

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

JOHANNA WAYNE IMEL,

Case No. 6:16-cv-00560-MA

Plaintiff,

OPINION AND ORDER

v.

COMMISSIONER SOCIAL SECURITY  
ADMINISTRATION,

Defendant.

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1 - OPINION AND ORDER

MARSH, Judge

Plaintiff Johanna Wayne Imel 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 Commissioner’s decision is affirmed.

**PROCEDURAL AND FACTUAL BACKGROUND**

Plaintiff protectively filed her application for a period of disability and DIB benefits on April 9, 2012, alleging disability beginning March 15, 2008, due to Crohn’s disease and colitis, cervical and lumbar spondylosis, right rotator cuff tear, and depression. Tr. Soc. Sec. Admin. R. (“Tr.”) at 158. ECF No. 10. 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 August 14, 2014, at which Plaintiff appeared with her attorney and testified. A vocational expert, Frank Lucas, also appeared at the hearing and testified. On August 29, 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 1959, and was 48 years old on the alleged onset of disability date and 54 on her date last insured. Plaintiff did not complete high school, but has received her GED. Tr. 40, 159. Plaintiff has past relevant work as a sales clerk, convenience store clerk, cashier, babysitter, and woodwork shop hand. Tr. 27, 40-43.

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### 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. 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, 2013. 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: spinal stenosis and degenerative disc disease of the cervical and lumbar spine; cervical radiculitis; sciatica; lumbago; right rotator cuff tear; fibromyalgia; and depression. 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:

lifting and/or carrying no more than 20 pounds occasionally and 10 pounds frequently; standing and/or walking about six hours of an eight-hour workday, and sitting about six hours of an eight-hour workday, and sitting about six hours of an eight-hour workday, with normal breaks. She must never climb ladders, ropes, and scaffolds. [Plaintiff], a right hand dominant individual, is limited to no overhead reaching with the right upper extremity. She is limited to no more than frequent handling and fingering with the right upper extremity. [Plaintiff] must avoid even moderate exposure to operational control of moving machinery, hazardous

machinery, and unprotected heights. She can understand and carry out simple instructions.

Tr. 23.

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: counter clerk, survey worker, marking clerk, or bakery helper. Accordingly, the ALJ concluded that Plaintiff has not been under a disability under the Social Security Act from March 15, 2008 through December 31, 2013.

#### **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 failed to develop the record; and (3) the ALJ erred in evaluating the lay testimony of her partner, Robert Compher. 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.<sup>1</sup> *Ghanim*, 763 F.3d at 1163; *Tommasetti*, 533 F.3d at 1039.

In a June 22, 2012 Adult Function Report, Plaintiff stated that she suffers chronic pain in her neck and back, and that she is unable to lift more than 10 pounds. Tr. 184. Plaintiff stated that her chronic pain wakes her in the night, and that she sleeps with a heating pad. Tr. 185. Plaintiff stated that she has difficulty washing her hair because she cannot lift her arms, and that she cannot shave her legs. Tr. 186. Plaintiff cooks four to five times each week, can do dishes, dust, and straighten up, but does not do yard work. Tr. 186-87. Plaintiff described that she enjoys working on the computer, sewing, and writing poems. Tr. 188. Plaintiff estimated she can lift three to five pounds, but cannot sit for extended periods or climb stairs. Tr. 189. Plaintiff indicated that her chronic pain interferes with lifting, squatting, bending, standing, reaching, walking, sitting, kneeling, completing tasks, and climbing stairs. Tr. 189. Plaintiff stated she has no trouble following instructions and gets along fine with authority figures. Tr. 189.

In an undated Pain & Fatigue Questionnaire, Plaintiff described chronic pain, and a feeling of pins and needles in her neck, lower back, right leg and arm. Tr. 169. Plaintiff stated that the pain lasts all day, and that she loses feeling in her right leg, causing falls. Tr. 169. Plaintiff stated lifting, bending, and climbing make the pain worse, and that lying down, heat, and pain medication make

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<sup>1</sup> The Court observes that on March 28, 2016, Social Security Ruling ("SSR") 16-3p became effective, and it eliminated the use of the term "credibility." The ALJ's decision in this case was issued August 24, 2014. 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.

the pain better. Tr. 169. Plaintiff also estimated that she can be active for an hour or two before needing to rest, and that she rest or naps three times a day. Tr. 169.

In the decision, the ALJ cited several specific reasons for discounting Plaintiff's credibility. First, the ALJ found that Plaintiff misrepresented recommendations from specialists to her treating providers. An ALJ may consider a claimant's prior inconsistent statements and other testimony by the claimant that appears less than candid when assessing credibility. *Ghanim*, 763 F.3d at 1163; see *Haight v. Comm'r Soc. Sec. Admin.*, Case No. 6:15-cv-02149-YY, 2017 WL 1371274, \*5 (D. Or. Apr. 14, 2017) (ALJ cited clear and convincing evidence where claimant misrepresented her functional abilities where she received unemployment benefits and also sought disability benefits); *Lemke v. Astrue*, No. CV-07-1363-HU, 2009 WL 395147, \*21-22 (D. Or. Feb. 3, 2009), *aff'd*, 380 F. App'x 599 (9th Cir. 2010) (upholding adverse credibility determination where claimant misrepresented physician's recommendation). The ALJ found that the two instances of "misrepresenting what a specialist recommended for treatment reflects negatively on [Plaintiff's] credibility." The ALJ detailed the two instances at length.

As the ALJ discussed, a March 9, 2011, treatment note from Plaintiff's primary care provider, J. Countiss, M.D., indicated that Plaintiff saw consulting neurologist David Walker, M.D., on September 28, 2010 for ongoing neck and shoulder pain. Tr. 429. Dr. Countiss's treatment note reflects that Dr. Walker stated that Plaintiff could have surgery on her neck, but she needed to stop smoking first, and that Plaintiff has been unable to quit smoking. Tr. 429. Dr. Walker's treatment note reflects that on examination, Plaintiff exhibited a diminished ranged of motion in her neck and that her pain was out of proportion to palpation over the musculature of her neck and trapezius. Tr. 308. Dr. Walker indicated that Plaintiff had chronic neck pain, with severe right C3-4 foraminal

stenosis and moderate bilateral foraminal stenosis at C5-6. Tr. 308. Additionally, Dr. Walker's treatment notes observe that Plaintiff had not yet tried physical therapy or nerve root injections. Tr. 306. Dr. Walker's treatment note does not contain a specific treatment recommendation, but Dr. Walker sent Plaintiff for additional cervical flexion and extension films for diagnostic purposes. Tr. 309. That imaging demonstrated moderate degenerative disc disease at C5-6 and C6-7, and dynamic views demonstrated "no evidence for segmental instability at any level." Tr. 314. Moreover, as the ALJ discussed, after Dr. Walker's September 2010 consultation and before Dr. Countiss's March 2011 treatment note, Plaintiff underwent a course of physical therapy that ended when the physical therapist felt Plaintiff had attained maximum therapeutic benefit and expressed concern about the degree of Plaintiff's complaint. Tr. 25, Tr. 421. These findings are wholly supported by substantial evidence in the record. Thus, based on the course of events and lack of cervical instability, the ALJ reasonably could conclude that Dr. Walker did not recommend surgery, but instead recommended physical therapy.

Plaintiff argues that the ALJ erroneously presumed that she misinformed Dr. Countiss that Dr. Walker recommended surgery because neither Dr. Countiss's nor Dr. Walker's treatment notes explicitly state that Dr. Walker made such a recommendation. Pl.'s Br. at 16. Although Plaintiff is correct that the treatment notes themselves do not specifically identify Plaintiff as the source of the information from Dr. Walker, based on the information available in the record, the ALJ reasonably could infer that Plaintiff misrepresented the specialist's recommendation and reasonably discounted Plaintiff's credibility on this basis. Even if the record could be viewed as Plaintiff suggests, the ALJ's interpretation is rational, and will not be disturbed. *Molina*, 674 F.3d at 1111.



Additionally, the ALJ detailed that in April 2012, Bruce Perry, M.D., wrote that he did not feel “operative intervention” would yield measurable results, and “I inform her that I will strongly recommend an evaluation in a pain clinic.” Tr. 26, 254. Inconsistently, Plaintiff informed her then-primary care provider Linda Picker-Johnson, N.P., in May 2012 that Dr. Perry recommended she see a neurosurgeon. Tr. 26, 258. The ALJ found that the Plaintiff’s report to Nurse Practitioner Picker-Johnson was inconsistent with Dr. Perry’s recommendation, and discredited her on this basis. The ALJ’s findings are wholly supported by substantial evidence.

Nevertheless, Plaintiff challenges the ALJ’s finding of misrepresentation. Plaintiff argues that Plaintiff’s report to Nurse Practitioner Picker-Johnson was not inconsistent because Dr. Perry sent her to a neurologist for an electrodiagnostic evaluation of her right neck, shoulder, and upper extremity complaints. Tr. 239. Plaintiff’s argument is without merit. The electrodiagnostic evaluation was performed by Peter A. Grant, M.D., on March 13, 2012, and revealed *no* neurophysiologic abnormalities, emphasizing that “all testing was fully normal with regards to any radicular process.” Tr. 241. Indeed, Dr. Grant indicated that Plaintiff’s right neck, shoulder, and upper extremity pain was being caused by chronic myofascial pain syndrome. Tr. 241. Moreover, Dr. Perry’s April 2012 treatment notes indicate that he reviewed Dr. Grant’s testing results prior to making his own recommendation to Plaintiff that she follow up with a pain clinic, and that surgical intervention was unwarranted. Tr. 241. Moreover, Nurse Picker-Johnson’s May 2012 notes reflect that Plaintiff had seen Dr. Perry, that Picker-Johnson did not yet have Dr. Perry’s notes, and that Plaintiff stated Dr. Perry recommended Neurosurgery. Tr. 258. Indeed, the record reflects that after Picker-Johnson obtained Dr. Perry’s notes, Plaintiff began treatment with a pain clinic in August 2013, not Neurosurgery as Plaintiff had reported. Tr. 377. In summary, the ALJ’s finding that

Plaintiff misrepresented specialists' recommendations is wholly supported by substantial evidence, and provides a specific, clear and convincing reason to discount Plaintiff's credibility.

Second, the ALJ found that Plaintiff's alleged limitations from her impairments are not fully supported by the objective medical record. While a claimant's statements regarding the severity of her symptoms may not be disregarded solely because they are not substantiated by objective medical evidence, the ALJ may consider a lack of medical evidence in determining credibility. *Bray v. Comm'r Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009). Here, the ALJ discussed that Plaintiff's upper right extremity weakness was not fully supported. The ALJ indicated that despite a reduced range of motion, her weakness was not due to neurologic compromise. Tr. 25, 240-41, 243, 436. Records cited by the ALJ revealed that Plaintiff had giveaway weakness and that she did not always have diminished strength on examination. Tr. 25, 250-51, 253, 349, 379. The ALJ noted found that electrodiagnostic studies confirmed the absence of radiculopathy, which the ALJ found consistent with Plaintiff's stable cervical abnormalities. Tr. 25, 232, 241, 310, 426. Moreover, the ALJ noted that in 2013, Plaintiff reported that she received good pain control with an epidural injection. Tr. 26, 365. The ALJ's findings are wholly supported by substantial evidence.

Concerning Plaintiff's lumbar spine impairment, the ALJ discussed that Plaintiff first reported lumbar pain after an accident in 2010, and that Plaintiff was then diagnosed with a lumbar strain. Tr. 26, 224-25. The ALJ indicated that Plaintiff did not specifically seek treatment for her alleged back pain until 2012, nearly two years later. Tr. 26, 299. An unexplained gap in treatment can be a clear and convincing reason for discounting a claimant's credibility. *Molina*, 674 F.3d at 1113 (ALJ may discount claimant's credibility for an unexplained or inadequately explained failure to seek treatment). As the ALJ discussed, in 2012 Plaintiff reported back pain over the previous five

to six months, radiating down right leg, causing falls. Tr. 299. The ALJ noted that during the examination, Plaintiff had an antalgic gait limping on the right, but inconsistently could heel and toe walk and had normal strength in her lower extremities bilaterally. Tr. 26, 302. The ALJ accurately noted that an MRI of her lumbar spine was essentially normal, as indicated by her treating provider Nurse Picker-Johnson. Tr. 26, 312, 347. And, as the ALJ correctly found, although Plaintiff reported sometimes needing a cane or crutches, there is no indication that this was medically necessary. Tr. 26. *See Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002) (ALJ properly discredited claimant where no objective medical evidence demonstrated need for cane or wheelchair). Furthermore, the ALJ detailed that on numerous occasions Plaintiff had a normal neurologic examination and normal gait. Tr. 375, 379, 473, 465, 468. The ALJ's findings are wholly supported by substantial evidence, and therefore, the ALJ could reasonably discount Plaintiff's credibility on this basis. Thus, the lack of objective medical evidence to support the severity of complaints lends additional clear and convincing support to the ALJ's adverse credibility determination.

In short, the ALJ thoroughly discussed the medical record and provided specific details about inconsistencies in Plaintiff's reports to her treating providers. The ALJ has provided specific, clear and convincing reasons to support the adverse credibility determination that are based on reasonable inferences drawn from the record as whole. *Molina*, 674 F.3d at 1111. The ALJ's findings are sufficiently specific to permit the court to conclude that Plaintiff's credibility was not arbitrarily discredited. *Brown-Hunter*, 806 F.3d at 493. The ALJ did not err.

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## **II. The ALJ Was Not Required to Develop the Record Further**

An ALJ has a duty to conduct a full and fair hearing. *McLeod v. Astrue*, 640 F.3d 881, 885 (9th Cir. 2011). As part of this duty, an ALJ must fully and fairly develop the record to ensure that the claimant's interests are considered, even when the claimant is represented by counsel. *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001). Fulfilling the duty to develop the record may compel the ALJ to consult a medical expert or to order a consultative examination. *Id.*; see 20 C.F.R. § 404.1519a. The ALJ's duty to develop the record is "triggered only when there is ambiguous evidence or when the record is inadequate to allow for proper evaluation of the evidence." *Mayer v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001).

Plaintiff contends the ALJ erred in failing to re-contact Plaintiff's treating physicians for an opinion, ordering a consultative examination, or having a medical expert testify at the hearing. According to Plaintiff, the ALJ erred by relying on nonexamining agency physician Martin Kehrl, M.D., in formulating Plaintiff's RFC. The court disagrees.

Plaintiff's argument does not accurately reflect the requirements of 20 C.F.R. § 404.1519a. This regulation requires that before ordering a consultative examination, the ALJ must consider a number of factors, including the existing medical evidence, interview forms, and a claimant's allegations. The ALJ has broad discretion in ordering a consultative examination. *Reed v. Massanari*, 270 F.3d 838, 842 (9th Cir. 2001). Moreover, the ALJ is required to seek additional information or clarification from a treating source where the evidence is inconsistent or insufficient. See 20 C.F.R. § 404.1520b(c)(1) (2012) (considering evidence, recontacting treating sources).

Here, Plaintiff fails to identify any ambiguity, conflict, or insufficiency in any medical record that required clarification from her treating providers, nor did the ALJ make such a finding. Thus,

the ALJ's duty to develop the record was not triggered. *See Thomas*, 278 F.3d at 958 (duty not triggered where the ALJ did not make a finding that the medical report was inadequate to make a disability determination).

Plaintiff's further contends that the ALJ erred in relying on Dr. Kehrli's opinion, arguing that Dr. Kehrli did not explain what medical records supported his finding that Plaintiff could sit, stand or walk for six hours in an eight hour workday, and that Dr. Kehrli failed to consider all of Plaintiff's medical impairments. Plaintiff asserts that the ALJ erred by relying on Dr. Kehrli's opinion instead of developing the record. Pl.'s Br. at 18-19, ECF No. 14. Plaintiff's argument misses the mark.

Agency physicians are experts in social security disability evaluations, and therefore the ALJ was required to consider Dr. Kehrli's opinion. 20 C.F.R. § 404.1527(e). Additionally, a nonexamining physician's opinion may serve as substantial evidence when it is not contradicted by other evidence. Plaintiff has not demonstrated that Dr. Kehrli's opinion was contradicted by other evidence. In this regard, Plaintiff appears to suggest that Dr. Kehrli's April 8, 2013 opinion is not supported by substantial evidence because it was rendered before her examination by Brett Quave, M.D., who diagnosed Plaintiff with fibromyalgia in October 2013. However, Plaintiff does not identify any functional limitations assessed by Dr. Quave due to her fibromyalgia that the ALJ failed to consider. To be sure, the ALJ found Plaintiff's fibromyalgia a severe impairment at step two, and thoroughly discussed Dr. Quave's records when assessing Plaintiff's RFC. Tr. 21, 26, 363. The ALJ is charged with resolving conflicts in the medical record, and must consider all of the limitations imposed by Plaintiff's impairments when fashioning the RFC. *Carmickle*, 533 F.3d at 1164-65. Tellingly, Plaintiff does not assign error to the ALJ's interpretation of the medical record, including Dr. Quave's opinion. Therefore, because Plaintiff has not identified conflicting opinions, the ALJ

could rely upon Dr. Kehrli's opinion. Moreover, Plaintiff fails to identify any an ambiguity or inadequacy in the record that required further clarification, and the ALJ was not required to solicit additional testimony from Plaintiff's treating providers. *Thomas*, 278 F.3d at 958. There was ample medical evidence in record to permit the ALJ to make a determination that Plaintiff was not disabled.

### III. The ALJ Did Not Err in Evaluating the Lay Testimony

Lay witness testimony as to a claimant's symptoms or how an impairment affects his ability to work is competent evidence, which the ALJ must take into account. *Molina*, 674 F.3d at 1114; *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996). The ALJ need not discuss every witness's testimony, and "if the ALJ gives germane reasons for rejecting testimony by one witness, the ALJ need only point to those reasons when rejecting similar testimony by a different witness." *Molina*, 674 F.3d at 1114. Inconsistency with other evidence in the record is a germane reason for rejecting the testimony of a lay witness. *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001). It is not reversible error to reject lay testimony when "the lay testimony described the same limitations as [claimant's] own testimony, and the ALJ's reasons for rejecting [claimant's] testimony apply with equal force to the lay testimony." *Molina*, 674 F.3d at 1122.

Plaintiff argues that the ALJ erred in rejecting the testimony of her partner, Robert Compher. In a June 23, 2012 Function Report - Adult - Third Party, Mr. Compher noted that he sees Plaintiff after work and on weekends. Tr. 192. Mr. Compher stated that Plaintiff is unable to lift, walk, or stand without pain, and that driving is difficult. Tr. 192. Mr. Compher noted that Plaintiff has difficulty sleeping, needs no help with personal care, and that making meals takes longer. Tr. 193-94. Mr. Compher indicated that Plaintiff is able to do the dishes and light housework, but that he does the laundry and vacuums because Plaintiff cannot. Tr. 194. Mr. Compher indicated that

Plaintiff is capable of shopping in stores, and does so a couple times each month, but she does not load or unload the groceries, and that Plaintiff is able to drive a car. Tr. 197.

In the decision, the ALJ accurately summarized Mr. Compher's testimony and provided two reasons for discounting it. First, the ALJ noted Mr. Compher's testimony was generally consistent with Plaintiff's allegations, which the ALJ rejected. Here, Mr. Compher indicated that Plaintiff cannot work because she cannot lift, stand or walk without pain, akin to allegations asserted by Plaintiff. As discussed at length above, the ALJ appropriately discounted Plaintiff's similar complaints. Therefore, the ALJ has provided a germane reason for rejecting Mr. Compher's comparable testimony. *Molina*, 674 F.3d at 1114; *Valentine*, 574 F.3d at 694.

Second, the ALJ rejected Mr. Compher's testimony because it is not fully supported by the objective medical evidence. Inconsistency with the medical record can be a germane reason for discounting lay testimony. *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005) (holding inconsistency with medical evidence is a germane reason for discounting lay testimony). But, an ALJ may not discredit lay testimony because it is not corroborated by medical evidence. As the ALJ accurately found, contrary to allegations that Plaintiff cannot walk without pain, the ALJ detailed numerous examinations where Plaintiff displayed a normal neurologic examination and had a normal gait. Additionally, Plaintiff does not identify any limitations described by Mr. Compher that extend beyond those described by Plaintiff. The ALJ's reasoning is backed by substantial evidence in the record as a whole, and provides another germane reasons for discounting Mr. Compher's testimony. *Molina*, 674 F.3d at 1114, 1122. Accordingly, the ALJ did not err.

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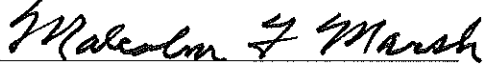
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CONCLUSION

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

IT IS SO ORDERED.

DATED this 3/ day of JULY, 2017.

  
Malcolm F. Marsh  
United States District Judge