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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BARINDER KAUR
Plaintiff,
v.
ANDREW M. SAUL, Commissioner of
Social Security,
Defendant.

No. 2:18-cv-00933-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, 42 U.S.C. §§ 401-34, and for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act (“the Act”), 42 U.S.C. §§ 1381-1383f.¹ For the reasons that follow, the court will deny plaintiff’s motion for summary judgment, and grant the Commissioner’s cross-motion for summary judgment.

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). SSI is paid to financially needy disabled persons. 42 U.S.C. § 1382(a); Washington State Dept. of Social and Health Services v. Guardianship Estate of Keffeler, 537 U.S. 371, 375 (2003) (“Title XVI of the Act, § 1381 *et seq.*, is the Supplemental Security Income (SSI) scheme of benefits for aged, blind, or disabled individuals, including children, whose income and assets fall below specified levels . . .”).

(continued...)

1 I. PROCEDURAL BACKGROUND

2 Plaintiff applied for DIB and SSI on August 14, 2013. Administrative Record
3 (“AR”) 287-99.² The disability onset date for both applications was alleged to be October 25,
4 2011. AR 287, 291. The applications were disapproved initially and on reconsideration. AR
5 148-52, 158-63. Two hearings were held before ALJ Lawrence J. Duran on October 14, 2016
6 and on January 5, 2017. AR 37-89 (transcripts). Plaintiff, representing herself, was present and
7 testified at both hearings with the assistance of a Punjabi interpreter. A medical expert and a
8 vocational expert also testified at the hearings.

9 On February 9, 2017, the ALJ issued an unfavorable decision, finding plaintiff “not
10 disabled” under Sections 216(i) and 223(d) of Title II of the Act, 42 U.S.C. §§ 416(i), 423(d), and
11 Section 1614(a)(3)(A) of Title XVI of the Act, 42 U.S.C. § 1382c(a)(3)(A). AR 21-31. On
12 February 16, 2018, the Appeals Council denied plaintiff’s request for review, leaving the ALJ’s
13 decision as the final decision of the Commissioner of Social Security. AR 1-6.

14 Plaintiff filed this action on April 16, 2018. ECF No. 1; see 42 U.S.C. §§ 405(g),
15 1383(c)(3). The parties consented to the jurisdiction of the magistrate judge. ECF Nos. 10, 20.
16 The parties’ cross-motions for summary judgment, based upon the Administrative Record filed by
17 the Commissioner, have been fully briefed. ECF Nos. 17 (plaintiff’s summary judgment motion),
18 21 (Commissioner’s summary judgment motion), 26 (plaintiff’s reply brief).

19 II. FACTUAL BACKGROUND

20 Plaintiff was born in 1968, and accordingly was 43 years old on the alleged disability
21 onset date, making her a “younger person” under the regulations. AR 287; see 20 C.F.R
22 §§ 404.1563(c), 416.963(c) (same). Plaintiff has a high school education, and can read and speak
23 some English. AR 56, 317.

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28 ² The AR is electronically filed at ECF Nos. 13.3 to 13.10 (AR 1 to 509).

1 III. LEGAL STANDARDS

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

7 Substantial evidence is “more than a mere scintilla,” but “may be less than a
8 preponderance.” Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012). “It means such
9 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
10 Richardson v. Perales, 402 U.S. 389, 401 (1971) (internal quotation marks omitted). “While
11 inferences from the record can constitute substantial evidence, only those ‘reasonably drawn from
12 the record’ will suffice.” Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006) (citation
13 omitted).

14 Although this court cannot substitute its discretion for that of the Commissioner, the court
15 nonetheless must review the record as a whole, “weighing both the evidence that supports and the
16 evidence that detracts from the [Commissioner’s] conclusion.” Desrosiers v. Secretary of HHS,
17 846 F.2d 573, 576 (9th Cir. 1988); Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985) (“The
18 court must consider both evidence that supports and evidence that detracts from the ALJ’s
19 conclusion; it may not affirm simply by isolating a specific quantum of supporting evidence.”).

20 “The ALJ is responsible for determining credibility, resolving conflicts in medical
21 testimony, and resolving ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th
22 Cir. 2001). “Where the evidence is susceptible to more than one rational interpretation, one of
23 which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.” Thomas v. Barnhart,
24 278 F.3d 947, 954 (9th Cir. 2002). However, the court may review only the reasons stated by the
25 ALJ in his decision “and may not affirm the ALJ on a ground upon which he did not rely.” Orn
26 v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007); Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir.
27 2003) (“It was error for the district court to affirm the ALJ’s credibility decision based on
28 evidence that the ALJ did not discuss”).

1 The court will not reverse the Commissioner’s decision if it is based on harmless error,
2 which exists only when it is “clear from the record that an ALJ’s error was ‘inconsequential to the
3 ultimate nondisability determination.’” Robbins v. Soc. Sec. Admin., 466 F.3d 880, 885 (9th Cir.
4 2006) (quoting Stout v. Soc. Sec. Admin., 454 F.3d 1050, 1055 (9th Cir. 2006)); see also Burch v.
5 Barnhart, 400 F.3d 676, 679 (9th Cir. 2005).

6 IV. RELEVANT LAW

7 Disability Insurance Benefits and Supplemental Security Income are available for every
8 eligible individual who is “disabled.” 42 U.S.C. §§ 423(a)(1)(E) (DIB), 1381a (SSI). Plaintiff is
9 “disabled” if she is “unable to engage in substantial gainful activity due to a medically
10 determinable physical or mental impairment” Bowen v. Yuckert, 482 U.S. 137, 140 (1987)
11 (quoting identically worded provisions of 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A)).

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

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

19 20 C.F.R. §§ 404.1520(a)(4)(i), (b) and 416.920(a)(4)(i), (b).

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

22 Id., §§ 404.1520(a)(4)(ii), (c) and 416.920(a)(4)(ii), (c).

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

27 Id., §§ 404.1520(a)(4)(iii), (d) and 416.920(a)(4)(iii), (d).

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

Id., §§ 404.1520(a)(4)(iv), (e), (f) and 416.920(a)(4)(iv), (e), (f).

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

3 Id., §§ 404.1520(a)(4)(v), (g) and 416.920(a)(4)(v), (g).

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

10 V. THE ALJ’s DECISION

11 The ALJ made the following findings:

12 1. The claimant meets the insured status requirements of the Social
13 Security Act through December 31, 2016.

14 2. [Step 1] The claimant has not engaged in substantial gainful
15 activity since October 25, 2011, the alleged onset date (20 CFR
16 404.1571 *et seq.*, and 416.971 *et seq.*).

17 3. [Step 2] The claimant has the following severe impairments: status
18 post L4-L5 laminectomy, partial facetectomy, and foraminotomy,
19 prosthetic right eye, depressive disorder, and anxiety (20 CFR
20 404.1520(c) and 416.920(c)).

21 4. [Step 3] The claimant does not have an impairment or combination
22 of impairments that meets or medically equals the severity of one of
23 the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1
24 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and
25 416.926).

26 5. [RFC] After careful consideration of the entire record, the
27 undersigned finds that the claimant has the residual functional
28 capacity to perform light work as defined in 20 CFR 404.1567(b) and
416.967(b), specifically as follows: the claimant can lift and/or carry
20 pounds occasionally and 10 pounds frequently; she can stand
and/or walk for 6 hours out of an 8-hour workday with regular
breaks; she can sit for 6 hours out of an 8-hour workday with regular
breaks; she can occasionally climb stairs, stoop to knee level, kneel,
crouch, and crawl; she cannot climb ladders, ropes, or scaffolds; she
cannot perform fast-paced work; she cannot concentrate intensely for
more than an hour without a 5-minute change in focus; she cannot
view objects moving from right to left; and she may be absent or off
task 5 percent of the time due to pain and depression.

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1 6. [Step 4] The claimant is capable of performing past relevant work
2 as a cleaner and hand packager. This work does not require the
3 performance of work-related activities precluded by the claimant's
4 residual functional capacity (20 CFR 404.1565 and 416.965).

5 7. The claimant has not been under a disability, as defined in the
6 Social Security Act, from October 25, 2011, through the date of this
7 decision (20 CFR 404.1520(f) and 416.920(f)).

8 AR 23-31.

9 As noted, the ALJ concluded that plaintiff was "not disabled" under Sections 216(i) and
10 223(d) of Title II of the Act, 42 U.S.C. §§ 416(i), 423(d), and Section 1614(a)(3)(A) of Title XVI
11 of the Act, 42 U.S.C. § 1382c(a)(3)(A). AR 31.

12 VI. ANALYSIS

13 Plaintiff argues that the ALJ (1) erred in finding her headaches/migraines non-severe at
14 Step Two, (2) determined a physical residual functional capacity ("RFC") that was not supported
15 by the record, (3) determined a psychological RFC that was not supported by the record, and
16 (4) improperly discounted the testimony of plaintiff and her brother. ECF No. 17 at 7-14.

17 A. Any Error at Step Two Was Harmless

18 Plaintiff argues that the ALJ should have found her migraine headaches an additional
19 severe impairment at Step Two of the analysis. "Step two is merely a threshold determination
20 meant to screen out weak claims." Buck v. Berryhill, 869 F.3d 1040, 1048 (9th Cir. 2017) (citing
21 Bowen v. Yuckert, 482 U.S. 137, 146-47 (1987)). Once a claimant prevails at Step Two, by
22 achieving a finding of some severe impairment, regardless of which condition is found to be
23 severe, the ALJ proceeds with the sequential evaluation, considering at each step all other alleged
24 impairments and symptoms that may impact the claimant's ability to work. See 42 U.S.C.
25 § 423(d)(2)(B); Buck, 869 F.3d at 1049 ("The RFC . . . should be exactly the same regardless of
26 whether certain impairments are considered 'severe' or not."). Thus, when an ALJ finds at least
27 one severe impairment and proceeds to consider evidence of limitations posed by all of a
28 claimant's impairments at Step Four, there is no reversible error for a failure to find additional
severe impairments at Step Two. See Lewis v. Astrue, 498 F.3d 909, 911 (9th Cir. 2007); see
also Buck, 869 F.3d at 1049 (where Step Two was decided in plaintiff's favor, he could not have

1 been prejudiced and any error was therefore harmless).

2 Here, the ALJ decided Step Two in plaintiff's favor, finding that plaintiff had severe
3 impairments of status post L4-L5 laminectomy, partial facetectomy, and foraminotomy;
4 prosthetic right eye; depressive disorder; and anxiety. AR 23. However, he found that because
5 plaintiff's headaches caused only a slight abnormality that would have no more than a minimal
6 effect on her ability to work, it was non-severe. AR 23-24; see 20 C.F.R. §§ 404.1522 ("An
7 impairment or combination of impairments is not severe if it does not significantly limit your
8 physical or mental ability to do basic work activities."), 416.922 (same). In making this finding,
9 the ALJ noted plaintiff's repeated complaints of headaches and the lack of positive signs in
10 plaintiff's brain CT and neurological examination. AR 24. Plaintiff argues that few people with
11 headaches will have abnormal CT scans, and that the ALJ's reasoning is flawed.

12 However, the court finds that any error by the ALJ at Step Two was harmless. Step Two
13 was resolved in plaintiff's favor with a finding of several other severe impairments, and the ALJ
14 proceeded to Steps Three and Four of the disability analysis, ultimately determining that plaintiff
15 could perform light work with certain limitations. AR 24-30. In discussing the evidence
16 supporting the RFC determination, the ALJ discussed plaintiff's testimony regarding her
17 headaches and the State agency medical consultant's opinion that plaintiff's migraines were non-
18 severe. AR 26, 28. The ALJ stated that the record revealed that claimant's migraines did not
19 have more than a minimal effect on her ability to work because the record reflected no diagnostic
20 or neurological evidence of migraines. AR 28. The ALJ thus considered plaintiff's migraine
21 headaches throughout the disability analysis, despite finding it non-severe. Accordingly, any
22 error at Step Two was harmless. See Lewis, 498 F.3d at 911.

23 B. The ALJ Did Not Err in Determining Plaintiff's Physical RFC

24 In challenging the ALJ's physical RFC determination that plaintiff could perform light
25 work with certain additional limitations, plaintiff asserts several arguments. First, plaintiff argues
26 that the ALJ improperly rejected the opinion of her treating physician, Dr. Venugopal Bellum.
27 Second, she contends that the ALJ failed to develop the record, assigning a physical RFC without
28 sufficient opinion evidence or raw medical evidence. Relatedly, she also argues that the case

1 should be remanded for consideration of a second opinion statement that Dr. Bellum provided
2 after the ALJ issued his decision. ECF No. 17 at 8-11.

3 *i. The ALJ Properly Rejected Dr. Bellum's First Opinion Statement*

4 The only opinion evidence from Dr. Bellum that was before the ALJ was an October 28,
5 2016 letter, the substance of which merely stated:

6 Ms. Kaur has been my patient for over a year. She has chronic back
7 pain and is s/p back surgery. She has chronic depression and chronic
8 insomnia. She is on medications.

9 Due to her above conditions she is unable to be gainfully employed.
10 AR 507.

11 The ALJ found that Dr. Bellum's conclusion regarding plaintiff's inability to work "ha[d]
12 no probative value" and therefore "reject[ed] it." AR 29. The ALJ reasoned that (1) as an
13 opinion on an issue reserved to the Commissioner, the statement was not entitled to controlling
14 weight and was not given special significance; and (2) the opinion was not supported by objective
15 evidence and was inconsistent with the record as a whole. Id.

16 By addressing this opinion evidence and explaining his reasons for discounting it, the ALJ
17 satisfied his legal obligation under the regulations. As an opinion limited to the ultimate
18 disability determination, Dr. Bellum's statement was not entitled to any special weight. 20 C.F.R.
19 416.927(e); see Tonapetyan v. Halter, 242 F.3d 1144, 1148-49 (9th Cir. 2001) (noting that an ALJ
20 is not bound by the opinion of a treating physician with respect to the ultimate determination of
21 disability). Dr. Bellum's letter contained no medical opinions regarding plaintiff's specific
22 functional limitations, and so did not create any contradiction between himself and the reviewing
23 physicians' opinion that would have required additional justification for the ALJ to reject it.

24 *ii. The ALJ Fulfilled His Duty to Develop the Record*

25 Plaintiff argues that the ALJ failed to develop the record in general, noting the dearth of
26 medical opinion evidence and treatment records. "The ALJ in a social security case has an
27 independent duty to fully and fairly develop the record and to assure that the claimant's interests
28 are considered." Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir. 2001) (citation and
quotation marks omitted). When the claimant is unrepresented, "the ALJ must be especially

1 diligent in exploring for all the relevant facts.” Id.; see Celaya v. Halter, 332 F.3d 1177, 1183
2 (9th Cir. 2003) (“When a claimant is not represented by counsel, this responsibility [to fully and
3 fairly develop the record] is heightened.”). “Ambiguous evidence, or the ALJ’s own finding that
4 the record is inadequate to allow for proper evaluation of the evidence, triggers the ALJ’s duty to
5 “conduct an appropriate inquiry.” Id. (citation and quotation marks omitted); see Mayes v.
6 Massanari, 276 F.3d 453, 459–60 (9th Cir. 2001) (“An ALJ’s duty to develop the record further is
7 triggered only when there is ambiguous evidence or when the record is inadequate to allow for
8 proper evaluation of the evidence.”). However, “[a] specific finding of ambiguity or inadequacy
9 of the record is not necessary to trigger this duty to inquire, where the record establishes
10 ambiguity or inadequacy.” McLeod v. Astrue, 640 F.3d 881, 885 (9th Cir. 2011) (as amended).
11 “The ALJ may discharge this duty in several ways, including: subpoenaing the claimant’s
12 physicians, submitting questions to the claimant’s physicians, continuing the hearing, or keeping
13 the record open after the hearing to allow supplementation of the record.” Tonapetyan, 242 F.3d
14 at 1150.

15 Plaintiff was not represented by counsel at the administrative level until after the ALJ had
16 rendered his decision. AR 17. In addition, plaintiff only spoke some English and testified at her
17 hearings with the assistance of a Punjabi interpreter. Thus, the ALJ was certainly under a
18 “heightened” obligation to ensure that plaintiff’s interests were considered under a fully
19 developed record. See Celaya, 332 F.3d at 1183. The administrative record, indeed, contains a
20 fairly small number of medical records. However, the court concludes that the ALJ adequately
21 discharged any duty to develop the record in this case.

22 At plaintiff’s first hearing on October 14, 2016, the ALJ stopped the proceeding after
23 discovering the lack of medical records related to plaintiff’s arm and back problems. The ALJ
24 instructed plaintiff to have her physicians fax in their records, and he sent plaintiff and her
25 interpreter to the reception desk to find out all the medical records that needed to be obtained.
26 AR 56-57. The ALJ informed plaintiff that she should “tell them about any treating doctors you
27 had, any pain management doctor you had, any psychiatric or psychological doctor you had” and
28 continued the hearing. AR 57. At the continued hearing on January 7, 2017, the ALJ

1 acknowledged receipt of additional records from several providers, and plaintiff stated that she
2 considered the record complete. AR 62. During the second hearing, plaintiff testified to
3 experiencing arm and shoulder pain within the last few months, and at the conclusion of the
4 hearing, the ALJ held the record open for 14 days to receive medical records supporting those
5 allegations. AR 87-88. Plaintiff stated that she was only receiving medication but had not
6 undergone any imaging for those injuries, and the ALJ replied that at least she could provide the
7 doctors' notes regarding a diagnosis. AR 88.

8 In this case, the ALJ utilized two methods of developing the record explicitly approved by
9 the Ninth Circuit. See Tonapetyan, 242 F.3d at 1150 (stating that an ALJ may discharge his duty
10 to develop the record by, inter alia, "continuing the hearing, or keeping the record open after the
11 hearing to allow supplementation of the record"). Plaintiff had nearly four months between her
12 hearings to supplement the record and in that time successfully submitted 27 more pages of
13 medical records, beyond the 68 pages initially submitted. AR 481-507. Having carefully
14 examined the hearing transcripts, the undersigned finds that, despite any language barrier,
15 plaintiff understood the ALJ's repeated instructions to provide further medical records. To the
16 extent the ALJ's duty to develop the record was triggered, he successfully discharged that duty.

17 *iii. Remand Is Not Warranted for Consideration of Dr. Bellum's Second Opinion*

18 After the ALJ issued his decision, and having retained counsel, plaintiff submitted to the
19 Appeals Council a second opinion statement by her treating physician Dr. Bellum. AR 10. Dr.
20 Bellum's May 19, 2017 letter states:

21 The purpose of this letter is to document Ms. Kaur's health condition.

22 I have been her primary care physician for over a year. She is
23 suffering from chronic pain syndrome/fibromyalgia. She also
underwent a lumbar spine surgery recently.

24 She has been prescribed multiple medications but she did not want
25 to take either due to fear of side effects with some and not responding
to some meds.

26 I have encouraged her to stay active and do regular physical activities
27 for better quality of life. She I believe is unable to sustain any
employment due to chronic pain.

28 AR 11.

1 The Appeals Council acknowledged receipt of this additional evidence, but it did not
2 consider and exhibit Dr. Bellum’s letter, finding that it did not show a reasonable probability that
3 it would change the outcome of the decision. AR 2. Even assuming this letter is proper for
4 consideration here, the court fails to see how it provides any more of an opinion than was
5 provided in Dr. Bellum’s first letter. Remand is unwarranted on this basis.

6 C. The ALJ Did Not Err in Determining Plaintiff’s Psychological RFC

7 Plaintiff argues that the ALJ improperly weighed the opinions of consultative examiners
8 Dr. Michelina Regazzi and Dr. Ko Fang in assigning her psychological RFC. In June 2013, Dr.
9 Fang conducted a mental status examination, observing that plaintiff’s memory was “fair” as
10 evidenced by minor difficulty remembering dates of significant life events and problems recalling
11 items during one test; she presented with a “depressed mood, and a flat affect”; and she “made
12 fair eye contact.” AR 416. Dr. Fang diagnosed plaintiff with Depressive Disorder and
13 Generalized Anxiety Disorder. Id. Dr. Fang found that plaintiff’s “mental health problems
14 impair[] her concentration, memory and cognitive functioning”; that her long-term and short-term
15 memory was “moderately impaired”; and that she “does not have the mental ability to understand
16 and remember meaningful information.” AR 417. In conclusion, Dr. Fang opined that plaintiff’s
17 psychiatric symptoms “seem to impede her general ability to perform tasks, manage daily
18 responsibility, and to care for her general well-being”; and that “[h]er poor social skills [and]
19 impaired judgment . . . will impede her ability to interact with others and the public such as
20 supervisor[s] and co-workers.” AR 418.

21 A few months later, in December 2013, Dr. Regazzi performed a mental status
22 examination. She observed, as relevant, that plaintiff’s eye contact was good; that her
23 intelligence was “[i]ntact”; that her attention was fair, as she was able to do reverse serial three’s
24 but made two mistakes; that her concentration was within normal limits, as she was able to carry
25 out a simple three-step command; that her memory was good, as she recalled three out of three
26 words immediately, and three out of three after a brief delay; and that her judgment was adequate.
27 AR 435-36. Dr. Regazzi also diagnosed plaintiff with Depressive Disorder. AR 436. Regarding
28 plaintiff’s work-related abilities, Dr. Regazzi found plaintiff “moderately impaired” in her ability

1 to complete a normal workday or workweek and in dealing with the usual stresses encountered in
2 a competitive work environment; and otherwise found plaintiff “not significantly limited” in her
3 ability to perform simple as well as detailed and complex tasks, perform work activities without
4 special or additional supervision, accept instructions from supervisors, and interact with
5 coworkers and the public. AR 436-37.

6 In his decision, the ALJ gave “significant weight” to the opinions of both Dr. Fang and
7 Dr. Regazzi. AR 28. Noting plaintiff’s mistakes with serial threes, and minor difficulty with
8 remote and immediate memory, the ALJ found it appropriate to restrict plaintiff from performing
9 fast paced work, to preclude her from intensely concentrating for more than an hour without a 5-
10 minute change in focus, and to permit her to be absent or off task 5 percent of the time due to pain
11 and depression. AR 28-29. The ALJ did not impose a limitation on social functioning, reasoning
12 that plaintiff was able to establish good eye contact, go out alone, and shop in stores. AR 29.

13 Plaintiff argues that Dr. Fang effectively opined that plaintiff was disabled, while Dr.
14 Regazzi found only moderate impairments, and therefore the ALJ improperly discounted Dr.
15 Fang’s opinions. ECF No. 17 at 12-13. While the court agrees that Dr. Fang’s report suggests
16 more pronounced limitations than Dr. Regazzi’s, the vague language in Dr. Fang’s report makes it
17 difficult to tell exactly what degree of limitations he found. Contrary to plaintiff’s assertion, the
18 statements that plaintiff’s psychiatric symptoms “seem to impede” her daily functioning and that
19 her poor social skills and judgment would “impede” her ability to interact with coworkers do not
20 necessarily amount to an opinion that plaintiff was disabled. Dr. Fang did not use the terms
21 prescribed in the regulations for evaluating mental impairments. See 20 C.F.R. § 404.1520a
22 (establishing five-point scale for degree of limitation in functional areas as “None, mild,
23 moderate, marked, and extreme”). Thus, it is unclear how much of an impediment Dr. Fang
24 found in the areas discussed. In many ways Dr. Fang’s and Dr. Regazzi’s reports explicitly
25 aligned, and the ALJ reasonably could have interpreted the vague language of Dr. Fang’s report
26 as generally consistent with Dr. Regazzi’s findings. See Tommasetti v. Astrue, 533 F.3d 1035,
27 1038 (9th Cir. 2008) (an ALJ’s conclusion will be upheld when the evidence is susceptible to
28 more than one rational interpretation).

1 Plaintiff also argues that the ALJ erred in declining to adopt a social functioning
2 limitation. ECF No. 17 at 13. While the undersigned agrees that the reasons the ALJ cited
3 directly after rejecting this limitation—good eye contact, going out alone, and shopping in stores
4 (AR 27)—are not particularly strong, they provide sufficient support for his decision, especially
5 in light of the ALJ’s detailed consideration of Dr. Regazzi’s finding that plaintiff was not
6 significantly limited in interacting with coworkers and the public.

7 D. The ALJ Did Not Err in Weighing Plaintiff’s and the Witness’s Testimony

8 Finally, in two brief paragraphs, plaintiff argues that the ALJ insufficiently justified his
9 decision to discount plaintiff’s testimony and her brother’s written third-party function report.
10 ECF No. 17 at 13-14. The court disagrees.

11 The ALJ did not err in his treatment of plaintiff’s testimony. Evaluating the credibility of
12 a plaintiff’s subjective testimony is a two-step process: First, the ALJ must “determine whether
13 the claimant has presented objective medical evidence of an underlying impairment which could
14 reasonably be expected to produce the pain or other symptoms alleged. . . . In this analysis, the
15 claimant is not required to show that her impairment could reasonably be expected to cause the
16 severity of the symptom she has alleged; she need only show that it could reasonably have caused
17 some degree of the symptom.” Garrison v. Colvin, 759 F.3d 995, 1014 (9th Cir. 2014) (internal
18 citations omitted). Objective medical evidence of the pain or fatigue itself is not required. Id.
19 (internal citations omitted). Second, if the ALJ does not find evidence of malingering, the ALJ
20 may only reject the claimant’s testimony by offering “specific, clear and convincing reasons for
21 doing so.” Id. (internal citations omitted). While an ALJ’s credibility finding must be properly
22 supported and sufficiently specific to ensure a reviewing court the ALJ did not “arbitrarily
23 discredit” a claimant’s subjective statements, an ALJ is also not “required to believe every
24 allegation” of disability. Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989). So long as
25 substantial evidence supports an ALJ’s credibility finding, a court “may not engage in second-
26 guessing.” Thomas, 278 F.3d at 958.

27 Here, the ALJ summarized plaintiff’s testimony from the hearing and found that while her
28 impairments could reasonably be expected to cause the alleged symptoms, her statements

1 concerning the intensity, persistence and limiting effects of those symptoms were not entirely
2 consistent with the other record evidence. AR 26. First, the ALJ discounted plaintiff's
3 statements in her function report that she had difficulty standing, walking, sitting, bending,
4 kneeling, concentrating, understanding and following instructions because she also stated that she
5 prepared meals, drove a car, went out alone, shopped, paid bills, and handled a savings account.
6 Id. Next, the ALJ discounted plaintiff's statements at the hearing that she was unable to work due
7 to back and shoulder pain, no eyesight in her right eye, migraines, and depression because of her
8 simultaneous testimony that on a normal day she dropped off her children at school, shopped,
9 mopped, swept, loaded the dishwasher and laundry, and read a Punjabi newspaper. Id. Finally,
10 the ALJ reasoned that while plaintiff's laminectomy suggested that her back pain symptoms were
11 genuine, the record reflected that the surgery was successful. Id.

12 The ALJ could reasonably conclude that plaintiff's daily activities undermined her
13 claimed inability to work and discount her testimony on that basis. See Molina v. Astrue, 674
14 F.3d 1104, 1112 (9th Cir. 2012) ("ALJ may consider inconsistencies either in the claimant's
15 testimony or between the testimony and the claimant's conduct"); id. at 1113 ("Even where those
16 activities suggest some difficulty functioning, they may be grounds for discrediting the claimant's
17 testimony to the extent that they contradict claims of a totally debilitating impairment."). The
18 ALJ did not err in discounting plaintiff's subjective testimony.

19 Nor did the ALJ err in his treatment of the third-party function report submitted by
20 plaintiff's brother, Dalvir Nijjar. "An ALJ need only give germane reasons for discounting the
21 testimony of lay witnesses." Bayliss v. Barnhart, 427 F.3d 1211, 1218 (9th Cir. 2005). Here, the
22 ALJ found that Mr. Nijjar's statements did not persuasively establish additional restrictions in
23 plaintiff's RFC. AR 30. The ALJ noted that Mr. Nijjar attested that claimant had difficulty
24 standing, walking, sitting, seeing, concentrating, and following directions; however, he also
25 averred that plaintiff took her children to and from school, drove a car, went out alone, shopped in
26 stores, paid bills, and handled a savings account. Id. The ALJ accurately described Mr. Nijjar's
27 report, and the inherent contradictions between his description of plaintiff's limitations and her
28 daily activities constitute a germane reason for discounting the report. See Lewis v. Apfel, 236

1 F.3d 503, 512 (9th Cir. 2001) (contradictory evidence in the record is a germane reason for
2 rejecting lay testimony).

3 VII. CONCLUSION

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

- 5 1. Plaintiff's motion for summary judgment (ECF No. 17), is DENIED;
6 2. The Commissioner's cross-motion for summary judgment (ECF No. 21), is

7 GRANTED; and

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

9 DATED: August 23, 2019

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11 ALLISON CLAIRE
12 UNITED STATES MAGISTRATE JUDGE
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