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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTINE BROOKS,  
  
Plaintiff,  
  
v.  
  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
  
Defendant.

No. 2:16-cv-1228 CKD

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying applications for Disability Income Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI of the Social Security Act (“Act”), respectively. 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.

BACKGROUND

Plaintiff, born 1971, applied on June 21, 2013 for DIB and SSI, alleging disability beginning January 1, 2009. Administrative Transcript (“AT”) 163-173. Plaintiff alleged she was unable to work due to bipolar disorder, depression, PTSD, premenstrual dysforic [sic] disorder, anxiety and sleeping issues. AT 185. In a decision dated December 15, 2014, the ALJ

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1 determined that plaintiff was not disabled.<sup>1</sup> AT 16-24. The ALJ made the following findings  
2 (citations to 20 C.F.R. omitted):

- 3 1. The claimant meets the insured status requirements of the Social  
4 Security Act through December 31, 2013.
- 5 2. The claimant has not engaged in substantial gainful activity  
6 since January 1, 2009, the alleged onset date.
- 7 3. The claimant has the following severe impairments: major  
8 depressive disorder and generalized anxiety disorder.
- 9 4. The claimant does not have an impairment or combination of  
10 impairments that meets or medically equals one of the listed  
11 impairments in 20 CFR Part 404, Subpart P, Appendix 1.

12 <sup>1</sup> Disability Insurance Benefits are paid to disabled persons who have contributed to the  
13 Social Security program, 42 U.S.C. § 401 et seq. Supplemental Security Income is paid to  
14 disabled persons with low income. 42 U.S.C. § 1382 et seq. Both provisions define disability, in  
15 part, as an “inability to engage in any substantial gainful activity” due to “a medically  
16 determinable physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A).  
17 A parallel five-step sequential evaluation governs eligibility for benefits under both programs.  
18 See 20 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S.  
19 137, 140-142, 107 S. Ct. 2287 (1987). The following summarizes the sequential evaluation:

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

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

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

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

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

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

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, 107 S. Ct. at 2294 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 a full range of work at all exertional levels but with the  
4 following non-exertional limitations: She can perform simple  
5 unskilled work.

6 6. The claimant is capable of performing past relevant work as a  
7 housekeeper. This work does not require the performance of work-  
8 related activities precluded by the claimant's residual functional  
9 capacity.

10 7. The claimant has not been under a disability, as defined in the  
11 Social Security Act, from January 1, 2009, through the date of this  
12 decision.

13 AT 19-24.

#### 14 ISSUES PRESENTED

15 Plaintiff challenges the ALJ's finding that plaintiff's statements were not credible.

#### 16 LEGAL STANDARDS

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

28 The record as a whole must be considered, Howard v. Heckler, 782 F.2d 1484, 1487 (9th  
Cir. 1986), and both the evidence that supports and the evidence that detracts from the ALJ's  
conclusion weighed. See Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not  
affirm the ALJ's decision simply by isolating a specific quantum of supporting evidence. Id.; see  
also Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the

1 administrative findings, or if there is conflicting evidence supporting a finding of either disability  
2 or nondisability, the finding of the ALJ is conclusive, see Sprague v. Bowen, 812 F.2d 1226,  
3 1229-30 (9th Cir. 1987), and may be set aside only if an improper legal standard was applied in  
4 weighing the evidence. See Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

#### 5 ANALYSIS

6 Plaintiff contends that the ALJ did not properly assess her credibility. The ALJ  
7 determines whether a disability applicant is credible, and the court defers to the ALJ's discretion  
8 if the ALJ used the proper process and provided proper reasons. See, e.g., Saelee v. Chater, 94  
9 F.3d 520, 522 (9th Cir. 1995). If credibility is critical, the ALJ must make an explicit credibility  
10 finding. Albalos v. Sullivan, 907 F.2d 871, 873-74 (9th Cir. 1990); Rashad v. Sullivan, 903 F.2d  
11 1229, 1231 (9th Cir. 1990) (requiring explicit credibility finding to be supported by "a specific,  
12 cogent reason for the disbelief").

13 In evaluating whether subjective complaints are credible, the ALJ should first consider  
14 objective medical evidence and then consider other factors. Bunnell v. Sullivan, 947 F.2d 341,  
15 344 (9th Cir. 1991) (en banc). If there is objective medical evidence of an impairment, the ALJ  
16 then may consider the nature of the symptoms alleged, including aggravating factors, medication,  
17 treatment and functional restrictions. See id. at 345-47. The ALJ also may consider: (1) the  
18 applicant's reputation for truthfulness, prior inconsistent statements or other inconsistent  
19 testimony, (2) unexplained or inadequately explained failure to seek treatment or to follow a  
20 prescribed course of treatment, and (3) the applicant's daily activities. Smolen v. Chater, 80 F.3d  
21 1273, 1284 (9th Cir. 1996); see generally SSR 96-7P, 61 FR 34483-01; SSR 95-5P, 60 FR 55406-  
22 01; SSR 88-13. Work records, physician and third party testimony about nature, severity and  
23 effect of symptoms, and inconsistencies between testimony and conduct also may be relevant.  
24 Light v. Social Security Administration, 119 F.3d 789, 792 (9th Cir. 1997). A failure to seek  
25 treatment for an allegedly debilitating medical problem may be a valid consideration by the ALJ  
26 in determining whether the alleged associated pain is not a significant nonexertional impairment.  
27 See Flaten v. Secretary of HHS, 44 F.3d 1453, 1464 (9th Cir. 1995). The ALJ may rely, in part,  
28 on his or her own observations, see Quang Van Han v. Bowen, 882 F.2d 1453, 1458 (9th Cir.

1 1989), which cannot substitute for medical diagnosis. Marcia v. Sullivan, 900 F.2d 172, 177 n.6  
2 (9th Cir. 1990). “Without affirmative evidence showing that the claimant is malingering, the  
3 Commissioner’s reasons for rejecting the claimant’s testimony must be clear and convincing.”  
4 Morgan v. Commissioner of Social Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).

5 Plaintiff testified that she could no longer work or hold a job because of her anxiety and  
6 panic attacks. AT 36. She further testified that she had bad customer service skills due to her  
7 mood disorder and not being able to focus or concentrate. AT 44. The ALJ set forth several  
8 reasons for discrediting plaintiff’s testimony regarding the severity of her symptoms and the  
9 limitations ensuing therefrom.

10 The ALJ noted that plaintiff’s assertions were contradicted by the objective evidence in  
11 the medical records and the ALJ made specific reference to those records. AT 22. The ALJ  
12 observed that the medical records showed that plaintiff failed to take prescribed medication  
13 despite her claim of disabling symptoms. Although medical non-compliance produced moderate  
14 symptoms, those symptoms were corrected with medication. AT 22, 273, 277, 289, 301, 317,  
15 319, 323, 328. The ALJ also discounted plaintiff’s testimony because she reported side effects of  
16 the medications on her function report yet denied any side effects to her treating physician. AT  
17 217, 267-270. The ALJ also found discrediting the inconsistency between plaintiff’s testimony  
18 regarding last using marijuana as a teenager and her admission that she occasionally uses  
19 marijuana when she was confronted with a positive toxicology screen. AT 22, 41, 42, 289, 302.  
20 The ALJ also considered plaintiff’s activities of daily living as demonstrating a greater functional  
21 capacity than that claimed by plaintiff. AT 22, 212-214, 328. The reasons set forth by the ALJ  
22 for discrediting plaintiff’s subjective complaints are valid and supported by the record. There is  
23 no basis for reversal in the ALJ’s credibility finding.

24 CONCLUSION

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

- 26 1. Plaintiff’s motion for summary judgment (ECF No. 16) is denied;

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2. The Commissioner's cross-motion for summary judgment (ECF No. 20) is granted;

and

3. Judgment is entered for the Commissioner.

Dated: May 11, 2017



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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