to Do Other Work – the
2 Medical-Vocational Rules as a Framework for Evaluating a Combination
3 of Exertional and Nonexertional Impairments," available at 1983 WL
4 83254 (the full range of light work implies that the worker is able to do
5 occasional bending of the stooping type). Accord, SSR 85-15: Titles II
6 and XVI: "Capability to Do Other Work – The Medical-Vocational Rules
7 as a Framework for Evaluating Solely Nonexertional Impairments,"
8 available at 1985 WL 56857 (limitations on kneeling and crawling have
9 almost no impact on the broad world of work; some limitation in climbing
10 and balancing ordinarily would not have a significant impact on the broad
11 world of work). . . . Therefore, the ALJ correctly found that [Medical-
12 Vocational] Guideline Rule 202.13 directed that Plaintiff be found "not
13 disabled" . . . , and his decision should be affirmed. Macri v. Chater, 93
14 F.3d 540, 545 (9th Cir. 1996) (where the claimant failed to establish a
15 significant nonexertional limitation, the ALJ was free to rely on the
16 Guidelines rather than a VE).

17 The court agrees. Here, there is no evidence that plaintiff's non-exertional limitations with
18 respect to climbing, stooping, etc., more than minimally impacted her capacity for light work. In
19 other words, despite any non-exertional limitations, plaintiff could still perform all the strength
20 activities of light work. Therefore, the ALJ properly relied on the Grids and was not required to
21 obtain testimony from a vocational expert.

22 V. CONCLUSION

23 Based on the foregoing, the court concludes that the Commissioner's final
24 decision is based on substantial evidence and proper legal analysis. Accordingly, IT IS HEREBY
25 ORDERED that:

- 26 1. Plaintiff's motion for summary judgment (Doc. 19) is denied;
2. Defendant's cross-motion for summary judgment (Doc. 20) is granted; and
3. The Clerk of the Court is directed to enter judgment and close this file.

DATED: February 19, 2009


CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE