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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KATIE LYNN FELTON,
Plaintiff,
v.
CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

No. 2:15-cv-2315-CKD

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) finding plaintiff was not disabled for purposes of receiving Disability Insurance Benefits (“DIB”) under Title II of the Social Security Act (“Act”). For the reasons discussed below, the court will deny plaintiff’s motion for summary judgment and grant the Commissioner’s cross-motion for summary judgment.

I. BACKGROUND

Plaintiff, born July 8, 1980, applied on January 11, 2012 for DIB, alleging disability beginning December 17, 2010. Administrative Transcript (“AT”) 14, 36, 66, 169-72. Plaintiff alleged she was unable to work due to a bulging disc touching her sciatic nerve and a back injury. AT 187. In a decision dated February 28, 2014, the ALJ determined that plaintiff was not

1 disabled.¹ AT 14-26. The ALJ made the following findings (citations to 20 C.F.R. omitted):

2 1. The claimant meets the insured status requirements of the Social
3 Security Act through March 31, 2015.

4 2. The claimant has not engaged in substantial gainful activity
5 since December 17, 2010, the alleged onset date.

6 3. The claimant has the following severe impairments:
7 degenerative disc disease of the lumbar spine post surgeries and
8 trauma events.

9 4. The claimant does not have an impairment or combination of
10 impairments that meets or medically equals the severity of one of
11 the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.

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13 ¹ Disability Insurance Benefits are paid to disabled persons who have contributed to the
14 Social Security program, 42 U.S.C. §§ 401, *et seq.* Supplemental Security Income is paid to
15 disabled persons with low income. 42 U.S.C. §§ 1382, *et seq.* Both provisions define disability,
16 in part, as an “inability to engage in any substantial gainful activity” due to “a medically
17 determinable physical or mental impairment . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A).
18 A parallel five-step sequential evaluation governs eligibility for benefits under both programs.
19 See 20 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S.
20 137, 140-142 (1987). The following summarizes the sequential evaluation:

21 Step one: Is the claimant engaging in substantial gainful
22 activity? If so, the claimant is found not disabled. If not, proceed
23 to step two.

24 Step two: Does the claimant have a “severe” impairment?
25 If so, proceed to step three. If not, then a finding of not disabled is
26 appropriate.

27 Step three: Does the claimant’s impairment or combination
28 of impairments meet or equal an impairment listed in 20 C.F.R., Pt.
29 404, Subpt. P, App.1? If so, the claimant is automatically
30 determined disabled. If not, proceed to step four.

31 Step four: Is the claimant capable of performing his past
32 work? If so, the claimant is not disabled. If not, proceed to step
33 five.

34 Step five: Does the claimant have the residual functional
35 capacity to perform any other work? If so, the claimant is not
36 disabled. If not, the claimant is disabled.

37 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

38 The claimant bears the burden of proof in the first four steps of the sequential evaluation
process. Bowen, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential
evaluation process proceeds to step five. Id.

1 5. After careful consideration of the entire record, the undersigned
2 finds that the claimant has the residual functional capacity to
3 perform light work as defined in 20 CFR 404.1567(b) except she
can frequently climb ramps, stairs, balance and occasionally climb
ladders, ropes or scaffolds, stoop, kneel, crouch and crawl.

4 6. The claimant is capable of performing past relevant work as a
5 cashier and customer service clerk. The work does not require the
6 performance of work-related activities precluded by the claimant's
residual functional capacity.

7 7. The claimant has not been under a disability, as defined in the
8 Social Security Act, from December 17, 2010, through the date of
this decision.

9 AT 16-26.

10 II. ISSUES PRESENTED

11 Plaintiff argues that the ALJ committed the following errors in finding plaintiff not
12 disabled: (1) improperly determined that plaintiff's spinal impairments did not meet or equal the
13 severity criteria set forth in Listing 1.04A; (2) failed to consider if a closed period of disability
14 was warranted; and (3) improperly assessed the credibility of plaintiff's testimony.

15 III. LEGAL STANDARDS

16 The court reviews the Commissioner's decision to determine whether (1) it is based on
17 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
18 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
19 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
20 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means "such relevant evidence as a reasonable
21 mind might accept as adequate to support a conclusion." Orn v. Astrue, 495 F.3d 625, 630 (9th
22 Cir. 2007) (quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)). "The ALJ is
23 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
24 ambiguities." Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citations omitted).
25 "The court will uphold the ALJ's conclusion when the evidence is susceptible to more than one
26 rational interpretation." Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

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1 The record as a whole must be considered, Howard v. Heckler, 782 F.2d 1484, 1487 (9th
2 Cir. 1986), and both the evidence that supports and the evidence that detracts from the ALJ's
3 conclusion weighed. See Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not
4 affirm the ALJ's decision simply by isolating a specific quantum of supporting evidence. Id.; see
5 also Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the
6 administrative findings, or if there is conflicting evidence supporting a finding of either disability
7 or nondisability, the finding of the ALJ is conclusive, see Sprague v. Bowen, 812 F.2d 1226,
8 1229-30 (9th Cir. 1987), and may be set aside only if an improper legal standard was applied in
9 weighing the evidence. See Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

10 IV. ANALYSIS

11 A. *The ALJ did not err in Finding that Plaintiff's Impairments did not Meet or Equal the*
12 *Requirements of Listing 1.04A*

13 First, plaintiff argues that the ALJ erred in finding that plaintiff's spinal impairments did
14 not meet or equal the requirements of Listing 1.04A in 20 CFR Part 404, Subpart P, Appendix 1.

15 The claimant "bears the burden of proving that . . . she has an impairment that meets or
16 equals the criteria of an impairment listed in Appendix 1 of the Commissioner's regulations."
17 Burch v. Barnhart, 400 F.3d 676, 683 (9th Cir. 2005). "For a claimant to show that his
18 impairment matches a listing, it must meet *all* of the specified medical criteria. An impairment
19 that manifests only some of those criteria, no matter how severely, does not qualify For a
20 claimant to qualify for benefits by showing that his unlisted impairment, or combination of
21 impairments, is 'equivalent' to a listed impairment, he must present medical findings equal in
22 severity to *all* the criteria for the one most similar listed impairment." Sullivan v. Zebley, 493
23 U.S. 521, 530-31 (1990). A determination of medical equivalence must rest on objective medical
24 evidence. See Lewis v. Apfel, 236 F.3d 503, 514 (9th Cir. 2001) ("A finding of equivalence must
25 be based on medical evidence only."); Tackett v. Apfel, 180 F.3d 1094, 1100 (9th Cir. 1999)
26 ("Medical equivalence must be based on medical findings A generalized assertion of
27 functional problems is not enough to establish disability at step three."); 20 C.F.R. §
28 404.1529(d)(3) ("In considering whether your symptoms, signs, and laboratory findings are

1 medically equal to the symptoms, signs, and laboratory findings of a listed impairment, we will
2 look to see whether your symptoms, signs, and laboratory findings are at least equal in severity to
3 the listed criteria. However, we will not substitute your allegations of pain or other symptoms for
4 a missing or deficient sign or laboratory finding to raise the severity of your impairment(s) to that
5 of a listed impairment.”). Furthermore, “[t]he mere diagnosis of an impairment listed in
6 Appendix 1 is not sufficient to sustain a finding of disability.” Key v. Heckler, 754 F.2d 1545,
7 1549 (9th Cir. 1985). Instead, all of the specified medical criteria must be met or equaled. Id. at
8 1550.

9 Listing 1.04A provides as follows:

10 Disorders of the spine (e.g., herniated nucleus pulposus, spinal
11 arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc
12 disease, facet arthritis, vertebral fracture), resulting in compromise
13 of a nerve root (including the cauda equina) or the spinal cord.
14 With:

15 A. Evidence of nerve root compression characterized by neuro-
16 anatomic distribution of pain, limitation of motion of the spine,
17 motor loss (atrophy with associated muscle weakness or muscle
18 weakness) accompanied by sensory or reflex loss and, if there is
19 involvement of the lower back, positive straight-leg raising test
20 (sitting and supine).

21 Here, the ALJ considered whether plaintiff’s spinal impairments met or equaled the
22 severity criteria for any of the musculoskeletal or neurological listings in Appendix 1, which
23 includes Listing 1.04A, and determined that the medical evidence in the record shows that they
24 did not. AT 18. Specifically, the ALJ found that “[n]o treating or examining physician has
25 mentioned findings equivalent in severity to the criteria of any in the musculoskeletal or
26 neurological listings, nor does the evidence show medical findings that are the same or equivalent
27 to those of any listed impairment of the Listing of Impairments.” Id.

28 Plaintiff argues that the ALJ’s determination was in error because the objective medical
evidence in the record provides findings consistent with the requirements of Listing 1.04A.
Plaintiff admits that the record does not establish that she exhibited all of the requisite Listing
1.04A criteria simultaneously for a continuous 12-month period, but argues that she was only
required to prove that the impairment itself, a spinal disorder resulting in compromise of the

1 nerve root, was present for more than 12 months and that the other criteria were met at any point
2 in time during the relevant period. Plaintiff contends that the objective medical evidence in the
3 record establishes such proof. The court disagrees.

4 As noted above, Listing 1.04A requires evidence of nerve root compression characterized
5 by (1) neuro-anatomic distribution of pain, (2) limitation of spinal motion, (3) motor loss (atrophy
6 with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss,
7 and, in the case of lower back impairments, which is the case here, (4) positive straight leg raising
8 tests (both sitting and supine). Here, the evidence provides substantial support for the ALJ's
9 conclusion that plaintiff's spinal impairments did not meet or equal these requirements. As the
10 ALJ noted, none of the treating or examining physicians in the record mention findings equivalent
11 in severity to Listing 1.04A's criteria, and the objective medical evidence in the record fails to
12 support plaintiff's contention that her impairments met or equaled those criteria.

13 In particular, the medical evidence fails to show that plaintiff suffered from nerve root
14 compression, the spinal impairment on which Listing 1.04A is based, for at least a 12 month
15 period during the relevant period. While MRI results from April 2011 first documented a "focal
16 subligamentous herniation . . . markedly compressing the lateral recess and the takeoff of the right
17 L5 nerve root," plaintiff underwent spinal surgery in June 2011, which resulted in the removal of
18 that herniated disc material. AT 321, 331-36, 338, 368-69. A subsequent MRI in August 2011
19 showed that a further disc protrusion had occurred, and that a "free fragment" was compressing
20 the L5 nerve root; however, plaintiff immediately underwent a second surgery, which resulted in
21 removal of that fragment, "following which the neural strictures relaxed more easily." AT 321-
22 22, 362. Plaintiff argues that further medical records from 2012, particularly MRI findings from
23 January 2012 and October 2012, show that she continued to suffer from nerve root compression
24 after her second surgery. However, a review of those records belies plaintiff's argument. While
25 the January 2012 MRI results showed a "*probable* impingement on the right L5 nerve root prior
26 to exit," the October 2012 MRI showed that while plaintiff had "mild spinal stenosis at [the L4-5]
27 level with mass effect upon the traversing right L5 nerve root," there were "[n]o acute
28 compression deformities." AT 359-60 (emphasis added), 426-27. In short, plaintiff fails to show

1 that the evidence in the record demonstrates that plaintiff had spinal nerve root compression for a
2 period of 12 months or greater during the relevant period.

3 Furthermore, the record provides only sporadic evidence of the existence of Listing
4 1.04A's other criteria. For instance, the treatment and examination notes from throughout the
5 relevant period generally show that plaintiff had either negative or "mildly positive" straight leg
6 raising results. E.g., AT 277, 305, 353-54, 358. Similarly, plaintiff exhibited largely normal
7 motor examination results, with the only signs of weakness occurring just prior to surgeries,
8 which resulted in immediate improvement in that area, and "some collapsing weakness" during
9 the later portion of the relevant period. E.g., AT 352-58, 442, 447, 455, 469. Indeed, even
10 plaintiff admits in her motion that "the remaining findings of listing 1.04A are not continuously
11 present throughout the record." ECF No. 15 at 12.

12 Plaintiff argues, however, that she was not required to show that each of the criteria had
13 been met simultaneously, or even in close proximity to one another. Plaintiff bases this argument
14 on the Fourth Circuit Court of Appeals' ruling in Radford v. Colvin; that court held that Listing
15 1.04A does not require a claimant to show that all the symptoms required to meet or equal its
16 criteria are "present simultaneously in the claimant or in close proximity to one another." 734
17 F.3d 288, 294 (4th Cir. 2013). However, the Fourth Circuit further held in Radford that Listing
18 1.04A requires a claimant to also show that he or she "has suffered or can be expected to suffer
19 from nerve root compression continuously for at least 12 months." Id. Here, plaintiff fails to
20 meet her burden in pointing to evidence in the record that reasonably supports her contention that
21 her nerve root compression lasted for a period of 12 months or greater. Accordingly, the ALJ did
22 not err in concluding that plaintiff's impairments did not meet or equal the criteria set out in
23 Listing 1.04A.²

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25 ² The Commissioner argues in her cross-motion for summary judgment that the criteria set forth
26 in Listing 1.04C are more applicable to plaintiff's impairments, but that the evidence in the record
27 still supports the ALJ's determination that plaintiff's impairments do not meet or equal that
28 listing, or any other listing based on musculoskeletal impairments. Plaintiff does not assert that
the ALJ erred in not finding her disabled under Listing 1.04C, or any listing other than Listing
1.04A. Accordingly, the court is not required to address the Commissioner's additional
argument. See Carmickle v. Comm'r, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008). Nevertheless, the

1 B. *The ALJ did not err by not Considering Whether Plaintiff was Entitled to a Closed*
2 *Period of Disability*

3 Second, plaintiff argues that the evidence establishes a closed period of disability between
4 December 17, 2010, plaintiff's alleged onset date, and April 19, 2012, the date the first physician
5 to review plaintiff's medical records provided an opinion regarding the functional impact of
6 plaintiff's physical limitations. Plaintiff contends that no physician who opined on plaintiff's
7 limitations assessed specifically whether plaintiff had been disabled prior to April 19, 2012,
8 therefore demonstrating that the ALJ had no basis on which to determine plaintiff was not
9 disabled prior to that date. Plaintiff asserts that while non-examining physician Dr. Tambellini
10 opined on April 19, 2012 that plaintiff was capable of light work as defined in 20 C.F.R. §
11 404.1567(b), his opinion was only as of that date and contains no analysis or indication that he
12 considered whether plaintiff had been disabled specifically during the period prior to that date.
13 Plaintiff argues further that the opinions of Dr. Eskander and Dr. Uriane, both of whom opined
14 plaintiff had limitations generally consistent with an ability to perform light work, AT 73-75,
15 442-43, were not based on a review of any medical evidence produced prior to October 2012 and,
16 in the case of Dr. Uriane's opinion, only assessed plaintiff's functional abilities as of January 4,
17 2013, the date of the examination. Plaintiff contends that the lack of medical opinion evidence
18 addressing plaintiff's limitations during the period between December 17, 2010 and April 19,
19 2012, and the objective medical evidence from that period mandates that this case be remanded so
20 the ALJ can specifically consider whether plaintiff was disabled during that period. Plaintiff's
21 argument is not well taken for two reasons.

22 First, plaintiff's contention that the ALJ could not rely on the opinions of Dr. Tambellini
23 and Dr. Uriane with regard to the closed period at issue because they only addressed plaintiff's
24 limitations as of the time they were written is misplaced. Nowhere in either physician's opinion
25 was there a statement that plaintiff's limitations were limited to the date on which the opinions
26 were issued or specifically state that the opinions were only prospective in nature. AT 62-63,

27 Commissioner's argument is well taken as the evidence in the record also does not support a
28 showing that plaintiff's impairments meet or equal the severity requirements of Listing 1.04C.

1 439-43. While Dr. Tambellini noted that his opinion was a “current assessment,” it was also
2 based on a review of plaintiff’s medical records developed prior to the date he wrote that opinion.
3 AT 62-63. Accordingly, it was reasonable for the ALJ to take that opinion into account with
4 regard to the entire span of the relevant period, including prior to the date of that opinion.
5 Similarly, it was reasonable for the ALJ to consider Dr. Uraine’s opinion with regard to the entire
6 relevant period as that opinion did not specify whether it was only prospective in nature and was
7 based, in part, on a review of records plaintiff had supplied at that time. AT 439-43.

8 Furthermore, the record fails to support plaintiff’s argument that the ALJ could not rely on
9 the medical opinions of Dr. Eskander and Dr. Uriane because they were not based on a review of
10 medical records prior to October 2012. While the earliest evidence Dr. Eskander indicated he had
11 reviewed in forming his opinion was an October 2012 MRI, AT 71-72, and Dr. Uraine noted that
12 he had reviewed only some of the records plaintiff supplied him, AT 439, those facts do not mean
13 the ALJ was precluded from considering those opinions with regard to the entire relevant period,
14 including the period prior to any records they reviewed, to aid in the formation of their opinions.
15 Plaintiff does not contest the ALJ’s consideration of the substance of Dr. Tambellini’s, Dr.
16 Eskander’s, or Dr. Uraine’s opinions, and it was reasonable for the ALJ to consider those
17 physicians’ opinions with regard to plaintiff’s residual functional capacity (“RFC”) throughout
18 entire relevant period rather than just the dates on which they provided their respective opinions.

19 Second, and more importantly, substantial objective medical evidence in the record from
20 the closed period plaintiff asserts should be reconsidered supports the ALJ’s determination that
21 plaintiff was not disabled within the meaning of the Act for the duration of that period. On
22 December 27, 2010, plaintiff was diagnosed with muscular sprain/strain due to coughing while ill
23 with a upper respiratory infection. AT 278. Over the course of the next several months, treating
24 notes show that plaintiff exhibited negative straight leg raising and either normal or mildly
25 decreased range of motion in flexion and extension of her back. AT 273-77, 305. Plaintiff’s
26 treatment during that time was largely conservative, consisting primarily of pain medications,
27 chiropractic treatment, and physical therapy. Id. In June 2011, after plaintiff underwent her first
28 spinal surgery, plaintiff’s examination results showed that plaintiff was “doing well,” had no leg

1 pain, negative straight leg raising, and normal motor examination results. AT 358. While
2 plaintiff's condition subsequently worsened, causing her to undergo a second surgical procedure
3 for her spine on August 13, 2011, the post-surgery examination notes for that second surgery
4 show that plaintiff exhibited negative straight leg raising and had normal motor and sensory
5 examinations. AT 354. During a follow up examination on December 16, 2011, plaintiff
6 exhibited "mildly positive" straight leg raising and stated that her leg pain had returned, but had
7 normal motor and sensory examinations. AT 353. During a subsequent examination on January
8 31, 2012, plaintiff's straight leg raising results were negative, motor examination was normal, and
9 sensation was intact. AT 352. A January 2012 MRI also revealed "disc herniation probable
10 impingement on the right L5 nerve root suggestive of residual or recurrent disc herniation, with
11 mild degenerative loss of disc space height and signal L4-L5; diffuse annular bulge, L5-S1 with
12 tiny posterior annular fissure centrally." AT 20 (citing AT 390). However, plaintiff declined
13 optional additional surgery at that time. AT 347. This evidence fails to demonstrate that plaintiff
14 had disabling limitations as a result of her spinal impairments for a period of 12 months or greater
15 within the limited time frame plaintiff requests the ALJ be ordered to reconsider. The ALJ
16 carefully and fully addressed this evidence in his decision and reached a reasonable determination
17 that it did not warrant a finding that plaintiff was disabled, not only during the closed period
18 plaintiff now contests, but throughout the entire course of the relevant period.

19 Moreover, even though plaintiff's condition appeared to decline somewhat subsequent to
20 the closed period, the medical opinion evidence produced during that later period indicates that
21 plaintiff was still largely capable of performing work-related activities commensurate with the
22 regulations' requirements for light work. AT 62-63, 71-72, 439-43. The ALJ assigned those
23 opinions "substantial weight"; a decision plaintiff does not contest. AT 23. Thus, the ALJ's RFC
24 determination that plaintiff was capable of light work with some additional postural limitations
25 throughout the course of the entire relevant period was supported by the substantial evidence.

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1 C. *The ALJ's Credibility Assessment of Plaintiff's Testimony was Proper and Supported*
2 *by Substantial Evidence*

3 Finally, plaintiff argues that the ALJ erred in finding plaintiff's testimony regarding the
4 extent of her pain and symptoms less than fully credible.

5 The ALJ determines whether a disability applicant is credible, and the court defers to the
6 ALJ's discretion if the ALJ used the proper process and provided proper reasons. See, e.g.,
7 Saelee v. Chater, 94 F.3d 520, 522 (9th Cir. 1995). If credibility is critical, the ALJ must make an
8 explicit credibility finding. Albalos v. Sullivan, 907 F.2d 871, 873-74 (9th Cir. 1990); Rashad v.
9 Sullivan, 903 F.2d 1229, 1231 (9th Cir. 1990) (requiring explicit credibility finding to be
10 supported by "a specific, cogent reason for the disbelief").

11 In evaluating whether subjective complaints are credible, the ALJ should first consider
12 objective medical evidence and then consider other factors. Bunnell v. Sullivan, 947 F.2d 341,
13 344 (9th Cir. 1991) (en banc). If there is objective medical evidence of an impairment, the ALJ
14 then may consider the nature of the symptoms alleged, including aggravating factors, medication,
15 treatment and functional restrictions. See id. at 345-47. The ALJ also may consider: (1) the
16 applicant's reputation for truthfulness, prior inconsistent statements or other inconsistent
17 testimony, (2) unexplained or inadequately explained failure to seek treatment or to follow a
18 prescribed course of treatment, and (3) the applicant's daily activities. Smolen v. Chater, 80 F.3d
19 1273, 1284 (9th Cir. 1996); see generally SSR 96-7p; SSR 95-5p; SSR 88-13. Work records,
20 physician and third party testimony about nature, severity and effect of symptoms, and
21 inconsistencies between testimony and conduct also may be relevant. Light v. Social Security
22 Administration, 119 F.3d 789, 792 (9th Cir. 1997). A failure to seek treatment for an allegedly
23 debilitating medical problem may be a valid consideration by the ALJ in determining whether the
24 alleged associated pain is not a significant non-exertional impairment. See Flaten v. Secretary of
25 HHS, 44 F.3d 1453, 1464 (9th Cir. 1995). The ALJ may rely, in part, on his or her own
26 observations, see Quang Van Han v. Bowen, 882 F.2d 1453, 1458 (9th Cir. 1989), which cannot
27 substitute for medical diagnosis. Marcia v. Sullivan, 900 F.2d 172, 177 n.6 (9th Cir. 1990).
28 "Without affirmative evidence showing that the claimant is malingering, the Commissioner's

1 reasons for rejecting the claimant’s testimony must be clear and convincing.” Morgan v.
2 Commissioner of Social Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).

3 Here, the ALJ assessed plaintiff’s testimony as follows:

4 This record demonstrates the claimant’s allegations are partially
5 supported - she experiences some level of chronic pain
6 necessitating at times, prescription medications, two 2011 surgeries,
7 exacerbation by two rear-ender accidents in 2012 and treatment
8 through a variety of other conservative modalities; there are limited
9 physical exam findings to support her allegations and imagery
shows and imagery shows [*sic*] degenerative changes in addition to
recurrent disc herniation. As well, her complaints of pain and
limitations to her treating sources support her severe impairments.

10 However while the record shows she may experience some level of
11 weakness, pain, and fatigue, the weight of the evidence
12 demonstrates her allegations are out of proportion to the medical
13 findings, diagnostic testing and imagery; that her symptoms are so
14 well controlled by the conservative treatment given that she can still
perform a wide range of light exertional work; and the medical
opinions support her capacity to engage in work activity.

15 AT 23-24. In short, the ALJ found plaintiff’s testimony partially credible insofar as the evidence
16 in the record supports her claims that her spinal impairments cause her some level of weakness,
17 pain, and fatigue, but not to the point of disability that plaintiff alleges. The ALJ’s reasons in
18 support of this conclusion, that plaintiff’s testimony regarding the degree of her pain and
19 symptoms conflicted with the objective medical findings, diagnostic testing, and imagery, and the
20 fact that plaintiff’s symptoms were well controlled with conservative treatment, were proper and
21 supported by substantial evidence from the record.

22 First, the ALJ cited to the fact that the objective medical evidence and medical opinion
23 evidence in the record did not support plaintiff’s claims of disabling limitations and pain. As
24 discussed above the ALJ assigned “substantial weight” to the examining and reviewing opinions
25 of Dr. Tambellini, Dr. Eskander, and Dr. Uraine, all of whom opined limitations in line with an
26 ability to perform light work. AT 23, 62-63, 71-72, 439-43. Such opined limitations conflict
27 with plaintiff’s claims of disabling limitations. Plaintiff does not contest the ALJ’s assessment of
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1 these three physicians' opinions, or any of the other opinion evidence in the record beyond her
2 erroneous argument that the ALJ was not permitted to consider those opinions with regard to the
3 first part of the alleged disability period. Similarly, plaintiff's treatment records do not
4 corroborate her claims of disabling pain and symptoms. As discussed above, plaintiff's treating
5 records through early 2012 demonstrate largely normal-to-mild findings with regard to objective
6 testing. E.g., AT 273-77, 305, 352-54, 358.

7 Similarly, the medical records beyond that initial period generally provide findings that
8 conflict with plaintiff's pain and symptom testimony, even though plaintiff had been involved in
9 two automobile accidents that exacerbated her symptoms during that time. For instance, an
10 October 2012 MRI showed mild spinal stenosis, mass effect upon the traversing right L5 nerve
11 root at L4-L5 with foraminal narrowing, no compression deformities, no significant spinal
12 stenosis at L5-S1, and undescribed degenerative changes at the sacroiliac joints. AT 421-22. A
13 follow up examination of plaintiff on January 23, 2013 indicates that while plaintiff exhibited
14 straight leg raising, she was able to flex and extend, and was "doing well" after she received an
15 epidural steroid. AT 447. As the ALJ noted in his decision, there is "no record of care for
16 [plaintiff's spinal] impairment after March 2013." AT 21. In short, the objective medical
17 evidence does not support plaintiff's claims that she suffered from disabling pain and symptoms
18 for a period of 12 months or more during the relevant period. Although lack of medical evidence
19 cannot form the sole basis for discounting plaintiff's subjective symptom testimony, it is
20 nevertheless a relevant factor for the ALJ to consider. Burch, 400 F.3d at 681. Accordingly, the
21 ALJ did not err in providing this reason for discounting plaintiff's testimony in light of the other
22 clear and convincing reasons he provided.

23 Specifically, the ALJ also properly determined that plaintiff's relatively conservative
24 treatment was a proper consideration. See Tommasetti, 533 F.3d at 1039-40 (reasoning that a
25 favorable response to conservative treatment undermines complaints of disabling symptoms);
26 Parra v. Astrue, 481 F.3d 742, 751 (9th Cir. 2007) ("We have previously indicated that evidence
27 of conservative treatment is sufficient to discount a claimant's testimony regarding severity of an
28 impairment."); Fair v. Bowen, 885 F.2d 597, 604 (9th Cir. 1989). Furthermore, it was proper for

1 the ALJ to consider plaintiff's positive reaction to that treatment. See Parra v. Astrue, 481 F.3d
2 742, 751 (9th Cir. 2007) ("We have previously indicated that evidence of conservative treatment
3 is sufficient to discount a claimant's testimony regarding severity of an impairment"); Warre v.
4 Comm'r of Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir. 2006) (noting that a condition that
5 can be controlled or corrected by medication is not disabling for purposes of determining
6 eligibility for benefits under the Act); Fair v. Bowen, 885 F.2d 597, 604 (9th Cir. 1989); Montijo
7 v. Sec'y of Health & Human Servs., 729 F.2d 599, 600 (9th Cir. 1984); Odle v. Heckler, 707 F.2d
8 439, 440 (9th Cir. 1983).

9 Here, the evidence shows that during the earlier portion of the relevant period, plaintiff
10 received relatively conservative treatment in the form of pain medications, physical therapy, and
11 chiropractic care. AT 273-77, 305. While plaintiff did undergo two surgical procedures on her
12 spine in mid-2011, both of which led to some relief in the months after the procedures, and was
13 involved in two car accidents in 2012 that exacerbated some of her symptoms, she later received a
14 series of epidural steroid injections that provided her "very good pain relief." AT 354-55, 358,
15 465, 469. As the ALJ observed in his decision, the record shows that after receiving the series of
16 epidural steroids and further chiropractic care, plaintiff's "symptoms [were] well controlled and
17 improve[d] such that she [was] able to sustain activities of daily living, liv[ed] with her fiancé,
18 parent[ed] multiple children, under[took] a move to Texas with them all in April 2013, and there
19 resume[d] working part-time." AT 19. In sum, the record contains substantial evidence on which
20 the ALJ could rely to support his reasoning that plaintiff's conservative treatment undermined her
21 claims of disabling pain and symptoms.

22 Because the ALJ provided multiple proper reasons for discounting plaintiff's testimony
23 that were supported by substantial evidence from the record, the ALJ did not err in his adverse
24 credibility determination.

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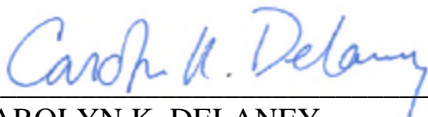
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V. CONCLUSION

For the reasons stated herein, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for summary judgment (ECF No. 15) is denied;
 2. The Commissioner's cross-motion for summary judgment (ECF No. 16) is granted;
- and
3. Judgment is entered for the Commissioner.

Dated: November 17, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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