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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 DIANA ALITRE GONYA,

11 Plaintiff,

12 v.

13 CAROLYN W. COLVIN, Acting
14 Commissioner of Social Security,

15 Defendant.

CASE NO. 16cv1160 DMS (PCL)

**ORDER (1) DENYING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND (2)
GRANTING DEFENDANT'S
CROSS-MOTION FOR SUMMARY
JUDGMENT**

16 On October 31, 2012, Plaintiff Diana Alitre Gonya ("Plaintiff") filed an
17 application for disability income benefits. Plaintiff's claim was denied initially, after
18 which she requested a hearing before an Administrative Law Judge ("ALJ"). ALJ
19 Leland H. Spencer held a hearing on November 4, 2014, during which he heard
20 testimony from Plaintiff, medical expert Arthur Lorber, M.D. and vocational expert
21 ("VE") Connie Guillory. On January 5, 2015, ALJ Spencer issued a written decision
22 finding Plaintiff not disabled. (Administrative Record ("AR") at 7-16.) Plaintiff filed
23 a request for review of that decision, which the Appeals Council denied on March 18,
24 2016. Plaintiff filed the present case on May 13, 2016.

25 Plaintiff now moves for reversal and remand of Defendant's decision to deny her
26 benefits. Defendant Carolyn W. Colvin, in her capacity as Commissioner of the Social
27 Security Administration, opposes Plaintiff's motion and cross-moves for summary

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1 judgment. For the reasons discussed below, the Court denies Plaintiff's motion for
2 summary judgment, and grants Defendant's cross-motion for summary judgment.

3 **I.**

4 **BACKGROUND**

5 Plaintiff is a 42-year old female with past relevant work experience as a security
6 guard and prep cook. (AR at 183.) In June 2011, she injured her right elbow. (*Id.* at
7 219.) After a course of conservative treatment, including cortisone injections, Plaintiff
8 underwent surgery on her elbow, specifically a topaz microtenotomy on October 5,
9 2012. (*Id.* at 248.) Following surgery, Plaintiff received physical therapy, and on
10 December 20, 2012, she reported being pain free and "independent" in activities of
11 daily living. (*Id.* at 258.) Plaintiff thereafter began to complain of renewed pain in her
12 right elbow, and received another cortisone injection, among other treatment. (*Id.* at
13 294-95.)

14 In his decision denying Plaintiff's claim, the ALJ found Plaintiff had:

15 the residual functional capacity to perform light work as defined in 20
16 CFR 416.967(b) except the claimant may lift 20 pounds occasionally, and
17 10 pounds frequently; may sit for 6 hours out of an 8 hour workday; may
18 stand and/or walk for 6 hours out of an 8 hour workday; and the claimant's
right wrist and hand are limited to no more than occasional gross and fine
manipulative activities.

19 (*Id.* at 10.) The ALJ also found Plaintiff's "statements concerning the intensity,
20 persistence and limiting effects of" her symptoms were not entirely credible for several
21 reasons. (*Id.* at 11.) He specifically stated Plaintiff's statements were:

22 inconsistent with her level of activity. She is able to cook; clean her
23 house; tend her garden and remove weeds with a weed whacker; hold her
24 German Shepherd's leash during bi-daily walks. Furthermore, her
25 allegations are inconsistent with the medical record ..., which overall
shows that the claimant's use of her right elbow is not severely limited,
and that her nerves, bones, muscles, and tendons are generally intact.

26 (*Id.*) After reviewing the medical records, the ALJ concluded, consistent with the
27 testimony of the VE, that

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1 Plaintiff was capable of performing her past relevant work as a security guard. (*Id.* at
2 15.)

3 II. 4 DISCUSSION

5 Plaintiff raises two arguments in her motion for summary judgment. First, she
6 asserts the VE's testimony contradicted the Dictionary of Occupational Titles ("DOT"),
7 which required the ALJ to inquire about that conflict. Plaintiff argues the ALJ's failure
8 to so inquire was error. Second, Plaintiff asserts the ALJ failed to articulate legally
9 sufficient reasons for rejecting Plaintiff's statements about her limitations. Defendant
10 disputes there was anything improper about the ALJ's analysis, and urges the Court to
11 affirm the Commissioner's decision denying Plaintiff's request for benefits.

12 A. Legal Standard

13 Under the Social Security Act, "disability" is defined as the:

14 inability to engage in any substantial gainful activity by reason of any
15 medically determinable physical or mental impairment which can be
16 expected to result in death or which has lasted or can be expected to
last for a continuous period of not less than twelve months.

17 42 U.S.C. § 423(d)(1)(A). The impairment must be so severe that the claimant "is not
18 only unable to do his previous work but cannot . . . engage in any other kind of
19 substantial gainful work." 42 U.S.C. § 423(d)(2)(A). In addition, the impairment must
20 result "from anatomical, physiological, or psychological abnormalities which are
21 demonstrable by medically acceptable clinical and laboratory techniques." 42 U.S.C.
22 § 423(d)(3).

23 A court cannot set aside a denial of benefits unless the Commissioner's findings
24 are based upon legal error or are not supported by substantial evidence in the record as
25 a whole. 42 U.S.C. § 405(g); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989);
26 *Martinez v. Heckler*, 807 F.2d 771, 772 (9th Cir. 1986); *Taylor v. Heckler*, 765 F.2d
27 872, 875 (9th Cir. 1985). Substantial evidence is such relevant evidence as a reasonable
28 mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402
U.S. 389, 401 (1971); *Orteza v. Shalala*, 50 F.3d 748, 749 (9th Cir. 1995). It is more

1 than a scintilla but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112,
2 1119 n. 10 (9th Cir. 1975).

3 To determine whether substantial evidence exists to support the ALJ's decision,
4 a court reviews the record as a whole, not just the evidence supporting the decision of
5 the ALJ. *Walker v. Matthews*, 546 F.2d 814, 818 (9th Cir. 1976). A court may not
6 affirm the Commissioner's decision simply by isolating a specific quantum of
7 supporting evidence. *Hammock v. Bowen*, 879 F.2d 498, 501 (9th Cir. 1989). In short,
8 a court must weigh the evidence that supports the Commissioner's conclusions and that
9 which does not. *Martinez*, 807 F.2d at 772.

10 If there is substantial evidence to support the decision of the ALJ, the decision
11 must be upheld even when there is evidence on the other side, *Hall v. Secretary*, 602
12 F.2d 1372, 1374 (9th Cir. 1979), and even when the evidence is susceptible to more
13 than one rational interpretation. *Gallant v. Heckler*, 753 F.2d 1450, 1453 (9th Cir.
14 1984). If supported by substantial evidence, the findings of the Commissioner as to any
15 fact will be conclusive. 42 U.S.C. § 405(g); *Vidal v. Harris*, 637 F.2d 710, 712 (9th
16 Cir. 1981).

17 **B. VE Testimony and the DOT**

18 During the hearing on Plaintiff's application, the ALJ asked the VE about
19 Plaintiff's past relevant work. (AR at 55.) The VE described Plaintiff's past relevant
20 work as a "[s]ecurity guard, 372.667-038." (*Id.*) The DOT defines this occupation,
21 Merchant Patroller, as follows:

22 Patrols assigned territory to protect persons or property; Tours building
23 and property of clients, examining doors, windows, and gates to assure
24 they are secured. Inspects premises for such irregularities as signs of
25 intrusion and interruption of utility service. Inspects burglar alarm and
26 fire extinguisher sprinkler systems to ascertain they are set to operate.
27 Stands guard during counting of daily cash receipts. Answers alarms and
28 investigates disturbances. Apprehends unauthorized persons. Writes
reports of irregularities. May call headquarters at regular intervals, using
telephone or portable radio transmitter. May be armed with pistol and be
uniformed. May check workers' packages and vehicles entering and
leaving premises.

Dictionary, 372.6670-038, 1991 WL 673101. The VE opined a hypothetical person
with Plaintiff's RFC could perform this occupation. (AR at 56.) The ALJ adopted the

1 VE's conclusion in his written decision, stating Plaintiff could perform the work of a
2 Merchant Patroller, "as it was actually performed." (*Id.* at 15.)

3 Plaintiff argues the ALJ erred when he failed to inquire of the VE whether
4 Plaintiff would be able to perform the occupation of "Merchant Patroller," which
5 requires frequent handling, *Dictionary*, 372.6670-038, 1991 WL 673101, given her
6 limitation to "no more than occasional gross handling" with her right wrist and hand.
7 Notably, Plaintiff fails to cite any authority to support her argument that this was error.
8 Case law cited by Defendant, however, suggests it was not. *See Pierre v. Colvin*, No.
9 CV 15-02944-DTB, 2016 WL 492430, at *2 (C.D. Cal. Feb. 5, 2016) (finding no
10 conflict between DOT and VE testimony where DOT did "not contain a requirement
11 of bilateral reaching, handling, and fingering" for the position); *Palomares v. Astrue*,
12 887 F.Supp.2d 906, 920 (N.D. Cal. 2012) (finding no conflict between VE testimony
13 and DOT where DOT did "not explicitly require constant reaching with *both* arms.");
14 *Madrid v. Astrue*, No. EDCV 10-1288 AJW, 2011 WL 2444909, at *4-5 (C.D. Cal.
15 June 17, 2011) (finding no conflict between DOT and VE testimony where DOT did not
16 contain any requirement of bilateral fingering ability or dexterity); *Feibusch v. Astrue*,
17 No. 07-00244 BMK, 2008 WL 583554, at *5 (D. Hawai'i Mar. 4, 2008) (finding no
18 conflict between VE's testimony and DOT where DOT did not "explicitly state that the
19 use of both arms is required). As in the cases cited by Defendant, the DOT definition
20 of Merchant Patroller does not require bilateral handling, *Dictionary*, 372.6670-038,
21 1991 WL 673101, and thus there was no conflict between the VE's testimony and the
22 DOT for the ALJ to resolve. There was no error.

23 **C. Plaintiff's Testimony**

24 Next, Plaintiff argues the ALJ failed to give legally sufficient reasons for
25 rejecting Plaintiff's testimony about her limitations. Plaintiff specifically takes issue
26 with the ALJ's rejection of Plaintiff's testimony that she was limited to carrying ten
27 pounds and what Plaintiff describes as the "dexterity testimony." Defendant claims
28 there was no error.

1 In his written decision, the ALJ found Plaintiff's "statements concerning the
2 intensity, persistence and limiting effects of" her symptoms were "not entirely credible"
3 because they were inconsistent with Plaintiff's level of activity and inconsistent with
4 the medical record. (AR at 11.) The ALJ specifically cited Plaintiff's ability "to cook;
5 clean her house; tend her garden and remove weeds with a weed whacker; hold her
6 German Shepherd's leash during bi-daily walks." (*Id.*) The ALJ also described the
7 overall medical record as showing "that the claimant's use of her right elbow is not
8 severely limited, and that her nerves, bones, muscles, and tendons are generally intact."
9 (*Id.*)

10 Plaintiff does not dispute that the evidence supports the ALJ's reasons for
11 rejecting Plaintiff's credibility. Instead, she offers nuanced arguments about those
12 reasons, *e.g.*, that the ALJ failed to specify "what Gonya cooks[]" and failed to note
13 which hand she used to operate the weed whacker and to carry her dog's leash. (Mem.
14 of P. & A. in Supp. of Pl.'s Mot. at 9.) These arguments do not show the ALJ's
15 assessment of Plaintiff's credibility was in error. On the contrary, the ALJ provided
16 "clear and convincing reasons, supported by evidence in the record," *Brown-Hunter v.*
17 *Colvin*, 806 F.3d 487, 489 (9th Cir. 2015), to support his credibility determination.

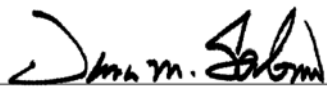
18 III.

19 CONCLUSION

20 For the reasons discussed above, Plaintiff's motion for summary judgment is
21 **DENIED**, and Defendant's cross-motion for summary judgment is **GRANTED**. The
22 Clerk shall enter judgment accordingly, and terminate this case.

23 **IT IS SO ORDERED.**

24 DATED: May 23, 2017

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27 HON. DANA M. SABRAW
28 United States District Judge