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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MELANIE CAROL PRESLEY,
Plaintiff,
v.
CAROLYN W. COLVIN,
Defendant.

Case No. [14-cv-01814-JD](#)

**ORDER ON MOTIONS FOR
SUMMARY JUDGMENT**

Plaintiff Melanie Carol Presley challenges a decision by a Social Security Administration (“SSA”) administrative law judge (“ALJ”) that denied her disability benefits. Plaintiff and defendant have cross-moved for summary judgment seeking to overturn or affirm, respectively, the ALJ’s decision. The Court has carefully considered the administrative record (“AR”) and the parties’ arguments, and finds no reversible error in the ALJ’s determinations. Consequently, plaintiff’s motion is denied and defendant’s motion is granted.

BACKGROUND

In October 2010, Presley filed an application for Title II disability insurance benefits. AR 164-65. Presley claimed disability based on a number of conditions including irritable bowel syndrome (“IBS”), fibromyalgia, neck, back and arm pain, depression and memory problems. AR 83-84. She reported substantial limitations on her ability to stand, lift and hold objects of more than minor weight, concentrate for any period of time, remember lists or instructions, and other problems. *Id.* She also said she suffered from social isolation as the result of depression. *Id.* The SSA denied Presley’s application initially and upon reconsideration. AR 94, 104. In both denials, the SSA determined that Presley’s condition was “not severe enough to keep you from working.” *Id.*

1 In August 2011, Presley requested a hearing on benefits eligibility before an ALJ. AR
2 115. Presley’s request was assigned to K. Kwon, an ALJ in the SSA’s Office of Disability
3 Adjudication and Review. AR 37. In August 2012, ALJ Kwon held an evidentiary hearing on
4 Presley’s claim at which Presley appeared with a lawyer and testified. *Id.* Connie Guillory, a
5 vocational expert, also testified at the hearing. *Id.*

6 In September 2012, ALJ Kwon issued a 14-page, single-spaced decision finding that
7 Presley was not disabled. AR 17-30. Presley appealed this adverse decision to the SSA Appeals
8 Council, which declined to review it. AR 7-9. Presley then filed this action pursuant to 42 U.S.C.
9 § 405(g), which authorizes review of final SSA decisions by a district court.

10 In the decision, the ALJ followed the five-step sequential evaluation process mandated for
11 disability claims under 20 C.F.R. §§ 404.1520 *et seq.* (2012). *See Burch v. Barnhart*, 400 F.3d
12 676, 679 (9th Cir. 2005) (setting out the five sequential steps). Step one requires the ALJ to
13 determine whether the claimant is working in a substantial and gainful way. 20 C.F.R. at §
14 404.1520(a); AR 18. This step counted in Presley’s favor because she had been unemployed for
15 some time. AR 19. Step two directs the ALJ to determine whether the claimant has a severe
16 impairment or combination of impairments that significantly limits the claimant’s ability to work.
17 AR 18. The ALJ found that Presley satisfied this step because fibromyalgia, irritable bowel
18 syndrome, joint disease and depression “significantly limit the claimant’s physical and mental
19 abilities to do one or more basic work activities.” AR 19. The ALJ reached this favorable finding
20 even though the record contained evidence indicating that Presley had exaggerated her symptoms,
21 AR 23-26, and suffered from memory and concentration issues due to chronic marijuana
22 consumption, AR 25.

23 The ALJ found against Presley at step three. In this step, the ALJ needs to determine
24 whether the claimant’s impairment meets, or is medically equal to, the criteria of an impairment
25 listed in 20 C.F.R. Part 404, Subpart P, Appendix 1 (20 C.F.R. § 404.1520(e)). AR 18. That
26 bureaucratic mouthful means the ALJ must see if the claimant’s impairment matches the criteria
27 for disabling conditions listed in the regulations. Here, the ALJ focused on listing 12.04, which
28 addresses affective mental disorders. AR 20. The ALJ evaluated Presley’s claims of depression,

1 concentration and memory problems, and related psychological issues, and determined that she did
2 not manifest the level of difficulty or decompensation required to meet or medically equal the
3 12.04 criteria. *Id.* Specifically, based on reports from psychologists and medical doctors who had
4 examined Presley, the ALJ found that Presley had moderate depression and concentration and
5 memory deficits, but experienced only mild restrictions on daily living activities and was able to
6 care for a husband with vision problems, read, play computer games, enjoy occasionally
7 socializing at garage sales and karaoke events, and generally attend to all the necessities of life on
8 an independent and competent basis. *Id.*

9 The ALJ did not expressly analyze Presley’s IBS or fibromyalgia against the listings but
10 made a set of detailed findings about these conditions. After reviewing Presley’s medical records,
11 the ALJ determined that Presley had received routine and conservative treatment for IBS and had
12 never reached the point where that condition required surgery or treatment by a specialist. AR 22.
13 Diagnostic evaluations showed the IBS was mild and Presley reported times when she felt better
14 and gained weight. *Id.* The ALJ found that Presley’s treatment for fibromyalgia had also been
15 routine and conservative. *Id.* The ALJ noted that Presley’s treating physician, Dr. Tamara
16 Dennis, had made a fibromyalgia diagnosis, but found that this physician depended mainly on
17 Presley’s subjective description of symptoms, which the ALJ considered to be of questionable
18 credibility, and did not use the fibromyalgia diagnostic criteria developed by the American
19 College of Rheumatology or refer Presley to a specialist. AR 26. The ALJ afforded Dr. Dennis’s
20 opinions minimal weight because they were based on Presley’s questionable self-reporting and not
21 on any clinical, objective diagnostic findings. AR 26-27.

22 The ALJ proceeded to step four, which requires a determination of whether the claimant is
23 capable of performing the work she used to do. AR 18. This step entails an assessment of the
24 claimant’s “residual functional capacity”, another bureaucratic turn of phrase which basically
25 means the claimant’s ability to work even with some limitations or impairments. Once that
26 capacity is determined, the ALJ looks at whether it is enough for the claimant to do her old jobs.
27 *Id.*

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1 7184455 at *5 (N.D. Cal. 2014) (citing *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989)).
2 But the Court is no mere rubber stamp when reviewing SSA decisions. While subject to these
3 principles of deference, it still is charged with reviewing the administrative record as a whole to
4 ensure that substantial evidence does in fact support the ALJ's determinations.

5 Plaintiff's challenge to the soundness of the ALJ's decision is not supported by fact or law,
6 and is not enough to set the decision aside. As an initial matter, plaintiff misconstrues the Court's
7 role in this case. Plaintiff's main argument is that the ALJ did not reach the right decision in light
8 of the evidence Presley presented. She devotes most of her motion to rehashing the often-vivid
9 descriptions of her conditions contained within her medical charts and files, and in statements by
10 friends and family. These materials clearly show, as the ALJ recognized, that Presley is not in
11 good physical or mental health. But under governing standards, the Court does not conduct a
12 fresh assessment of Presley's claims as if the ALJ had never made a disability determination. The
13 Court is limited to reviewing the ALJ's decision for legal error or lack of substantial evidence. It
14 is not a forum for arguing the disability issue de novo or second-guessing findings supported by
15 substantial evidence. *Tommasetti*, 533 F.3d at 1039.

16 This limited scope of review sinks most of Presley's contentions. As Presley urges, the
17 Court recognizes that the ALJ dealt with conflicting evidence and made credibility determinations
18 and resolved fact conflicts on the way to finding no disability. The Court also recognizes, as
19 Presley does not, that the ALJ's decision was detailed, specific and clear when stating what the
20 ALJ determined and why. Presley has not identified a single instance of the ALJ failing to apply
21 the appropriate legal tests or standards, or failing to provide an adequate evidentiary basis for the
22 findings made. And while Presley disputes the ALJ's credibility determinations and resolution of
23 ambiguities or conflicts in the medical evidence, the ALJ "is the final arbiter" of those questions.
24 *Tommasetti*, 533 F.3d at 1041.

25 Plaintiff's more specific suggestions of error also do not fly. Presley repeatedly contends
26 that the ALJ improperly discounted the opinions of her treating physicians, including Dr. Dennis,
27 and erroneously gave them only minimal weight. It is certainly true that, as a general proposition,
28 the opinions of a treating physician are ordinarily afforded greater weight than those of non-

1 treating physicians. *Magallanes*, 881 F.2d at 751. But it is equally true, and much more apposite
2 here, that the treating physician’s opinions are not conclusive on a physical condition or disability,
3 *id.*, and the ALJ may reduce the weight they are afforded when the ALJ finds they are based
4 largely on the claimant’s subjective self-reporting and the ALJ provides specific reasons for
5 discounting them, *Tommasetti*, 533 F.3d at 1041. The ALJ here amply satisfied both conditions,
6 and did not improperly slight the opinions of the treating physicians.

7 Presley argues that the ALJ failed to properly evaluate the fibromyalgia claim against the
8 disability listings. As plaintiff concedes, “[f]ibromyalgia is not a listed impairment” but the
9 parties agree that Social Security Ruling 12-2P, 2012 WL 3104869, allows a claimant to contend
10 that fibromyalgia medically equals a listing for another condition. Dkt. No. 21 at 21; Dkt. No. 22
11 at 2. While the ALJ does not appear to have specifically referenced Ruling 12-2P in the decision,
12 the ALJ carefully reviewed and evaluated the medical evidence on Presley’s fibromyalgia claim,
13 AR 26-28, and found against disability on that ground. The ALJ explained its reasoning at every
14 step and cited to evidence in the record. There is no error here.

15 Presley also raises a vague attack on the ALJ’s use of a hypothetical question to the
16 vocational expert raised in evaluating Presley’s work capacity. Plaintiff’s specific argument on
17 this point is hard to discern -- the briefing is unfocused and unclear. In any event, the use of a
18 vocational expert is without a doubt an acceptable practice to determine whether a claimant can
19 perform prior work or do other work. *Ghanim v. Colvin*, 763 F.3d 1154, 1166 (9th Cir. 2014).
20 And the ALJ may use a hypothetical question to elicit the expert’s opinion when the hypothetical
21 contains “all of the limitations that the ALJ found credible and supported by substantial evidence
22 in the record.” *Id.*


23 The ALJ here did what was required and in a manner that actually favored Presley. The
24 vocational expert addressed a hypothetical question that assumed Presley’s age, education,
25 vocational background but included only physical limitations. AR 28. The ALJ found that
26 Presley’s mental limitations, namely a limitation to simple and routine tasks, should also be
27 factored in. *Id.* On that basis, the ALJ found a lesser residual capacity than the expert -- a finding
28 in plaintiff’s favor. *Id.*

1 **CONCLUSION**

2 The Court is sympathetic to Presley's conditions and challenges. The ALJ's decision,
3 however, is without legal error and falls well within the bounds of substantial evidence.
4 Consequently, plaintiff's motion is denied, defendant's is granted, and the case is closed.

5 **IT IS SO ORDERED.**

6 Dated: May 18, 2015

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10 JAMES DONATO
11 United States District Judge