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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARY ANN FORD,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

No. 2:17-cv-02412 AC

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”), denying her application for disability insurance benefits (“DIB”) under Title II of the Social Security Act (“the Act”), 42 U.S.C. §§ 401-34.¹ For the reasons that follow, plaintiff’s motion for summary judgment will be DENIED, and defendant’s cross-motion for summary judgment will be GRANTED.

I. PROCEDURAL BACKGROUND

Plaintiff applied for DIB on January 9, 2014. Administrative Record (“AR”) 278.² The disability onset date was alleged to be August 1, 2013. AR 278-79. 324. The application was

¹ DIB is paid to disabled persons who have contributed to the Disability Insurance Program, and who suffer from a mental or physical disability. 42 U.S.C. § 423(a)(1); Bowen v. City of New York, 476 U.S. 467, 470 (1986).

² The AR is electronically filed at ECF Nos. 13-3 to 13-14 (AR 1 to AR 762).

1 disapproved initially and on reconsideration. AR 94-122. On September 16, 2015, ALJ G.
2 Christopher C. Knowdell presided over the hearing on plaintiff’s challenge to the disapprovals.
3 AR 34 – 93 (transcript). Plaintiff, who appeared with her counsel James Pi, was present at the
4 hearing. AR 34. Mr. Thomas Reed, a Vocational Expert (“VE”), also testified. Id.

5 On February 9, 2017, the ALJ found plaintiff “not disabled” under Sections 216(i) and
6 223(d) of Title II of the Act, 42 U.S.C. §§ 416(i), 423(d). AR 15-25 (decision), 26-31 (exhibit
7 list). On September 20, 2017, after receiving a request for review of hearing and a
8 representative’s brief as additional exhibits, the Appeals Council denied plaintiff’s request for
9 review, leaving the ALJ’s decision as the final decision of the Commissioner of Social Security.
10 AR 1-5 (decision and additional exhibit list).

11 Plaintiff filed this action on November 15, 2017. ECF No. 1; see 42 U.S.C. § 405(g). The
12 parties consented to the jurisdiction of the magistrate judge. ECF Nos. 10, 11. The parties’ cross-
13 motions for summary judgment, based upon the Administrative Record filed by the
14 Commissioner, have been fully briefed. ECF Nos. 15 (plaintiff’s summary judgment motion), 18
15 (Commissioner’s summary judgment motion).

16 II. FACTUAL BACKGROUND

17 Plaintiff was born in 1963, and accordingly was, at age 49, a younger person under the
18 regulations, on the alleged disability onset date.³ AR 23. Plaintiff has at least a high school
19 education, and can communicate in English. Id.

20 III. LEGAL STANDARDS

21 The Commissioner’s decision that a claimant is not disabled will be upheld “if it is
22 supported by substantial evidence and if the Commissioner applied the correct legal standards.”
23 Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1011 (9th Cir. 2003). “The findings of the
24 Secretary as to any fact, if supported by substantial evidence, shall be conclusive . . .” Andrews
25 v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995) (quoting 42 U.S.C. § 405(g)).

26 Substantial evidence is “more than a mere scintilla,” but “may be less than a
27 preponderance.” Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012). “It means such

28 ³ See 20 C.F.R. § 404.1563(c) (“younger person”).

1 evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson v.
2 Perales, 402 U.S. 389, 401 (1971) (internal quotation marks omitted). “While inferences from the
3 record can constitute substantial evidence, only those ‘reasonably drawn from the record’ will
4 suffice.” Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006) (citation omitted).

5 Although this court cannot substitute its discretion for that of the Commissioner, the court
6 nonetheless must review the record as a whole, “weighing both the evidence that supports and the
7 evidence that detracts from the [Commissioner’s] conclusion.” Desrosiers v. Secretary of HHS,
8 846 F.2d 573, 576 (9th Cir. 1988); Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985) (“The
9 court must consider both evidence that supports and evidence that detracts from the ALJ’s
10 conclusion; it may not affirm simply by isolating a specific quantum of supporting evidence.”).

11 “The ALJ is responsible for determining credibility, resolving conflicts in medical
12 testimony, and resolving ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th
13 Cir. 2001). “Where the evidence is susceptible to more than one rational interpretation, one of
14 which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.” Thomas v. Barnhart,
15 278 F.3d 947, 954 (9th Cir. 2002). However, the court may review only the reasons stated by the
16 ALJ in his decision “and may not affirm the ALJ on a ground upon which he did not rely.” Orn
17 v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007); Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir.
18 2003) (“It was error for the district court to affirm the ALJ’s credibility decision based on
19 evidence that the ALJ did not discuss”).

20 The court will not reverse the Commissioner’s decision if it is based on harmless error,
21 which exists only when it is “clear from the record that an ALJ’s error was ‘inconsequential to the
22 ultimate nondisability determination.’” Robbins v. Commissioner, 466 F.3d 880, 885 (9th Cir.
23 2006) (quoting Stout v. Commissioner, 454 F.3d 1050, 1055 (9th Cir. 2006)); see also Burch v.
24 Barnhart, 400 F.3d 676, 679 (9th Cir. 2005).

25 IV. RELEVANT LAW

26 Disability Insurance Benefits and Supplemental Security Income are available for every
27 eligible individual who is “disabled.” 42 U.S.C. §§ 402(d)(1)(B)(ii) (DIB), 1381a (SSI). Plaintiff
28 is “disabled” if he is “unable to engage in substantial gainful activity due to a medically

1 determinable physical or mental impairment . . .” Bowen v. Yuckert, 482 U.S. 137, 140 (1987)
2 (quoting identically worded provisions of 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A)).

3 The Commissioner uses a five-step sequential evaluation process to determine whether an
4 applicant is disabled and entitled to benefits. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4);
5 Barnhart v. Thomas, 540 U.S. 20, 24-25 (2003) (setting forth the “five-step sequential evaluation
6 process to determine disability” under Title II and Title XVI). The following summarizes the
7 sequential evaluation:

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

10 20 C.F.R. § 404.1520(a)(4)(i), (b).

11 Step two: Does the claimant have a “severe” impairment? If so,
12 proceed to step three. If not, the claimant is not disabled.

13 Id. §§ 404.1520(a)(4)(ii), (c).

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

18 Id. §§ 404.1520(a)(4)(iii), (d).

19 Step four: Does the claimant’s residual functional capacity make him
20 capable of performing his past work? If so, the claimant is not
21 disabled. If not, proceed to step five.

22 Id. §§ 404.1520(a)(4)(iv), (e), (f).

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

26 Id. §§ 404.1520(a)(4)(v), (g).

27 The claimant bears the burden of proof in the first four steps of the sequential evaluation
28 process. 20 C.F.R. §§ 404.1512(a) (“In general, you have to prove to us that you are blind or
disabled”), 416.912(a) (same); Bowen, 482 U.S. at 146 n.5. However, “[a]t the fifth step of the
sequential analysis, the burden shifts to the Commissioner to demonstrate that the claimant is not
disabled and can engage in work that exists in significant numbers in the national economy.” Hill
v. Astrue, 698 F.3d 1153, 1161 (9th Cir. 2012); Bowen, 482 U.S. at 146 n.5.

1 V. THE ALJ's DECISION

2 The ALJ made the following findings:

3 1. The claimant meets the insured status requirements of the Social
4 Security Act through December 31, 2018.

5 2. [Step 1] The claimant has not engaged in substantial gainful
6 activity since August 1, 2013, the alleged onset date (20 CFR
7 404.1571 *et seq.*).

8 3. [Step 2] The claimant has the following severe impairments:
9 bilateral carpal tunnel syndrome; degenerative disc disease of the
10 cervical spine; obesity; major depression; and posttraumatic stress
11 disorder (20 CFR 404.1520(c)).

12 4. [Step 3] The claimant does not have an impairment or combination
13 of impairments that met or medically equaled the severity of one of
14 the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1
15 (20 CFR 404.1520(d), 404.1525 and 404.1526).

16 5. [Residual Functional Capacity ("RFC")] After careful
17 consideration of the entire record, I find that the claimant has the
18 residual functional capacity to perform light work as defined in 20
19 CFR 404.1567(b) except: occasionally handle and finger bilaterally;
20 occasionally climb stairs and crawl; never climb ropes, ladders, or
21 scaffolds; no steep inclined planes; should avoid vibrations; and
22 limited to perform simple routine repetitive tasks and occasional
23 interactions with the public, supervisors, and coworkers.

24 6. [Step 4] The claimant is unable to perform any past relevant work
25 (20 CFR 404.1565).

26 7. [Step 5] The claimant was born [in 1963] and was 49 years old,
27 which is defined as a younger individual age 18-49, on the alleged
28 disability date. The claimant subsequently changed age category to
closely approaching advanced age (20 CFR 404.1563).

8. [Step 5, continued] The claimant has at least a high school
education and is able to communicate in English (20 CFR 404.1564).

9. [Step 5, continued] Transferability of job skills is not material to
the determination of disability because using the Medical-Vocational
Rules as a framework supports a finding that the claimant is "not
disabled," whether or not the claimant has transferable job skills (See
SSR 82041 and 20 CFR Part 404, Subpart P, Appendix 2).

10. [Step 5, continued] Considering the claimant's age, education,
work experience, and residual functional capacity, there are jobs that
exist in significant numbers in the national economy that the claimant
can perform (20 CFR 404.1569 and 404.1569(a)).

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1 11. The claimant has not been under a disability, as defined in the
2 Social Security Act, from August 1, 2013 through the date of this
3 decision (20 CFR 404.1520(g)).

4 AR 17-24.

5 As noted, the ALJ concluded that plaintiff was “not disabled” under Sections 216(i) and
6 223(d) of Title II of the Act, 42 U.S.C. §§ 416(i), 423(d). AR 25.

7 VI. ANALYSIS

8 Plaintiff alleges that the ALJ erred by failing to properly consider her subjective testimony
9 regarding her carpal tunnel syndrome. ECF No. 15 at 6-13. The court disagrees.

10 A. Legal Standards for Consideration of Claimant’s Testimony

11 An ALJ’s credibility finding must be properly supported, and sufficiently specific to
12 ensure a reviewing court that the ALJ did not “arbitrarily discredit” a claimant’s subjective
13 statements. Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989). However, the ALJ is not “required
14 to believe every allegation” of disability. Id. In evaluating whether subjective complaints are
15 credible, the ALJ should first consider objective medical evidence and then consider other factors.
16 Bunnell v. Sullivan, 947 F.2d 341, 344 (9th Cir. 1991) (en banc). If there is objective medical
17 evidence of impairment, the ALJ may then consider the nature of the symptoms alleged,
18 including aggravating factors, medication, treatment and functional restrictions. See id. at 345–
19 47.

20 The ALJ also may consider: (1) the applicant’s reputation for truthfulness, prior
21 inconsistent statements or other inconsistent testimony, (2) unexplained or inadequately explained
22 failure to seek treatment or to follow a prescribed course of treatment, and (3) the applicant’s
23 daily activities. Smolen v. Chater, 80 F.3d 1273, 1284 (9th Cir. 1996). Work records, physician
24 and third-party testimony about nature, severity and effect of symptoms, and inconsistencies
25 between testimony and conduct also may be relevant. Light v. Comm’r., 119 F.3d 789, 792 (9th
26 Cir. 1997). A failure to seek treatment for an allegedly debilitating medical problem may be a
27 valid consideration in determining whether the alleged associated pain is not a significant
28 nonexertional impairment. See Flaten v. Sec’y of HHS, 44 F.3d 1453, 1464 (9th Cir. 1995). The
ALJ may rely, in part, on his or her own observations, see Quang Van Han v. Bowen, 882 F.2d

1 1453, 1458 (9th Cir. 1989), which cannot substitute for medical diagnosis. Marcia v. Sullivan,
2 900 F.2d 172, 177 n. 6 (9th Cir. 1990).

3 “Without affirmative evidence showing that the claimant is malingering, the
4 Commissioner’s reasons for rejecting the claimant’s testimony must be clear and convincing.”
5 Morgan v. Comm’r., 169 F.3d 595, 599 (9th Cir. 1999). “The ALJ must specifically identify what
6 testimony is credible and what testimony undermines the claimant’s complaints.” Id. So long as
7 substantial evidence supports an ALJ’s credibility finding, a court “may not engage in second-
8 guessing.” Thomas, 278 F.3d at 958.

9 B. The ALJ Did Not Err in Discrediting Plaintiff’s Testimony

10 Having found objective medical evidence of impairment, the ALJ proceeded to consider
11 permissible factors that bear on the credibility of a claimant’s subjective testimony. See AR 20-
12 22. The ALJ found that plaintiff’s testimony about the intensity, persistence and limiting effects
13 of her symptoms was inconsistent with the medical evidence and with her history of conservative
14 treatment. Id.

15 The ALJ gave numerous examples of contradictions between plaintiff’s testimony and the
16 medical record. For example, plaintiff testified that her carpal tunnel has gotten worse such that
17 she cannot grip anything, and she drops things. Id. Plaintiff specifically claimed that she could
18 only lift half a gallon of milk (approximately four pounds). Id. The ALJ found these statements
19 were contradicted by the medical record. Specifically, physical examinations revealed that
20 plaintiff’s grip and dexterity were intact, and she displayed a normal range of motion in her
21 thumbs, wrists elbows and shoulders. AR 21, 507.⁴ Medical records also showed plaintiff
22 displayed intact motor strength and sensation in the upper extremities with no evidence of trigger
23 points. AR 21, 507-08.

24 In June of 2015, plaintiff had normal range of motion, muscle strength, and stability in all
25 extremities and no pain on inspection, with no edema. AR 21, 748. When plaintiff complained
26 of worsening hand pain in January of 2016 she was advised to use a wrist splint. AR 21, 740.

27 _____
28 ⁴ The ALJ did not note, though the same record shows, that Phalen’s sign was positive and
Tinel’s sign was positive bilaterally but negative at the elbows. AR 507.

1 This same note remarked that the severity level of the pain was “moderate” and that the patient
2 failed to perform labs previously ordered. AR 740. Notes reflect plaintiff would be referred to a
3 neurologist if the splint did not improve her wrist pain (AR 742), but there are no later records of
4 a referral. Though an April 2016 x-ray revealed degenerative joint disease of the bilateral thumb,
5 a visual overview of all four extremities was normal, and there is no record of further treatment.
6 AR 21, 734.

7 Medical evidence that contradicts a claimant’s subjective pain statements is a legitimate
8 reason to discredit a claimant. Bunnell, 947 F.2d at 344, 20 C.F.R. § 404.1529(c)(2) (“Objective
9 medical evidence ... is a useful indicator to assist us in making reasonable conclusions about the
10 intensity and persistence of your symptoms”). The ALJ therefore did not err by failing to
11 credit plaintiff’s testimony regarding the severity and impact of her carpal tunnel symptoms.

12 The ALJ’s credibility determination was also based on the records of treating physician
13 Dr. Robert Lang, who noted that the clamant did not take medication for her symptoms and that
14 massage therapy “helped some.” AR 21, 700. The ALJ also pointed to the absence of evidence
15 that treating physicians recommended physical restrictions. AR 21-22. An ALJ may consider
16 plaintiff’s treatment as part of the credibility determination. A record of conservative treatment
17 inconsistent with plaintiff’s subjective pain testimony is an adequate basis to discount the
18 claimant’s testimony. Meanel v. Apfel, 172 F.3d 1111, 1114 (9th Cir.1999) (rejecting subjective
19 pain complaints where petitioner’s “claim that she experienced pain approaching the highest level
20 imaginable was inconsistent with the ‘minimal, conservative treatment’ that she received”).

21 In sum, the ALJ’s permissibly considered, and specifically identified, contradicting
22 medical evidence and plaintiff’s record of conservative treatment. Because the ALJ provided
23 adequate reasoning in support of her credibility determination, which is supported by substantial
24 evidence, the court may not engage in “second guessing.” Thomas, 278 F.3d at 958. Plaintiff’s
25 motion is therefore denied.

26 VII. CONCLUSION

27 For the reasons set forth above, IT IS HEREBY ORDERED that:

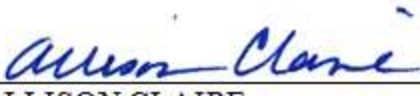
- 28 1. Plaintiff’s motion for summary judgment (ECF No. 15), is DENIED;

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2. The Commissioner's cross-motion for summary judgment (ECF No. 18), is
GRANTED;

3. The Clerk of the Court shall enter judgment for the Commissioner, and close this case.

DATED: January 30, 2019



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE