

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

PAMELA J. BAHLES

Case No. 3:16-cv-00766-MA

Plaintiff,

OPINION AND ORDER

v.

COMMISSIONER SOCIAL SECURITY
ADMINISTRATION,

Defendant.

ROBYN M. REBERS
P.O. Box 3530
Wilsonville, OR 97070

Attorney for Plaintiff

BILLY J. WILLIAMS
United States Attorney
District of Oregon
JANICE E. HEBERT
Assistant United States Attorney
1000 S.W. Third Ave., Suite 600
Portland, OR 97204-2902

LISA GOLDOFTAS
Special Assistant United States Attorney
Office of the General Counsel
Social Security Administration
701 Fifth Ave., Suite 2900
Seattle, WA 98104

Attorneys for Defendant

1 - OPINION AND ORDER

MARSH, Judge

Plaintiff Pamela J. Bahles seeks judicial review of the final decision of the Commissioner of Social Security denying her application for a period of disability and disability insurance benefits (“DIB”) under Title II of the Social Security Act, 42 U.S.C. §§ 401-403. This Court has jurisdiction pursuant to 42 U.S.C. § 405(g). For the reasons that follow, the decision of the Commissioner is affirmed.

PROCEDURAL AND FACTUAL BACKGROUND

Plaintiff protectively filed her application for a period of disability and DIB benefits on September 27, 2012, alleging disability beginning July 5, 2001, due to back pain, neck pain, and hip and leg problems. Tr. Soc. Sec. Admin. R. (“Tr.”) at 12, 67, 69, ECF No. 11. Plaintiff’s claims were denied initially and upon reconsideration. Plaintiff filed a request for a hearing before an administrative law judge (“ALJ”). The ALJ held a hearing on November 14, 2014, at which Plaintiff appeared with her attorney and testified. A vocational expert, Lynn A. Jones, also appeared at the hearing and testified. On December 19, 2014, the ALJ issued an unfavorable decision. The Appeals Council denied Plaintiff’s request for review, and therefore, the ALJ’s decision became the final decision of the Commissioner for purposes of review.

Plaintiff was born in 1953, and was 47 years old on the alleged onset of disability date and 53 on her date last insured. Plaintiff completed high school, completed two years of college, and has an associate’s degree in hospitality management. Tr. 53, 157. Plaintiff has past relevant work as an office manager, motel manager, and restaurant hostess/manager. Tr. 20.

THE ALJ’S DISABILITY ANALYSIS

The Commissioner has established a five-step sequential process for determining whether

a person is disabled. *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987); 20 C.F.R. §§ 404.1520, 416.920. Each step is potentially dispositive. The claimant bears the burden of proof at steps one through four. *See Valentine v. Commissioner Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir. 2009); *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At step five, the burden shifts to the Commissioner to show that the claimant can do other work which exists in the national economy. *Hill v. Astrue*, 698 F.3d 1153, 1161 (9th Cir. 2012).

The ALJ found that Plaintiff meets the insured status requirements through December 31, 2006. At step one, the ALJ found that Plaintiff has not engaged in substantial gainful activity since her alleged onset of disability through her date last insured. At step two, the ALJ found that Plaintiff had the following severe impairments: degenerative disc disease, mild foraminal stenosis, and carpal tunnel syndrome. At step three, the ALJ found that Plaintiff's impairments, or combination of impairments, did not meet or medically equal a listed impairment.

The ALJ assessed Plaintiff with a residual functional capacity ("RFC") to perform light work with additional limitations: Plaintiff can lift and carry up to 20 pounds occasionally and 10 pounds frequently; she can push and pull up to 20 pounds occasionally and 10 pounds frequently; she can sit six out of eight hours and stand and walk up to six hours total out of eight hours; she can occasionally reach overhead bilaterally; she can occasionally climb, balance, stoop, kneel, crouch and crawl; she can never work at unprotected heights or around heavy machinery; she can never operate a motor vehicle as part of her day-to-day job; she must avoid concentrated exposure to extreme cold and vibrations; and she can only occasionally perform bilateral fingering. Tr. 16.

At step four, the ALJ found that Plaintiff is unable to perform her past relevant work. At step five, the ALJ found that considering Plaintiff's age, education, work experience, and residual

functional capacity, jobs exist in significant numbers in the national economy that Plaintiff can perform, including such representative occupations as: greeter, gate guard, and usher. Accordingly, the ALJ concluded that Plaintiff has not been under a disability under the Social Security Act from July 5, 2001 through December 31, 2006.

ISSUES ON REVIEW

On appeal to this court, Plaintiff contends the following errors were committed: (1) the ALJ improperly evaluated her testimony; (2) the ALJ improperly evaluated the opinion of Robert Hander, M.D.; and (3) the RFC fails to incorporate her lifting, carrying, and fingering functional limitations. The Commissioner argues that the ALJ's decision is supported by substantial evidence and is free of legal error. Alternatively, the Commissioner contends that even if the ALJ erred, Plaintiff has not demonstrated harmful error.

STANDARD OF REVIEW

The district court must affirm the Commissioner's decision if the Commissioner applied proper legal standards and the findings are supported by substantial evidence in the record. 42 U.S.C. § 405(g); *Berry v. Astrue*, 622 F.3d 1228, 1231 (9th Cir. 2010). "Substantial evidence is more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Hill*, 698 F.3d at 1159 (internal quotations omitted); *Valentine*, 574 F.3d at 690. The court must weigh all the evidence, whether it supports or detracts from the Commissioner's decision. *Garrison v. Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014); *Martinez v. Heckler*, 807 F.2d 771, 772 (9th Cir. 1986). The Commissioner's decision must be upheld, even if the evidence is susceptible to more than one rational interpretation. *Batson v. Commissioner Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). If the evidence supports the

Commissioner's conclusion, the Commissioner must be affirmed; "the court may not substitute its judgment for that of the Commissioner." *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001); *Garrison*, 759 F.3d at 1010.

DISCUSSION

I. The ALJ Did Not Err in Discounting Plaintiff's Credibility

To determine whether a claimant's testimony regarding subjective pain or symptoms is credible, an ALJ must perform two stages of analysis. 20 C.F.R. § 404.1529. The first stage is a threshold test in which the claimant must produce objective medical evidence of an underlying impairment that could reasonably be expected to produce the symptoms alleged. *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012); *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008). At the second stage of the credibility analysis, absent affirmative evidence of malingering, the ALJ must provide clear and convincing reasons for discrediting the claimant's testimony regarding the severity of the symptoms. *Carmickle v. Commissioner Soc. Sec. Admin.*, 533 F.3d 1155, 1166 (9th Cir. 2008); *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007).

The ALJ must make findings that are sufficiently specific to permit the reviewing court to conclude that the ALJ did not arbitrarily discredit the claimant's testimony. *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014); *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015). Factors the ALJ may consider when making such credibility determinations include the objective medical evidence, the claimant's treatment history, the claimant's daily activities, and inconsistencies in testimony. *Ghanim*, 763 F.3d at 1163; *Tommasetti*, 533 F.3d at 1039.

The parties disagree on the proper standard for evaluating credibility. Plaintiff contends that this court should apply Social Security Ruling ("SSR") 16-3p to the ALJ's analysis of Plaintiff's

credibility. SSR 16-3p became effective March 28, 2016. The ALJ's decision in this case was issued December 19, 2014. According to Plaintiff, SSR 16-3p should be applied retroactively to the ALJ's analysis of her credibility. Plaintiff argues that SSR 16-3p eliminated the use of the term "credibility" and contends that the ALJ erred by making a generalized character evaluation. Pl.'s Br. at 13, ECF No. 12. The Commissioner contends that SSR 16-3p is not applicable because it was not in effect at the time of the ALJ's December 19, 2014 decision, and applies only to decisions issued after March 28, 2016. Def's Br. at 6-7, ECF No. 13. The Commissioner is correct.

I have previously determined that SSR 16-3p does not apply retroactively because 42 U.S.C. § 405(g) does not contain any express authorization from Congress allowing the Commissioner to engage in retroactive rulemaking. *Smith v. Colvin*, No. 6:15-cv-01625-MA, 2017 WL 388814, at *4 n.2 (D. Or. Jan. 27, 2017). *See, e.g., Wright v. Colvin*, No. 15-cv-02495-BLF, 2017 WL 697542, *9 (N.D. Cal. Feb. 22, 2017) (holding SSR 16-3p does not apply retroactively); *Thayer v. Colvin*, No. 2:16-cv-00545-DWC, 2017 WL 132450, at *7 (W.D. Wash. Jan. 13, 2017) (same). I adhere to that rationale here.

At the November 21, 2014 hearing, Plaintiff testified that she can no longer work because she has lower back problems that prevent her from doing repetitive motions, and she is unable to turn her neck from side to side. Tr. 30. Plaintiff testified that her carpal tunnel causes cramping in the palms of her hands, her wrists hurt, and she has shooting pain up her arm, and tingling and numbness in her fingertips. Tr. 34. Plaintiff stated that because of her carpal tunnel, she can no longer use the computer for longer than 10 minutes. Tr. 35. Plaintiff described that her carpal tunnel symptoms have remained the same since 2002. Tr. 35-36.

Plaintiff testified that she can walk for a half mile, and that her back pain on a good day is

a three or four on a 10 point scale, and on a bad day is an eight or nine. Tr. 36-37. Plaintiff stated that she has approximately 10 to 12 bad days per month. Tr. 37. Plaintiff testified that she takes oxycodone and flexeril for her pain on the bad days, and that medication brings her pain down to a five, but medications interfere with her concentration. Tr. 43-44, 57. Plaintiff stated that she can stand in one position for 15 to 20 minutes and can sit for 30 minutes with her arms in front of her, but typing would exacerbate muscle spasms in her shoulders and arms. Tr. 47, 54-55. Plaintiff described that she wears wrist braces and six months earlier, she started using a cane for balance, and that the cane and braces were not prescribed by a doctor. Tr. 33, 48.

Plaintiff stated that she last saw her doctor about her back pain in January or February of 2014. Tr. 41. Plaintiff testified that from 2008 to 2014 she did not have any insurance and was without pain medication for her back. Tr. 42. Plaintiff described that she recently began physical therapy because she again has health insurance. Tr. 39.

Plaintiff testified that in a typical day, she usually watches television and will occasionally stretch her back. Tr. 44-45. Plaintiff described that reading a book is difficult because it bothers her neck. Plaintiff stated that she can vacuum, but her husband does most of the housekeeping chores. Plaintiff described that she can help with making meals, but has difficulty chopping. Tr. 46. Plaintiff stated that she will go grocery shopping with her husband on occasion. Tr. 49.

Plaintiff testified that in 2001 she was employed as an office manager, and that she performed data entry, filed papers, answered phones, greeted customers, and was on her feet 50 percent of the time. Tr. 52. Plaintiff described that the most weight she had to lift was 15 pounds. Tr. 52.

In a November 2012 Function Report, Plaintiff stated that she is unable to sit or stand for long periods of time, and cannot lift more than five pounds. Tr. 183. Plaintiff stated that any type

of repetitive movement causes pain her back, neck and other areas for days. Tr. 183. Plaintiff stated that her grown daughter comes by the house to assist every other week. Tr. 184. Plaintiff described that she is no longer able to engage any outdoor activities due to pain, and that the pain causes her to toss and turn all night. Tr. 184. Plaintiff reported that she has no difficulty with self-care. Tr. 185. Plaintiff described that she leaves the house once per day, is able to grocery shop in stores or online, and can ride in a car. Tr. 186. Plaintiff described that she visits with family weekly, but does not engage in other social activities or hobbies due to pain. Tr. 187-88.

In the decision, the ALJ offered several specific, clear, and convincing reasons for discounting Plaintiff's testimony. *Brown-Hunter*, 806 F.3d at 488-89. First, the ALJ detailed that Plaintiff has had large gaps in treatment. An ALJ may consider an unexplained or inadequately explained failure to seek treatment when assessing a claimant's credibility. *Molina*, 674 F.3d at 1113; *Tommasetti*, 533 F.3d at 1039. As the ALJ discussed, Plaintiff alleges disability beginning in April 2001 due to pain in her neck, back and arms, however, Plaintiff did not seek treatment for those conditions for over one year, despite seeking treatment for other conditions. Tr. 17. It is permissible to rely on failure to report symptoms when assessing credibility. *Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006). Indeed, the ALJ cited a July 27, 2001 treatment note revealing that Plaintiff complained of two issues only – a skin tag she wanted removed, and concerns about possible glaucoma and a request for medical marijuana. Tr. 330. As the ALJ accurately indicated, Plaintiff did not mention back, neck or arm pain at that visit – notably, the only treatment note from 2001 in the record before me. Tr. 330. The ALJ's findings are supported by substantial evidence. Accordingly, the ALJ could reasonably infer that Plaintiff's back, neck and arm pain was not as severe as alleged in 2001 and appropriately discounted her credibility on this basis.

Second, the ALJ discounted Plaintiff's subjective allegations of disabling pain because she responded favorably to treatment. *Tommasetti*, 533 F.3d at 1039 (finding a favorable response to conservative treatment is a valid credibility consideration); *Parra v. Astrue*, 481 F.3d 742, 750-51 (9th Cir. 2007) (same). As the ALJ accurately noted, the record reflects that in 2002, Plaintiff received various forms of treatment for her neck and back pain. The ALJ cited treatment notes from Plaintiff's treating physician, Ellen Madnick, M.D., who recommended physical therapy for her complaints of mid-back pain in June 2002. Tr. 329-30. Treatment notes from June through September 2002 reveal that despite physical therapy, Plaintiff complained of persistent neck pain, arm pain and tingling, making it difficult for her to work and sleep. Tr. 323-29. Dr. Madnick sent Plaintiff for nerve conduction studies completed on October 7, 2002, which demonstrated moderate to severe nerve entrapment at both wrists, worse on the right, and diagnosed carpal tunnel syndrome. Tr. 321-23, 397. Plaintiff was a candidate for carpal tunnel release surgery, but she elected to pursue her neck pain with another physician. Tr. 399-400. Additionally, a CT of Plaintiff's spine demonstrated facet degeneration resulting in mild right C5-6 foraminal stenosis. Tr. 241.

As the ALJ discussed, Plaintiff tried various forms of treatment, including chiropractic adjustments, massage therapy, acupuncture, and medications, and she underwent successful denervation treatments in early 2003. Tr. 244. To be sure, the ALJ cited treatment notes from David M. Sibell, M.D. Plaintiff reported to Dr. Sibell that the tingling in her right arm had begun to "significantly subside" and that she had received about "40% relief from her medications," including vicodin, cyclobenzaprine, and paxil, but that she was having persistent pain at the cervical midline. Tr. 244. Dr. Sibell performed a series of diagnostic facet medial branch blocks at C4, C5, and C6 beginning in January 2003, followed by cervical denervation at C4-5 in April 2003. Tr. 277-78. As

the ALJ carefully detailed, by May 2003, Plaintiff reported “significant improvement” in pain control, a “perceived increase in range of motion” and had “greatly increased her activity level.” Tr. 18, 391. Plaintiff reported her pain was a one out of 10, and Dr. Sibell recommended she continue with physical therapy and noted that Plaintiff had an “excellent response” to the denervation. Tr. 391. And, as the ALJ correctly summarized, in June 2003, Plaintiff continued to report better than 75 percent relief from her cervical discomfort, and that she was only taking ibuprofen for pain. Tr. 392. At that visit with Dr. Sibell, Plaintiff complained of low back pain, and indicated her desire to undergo lumbar medical branch blocks. Tr. 393. Dr. Sibell performed a series of lumbar branch blocks at L4 and L5 in July 2003, followed by lumbar denervation treatment on August 13, 2003. Tr. 285-88. Contrary to Plaintiff’s suggestion, she reported positive results with 75 to 100 percent reduction in pain with these procedures. Tr. 286, 289. As the ALJ discussed, Plaintiff reported her low back pain had “improved greatly” and reported “[s]he is able to do all the work she could not perform before.” Tr. 18, 353. Treatment notes cited by the ALJ reflect that Plaintiff reported her pain was at a zero on a 10 point scale, and that she “never felt like this before.” Tr. 353.

As the ALJ accurately indicated, Plaintiff reported in October 2003 that her lumbar pain was gone, that she felt good and positive about her care, and that her neck pain had improved with the denervation and physical therapy. Tr. 350-51. The ALJ noted that records showed Plaintiff had excellent range of motion in her neck, with mild pain in her right shoulder, and that overall, her condition had improved significantly. Tr. 18, 351. The ALJ indicated that Plaintiff was discharged from pain management in October 2003 due to the stable nature of her medications and pain. Tr. 18, 352-53. In a November 2003 treatment note, Plaintiff again indicated her pain was significantly improved and stabilized. Tr. 18, 348-50.

In her briefing to this court, Plaintiff contends that her relief from the denervation treatments lasted only six months, and that she could not undergo additional denervation treatments because her physicians did not recommend them, and that the side effects of her treatments were so horrible, she would not elect to undergo additional treatments. Pl.'s Br. at 15; Tr. 32. Plaintiff's argument lacks record support. Plaintiff declined a referral back to the Pain Management clinic for her neck pain in 2004. Tr. 338. Additionally, Plaintiff's contention regarding experiencing adverse side effects from the denervation treatments is undermined by the record before me. At no point in her follow up appointments with various providers did Plaintiff discuss negative side effects of her treatment, which is contrary to her hearing testimony. Tr. 32. Rather, as the ALJ discussed, Plaintiff reported only positive results about her care and results. Tr. 18, 353. Moreover, based on her positive cervical results, Plaintiff underwent lumbar denervation. Thus, the ALJ could reasonably conclude that Plaintiff's treatments for her neck, back and arm pain from 2001 through 2003 were successful and discounted her allegations of disabling pain on this basis. The ALJ's findings are wholly supported by substantial evidence in the record and the reasonable inferences drawn therefrom and will not be disturbed. *See Molina*, 674 F.3d at 1111.

Third, the ALJ found Plaintiff's allegations of disabling back, neck, and arm pain not fully credible based on the conservative treatment she received after 2003. Evidence of conservative treatment "is sufficient to discount a claimant's testimony regarding the severity of an impairment." *Parra*, 481 F.3d at 751. As the ALJ discussed, despite complaints of increased neck pain in March 2004, Plaintiff was taking only occasional vicodin for pain, and occasional flexeril. Tr. 332, 336. And, as the ALJ noted, in May 2004, Plaintiff reported continued neck and back pain, but felt they were under fairly good control by using occasional vicodin, ibuprofen, flexeril, and medical

marijuana. Tr. 334-35. The ALJ accurately noted that Plaintiff reported less tender points in her shoulders as well as occasional spasms in her neck and back, but that Plaintiff was “coping fairly well.” Tr. 18, 335. The ALJ discussed that in October 2004, Plaintiff reported to Dr. Madnick that she was doing well, except for her neck pain with spasms. Plaintiff reported that she takes flexeril and that it helps somewhat. Tr. 338. Plaintiff stated she was “not interested in going back to the Pain Clinic again for that.” Tr. 338. Dr. Madnick prescribed flexeril for her neck spasms. Tr. 339.

As the ALJ indicated, Plaintiff was not treated again for her allegedly disabling conditions until May 5, 2005, when Plaintiff complained of severe pain between her scapulae that made her left arm weak. Tr. 18, 341. Plaintiff reported that the pain had subsided to her usual level of two to three on a 10 point scale. Tr. 341. As the ALJ correctly indicated, Plaintiff denied dropping things, numbness or tingling, and on examination, she had no tenderness or no pain in her scapulae and reported her symptoms were improving. Tr. 341-42. At a follow-up visit on May 12, 2005, Plaintiff was having a very low level muscle spasm between her scapulae. Tr. 339. Dr. Madnick recommended an over-the-counter therma-care patch. Tr. 340. The ALJ’s findings that Plaintiff received only conservative treatment following her 2003 denervations is wholly supported by substantial evidence, and the ALJ appropriately discounted Plaintiff’s credibility on this basis.

Fourth, the ALJ found Plaintiff less than fully credible because of the long gap in seeking treatment that puts the alleged severity of her impairments into question. Tr. 18. “The ALJ is permitted to consider lack of treatment in his credibility determination.” *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005). As the ALJ correctly indicated, Plaintiff did not seek treatment for over two years, from February 2006 to June 2008. To be sure, Plaintiff was treated by Dr. Madnick on February 24, 2006 for neck pain. At that visit, Plaintiff reported to Dr. Madnick that her neck

pain was about the same, was not completely relieved by flexeril, and that medical marijuana helped with her neck pain. Tr. 346-47. Dr. Madnick refilled her flexeril prescription and signed her medical marijuana form. Tr. 348. The ALJ noted that Plaintiff reported in June 2008 that she had not seen a doctor for two years, but had been “toughing out” her back pain, which she described as averaging a three on a 10 point scale, with occasional flares to a 10. Tr. 18, 214. The ALJ discussed that on examination, there were no physical demonstrations of pain or limitations, and Plaintiff had no difficulty ambulating, sitting or performing her activities of daily living. Tr. 18, 214.

The ALJ also discussed that although Plaintiff testified that she lost her insurance in 2008, she did not follow through on her carpal tunnel release surgery while she was insured. The ALJ could reasonably infer from this information that her carpal tunnel was not as limiting as alleged. On the record before me, the ALJ reasonably discounted Plaintiff’s credibility based on her failure to seek treatment. Tr. 19; *see Chaudhry v. Astrue*, 688 F.3d 661, 672 (9th Cir. 2012) (holding ALJ appropriately discounted claimant’s credibility for failing to seek treatment).

Fifth, the ALJ discounted Plaintiff’s credibility because it is inconsistent with her activities of daily living. Tr. 19. The ALJ detailed that Plaintiff was able to take care of all her personal needs, prepare meals, perform light household chores, drive, shop, visit with friends and family, and spend time on the computer. On the record before me, I conclude that the ALJ could find Plaintiff’s various daily activities inconsistent with her allegations of total disability. *Molina*, 674 F.3d at 1113. Even if the ALJ erred in discounting her credibility on this basis, the remaining reasons cited by the ALJ readily provide the necessary specific, clear and convincing reasons. Accordingly, the ALJ’s adverse credibility determination was sufficiently supported by the record, and free of harmful legal error. *Molina*, 674 F.3d at 1114-15 (holding that court will not reverse for errors that are

inconsequential to the ALJ's ultimate conclusion).

II. The ALJ Did Not Err in Evaluating the Medical Evidence

In general, the opinion of a treating physician is given more weight than the opinion of an examining physician, and the opinion of an examining physician is afforded more weight than the opinion of a nonexamining physician. *Ghanim*, 763 F.3d at 1160; *Garrison*, 759 F.3d at 1012; *Orn v. Astrue*, 495 F.3d 625, 632 (9th Cir. 2007). "If a treating physician's opinion is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the] case record, [it will be given] controlling weight." *Orn*, 495 F.3d at 631 (internal quotations omitted)(alterations in original); 20 C.F.R. § 416.927(c). To reject the uncontradicted opinion of a treating physician, the ALJ must provide "clear and convincing reasons that are supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).

If the treating physician's opinion is contradicted, the ALJ must consider how much weight it is entitled to considering the factors in 20 C.F.R. § 404.1527(c)(2-6). The factors include the length of the treatment relationship, the frequency of examination, the nature and supportability of the opinion, and its consistency with other evidence in the record as a whole. 20 C.F.R. § 404.1527(d)(2-6); *Ghanim*, 763 F.3d at 1161. If a treating or examining doctor's opinion is contradicted by another doctor's opinion, it may be rejected by specific and legitimate reasons. *Taylor v. Commissioner Soc. Sec. Admin.*, 659 F.3d 1228, 1232 (9th Cir. 2011). However, "[t]he ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory, and inadequately supported by clinical findings." *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002).

An ALJ satisfies the “substantial evidence” requirement by “setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings.” *Garrison*, 759 F.3d at 1012 (internal quotations omitted). “The ALJ must do more than state conclusions. He must set forth his own interpretations and explain why they, rather than the doctors,’ are correct.” *Id.*

Plaintiff contends that the ALJ’s analysis of Dr. Hander’s opinion is not supported by substantial evidence. Dr. Hander is an agency nonexamining physician who reviewed available records and prepared a Residual Functional Capacity Assessment dated January 9, 2013. In that assessment, Dr. Hander opined that Plaintiff could lift and carry 10 pounds occasionally, and 10 pounds frequently; could stand, sit and walk for six hours in an eight hour day; has occasional postural limitations; is limited to occasional overhead reaching bilaterally; and is limited to occasional fingering, and can perform unlimited handling and feeling. Tr. 70-71. Dr. Hander explained that Plaintiff has overhead reaching and feeling limitations based on her chronic neck pain and bilateral median nerve compression in her wrists. Tr. 70-71. Dr. Hander also opined that Plaintiff should avoid concentrated exposure to extreme cold and vibrations, and hazards. Tr. 71-72. Dr. Hander also opined with these limitations, Plaintiff is capable of performing her past relevant work as actually performed. Tr. 73.

In the decision, the ALJ discussed Dr. Hander’s opinion, and gave it some weight.¹ The ALJ found that his opinions are generally consistent with the record, but that his opinion that Plaintiff is

¹ I note that Plaintiff does not challenge the ALJ’s rejection of an August 2008 opinion provided by Katherine Fisher, D.O., who opined that Plaintiff was unable to work due to pain in her back and neck. Tr. 19, 213. Plaintiff also does not challenge the ALJ’s assessment of the July 16, 2013 opinion of nonexamining physician Linda L. Jensen. Pl.’s Br. at 6, ECF No. 12; Tr. 75-78.

limited to a sedentary exertional limitation prior to her date last insured was not supported. Tr. 20. The ALJ discounted this portion of Dr. Hander's opinion specifically because Plaintiff's upper extremity strength was generally maintained throughout the time period at issue, and because she had a normal gait. Tr. 20.

The ALJ disagreed with Dr. Hander's opinion that Plaintiff was limited to sedentary work. *See* 20 C.F.R. § 404.1567(a)-(b) (defining sedentary work as the ability to occasionally lift and carry 10 pounds and defining lift work as the ability to frequently lift 10 pounds and occasionally lift 20 pounds). The ALJ cited multiple treatment records conflicting with Dr. Hander's opinion that Plaintiff is limited to occasionally lifting and carrying 10 pounds where Plaintiff reported good strength in her upper extremities and had a normal gait. For example, the ALJ cited a July 2002 treatment note indicating that Plaintiff had full strength in her arms, and a September 2002 treatment note observing the same. Tr. 325, 327. The ALJ cited a November 2002 record from Dr. Burchiel, to whom Plaintiff was referred for her carpal tunnel, whose examination revealed 5/5 strength in her bilateral upper extremities, except her grip strength on the right which was 4+/5, and that she had a normal gait. Tr. 399. The ALJ cited records from January 2003 revealing that Plaintiff had motor sensation was 5/5 in her upper extremities, and that her overall mobility was good, she had a normal gait, and could perform heel and toe walking without difficulty. Tr. 365. The ALJ also cited records from March 2004 showing that Plaintiff had good strength in her upper extremities. Tr. 337.

Additionally, the ALJ's finding in this regard is bolstered by other substantial evidence in the record as a whole. For instance, as the ALJ discussed when discounting Plaintiff's credibility, Plaintiff reported to Dr. Sibell in June 2003 that her pain was significantly improved following her cervical denervation, and in August 2003 she was able to do all the work she was unable to do before

and rated her pain at a zero following her lumbar denervation. Tr. 353. And, as discussed at length above, from 2004 through her date last insured, Plaintiff maintained a conservative course of treatment, with infrequent doctors visits, followed by a two-year gap in treatment from February 2006 to June 2008. The ALJ also indicated that Plaintiff did not pursue further treatment for her carpal tunnel syndrome, from which the ALJ reasonably inferred that the condition was not as severe as alleged. Thus, the ALJ's findings are supported by substantial evidence in the record as a whole.

Plaintiff argues that the ALJ's citation to her upper extremity strength fails to amount to substantial evidence for discounting Dr. Hander's opinion. However, Plaintiff does not identify any credited evidence establishing that she is limited to sedentary exertion. As the ALJ aptly noted, the record does not contain any opinions from treating physicians indicating that Plaintiff is limited to lifting and carrying 10 pounds. Tr. 19. "Even when the evidence is susceptible to more than one rationale interpretation, we must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina*, 674 F.3d at 1111. Accordingly, I conclude the ALJ did not err in discounting Dr. Hander's opinion regarding Plaintiff's lifting and carrying restrictions.²

III. The ALJ Did Not Err in Assessing Plaintiff's RFC

The RFC is the most a claimant can do despite his limitations and must include all credited limitations supported by substantial evidence in the record. *See Bayliss*, 427 F.3d at 1217. Similarly, the hypothetical question posed to the VE need only include those functional limitations supported by substantial evidence. *Id.* Where the ALJ credits the opinion of a physician, the ALJ must translate the claimant's condition as described in the physician's opinion into functional

² Plaintiff suggests that her past relevant work was mischaracterized at the initial level of her DIB application. Pl. Br. at 6, ECF No. 12. Plaintiff does not identify an error by the ALJ in evaluating her past relevant work at hearing, therefore, I decline to address this issue.

limitations in the RFC. *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008).

Plaintiff contends that the ALJ erred by failing to include her 10 pound lifting and carrying limitation into the RFC, and that she is limited to occasional handling. Plaintiff argues that she has been diagnosed with moderate to severe nerve entrapment at both wrists, and diagnosed with carpal tunnel. Plaintiff contends that her testimony is consistent with these diagnoses, and in conjunction with Dr. Hander's opinion, supports limiting her to lifting and carrying 10 pounds frequently and occasional handling. According to Plaintiff, when the additional limitations are including in the RFC, she is unable to perform the jobs identified by the VE, and that remand is appropriate to determine whether Plaintiff possesses any transferrable skills. I disagree.

As discussed above, the ALJ appropriately discounted Dr. Hander's opinion that Plaintiff is limited to lifting and carrying 10 pounds frequently, and therefore was not required to include that limitation into the RFC. Moreover, the ALJ appropriately discounted Plaintiff's subjective symptoms, and specifically discounted the severity of her carpal tunnel based on her lack of treatment, and thus was not required to incorporate her subjective limitations.

Accordingly, the RFC includes all those limitations credited by the ALJ, is supported by substantial evidence in the record, and is a reasonable interpretation of the record. *Britton v. Colvin*, 787 F.3d 1011, 1013 (9th Cir. 2015). Therefore, the ALJ did not err in fashioning the RFC, and the subsequent hypothetical posed to the VE included all credited limitations. *Osenbrock v. Apfel*, 240 F.3d 1157, 1165 (9th Cir. 2001) (holding an ALJ may "limit a hypothetical to those impairments that are supported by substantial evidence in the record.")

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CONCLUSION

For the reasons set forth above, the Commissioner's final decision denying benefits to Plaintiff is AFFIRMED. This action is DISMISSED.

IT IS SO ORDERED.

DATED this 4 day of APRIL, 2017.



Malcolm F. Marsh
United States District Judge