

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JANET JANDREJACK,

 Plaintiff,

 v.

COMMISSIONER OF SOCIAL
SECURITY,

 Defendant.

No. 2:17-cv-1455-KJN

ORDER

Plaintiff Janet Jandrejack seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner”) that plaintiff was not disabled for purposes of receiving Disability Insurance Benefits (“DIB”) under Title II of the Social Security Act (“Act”).¹ Plaintiff filed a motion for summary judgment, which the Commissioner opposed by filing a cross-motion for summary judgment. (ECF Nos. 15, 16.) Thereafter, plaintiff also filed a reply brief. (ECF No. 17.) For the reasons discussed below, the court DENIES plaintiff’s motion for summary judgment, GRANTS the Commissioner’s cross-motion for summary judgment, and AFFIRMS the Commissioner’s final decision.

¹ This action was referred to the undersigned pursuant to Local Rule 302(c)(15), and both parties voluntarily consented to proceed before a United States Magistrate Judge for all purposes. (ECF Nos. 8, 10.)

1 I. BACKGROUND

2 Plaintiff was born on September 12, 1959; has at least a high school education; can
3 communicate in English; and previously worked as an office manager for the State of California.
4 (Administrative Transcript (“AT”) 32, 56.)² On January 22, 2014, plaintiff filed an application
5 for DIB, alleging that she was unable to work as of August 9, 2012, due to lumbar degenerative
6 disc disease, morbid obesity, neuropathy, diabetes, chronic obstructive pulmonary disease,
7 irritable bowel syndrome, fatigue, osteoarthritis, and hypothyroidism. (AT 101, 195, 209.) After
8 plaintiff’s application was denied initially and on reconsideration, plaintiff requested a hearing
9 before an administrative law judge (“ALJ”), which took place on December 11, 2015, and at
10 which plaintiff, appearing with counsel, and a vocational expert (“VE”) testified. (AT 48-88.)
11 The ALJ subsequently issued a decision dated March 2, 2016, determining that plaintiff had not
12 been disabled, as defined in the Act, from August 9, 2012, plaintiff’s alleged disability onset date,
13 through the date of the ALJ’s decision. (AT 19-34.) The ALJ’s decision became the final
14 decision of the Commissioner when the Appeals Council denied plaintiff’s request for review on
15 May 23, 2017. (AT 1-3.) Plaintiff subsequently filed this action on July 13, 2017, to obtain
16 judicial review of the Commissioner’s final decision. (ECF No. 1.)

17 II. ISSUES PRESENTED

18 On appeal, plaintiff raises the following issues: (1) whether the ALJ improperly
19 discounted the opinion of plaintiff’s treating physician; (2) whether the ALJ erroneously failed to
20 assess if plaintiff was entitled to a closed period of disability; and (3) whether the ALJ improperly
21 failed to consider plaintiff’s non-severe mental impairments.

22 III. LEGAL STANDARD

23 The court reviews the Commissioner’s decision to determine whether (1) it is based on
24 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record

25 _____
26 ² Because the parties are familiar with the factual background of this case, including plaintiff’s
27 medical and mental health history, the court does not exhaustively relate those facts in this order.
28 The facts related to plaintiff’s impairments and treatment will be addressed insofar as they are
relevant to the issues presented by the parties’ respective motions.

1 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
2 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
3 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means “such relevant evidence as a reasonable
4 mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th
5 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is
6 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
7 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citation omitted). “The
8 court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one rational
9 interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

10 IV. DISCUSSION

11 Summary of the ALJ’s Findings

12 The ALJ evaluated plaintiff’s entitlement to DIB pursuant to the Commissioner’s standard
13 five-step analytical framework.³ As an initial matter, the ALJ found that plaintiff met the insured

14 ³ Disability Insurance Benefits are paid to disabled persons who have contributed to the Social
15 Security program. 42 U.S.C. §§ 401 et seq. Supplemental Security Income is paid to disabled
16 persons with low income. 42 U.S.C. §§ 1382 et seq. Both provisions define disability, in part, as
17 an “inability to engage in any substantial gainful activity” due to “a medically determinable
18 physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A). A parallel
19 five-step sequential evaluation governs eligibility for benefits under both programs. See 20
20 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-
21 42 (1987). The following summarizes the sequential evaluation:

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

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

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

Step four: Is the claimant capable of performing her past relevant 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.

1 status requirements of the Act for purposes of DIB through December 31, 2018. (AT 21.) At the
2 first step, the ALJ concluded that plaintiff had not engaged in substantial gainful activity since
3 August 9, 2012, plaintiff's alleged disability onset date. (Id.) At step two, the ALJ found that
4 plaintiff had the following severe impairments: morbid obesity, status-post remote and gastric
5 band implantation and removal and recent bariatric surgery; lumbar degenerative disc disease.
6 (AT 22.) However, at step three, the ALJ determined that plaintiff did not have an impairment or
7 combination of impairments that met or medically equaled the severity of an impairment listed in
8 20 C.F.R. Part 404, Subpart P, Appendix 1. (AT 24.)

9 Before proceeding to step four, the ALJ assessed plaintiff's RFC as follows:

10 After careful consideration of the entire record, I find that the
11 claimant has the residual functional capacity to lift, carry, push, and
12 pull 10 pounds occasionally and less than 10 pounds frequently.
13 The claimant can sit for 6 hours and stand and or walk for 4 hours
14 during an 8-hour workday. She must be able to alternate between
15 sitting and standing, every 30 minutes for 1-2 minutes, so long as
16 she does not have to leave the vicinity of the workstation or be off
17 task. The claimant can never climb ladders, ropes, or scaffolds, and
18 can occasionally stoop, kneel, crouch, crawl, and balance. The
19 claimant must avoid more than occasional exposure to extreme cold
20 or pulmonary irritants that include dust, gases, odors, and fumes.
21 The claimant must avoid unprotected heights, unprotected moving
22 mechanical machinery, and vibrations.

23 (AT 25.) At step four, the ALJ determined, based on the VE's testimony, that plaintiff was
24 capable of performing past relevant work as an office manager. (AT 32.) In the alternative, the
25 ALJ proceeded to step five and found, based on the VE's testimony, that plaintiff was also
26 capable of performing other jobs existing in significant numbers in the national economy. (AT
27 32-34.)

28 Consequently, the ALJ concluded that plaintiff had not been disabled, as defined in the
Act, from August 9, 2012, plaintiff's alleged disability onset date, through March 2, 2016, the
date of the ALJ's decision. (AT 34.)

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. The Commissioner bears the burden if the sequential
evaluation process proceeds to step five. Id.

1 Plaintiff's Substantive Challenges to the Commissioner's Determinations

2 *Whether the ALJ improperly discounted the opinion of plaintiff's treating*
3 *physician*

4 The weight given to medical opinions depends in part on whether they are proffered by
5 treating, examining, or non-examining professionals. Holohan v. Massanari, 246 F.3d 1195,
6 1201-02 (9th Cir. 2001); Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). Generally speaking,
7 a treating physician's opinion carries more weight than an examining physician's opinion, and an
8 examining physician's opinion carries more weight than a non-examining physician's opinion.
9 Holohan, 246 F.3d at 1202.

10 To evaluate whether an ALJ properly rejected a medical opinion, in addition to
11 considering its source, the court considers whether (1) contradictory opinions are in the record;
12 and (2) clinical findings support the opinions. An ALJ may reject an uncontradicted opinion of a
13 treating or examining medical professional only for "clear and convincing" reasons. Lester, 81
14 F.3d at 830-31. In contrast, a contradicted opinion of a treating or examining professional may be
15 rejected for "specific and legitimate" reasons. Id. at 830. While a treating professional's opinion
16 generally is accorded superior weight, if it is contradicted by a supported examining
17 professional's opinion (supported by different independent clinical findings), the ALJ may
18 resolve the conflict. Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citing Magallanes
19 v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). The regulations require the ALJ to weigh the
20 contradicted treating physician opinion, Edlund, 253 F.3d at 1157,⁴ except that the ALJ in any
21 event need not give it any weight if it is conclusory and supported by minimal clinical findings.
22 Meanel v. Apfel, 172 F.3d 1111, 1114 (9th Cir. 1999) (treating physician's conclusory, minimally
23 supported opinion rejected); see also Magallanes, 881 F.2d at 751. The opinion of a non-
24 examining professional, by itself, is insufficient to reject the opinion of a treating or examining
25 professional. Lester, 81 F.3d at 831.

26 _____
27 ⁴ The factors include: (1) length of the treatment relationship; (2) frequency of examination; (3)
28 nature and extent of the treatment relationship; (4) supportability of diagnosis; (5) consistency;
and (6) specialization. 20 C.F.R. § 404.1527.

1 In this case, plaintiff's treating physician, Dr. Elizabeth Madarang, completed a medical
2 source statement opining *inter alia* that plaintiff could sit/stand/walk for less than 2 hours a day;
3 would need to take unscheduled breaks of 5-15 minutes every 30-60 minutes; would be off task
4 25% or more of the day; was incapable of even low stress work; and would be absent from work
5 more than four days per month. (AT 358-64.) Because Dr. Madarang's opinion was contradicted
6 by other medical opinions in the record, the ALJ was required to provide specific and legitimate
7 reasons to discount Dr. Madarang's opinion. As discussed below, the ALJ properly discharged
8 that obligation.

9 The ALJ reasonably observed that Dr. Madarang's extreme opinion was unsupported by
10 the objective medical records, which largely documented conservative treatment with oral
11 medication and no physical therapy or injections. (AT 29-30.) See Tommasetti v. Astrue, 533
12 F.3d 1035, 1039-40 (9th Cir. 2008) (reasoning that a favorable response to conservative treatment
13 undermines complaints of disabling symptoms); Parra v. Astrue, 481 F.3d 742, 751 (9th Cir.
14 2007) ("We have previously indicated that evidence of conservative treatment is sufficient to
15 discount a claimant's testimony regarding severity of an impairment"). Furthermore, as the ALJ
16 noted, plaintiff herself conceded that her medications had been relatively effective in controlling
17 her pain. (AT 28-29, 63 [if plaintiff takes her medication consistently, pain remains at a "low
18 hum" or level of 2-4 out of 10; "with my medication, I can easily sit for four hours, and possibly
19 six"].) A condition that can be controlled or corrected by medication is not disabling for
20 purposes of determining eligibility for benefits under the Act. See Warre v. Comm'r of Soc. Sec.
21 Admin., 439 F.3d 1001, 1006 (9th Cir. 2006).

22 The ALJ also rationally pointed to inconsistencies concerning Dr. Madarang's opinion,
23 which detracted from its reliability. For example, although Dr. Madarang suggested that plaintiff
24 was unable to walk even a single city block without rest or severe pain, she also indicated that
25 plaintiff had to walk for 5 minutes at least twice an hour. (AT 30, 359.) Notably, plaintiff herself
26 testified that she could walk up to 2 miles fairly regularly. (AT 63-64.)

27 The ALJ further permissibly found that Dr. Madarang's extreme limitations were
28 inconsistent with the weight of the other medical opinions in the record. (AT 29-31.) Dr. Joseph

1 Serra, an orthopedic surgeon, reviewed plaintiff's records and medical history (including her
2 lower back and knee issues, prior surgeries, and other medical issues such as obesity, diabetes,
3 numbness/tingling, diarrhea, high blood pressure, hypothyroidism, asthma, etc.); personally
4 examined plaintiff; and opined that plaintiff was capable of performing the specific job duties of
5 her prior job and that there was an "exaggeration of complaints. The subjective complaints far
6 outweigh any objective findings." (AT 1068-76, 1077-78, 1089-94.) Additionally, Dr. Narinder
7 Dhaliwal, an internal medicine specialist, reviewed plaintiff's records, personally examined
8 plaintiff, and likewise opined that plaintiff was not substantially incapacitated from performing
9 the duties of her prior job. (AT 1079-88, 1095-98.) Furthermore, Dr. Fariba Vesali, a physical
10 medicine and rehabilitation specialist, personally examined plaintiff and opined that plaintiff
11 could walk/stand/sit for 6 hours each in an 8-hour day, with breaks every 2 hours; lift/carry 50
12 pounds occasionally and 25 pounds frequently; and perform frequent postural activities. (AT
13 1104-07.) Because those physicians personally examined plaintiff and made independent clinical
14 findings, their opinions constitute substantial evidence on which the ALJ was entitled to rely.⁵ To
15 be sure, another orthopedist who evaluated plaintiff, Dr. Anthony Bellomo, concluded that
16 plaintiff was unable to perform her prior work, at least for a defined period of time. (AT 758-65.)
17 However, it is the ALJ's role to resolve inconsistencies in the medical evidence, and the court
18 defers, as it must, to the ALJ's rational resolution of such inconsistencies.

19 Consequently, the ALJ's evaluation of Dr. Madarang's opinion was supported by the
20 record and by the proper analysis.

21 ///

22 ///

23 ///

24 _____
25 ⁵ Plaintiff's briefing appears to contend that the opinions by those physicians did not actually
26 controvert Dr. Madarang's opinion, because some of the opinions were formed in the process of
27 plaintiff's worker's compensation claim, and the individual opinions were focused on different
28 aspects of plaintiff's medical condition (orthopedic vs systemic medical issues). However, each
physician prepared a detailed report with his or her findings, and the reports taken together
extensively cover plaintiff's various medical impairments. Moreover, the findings by those
physicians plainly controverted the extreme limitations assessed by Dr. Madarang.

1 *Whether the ALJ erroneously failed to assess if plaintiff was entitled to a*
2 *closed period of disability*

3 Plaintiff underwent gastric bypass surgery in March 2014, and it appears undisputed that
4 many of her systemic medical impairments, such as diabetes, irritable bowel syndrome, and
5 asthma, went away after some significant weight loss. However, according to plaintiff, her
6 orthopedic concerns remain. (See, e.g., AT 56-57, 70-71.) Plaintiff posits that the ALJ should
7 have, at a minimum, considered whether plaintiff was eligible for a closed period of disability
8 before her gastric bypass surgery.

9 However, in this case, the ALJ carefully summarized the medical evidence and concluded
10 that, giving plaintiff “every benefit of the doubt,” plaintiff was limited to a significantly reduced
11 range of sedentary work throughout the relevant period. (AT 25, 31.) The ALJ noted that the
12 RFC assessment accounted for plaintiff’s various systemic medical impairments, most of which
13 resolved after her gastric bypass surgery, as well as her ongoing pain and limitations associated
14 with her orthopedic impairments. (See, generally, AT 25-32.) Importantly, the medical evidence,
15 as appropriately weighed by the ALJ, substantially supports the ALJ’s conclusion in that regard,
16 even if this court may have weighed the evidence differently upon a *de novo* review. As such,
17 remand for consideration of a closed period of disability is not compelled by this record.

18 *Whether the ALJ improperly failed to consider plaintiff’s non-severe*
19 *mental impairments*

20 The medical evidence of record, as appropriately weighed by the ALJ, does not include
21 any specific mental functional limitations that the ALJ failed to incorporate into the RFC. As
22 such, any failure by the ALJ to explicitly discuss non-severe mental impairments in the decision
23 was, at most, harmless error. See Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012) (“we
24 may not reverse an ALJ’s decision on account of an error that is harmless”).

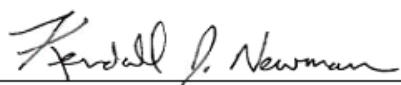
25 V. CONCLUSION

26 For the foregoing reasons, the court concludes that the ALJ’s decision is free from
27 prejudicial error and supported by substantial evidence in the record as a whole. Accordingly, IT
28 IS HEREBY ORDERED that:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.
3. The final decision of the Commissioner is AFFIRMED, and judgment is entered for the Commissioner.
4. The Clerk of Court shall close this case.

Dated: October 5, 2018


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE