

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SANDRA HOLGUIN,
Plaintiff,

v.

NANCY A. BERRYHILL,
Defendant.

Case No.16-cv-06479-HRL

**ORDER DENYING CLAIMANT’S
MOTION FOR SUMMARY JUDGMENT
AND GRANTING DEFENDANT’S
CROSS-MOTION FOR SUMMARY
JUDGMENT**

Re: Dkt. Nos. 14, 15

Claimant Sandra Holguin (“Claimant”) appeals a decision denying social security disability benefits and supplemental security income under Titles II and XVI of the Social Security Act. Dkt. No. 1. She seeks a reversal of the Commissioner’s decision and a judgment on the record in her favor or, alternatively, remand for further administrative proceedings. Dkt. No. 14. Defendant filed a cross-motion for summary judgment defending the ALJ’s decision. Dkt. No. 15. Each party consented to magistrate judge jurisdiction. Dkt. Nos. 8, 11. For the reasons described below, the court denies Claimant’s motion for summary judgment and grants the Commissioner’s cross-motion for summary judgment.

BACKGROUND

Claimant was born in 1963 and completed part of high school. AR 37, 61. From 2001 to 2002, she worked in electronics assembly, a job she performed primarily in a sitting position. AR 34-35. From 2002 to 2003, Claimant wrapped baked goods in a wholesale store. AR 34. And in 2005 and 2006, she worked as an in-home caregiver. AR 33. While working as a caregiver, Claimant injured her back after several months of transferring her patient without assistance. AR 38. By late 2006, she stopped working due to the “excruciating” pain: “I could not sit, squat, bend, I mean, just moving all the way around, nothing.” AR 38.

Claimant applied for social security disability benefits and supplemental social security

United States District Court
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1 income in December 2012 and January 2013, respectively, alleging a disability on-set date of
2 October 1, 2008. AR 10. Her claims—which alleged disability based on degenerative disc
3 disease, chronic back problems, nerve damage, high blood pressure, and anxiety, AR 61—were
4 denied initially and on reconsideration. AR 10.

5 The record contains numerous reports and various physicians’ opinions. A 2010 MRI of
6 Claimant’s spine identified a mild disc bulge consistent with an annular tear. AR 308. The MRI
7 report observed that the annular tear “may act as a source of chemical irritation to the nerve root.”
8 *Id.* A 2012 MRI report indicated that three osteophyte complexes were “mildly indenting” the
9 spinal cord. AR 425. And a 2014 MRI found mild central canal stenosis. AR 751.

10 Claimant was examined by Dr. Robinson in January of 2007. Dr. Robinson observed that
11 Claimant had a positive straight leg-raising test and recommended that she be limited to
12 “sedentary to semi-sedentary occupations.” AR 275, 286. Claimant, Dr. Robinson stated, “could
13 probably sit for fairly long periods of time provided she is able to take breaks for about 1-2
14 minutes every 30-45 minutes to relieve back pain.” AR 286.

15 Doctor Feinberg examined Claimant in 2010. He reported that Claimant had no muscular
16 atrophy in her lower body and that her lower body strength was normal. AR 323. He also stated
17 that “straight leg-raising was negative for sciatica,” and that her gait was normal. *Id.* Dr. Feinberg
18 seemed skeptical of the results of the MRI described above, stating: “She was reported to have an
19 abnormal MRI, although quite frankly her objective physical examination today is normal and I
20 had her return for electrodiagnostic testing which revealed no abnormalities.” AR 326. As for
21 Claimant’s range of motion, Dr. Feinberg noted that “lumbar flexibility was reduced with some
22 discomfort at the ends of range,” but that “[h]ip and lower body range of motion was otherwise
23 within normal limits.” AR 323. The doctor stated that he would not have Claimant work in a
24 position as rigorous as her prior in-home caregiving job and concluded that she was precluded
25 from “heavy lifting, repeated bending and stooping” and “prolonged weight bearing.” AR 326.

26 Claimant was treated from 2009 to 2011 by Dr. Fujimoto. Dr. Fujimoto observed that
27 Claimant had an antalgic gait in July 2010, but that she had not had an antalgic gait several months
28 earlier. AR 370, 378. He stated in 2011 that Claimant’s functional limitations were being

1 managed by her medication. AR 354. Dr. Fujimoto also noted that Claimant had a mild decrease
2 in sensation to pinprick and light touch on her right foot and a negative straight-leg raising test.
3 AR 366. He prescribed “modified” work duty, with “no heavy lifting, repeated bending or
4 stooping for the spine, and no prolonged weight bearing.” AR 352.

5 Dr. Hsieh treated Claimant from 2008 to 2013. In 2008, he observed evidence of “a right
6 L5-S1 radiculopathy.” AR 485, 495. He later reported that Claimant’s gait was “mildly antalgic,”
7 that her lumbar range of motion was “moderately limited to flexion, with pain,” and that her
8 straight-leg raising test was negative on the left and positive on the right. AR 428. In 2015,
9 Doctor Hsieh wrote a letter stating that, though he had last seen Claimant for treatment in 2013, he
10 “would be doubtful that she would be able to continue working” due to “pain and functional
11 limitation” unless her symptomatology had “significantly improve[d].” AR 878.

12 Another treating doctor, Doctor Lifshutz, also wrote a letter in 2015 stating that Claimant
13 (a current patient of his) could not work at that time. AR 879.

14 Finally, Claimant was examined by a psychologist, Dr. Goldman. Dr. Goldman found
15 Claimant to be an unreliable historian and assessed “malingering.” AR 702. She observed that
16 Claimant was “only superficially cooperative throughout the evaluation” and “did not make an
17 adequate effort on the tasks presented to her.” AR 702. Dr. Goldman further observed that
18 Claimant drove without restriction, bathed and groomed herself without help, and could pay bills
19 independently. AR 701. She concluded that Claimant’s functional limitations “were unable to be
20 accurately assessed due to malingering.” AR 702.

21 In addition to the above, the record contains evidence of Claimant’s drug use. Claimant
22 reportedly used cocaine in the 1980s and in 1999, as well as in 2005 and 2006. AR 315, 316.
23 When asked by Dr. Feinberg, Claimant stated that “she does not remember having a cocaine
24 problem in 2005” but that she could not recall the last time she used cocaine. AR 325. Claimant
25 also may have lied to Dr. Fujimoto about her cocaine use: she tested positive for cocaine in 2011,
26 though she denied having used the drug and demanded a re-test (which was denied). AR 351.
27 After discovering the positive test and the fact that Claimant had obtained Vicodin from five other
28 doctors besides himself, Dr. Fujimoto terminated his relationship with her. AR 351.

1 At the hearing before the ALJ, Claimant testified that she stopped working in 2006 due to
2 her injury. AR 38. She stated that she experienced constant back pain, which radiated down the
3 right side of her body. AR 41. Due to the pain, she could stand for 20 minutes before needing a
4 10-minute break, and she needed to shift positions after 10 minutes of sitting. AR 42.

5 The ALJ ultimately determined that Claimant was not disabled. AR 19. At step one, he
6 determined that she had not engaged in substantial gainful activity since the disability onset date.¹
7 AR 12. At step two, he found that Claimant had the following severe impairment: degenerative
8 disc disease of the cervical and lumbar spine, status post decompression surgery of the cervical
9 spine. AR 12. At step three, he determined that Claimant did not meet listing 1.04. AR 14. Prior
10 to step four, the ALJ found the Claimant’s testimony “not entirely credible.” AR 15. In reaching
11 this conclusion, he cited evidence of malingering in the record, Claimant’s inconsistent reports
12 about drug use, and inconsistencies between Claimant’s testimony and the medical evidence. AR
13 14-18. He assessed Claimant with the residual functional capacity to perform “sedentary work.”
14 AR 14. At step four, the ALJ found Claimant capable of performing her past relevant work as an
15 electronics worker as she actually performed it—that is, as sedentary work. AR 18.

16 In making the findings above, the ALJ cited various pieces of evidence and discussed
17 multiple physicians’ opinions. He afforded Dr. Feinberg’s opinion substantial weight and referred
18 to his findings that Claimant had a normal gait, a negative straight-leg test, no atrophy of the lower
19 body, normal lower body strength, and a normal range of motion of her hips and lower body (with
20 the exception of “a mildly reduced range of motion in her lumbar spine”). AR 15, 17. He referred
21 to Dr. Feinberg’s opinion that Claimant should not engage in “heavy lifting, repeated bending or
22 stooping, or prolonged weight bearing on her right foot.” AR 16. The ALJ cited Dr. Fujimoto’s

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24 ¹ “To decide if a claimant is entitled to benefits, an ALJ conducts a five-step inquiry. 20 C.F.R. §§
25 404.1520 & 416.920. The ALJ first considers whether the claimant is engaged in substantial
26 gainful activity; if not, the ALJ asks in the second step whether the claimant has a severe
27 impairment (i.e., one that significantly affects his or her ability to function); if so, the ALJ asks in
28 the third step whether the claimant's condition meets or equals one of those outlined in the Listing
of Impairments in Appendix 1 of the Regulations; if not, then in the fourth step the ALJ asks
whether the claimant can perform his or her past relevant work; if not, finally, the ALJ in the fifth
step asks whether the claimant can perform other jobs that exist in substantial numbers in the
national economy. 20 C.F.R. §§ 404.1520(b)–404.1520(f)(1) & 416.920(b)–416.920(f)(1).”
Lewis v. Apfel, 236 F.3d 503, 508 (9th Cir. 2001).

1 reports that Claimant managed her pain with medication and exhibited “no pain behaviors.” *Id.*
2 He also noted the doctor’s findings that Claimant had a “mild decrease in sensation” to stimuli in
3 her foot and his prescription of modified work duty consistent with Dr. Feinberg’s opinion. AR
4 16. The ALJ cited Dr. Hsieh’s reports that Claimant’s gait was “mildly antalgic,” that her lumbar
5 range of motion was “mildly limited,” and that she had a positive straight-leg test on the right. AR
6 16. He cited a September 2013 report observing that Claimant had a “normal range of motion.”
7 AR 16, 640. And he afforded the letters from Doctors Lifshutz and Hsieh reduced weight, as (1)
8 both referred to matters reserved to the Commissioner, (2) Dr. Lifshutz’s report was not supported
9 by any rationale, and (3) Dr. Hsieh’s letter relied on potentially stale impressions. AR 17.

10 Claimant filed the complaint in this lawsuit in November 2016. Dkt. No. 1. Her motion
11 for summary judgment argues that the ALJ erred by (1) failing to address the opinion of Dr.
12 Robinson, (2) failing to adequately explain his finding that Claimant did not meet listing 1.04, and
13 (3) improperly finding Claimant to be not credible.

14 **STANDARD OF REVIEW**

15 A reviewing court must affirm the Commissioner’s decision if it applies the correct legal
16 standards and is supported by substantial evidence. *Lewis v. Apfel*, 236 F.3d 503, 509 (9th Cir.
17 2001). Substantial evidence is “relevant evidence that, considering the entire record, a reasonable
18 person might accept as adequate to support a conclusion.” *Id.* The Ninth Circuit has stated that
19 substantial evidence is “more than a mere scintilla, but may be less than a preponderance.” *Id.*;
20 *Molina v. Astrue*, 674 F.3d 1104, 1110-11 (9th Cir. 2012). If the evidence is such that reversal or
21 affirmance are both reasonable, the Court must defer to the Commissioner. *Morgan v. Comm’r of*
22 *Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999) (“Where the evidence is susceptible to more
23 than one rational interpretation, it is the ALJ’s conclusion that must be upheld.”).

24 **DISCUSSION**

25 **1. Doctor Robinson’s Opinion.**

26 Claimant first argues that the ALJ erred by failing to address the opinion of Dr. Robinson,
27 who determined that Plaintiff could sit only with 1-2 minute breaks every 30-45 minutes. The
28 vocational expert testified that this restriction would preclude work. Claimant thus asserts that Dr.

1 Robinson’s opinion is significant and probative evidence, and that the ALJ erred in failing to
2 consider it.

3 The ALJ does not need to discuss every piece of evidence in the record and may decline to
4 address evidence that is neither significant nor probative. *Howard v. Barnhart*, 341 F.3d 1006,
5 1012 (9th Cir. 2003). Conversely, the Secretary may not reject “significant probative evidence”
6 without explanation. *Flores v. Shalala*, 49 F.3d 562, 570-71 (9th Cir. 1995). To reject the opinion
7 of a treating physician when there are conflicting opinions in the record, the ALJ must make
8 findings setting forth “specific legitimate reasons for doing so that are based on substantial
9 evidence in the record.” *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ need
10 not, however, recite the magic words “I reject this doctor’s opinion because” when the court can
11 draw “specific and legitimate inferences” from the ALJ’s opinion. *Id.*, at 755.

12 The Commissioner argues that the ALJ was not required to address Dr. Robinson’s 2007
13 opinion because it pre-dated Claimant’s 2008 disability on-set date. The Commissioner cites
14 *Carmickle v. Commissioner, Social Security Administration* for the proposition that an opinion is
15 “of limited relevance,” and thus not significant and probative, when it predates the alleged onset of
16 disability. 533 F.3d 1155, 1165 (9th Cir. 2008). Plaintiff distinguishes *Carmickle*: that case
17 involved a disability caused by a discrete event that followed the date of the opinion, while
18 Claimant’s injury in late 2005 preceded Dr. Robinson’s opinion.

19 Even if the ALJ erred in failing to specifically address Dr. Robinson’s opinion, however,
20 this error was harmless. The ALJ’s opinion was based on substantial evidence, and the court can
21 draw “specific and legitimate inferences” from the ALJ’s discussion that support the rejection of
22 Dr. Robinson’s opinion. *See Lewis v. Apfel*, 236 F.3d 503, 514 (the ALJ’s failure to mention a
23 doctor’s opinion did not rise to the level of error because his conclusion was supported by
24 substantial evidence). For example, the ALJ afforded Dr. Feinberg’s opinion substantial weight,
25 citing that physician’s opinion that Claimant should not engage in heavy lifting, repeated bending
26 or stooping, or prolonged weight bearing on her right foot—restrictions consistent with sedentary
27 work. He cited Dr. Fujimoto’s observations that Claimant managed her pain with medications and
28 his prescription of “modified work duty, to include no heavy lifting, no repeated bending or

1 stooping for the spine, and no prolonged weight-bearing on the right foot.” This prescription—
2 from a treating doctor—is consistent with that of Dr. Feinberg. The ALJ also provided legitimate
3 reasons for rejecting the opinions of Doctors Hsieh and Lifshutz (that is, that the former had not
4 treated Claimant for two years and the latter provided no supporting rationale to back his opinion).
5 The ALJ also cited objective medical evidence, including “normal electrodiagnostic testing,”
6 “normal” objective examinations, and MRIs showing only “mild” or insignificant indentations of
7 the spinal cord and canal stenosis.

8 The evidence described above and cited by the ALJ yields specific and legitimate
9 inferences supporting the ALJ’s rejection of Dr. Robinson’s opinion in making the finding that
10 Claimant could perform sedentary work. The failure to address Dr. Robinson’s opinion was not
11 reversible error.

12 **2. Listing 1.04.**

13 As relevant here, listing 1.04 requires a disorder of the spine (for example, spinal stenosis
14 or degenerative disc disease) “resulting in compromise of a nerve root . . . or the spinal cord,”
15 with:

16 [1] [e]vidence of nerve root compression characterized by neuro-
17 anatomic distribution of pain, [2] limitation of motion of the spine,
18 [3] motor loss (atrophy with associated muscle weakness or muscle
19 weakness) accompanied by sensory or reflex loss and, [4] if there
20 is involvement of the lower back, positive straight-leg raising test
(sitting and supine).

20 C.F.R. Part 404, Subpart P, Appendix 1.

21 Claimant argues that the ALJ erred by insufficiently explaining why Claimant’s spinal
22 condition did not meet the requirements of listing 1.04. Claimant further argues that Claimant
23 meets this listing. In support of this argument, Claimant points to (1) an MRI which she asserts
24 shows nerve root compromise (i.e., by showing an annular tear acting as a source of chemical
25 irritation to the nerve root), (2) Dr. Hsieh’s observations that she had an antalgic gait, moderately
26 limited lumbar range of motion, a positive straight leg-raising test, concordant right buttock and
27 leg pain, and decreased sensation, and (3) Dr. Fujimoto’s observation of muscle weakness.

28 To meet the requirements of a listing, a claimant “must have a medically determinable

1 impairment[] that satisfies all of the criteria in the listing.” 20 C.F.R. § 404.1525; *Sullivan v.*
2 *Zebley*, 493 U.S. 521, 530 (“For a claimant to show that his impairment matches a listing, it must
3 meet *all* of the specified medical criteria. An impairment that manifests only some of those
4 criteria, no matter how severely, does not qualify.”). An ALJ must make “sufficient findings” to
5 show that he or she has evaluated the relevant evidence before deciding whether the claimant
6 meets or equals a listed impairment. *Marcia v. Sullivan*, 900 F.3d 172, 176 (9th Cir. 1990). But
7 the ALJ does not need to include these findings under a clearly labeled heading. *Lewis v. Apfel*,
8 236 F.3d 503, 513 (9th Cir. 2001) (“*Marcia* simply requires an ALJ to discuss and evaluate the
9 evidence that supports his or her conclusion; it does not specify that the ALJ must do so under the
10 heading ‘Findings.’”). The ALJ is responsible for resolving conflicts and ambiguities in the
11 medical testimony, and the court must uphold the ALJ’s decision where the evidence bears more
12 than one rational interpretation. *Andrews v. Shalala*, 53 F.3d 1035, 1039-40 (9th Cir. 1995).

13 Here, the paragraph containing the ALJ’s conclusion in step three did not contain his
14 supporting rationale, but he discussed the medical evidence in subsequent paragraphs. The ALJ’s
15 discussion (and an examination of the record) reveals conflicting evidence regarding listing 1.04’s
16 requirements for “motor loss (atrophy with associated muscle weakness or muscle weakness)
17 accompanied by sensory or reflex loss)” and positive straight-leg raising tests. The ALJ cited Dr.
18 Feinberg’s examination notes stating that the straight-leg test was negative and that there was no
19 atrophy of the lower body or reduction in strength. He also cited notes from Dr. Hsieh in 2012
20 stating that Claimant’s motor strength was “intact.” Though there were also instances of positive
21 leg-raising tests and sensory loss cited by the ALJ, the ALJ may resolve conflicts in the evidence.²
22 And while Claimant showed evidence in the record that supports her argument, “the key question
23 is not whether there is substantial evidence that could support a finding of disability, but whether
24 there is substantial evidence to support the Commissioner’s actual finding that the claimant is not
25 disabled.” *Jamerson v. Chater*, 112 F.3d 1064, 1067 (9th Cir. 1997). The Commissioner pointed

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27 ² Claimant also points to Dr. Fujimoto’s findings of muscle weakness: “Motor strength [is] 5/5 and
28 equal in lower extremities, except 4/5 weakness with right EHL.” AR 378, 382. Though the ALJ
did not cite this evidence specifically, it conflicts with the evidence from Doctors Feinberg and
Hsieh cited by the ALJ and referenced above.

1 to such evidence. As the evidence here was subject to more than one rational interpretation, the
2 court must defer to the ALJ's conclusions. The ALJ did not commit reversible error in finding
3 that Claimant did not meet listing 1.04.

4 **3. Credibility.**

5 Claimant next argues that the ALJ made an improper credibility determination. Claimant
6 argues that the ALJ erred in finding Claimant's testimony to be not credible when he (1)
7 concluded that medical providers found few functional limitations where the opposite was true; (2)
8 held Claimant's drug-seeking behavior against her, while it actually provided evidence of her pain;
9 and (3) suggested that the record contained evidence of malingering without pointing to specific
10 instances of malingering.

11 Unless there is "affirmative evidence" of malingering, the ALJ may only reject a
12 claimant's pain testimony for clear and convincing reasons. *Burch v. Barnhart*, 400 F.3d 676, 680
13 (9th Cir. 2005). In assessing the claimant's credibility, the ALJ may weigh considerations
14 including inconsistencies in the claimant's testimony, the claimant's reputation for truthfulness,
15 and a lack of objective medical findings supporting the claimed limitations (though this last
16 consideration cannot provide the sole basis for discounting pain testimony). *Id.*, at 680-81. The
17 presence of affirmative evidence of malingering "vitiates the clear and convincing standard of
18 review." *Schow v. Astrue*, 272 F. App'x 647, 651 (9th Cir. 2008).

19 Here, the ALJ did not need to provide clear and convincing reasons for finding the
20 Claimant to be not credible because the record contained affirmative evidence of malingering. As
21 the ALJ referenced, Dr. Goldman determined that Claimant was malingering, that she was "only
22 superficially cooperative" during her examination, and that she "did not make an adequate effort
23 on the tasks presented to her." Dr. Goldman observed that Claimant "appeared to volitionally
24 present herself with a deficient fund of information," and that her "functional limitations were
25 unable to be accurately assessed due to malingering." AR 702.

26 Even absent this affirmative evidence of malingering, however, the ALJ provided clear and
27 convincing reasons supported by substantial evidence for discrediting Claimant's testimony. The
28 ALJ began by recounting Claimant's testimony "that her pain interfered with her ability to stand,

1 sit or walk for more than ten to twenty minutes at a time.” He then explained that Claimant’s
2 testimony was inconsistent with the reports of medical examiners who found insignificant
3 limitations. For example, he cited Dr. Feinberg’s examination and Dr. Fujimoto’s treatment notes,
4 both of which were consistent with Claimant being able to perform sedentary work.

5 Additionally, the ALJ explained that Claimant had a history of inconsistent reports as to
6 her substance abuse and of drug-seeking behavior. In fact, Dr. Fujimoto terminated his
7 relationship with Claimant after discovering that (1) she had tested positive for cocaine despite
8 having denied using the drug recently, and (2) she had obtained pain medication from five
9 physicians other than him. Claimant argues that her drug-seeking behavior supports, rather than
10 casts doubt upon, her testimony concerning the severity of her symptoms. While the evidence is
11 subject to Claimant’s interpretation, it is also subject to the ALJ’s interpretation that Claimant had
12 not been forthright with Dr. Fujimoto. As the evidence bears multiple rational interpretations, the
13 court does not find error in the ALJ’s interpretation.

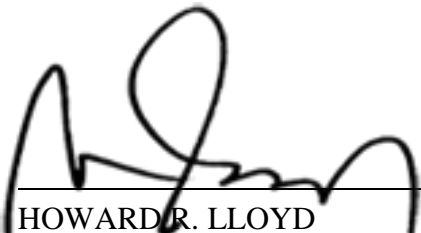
14 In finding Claimant’s testimony to be not credible, the ALJ cited affirmative evidence of
15 malingering, inconsistencies between her testimony and medical reports/opinions, and past
16 conduct suggesting decreased credibility. The court is not persuaded that the ALJ erred in making
17 the credibility determination.

18 **CONCLUSIONS**

19 The court is not persuaded that the ALJ has committed reversible error. As such, the court
20 denies Claimant’s motion for summary judgment, grants the Commissioner’s cross-motion for
21 summary judgment, and affirms the agency’s decision.

22 **IT IS SO ORDERED.**

23 Dated: 7/18/2017

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28 HOWARD R. LLOYD
United States Magistrate Judge