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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JULIA GUADALUPE GONZALEZ,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:19-cv-02234-KJN

ORDER ON PARTIES' CROSS MOTIONS
FOR SUMMARY JUDGMENT

(ECF Nos. 14, 17)

Plaintiff seeks judicial review of a final decision by the Commissioner of Social Security denying her application for Disability Insurance Benefits under Title II of the Social Security Act.¹ In her summary judgment motion, plaintiff contends the Administrative Law Judge erred in formulating her residual functional capacity by improperly discounting certain medical evidence and improperly rejecting plaintiff's subjective-symptom testimony. Plaintiff also alleges the Appeals Council improperly rejected evidence in its review of the ALJ's decision. The Commissioner opposed and filed a cross-motion for summary judgment.

For the reasons discussed below, the court DENIES plaintiff's motion for summary judgment, GRANTS the Commissioner's cross-motion, and AFFIRMS the final decision of the

¹ This action was referred to the undersigned pursuant to 28 U.S.C. § 636 and Local Rule 302(c)(15). Both parties consented to proceed before a United States Magistrate Judge, and the case was reassigned to the undersigned for all purposes. (ECF Nos. 6, 8, 19.)

1 Commissioner.

2 **I. BACKGROUND AND ALJ'S FIVE-STEP ANALYSIS**²

3 On December 6, 2016 plaintiff applied for Disability Insurance Benefits, alleging an onset
4 date of June 13, 2016. (Administrative Transcript (“AT”) 989-92.) Plaintiff stated she was
5 disabled due to her multiple sclerosis, degenerative arthritis, acid reflux, anxiety disorder, and
6 depression disorder. (AT 893-94.) Plaintiff’s application was denied initially and again upon
7 reconsideration. (AT 892, 912.) Plaintiff, still unrepresented at the time, sought review of those
8 denials with an Administrative Law Judge (“ALJ”). (AT 942-43.) The ALJ held a hearing on
9 June 7, 2018, where plaintiff testified about her conditions and where a Vocational Expert (“VE”)
10 testified regarding available jobs for someone with plaintiff’s limitations. (AT 866-91.)

11 On October 17, 2018, the ALJ issued a decision determining plaintiff was not disabled
12 from her onset date forward. (AT 125-37.) As an initial matter, the ALJ found plaintiff met the
13 insured status requirements through December of 2021. (AT 127.) At step one, the ALJ
14 concluded plaintiff had not engaged in substantial gainful activity since her alleged onset date of
15 June 13, 2016. (*Id.*) At step two, the ALJ determined plaintiff had the following severe
16 impairments: multiple sclerosis, obesity, anxiety disorder, and depression disorder. (*Id.*) At step

17 ² Disability Insurance Benefits are paid to disabled persons who have contributed to the Social
18 Security program. 42 U.S.C. §§ 401 et seq. Disability is defined, in part, as an “inability to
19 engage in any substantial gainful activity” due to “a medically determinable physical or mental
20 impairment. . . .” 42 U.S.C. § 423(d)(1)(a). A parallel five-step sequential evaluation governs
eligibility for benefits. *See* 20 C.F.R. §§ 404.1520, 404.1571-76; *Bowen v. Yuckert*, 482 U.S.
137, 140-42 (1987). The following summarizes the sequential evaluation:

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

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

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

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

26 **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.

27 *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
28 Commissioner bears the burden if the sequential evaluation process proceeds to step five. (*Id.*)

1 three, the ALJ determined plaintiff's impairments did not meet nor medically equal the severity of
2 an impairment listed in Appendix 1. (Id., citing 20 C.F.R. Part 404, Subpart P, Appendix 1). In
3 doing so, the ALJ noted that plaintiff did not have any marked limitations in physical functioning,
4 and only had moderate limitations in the four mental impairments categories listed in paragraph
5 B, listing 12.04 and 12.06. (AT 128-29.)

6 The ALJ determined plaintiff had the Residual Functional Capacity ("RFC") to perform
7 light work as defined in 20 C.F.R. § 404.1567(b), with certain limitations:

8 [Plaintiff can] stand/walk for two hours in an eight hour workday;
9 frequently climb ramps/stairs; never climb ladders, ropes, or
10 scaffolds; and occasionally balance; is limited to jobs where she is
11 able to use a hand held assisted device at all times with standing
12 and walking, but the bilateral upper extremities can be used to carry
13 up to the exertional limits; must avoid concentrated exposure to
hazards defined as operation of controlled dangerous machinery as
well as unprotected heights; is limited to simple, routine, and
repetitive task in jobs with low stress defined as occasional decision
making or work setting changes; and can have occasionally public
face-to-face interaction.

14 (AT 129-30, cleaned up.) In fashioning this RFC, the ALJ stated he considered those of
15 plaintiff's symptoms which were consistent with the medical evidence and opinions of the
16 medical professionals. (AT 130.) Relevant here, the ALJ rejected some findings from plaintiff's
17 treating physician Dr. Fung, who ascribed more restrictive physical limitations than the RFC.
18 (AT 133, 135.) The ALJ also rejected the more severe aspects of plaintiff's subjective symptom
19 testimony, including alleged physical inabilities. (AT 130, 135.) Based on the VE's testimony,
20 the ALJ concluded that while plaintiff was unable to perform any past relevant work, there were
21 numerous sedentary jobs existing in the national economy that she could perform. (AT 135-36.)
22 Thus, the Commissioner determined plaintiff was not disabled for the relevant period. (Id.)

23 Plaintiff requested the Appeals Council review the ALJ's decision, and with her appeal
24 submitted additional evidence. This new evidence included two new Work Status Reports by Dr.
25 Fung, one of which was dated two days after the ALJ's decision was released. (AT 1-7, 120-21,
26 143-865.) The Appeals Council rejected some evidence as post-decision evidence, and found the
27 remaining evidence would not have changed the outcome. (AT 1-7, 986-88.)

28 Plaintiff then filed this action requesting judicial review of the ALJ's and Appeals

1 Council’s decisions; and the parties filed cross-motions for summary judgment. (ECF Nos. 1, 14,
2 17, 18.)

3 **II. LEGAL STANDARD**

4 The court reviews the Commissioner’s decision de novo, and should reverse “only if the
5 ALJ’s decision was not supported by substantial evidence in the record as a whole or if the ALJ
6 applied the wrong legal standard.” Buck v. Berryhill, 869 F.3d 1040, 1048 (9th Cir. 2017).
7 Substantial evidence is more than a mere scintilla, but less than a preponderance; i.e. “such
8 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
9 Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001). “The ALJ is responsible for
10 determining credibility, resolving conflicts in medical testimony, and resolving ambiguities.”
11 (Id.) The court will uphold the ALJ’s conclusion where “the evidence is susceptible to more than
12 one rational interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008). Further,
13 the court may not reverse the ALJ’s decision on account of harmless error. Buck, 869 F.3d at
14 1048.

15 **III. ISSUES PRESENTED**

16 Plaintiff raises three issues in her motion for summary judgment: (A) the ALJ prescribed
17 a faulty RFC by failing to consider certain medical evidence and medical opinions of Dr. Fung;
18 (B) the ALJ did not provide clear and convincing reasons for rejecting plaintiff’s testimony, in
19 that he presented “a skewed view of her activities”; and (C) the Appeals Council improperly
20 denied plaintiff’s request for review and incorrectly rejected the additional evidence.
21 Accordingly, plaintiff seeks a remand for additional proceedings. (ECF Nos. 14, 18.)

22 The Commissioner disagrees, arguing the ALJ properly determined the RFC, articulated
23 legally sufficient reasons for rejecting Dr. Fung’s more extreme opinions, and appropriately
24 considered plaintiff’s subjective symptoms. (ECF No. 17 at 16.) Additionally, the Commissioner
25 argues the evidence plaintiff submitted to the Appeals Council fails to rebut the ALJ’s findings,
26 and is otherwise consistent with the overall record. (Id. at 17.) Thus, the Commissioner contends
27 the decision as a whole is supported by substantial evidence, and should result in affirmance.
28 (Id.)

1 **IV. DISCUSSION**

2 **A. The ALJ's Interpretation of the Medical Evidence and Opinions**

3 Legal Standard

4 Generally speaking, the ALJ is required to consider a host of factors in deciding the
5 weight given to any medical opinion, including whether the physician examined the claimant, the
6 length of the physician's treatment of claimant, the frequency of examination, the nature and
7 extent of the treatment relationship, supportability of the physician's findings, consistency with
8 the record, the physician's specialization, and any other factors deemed relevant. 20 C.F.R.
9 § 404.1527(c)(1)-(6).

10 In order 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. Lester v. Chater, 81 F.3d 821, 831 (9th Cir. 1995).
13 To reject the uncontradicted opinion of a treating or examining doctor, the ALJ must provide
14 "clear and convincing reasons that are supported by substantial evidence." Ryan v. Comm'r, 528
15 F.3d 1194, 1198 (9th Cir. 2008). Conversely, a contradicted opinion may be rejected for
16 "specific and legitimate" reasons. Lester, 81 F.3d at 830. An ALJ provides specific and
17 legitimate reasons by "setting out a detailed and thorough summary of the facts and conflicting
18 clinical evidence, stating [an] interpretation thereof, and making findings." Magallanes v.
19 Bowen, 881 F.2d 747, 751 (9th Cir. 2011).

20 Even when the evidence is susceptible to more than one rational interpretation, a court
21 must uphold the ALJ's findings if are supported by inferences reasonably drawn from the record.
22 Tommasetti, 533 F.3d at 1038 (citing Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012)
23 (superseded by regulation on other grounds)). A reviewing court will not set aside the denial of a
24 disability claim unless the Commissioner's findings "are not supported by substantial evidence in
25 the record as a whole." Molina, 674 F.3d at 1121 (quoting Stone v. Heckler, 761 F.2d 530, 531
26 (9th Cir. 1985)). It is the ALJ's job to formulate the RFC, and a physician's opinion need not
27 adopted verbatim. 20 C.F.R. § 416.946(c); see, generally, Magallanes, 881 F.2d at 753.

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1 Analysis

2 Here, plaintiff is mainly concerned with the ALJ’s rejection of treating neurologist Dr.
3 Fung’s opinions, in favor of examiner Dr. Sharma and non-examiners Drs. Huynh and Cepeda.
4 (ECF No. 14 at 13-14.) In sum, plaintiff notes that Dr. Fung found different restrictions in
5 plaintiff’s ability to stand, walk, sit, use stairs, bend, squat/kneel, use her right hand, ability to
6 grip, drive, and use a keyboard/mouse. (AT 131-33.) Thus, under Magallanes, the ALJ was
7 required to set out a thorough summary of the facts and conflicting evidence, and interpret this
8 evidence, and craft an RFC so the court can review this case. The ALJ did so here.

9 Contrary to plaintiff’s contentions, the ALJ did not reject all of Dr. Fung’s opinions and
10 limitations. Plaintiff first mentions that the ALJ combined standing and walking in his
11 assessment, while Dr. Fung did not. (ECF No. 14 at 13-14.) However, the ALJ’s assessment of
12 plaintiff’s ability to stand and walk is in fact more restrictive than Dr. Fung’s—who did not
13 include the need for a hand held assistive device in his Work Status Reports (whereas the ALJ did
14 include such limitation). (AT 121, 675, 2039, 2066, 2222); see, e.g., Montalbo v. Colvin, 231 F.
15 Supp. 3d 846, 861 n.10 (D. Haw. 2017) (finding harmless when the ALJ adopted a more
16 restrictive RFC than the one recommended by plaintiff’s physician). Second, all four physicians
17 opined that plaintiff could stand or walk for two hours in an eight-hour workday, which the ALJ
18 incorporated into the RFC. (AT 133, 905, 924 2063, 2066.) Dr. Fung noted in an October 19,
19 2018 report that plaintiff’s walking limitations were reduced to “not at all.” (ECF No. 14 at 21;
20 AT 121.) However, this limitation was primarily based upon plaintiff’s subjective symptoms,
21 which can be rejected if the subjective symptoms are properly rejected (see Sections B and C,
22 below). Bray v. Comm’r., 554 F.3d 1219, 1228 (9th Cir. 2009) (ALJ may discount a treating
23 physician’s findings when based on claimant’s rejected subjective symptoms). In addition, Dr.
24 Fung opined that plaintiff could lift/carry a maximum of 20 pounds. (AT 2066.) This limitation is
25 incorporated into the standard for light work, as defined in 20 C.F.R. § 404.1567(b), so the ALJ’s
26 adoption of “light work” is specific and legitimate. Magallanes, 881 F.2d at 751.

27 Plaintiff argues Dr. Fung called for a 50% limitation in sitting (i.e. 4 hours), but the ALJ
28 assigned an RFC allowing for 6 hours of sitting. However, it is clear from the analysis that the

1 ALJ applied more weight to the opinions of Dr. Sharma, Dr. Huynh, and Dr. Cepeda, whose
2 opinions matched the ALJ's six-hour finding. (AT 130, 133); Magallanes, 881 F.2d at 755 (the
3 ALJ need not recite the magic words, "I reject [a doctor's] opinion ... because ..."). The same
4 holds true for the ALJ's adoption of the three physicians' opinions (over Dr. Fung) in regards to
5 plaintiff's use of stairs, ability to bend, squat/kneel, right hand motions, and ability to grip. (Id.)
6 Plaintiff contends that the ALJ's reliance on Dr. Sharma is misplaced because his opinion
7 regarding plaintiff's gripping limitation is inconsistent with his objective findings. (ECF No. 14
8 at 16.) However, Dr. Sharma's opinion, albeit less restrictive than Dr. Fung's, did in fact assign
9 limitations which are consistent with his overall findings of weakness in both upper and lower
10 extremities. (AT 2062-063); Molina, 674 F.3d at 1121 ("Even when an agency explains its
11 decision with less than ideal clarity, we must uphold it if the agency's path may reasonably be
12 discerned,") (quoting Alaska Dep't of Env'tl. Conservation v. EPA, 540 U.S. 461, 497 (2004)).

13 As to the ALJ's apparent failure to address plaintiff's inability to drive or use a keyboard,
14 the court finds that the jobs testified to by the VE to not require her to do these things in those
15 positions. See Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1174 (9th Cir. 2008) (finding
16 harmless ALJ's omission from the RFC certain limitations because ascribed jobs did not require
17 more than what plaintiff could do). Arguably, plaintiff may need to drive to and from her place
18 of work; however, plaintiff testified to her ability to drive short distances. (AT 879.)

19 Finally, plaintiff notes the VE opined that if plaintiff had to frequently alternate positions
20 between sitting and standing and had a handling limitation, all work would be precluded. (ECF
21 No. 14 at 16.) The court recognizes that the VE did state such an opinion; however, the ALJ
22 reasonably found plaintiff retained a normal range of motion in the upper and lower extremities
23 and therefore did not prescribe such limiting restrictions. (AT 135, 889.) Edlund, 253 F.3d at
24 1156 ("The ALJ is responsible for . . . resolving conflicts in medical testimony . . .").

25 Ultimately, the court finds the ALJ's extensive summary of the record, discussion of the
26 medical opinions, and findings regarding those opinions' consistency with the bulk record
27 satisfies the ALJ's duty. Molina, 674 F.3d at 1121. It is proper for a reviewing court to draw
28 rational inferences from the paragraphs discussing contradictory opinions, if those inferences are

1 there to be drawn. Magallanes, 881 F.2d at 755. Plaintiff’s attempts here appear to be a request
2 for the court to reweigh the medical evidence, which the court cannot do. Tommasetti, 533 F.3d
3 at 1038 (the court will uphold the ALJ’s conclusion where the evidence is susceptible to more
4 than one rational interpretation). For these reasons, the court rejects plaintiff’s arguments
5 concerning the ALJ’s interpretation of the medical evidence in formulating the RFC.

6 **B. Plaintiff’s Subjective-Symptom Testimony**

7 Legal Standard

8 In evaluating a claimant’s report of his or her symptoms, the Ninth Circuit has set forth
9 the following two-step analysis:

10 First, the ALJ must determine whether the claimant has presented objective
11 medical evidence of an underlying impairment which could reasonably be
12 expected to produce the pain or other symptoms alleged. In this analysis, the
13 claimant is not required to show that her impairment could reasonably be
14 expected to cause the severity of the symptom she has alleged; she need only
15 show that it could reasonably have caused some degree of the symptom. Nor
16 must a claimant produce objective medical evidence of the pain or fatigue itself,
17 or the severity thereof.

18 If the claimant satisfies the first step of this analysis, and there is no evidence of
19 malingering, the ALJ can reject the claimant’s testimony about the severity of her
20 symptoms only by offering specific, clear and convincing reasons for doing so.
21 This is not an easy requirement to meet: the clear and convincing standard is the
22 most demanding required in Social Security cases.

23 Revels v. Berryhill, 874 F.3d 648, 655 (9th Cir. 2017) (quoting Garrison v. Colvin, 759 F.3d 995,
24 1014-15 (9th Cir. 2014)).

25 The ALJ’s reasons for discounting or rejecting a claimant’s subjective symptom testimony
26 must be “sufficiently specific to allow a reviewing court to conclude the adjudicator . . . did not
27 arbitrarily discredit a claimant’s testimony.” Brown-Hunter v. Colvin, 806 F.3d 487, 483 (9th
28 Cir. 2015) (quoting Bunnell v. Sullivan, 947 F.2d 341, 345-46 (9th Cir. 1991)). This analysis
requires the ALJ to “specifically identify the testimony [from a claimant] she or he finds not to be
credible and . . . explain what evidence undermines that testimony.” Treichler v. Comm’r, 775
F.3d 1090, 1102 (9th Cir. 2014). Examples of “specific, clear and convincing reasons” for

1 discounting or rejecting a claimant’s subjective symptom testimony include: the effectiveness of
2 or noncompliance with a prescribed regime of medical treatment, inconsistencies between a
3 claimant’s testimony and his or her conduct (including daily activities), and whether the alleged
4 symptoms are consistent with the medical evidence of record. See Tommasetti, 533 F.3d at 1040;
5 Lingenfelter v. Astrue, 504 F.3d 1028, 1040 (9th Cir. 2007). A lack of corroborating, objective
6 medical evidence alone is insufficient grounds to discount a claimant’s subjective symptoms;
7 however, it is a factor the ALJ may consider. 20 C.F.R § 404.1529(c)(2); Rollins v. Massanari,
8 261 F.3d 853, 857 (9th Cir. 2001). Broadly speaking, a claimant’s statements of subjective
9 symptoms alone is insufficient grounds to establish disability. 20 C.F.R § 404.1529(a); Treichler,
10 775 F.3d at 1106.

11 Analysis

12 Plaintiff argues the ALJ misconstrued statements she made to her physicians and to the
13 ALJ at the hearing. Thus, plaintiff argues the ALJ failed to provide clear and convincing reasons
14 for discounting her subjective symptoms. (ECF No. 14 at 16-20.) Specifically, plaintiff points to
15 her testimony saying that she has extreme difficulties in walking, balancing, remembering, and
16 that she can only sit and stand for short periods of time and must alternate between the two. (Id.
17 at 18-19.) Plaintiff also asserted that she can only drive locally, cannot shop or go out alone,
18 needs assistance managing money, and that she struggles in attending to her personal hygiene,
19 taking care of her children and husband, and performing household chores such as doing the
20 dishes, vacuuming, and preparing meals. (Id.) Thus, the court turns to the ALJ’s discussion of
21 plaintiff’s numerous statements.

22 Here, the ALJ first summarized plaintiff’s subjective symptom testimony regarding her
23 daily activities, as provided from plaintiff’s own Function Report and hearing testimony. (AT
24 130.) The ALJ began his analysis with the oft-repeated statement that while plaintiff’s testimony
25 generally aligned with the medical evidence, her “statements concerning the intensity, persistence
26 and limiting effects of these symptoms are not entirely consistent with the medical evidence and
27 other evidence in the record...” (AT 130.) Next, the ALJ extensively reviewed the objective
28 medical evidence and each physicians’ opinions. (AT 131-35.) The ALJ then stated two reasons

1 why plaintiff's symptoms were not as severe as she alleged. First, the ALJ noted the medical
2 evidence did not support the severity of plaintiff's allegations. (AT 135.) Second, the ALJ noted
3 some of plaintiff's daily activities—including her ability to drive, care for her children and legally
4 blind husband, perform light household chores, and grocery shop—undermined her claim of
5 limited physical mobility and functioning. (AT 132-35.) The question is whether the ALJ's
6 description of plaintiff's symptom testimony and rationale for rejecting it meets the Ninth
7 Circuit's clear and convincing standard. The court finds that it does.

8 The ALJ primarily relied on a lack of corroborating objective medical evidence to support
9 his decision to discount plaintiff's testimony that she could not work because of her impairments.
10 (AT 128-35.) Contrary to plaintiff's assertions of extreme limitations in her ability to sit, stand,
11 walk, and balance, the ALJ noted that "the record [did] not reflect that the claimant has
12 disorganization of motor function in two extremities, resulting in an extreme limitation in her
13 ability to stand up from a seated position, balance while standing or walking, or use the upper
14 extremities." (AT 128.) The ALJ also noted that plaintiff's treating provider had in fact found
15 plaintiff able to stand and walk occasionally. (AT 128, 1945-2048, 2060-66, 2089-215, 2219-23.)
16 Plaintiff also points to her testimony regarding her difficulty in remembering. However, the ALJ
17 found plaintiff's "recent treatment notes reflect intact recent and remote memory," and that she
18 displayed an ability to remember things during her mental examination. (AT 132, 134, 2049-58.)
19 Further, the ALJ rejected plaintiff's testimony concerning her inability to bag and load groceries
20 or pick up her young daughter based on the medical record, as a 20 pound limitation was adopted
21 into the RFC based on the four physicians' opinions. (AT 130, 133; see also Section A, above).
22 The ALJ also noted that the objective medical evidence showed a normal range of motion in the
23 upper and lower extremities (despite decreased strength and an ability to walk with an assistive
24 walking device), which contradicted plaintiff's testimony of complete debilitating impairments.
25 See, e.g., Morgan v. Comm'r, 169 F.3d 595, 600 (9th Cir. 1999) (finding ALJ provided clear and
26 convincing reasons for rejecting claimant's subjective symptom testimony by citing, among other
27 things, inconsistencies between claimant's testimony and medical evidence).

28 Even though a lack of corroborating medical evidence is not enough (by itself) to

1 disregard a plaintiff's subjective symptoms, the ALJ also found inconsistencies in plaintiff's
2 reported daily activities. Specifically, the ALJ noted plaintiff's testimony regarding her standing
3 and balance issues (re: her inability to shower without having to lean against the wall, or her
4 inability to quickly complete household chores, prepare meals on her feet, or grocery shop
5 without assistance), but found that testimony contradicted by her continued ability to perform
6 chores such as grocery shop and prepare meals while sitting—which implicates the ability to
7 maintain balance for an extended period of time.³ (AT 128.) The ALJ noted plaintiff's testimony
8 that she could not drive or go out alone, but also found she had stated she drove her children to
9 and from school on a daily basis and herself to an evaluation. (AT 132); see Molina 674 F.3d at
10 1113 (rejecting plaintiff's testimony because it was inconsistent with her daily activities of
11 walking her grandchildren to and from school, attending church, going shopping, and taking
12 walks); see also Morgan, 169 F.3d at 600 (rejecting plaintiff's subjective testimony because it
13 conflicted with his daily activities showing an “ability to fix meals, do laundry, work in the yard,
14 and occasionally care for his friend's child.”). The ALJ noted plaintiff's testimony that she
15 experienced tremors in her arms and hands, but plaintiff also testified that she can (with
16 difficulty) use her hands to prepare meals and complete other chores. (AT 131, 135, 875-76.)
17 The ALJ's descriptions are sufficiently clear, accurate, and convincing. See Molina, 674 F.3d at
18 1113 (“Even where those activities suggest some difficulty functioning, they may be grounds for
19 discrediting the claimant's testimony to the extent that they contradict claims of a totally
20 debilitating impairment.”) (citing Valentine v. Comm'r, 574 F.3d 685, 693 (9th Cir. 2009)).

21 Overall, the ALJ's findings on plaintiff's subjective symptom testimony are sufficiently
22 consistent with the record. Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002) (“if the
23 ALJ's credibility finding is supported by substantial evidence in the record, [the court] may not
24 engage in second-guessing”) (citing Morgan, 169 F.3d at 599-600 (where the evidence is
25 susceptible to more than one rational interpretation, one of which supports the ALJ's decision, the
26 ALJ's conclusion must be upheld)). For these reasons, the undersigned finds the ALJ did not fail

27 ³ Further, plaintiff's RFC allowed for the use of a handheld assistive device at all times, and the
28 VE found she could do multiple sedentary jobs. (AT 136); 20 C.F.R. § 404.1567(b).

1 in his duty to provide clear and convincing reasons for discounting plaintiff's subjective-symptom
2 testimony under Ninth Circuit precedent. Treichler, 775 F.3d at 1102.

3 **C. Appeals Council Decision to Deny Review**

4 Federal courts "do not have jurisdiction to review a decision of the Appeals Council
5 denying a request for review of an ALJ's decision, because the Appeals Council decision is a
6 non-final agency action." Brewes v. Comm'r, 682 F.3d 1157, 1161-62 (9th Cir. 2012). Once the
7 Appeals Council denies review, the ALJ's decision becomes the final decision of the
8 Commissioner. (Id.) When evidence is given to the Appeals Council for the first time, and such
9 evidence is considered in denying review of the ALJ's decision, that evidence becomes part of the
10 administrative record, and the reviewing court must consider it in determining whether the
11 decision was supported by substantial evidence. (Id. at 1159-60.) However, only new and
12 material evidence relating to the period on or before the date of the ALJ decision should be
13 considered. 20 C.F.R. § 404.970(b); Taylor v. Comm'r, 659 F.3d 1228, 1233 (9th Cir. 2011).
14 Remand is appropriate if the new evidence creates a reasonable possibility that it would have
15 changed the outcome of the ALJ's decision. Mayes v. Massanari, 276 F.3d 453, 462 (9th Cir.
16 2001); Booz v. Sec. of Health and Human Servs., 734 F.2d 1378, 1380 (9th Cir. 1984).

17 When plaintiff requested review from the Appeals Council, she submitted additional
18 evidence consisting of medical examinations and reports conducted before and after the ALJ's
19 decision. (AT 2.) The Appeals Council declined to review the records from March 15, 2019, and
20 from October 19, 2018, through January 15, 2019, because those records did not relate to the
21 period before the ALJ's decision (issued on October 17, 2018). (Id.) However, the Appeals
22 Council seemingly reviewed the additional evidence dated February 12, 2018, through October
23 17, 2018, August 16, 2018, through December 21, 2018, and one report from October 19, 2018,
24 that was drafted before the ALJ's decision. (Id.) The Appeals Council found the reviewed
25 evidence did "not show a reasonable probability that it would change the outcome of the
26 decision." (Id.) Plaintiff contends the Appeals Council erred in the treatment of this evidence.

27 The additional evidence which plaintiff is mainly concerned with are two reports by Dr.
28 Fung, one dated June 7, 2018, and another dated October 19, 2018. (ECF No. 14 at 20-22.)

1 Plaintiff contends the Appeals Council did not review the October 19, 2018 report “on the
2 mistaken belief that it did not relate to the period before the date of the ALJ’s decision.” (ECF
3 No. 14 at 22.) However, contrary to plaintiff’s contention, the Appeals Council in fact reviewed
4 the report as it is listed among the documents reviewed. (AT 2.) Plaintiff concedes that there is
5 only one changed work limitation in the October 19, 2018 report as compared to the rest of Dr.
6 Fung’s Work Status Reports, which is that plaintiff’s walking limitations were reduced to “not at
7 all.” (ECF No. 14 at 21; AT 121.) Regardless, this limitation was primarily based upon
8 plaintiff’s subjective symptoms. (See AT 846-65.) Information contained in a physician’s report
9 can be rejected if primarily based on a patient’s symptoms (which the ALJ also rejects). Bray,
10 554 F.3d at 1228. Similarly, the June 7, 2018 report does not change the outcome because it
11 merely mirrors the previous reports and does not provide any new limitations. (Cf. AT 2066,
12 2222 with AT 675.) Therefore, the additional evidence submitted by plaintiff generated prior to
13 the decision does not show a reasonable possibility of a different outcome, and reports generated
14 after are irrelevant to this proceeding. Taylor, 659 F.3d at 1228; see also, e.g., Roberson v.
15 Astrue, 481 F.3d 1020, 1026 (8th Cir. 2007) (finding medical records considering claimant’s
16 condition after the ALJ’s decision to be immaterial).

17 **V. CONCLUSION**

18 In sum, the court rejects plaintiff’s challenges, and otherwise finds the ALJ’s decision free
19 from prejudicial legal error and supported by substantial evidence in the record as a whole. Buck,
20 869 F.3d at 1048. Accordingly, IT IS HEREBY ORDERED that:

- 21 1. Plaintiff’s motion for summary judgment (ECF No. 14) is DENIED;
- 22 2. The Commissioner’s motion for summary judgment (ECF No. 17) is GRANTED;
- 23 3. The final decision of the Commissioner is AFFIRMED; and
- 24 4. The Clerk of Court is directed to issue judgment in the Commissioner’s favor and
25 CLOSE this case.

26 Dated: February 16, 2021

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE