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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SANDRA YOLANDA
SANDOVAL,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:16-CV-03168-RHW

**ORDER GRANTING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

Before the Court are the parties’ cross-motions for summary judgment, ECF Nos. 14 & 18. Plaintiff Sandra Yolanda Sandoval brings this action seeking judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner’s final decision, which denied her application for Supplemental Security Income under Title XVI of the Social Security Act, 42 U.S.C § 1381-1383F. After reviewing the administrative record and briefs filed by the parties, the Court is now fully informed. For the reasons set forth below, the Court **GRANTS** Defendant’s

1 Motion for Summary Judgment and **DENIES** Plaintiff’s Motion for Summary
2 Judgment.

3 **I. Jurisdiction**

4 Ms. Sandoval protectively file an application for Supplemental Security
5 Income on October 24, 2012. AR 183-198. Her alleged onset date is January 1,
6 2006. AR 185. Ms. Sandoval’s applications were initially denied on April 1, 2013,
7 AR 105-08, and on reconsideration on June 5, 2013, AR 121-130.

8 A hearing with Administrative Law Judge (“ALJ”) Mary Gallagher Dilley
9 occurred on June 4, 2014. AR 32-68. On March 26, 2015, the ALJ issued a
10 decision finding Ms. Sandoval ineligible for disability benefits. AR 13-29. The
11 Appeals Council denied Ms. Sandoval’s request for review on June 1, 2015, AR 1-
12 4, making the ALJ’s ruling the “final decision” of the Commissioner.

13 Ms. Sandoval timely filed the present action challenging the denial of
14 benefits, on September 20, 2016. ECF No. 4. Accordingly, Ms. Sandoval’s claims
15 are properly before this Court pursuant to 42 U.S.C. § 405(g).

16 **II. Sequential Evaluation Process**

17 The Social Security Act defines disability as the “inability to engage in any
18 substantial gainful activity by reason of any medically determinable physical or
19 mental impairment which can be expected to result in death or which has lasted or
20 can be expected to last for a continuous period of not less than twelve months.” 42

1 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be
2 under a disability only if the claimant’s impairments are of such severity that the
3 claimant is not only unable to do his previous work, but cannot, considering
4 claimant's age, education, and work experience, engage in any other substantial
5 gainful work that exists in the national economy. 42 U.S.C. § 1382c(a)(3)(B).

6 The Commissioner has established a five-step sequential evaluation process
7 for determining whether a claimant is disabled within the meaning of the Social
8 Security Act. 20 C.F.R. §§ 404.1520(a)(4) & 416.920(a)(4); *Lounsbury v.*
9 *Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006).

10 Step one inquires whether the claimant is presently engaged in “substantial
11 gainful activity.” 20 C.F.R. §§ 404.1520(b) & 416.920(b). Substantial gainful
12 activity is defined as significant physical or mental activities done or usually done
13 for profit. 20 C.F.R. §§ 404.1572 & 416.972. If the claimant is engaged in
14 substantial activity, he or she is not entitled to disability benefits. 20 C.F.R. §§
15 404.1571 & 416.920(b). If not, the ALJ proceeds to step two.

16 Step two asks whether the claimant has a severe impairment, or combination
17 of impairments, that significantly limits the claimant’s physical or mental ability to
18 do basic work activities. 20 C.F.R. §§ 404.1520(c) & 416.920(c). A severe
19 impairment is one that has lasted or is expected to last for at least twelve months,
20 and must be proven by objective medical evidence. 20 C.F.R. §§ 404.1508-09 &

1 416.908-09. If the claimant does not have a severe impairment, or combination of
2 impairments, the disability claim is denied, and no further evaluative steps are
3 required. Otherwise, the evaluation proceeds to the third step.

4 Step three involves a determination of whether any of the claimant's severe
5 impairments "meets or equals" one of the listed impairments acknowledged by the
6 Commissioner to be sufficiently severe as to preclude substantial gainful activity.
7 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526 & 416.920(d), 416.925, 416.926;
8 20 C.F.R. § 404 Subpt. P. App. 1 ("the Listings"). If the impairment meets or
9 equals one of the listed impairments, the claimant is *per se* disabled and qualifies
10 for benefits. *Id.* If the claimant is not *per se* disabled, the evaluation proceeds to the
11 fourth step.

12 Step four examines whether the claimant's residual functional capacity
13 enables the claimant to perform past relevant work. 20 C.F.R. §§ 404.1520(e)-(f) &
14 416.920(e)-(f). If the claimant can still perform past relevant work, the claimant is
15 not entitled to disability benefits and the inquiry ends. *Id.*

16 Step five shifts the burden to the Commissioner to prove that the claimant is
17 able to perform other work in the national economy, taking into account the
18 claimant's age, education, and work experience. *See* 20 C.F.R. §§ 404.1512(f),
19 404.1520(g), 404.1560(c) & 416.912(f), 416.920(g), 416.960(c). To meet this
20 burden, the Commissioner must establish that (1) the claimant is capable of

1 performing other work; and (2) such work exists in “significant numbers in the
2 national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); *Beltran v. Astrue*,
3 676 F.3d 1203, 1206 (9th Cir. 2012).

4 **III. Standard of Review**

5 A district court's review of a final decision of the Commissioner is governed
6 by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited, and the
7 Commissioner's decision will be disturbed “only if it is not supported by
8 substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1144,
9 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence means “more than a
10 mere scintilla but less than a preponderance; it is such relevant evidence as a
11 reasonable mind might accept as adequate to support a conclusion.” *Sandgathe v.*
12 *Chater*, 108 F.3d 978, 980 (9th Cir.1997) (quoting *Andrews v. Shalala*, 53 F.3d
13 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted). In determining
14 whether the Commissioner’s findings are supported by substantial evidence, “a
15 reviewing court must consider the entire record as a whole and may not affirm
16 simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc.*
17 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock v. Bowen*, 879
18 F.2d 498, 501 (9th Cir. 1989)).

19 In reviewing a denial of benefits, a district court may not substitute its
20 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.

1 1992). If the evidence in the record “is susceptible to more than one rational
2 interpretation, [the court] must uphold the ALJ's findings if they are supported by
3 inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104,
4 1111 (9th Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.
5 2002) (if the “evidence is susceptible to more than one rational interpretation, one
6 of which supports the ALJ’s decision, the conclusion must be upheld”). Moreover,
7 a district court “may not reverse an ALJ's decision on account of an error that is
8 harmless.” *Molina*, 674 F.3d at 1111. An error is harmless “where it is
9 inconsequential to the [ALJ's] ultimate nondisability determination.” *Id.* at 1115.
10 The burden of showing that an error is harmful generally falls upon the party
11 appealing the ALJ's decision. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

12 **IV. Statement of Facts**

13 The facts of the case are set forth in detail in the transcript of proceedings
14 and only briefly summarized here. Mr. Sandoval was born in 1987. AR 184. She
15 has experienced several traumatic events in her lifetime. She reports a history of
16 verbal and physical abuse. AR 277, 307, 467. When she was eight years old, her
17 older sister shot and killed their mother. AR 18, 262, 265. Ms. Sandoval witnessed
18 the aftermath of the shooting, and she reports that she still has nightmares of this
19 experience. AR 46. Her sister committed suicide in 2012, and at the time of her
20 hearing, Ms. Sandoval stated that her father has terminal cancer. AR 52.

1 Ms. Sandoval has five children. AR 18, 277. The oldest three were adopted,
2 and the younger two live in Seattle with their father who has filed a no contact
3 order against Ms. Sandoval. AR 41-43, 49. During the birth of her youngest child,
4 she had complications that required a hysterectomy. AR 307.

5 Ms. Sandoval also has a history of significant drug use, including
6 methamphetamine and cocaine. AR 277. She was introduced to drugs at age 10 or
7 11 by the same sister that killed their mother. AR 18, 46. She testified that she uses
8 methamphetamine on weekends or when she is really depressed, she uses
9 methamphetamine every other day. AR 42. She reported being clean for a period of
10 approximately five years when she lived in Seattle, but since the beginning of
11 2013, she has used methamphetamine frequently. AR 48-49, 52.

12 Ms. Sandoval suffers from multiple mental impairments, substance abuse,
13 urinary tract infections, and obesity. AR 15. She also reports chronic pelvic pain
14 and numbness in her right leg since her hysterectomy. AR 44, 307.

15 Ms. Sandoval has very limited education and work history. She told an
16 examining physician that worked around 2006 for two weeks sorting fruit before
17 she quit due to pregnancy. AR 308. She attended school through eighth grade. AR
18 40. She has trouble reading complicated words and cannot subtract, divide, or
19 multiply numbers. *Id.*

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1 **V. The ALJ's Findings**

2 The ALJ determined that, because substance use disorder is a contributing
3 factor material to the determination of disability, Ms. Sandoval was not under a
4 disability within the meaning of the Act from the date the application was filed
5 through the date of the ALJ's decision. AR 29.

6 **At step one**, the ALJ found that Ms. Sandoval had not engaged in
7 substantial gainful activity since October 24, 2012 (citing 20 C.F.R. §§ 416.920(b)
8 & 416.971 et seq.). AR 15.

9 **At step two**, the ALJ found Ms. Sandoval had the following severe
10 impairments: major depressive disorder, posttraumatic stress disorder, personality
11 disorder, substance abuse, urinary tract infections, and obesity (citing 20 C.F.R. §
12 416.920(c)). AR 15.

13 **At step three**, the ALJ found that Ms. Sandoval did not have an impairment
14 or combination of impairments that meets or medically equals the severity of one
15 of the listed impairments in 20 C.F.R. § 404, Subpt. P, App. 1. AR 17.

16 **At step four**, the ALJ found Ms. Sandoval had the residual functional
17 capacity to perform a less than a full range of light work with the following
18 restrictions: (1) she could lift and/or carry 20 pounds occasionally and 10 pounds
19 frequently; (2) she could stand and/or walk for about six hours in an eight-hour
20 workday with normal breaks; (3) she could sit for about six hours in an eight-hour

1 workday with normal breaks; (4) she could frequently push/pull controls with her
2 right upper and left lower extremity; (5) she could occasionally climb stairs and
3 ramps; (6) she could never climb ropes, scaffolds, and ladders; (7) she could
4 occasionally crouch, kneel, and crawl; (8) she could frequently balance; (9) she
5 could occasionally stoop; (10) she could frequently handle and finger bilaterally
6 and is right hand dominate; (11) she should avoid concentrated exposure to
7 vibration and hazards; (12) she is able to perform simple, repetitive tasks; (13) she
8 should have no contact with the public; (13) she could have occasional, superficial
9 contact with co-workers; (14) she has loss of focus throughout the workday and
10 would be nonproductive 30 percent of the time; (15) she would be absent two or
11 more times per month; and (16) she could do reading and math at a third-grade
12 level. AR 18.

13 The ALJ determined that Ms. Sandoval does not have any past relevant
14 work. AR 19.

15 **At step five**, the ALJ found that, in light of her age, education, work
16 experience, and residual functional capacity, including her substance use disorder,
17 there are no jobs that exist in significant numbers in the national economy that she
18 can perform. AR 20.

1 However, the ALJ found that Ms. Sandoval's substance use disorder is a
2 contributing factor material to the determination of the disability because she
3 would not be disabled if she stopped the substance use. AR 20-21.

4 The ALJ found, that if Ms. Sandoval stopped the substance use, she would
5 have the residual functional capacity to perform a less than a full range of light
6 work with the following restrictions: (1) she could lift and/or carry 20 pounds
7 occasionally and 10 pounds frequently; (2) she could stand and/or walk for about
8 six hours in an eight-hour workday with normal breaks; (3) she could sit for about
9 six hours in an eight-hour workday with normal breaks; (4) she could frequently
10 push/pull controls with her right upper and left lower extremity; (5) she could
11 occasionally climb stairs and ramps; (6) she could never climb ropes, scaffolds,
12 and ladders; (7) she could occasionally crouch, kneel, and crawl; (8) she could
13 frequently balance; (9) she could occasionally stoop; (10) she could frequently
14 handle and finger bilaterally and is right hand dominate; (11) she should avoid
15 concentrated exposure to vibration and hazards; (12) she is able to perform simple,
16 repetitive tasks; (13) she should have no contact with the public; (13) she could
17 have occasional, superficial contact with co-workers; and (16) she could do
18 reading and math at the third-grade level. AR 21-22.

19 The ALJ then found that, if Ms. Sandoval stopped her substance use,
20 considering her age, education, work experience, and residual functional capacity,

1 in conjunction with testimony of a vocational expert, there would be a significant
2 number of jobs in the national economy that she could perform. These include
3 production assembler, housekeeper, and injection molding machine tender. AR 26.

4 **VI. Issues for Review**

5 Ms. Sandoval argues that the Commissioner’s decision is not free of legal
6 error and not supported by substantial evidence. Specifically, she argues the ALJ
7 erred by: (1) erroneously concluding that Ms. Sandoval’s substance abuse was a
8 contributing factor material to the determination of disability; (2) improperly
9 weighing the medical evidence; and (3) improperly rejecting Ms. Sandoval’s
10 symptom testimony. ECF No. 14 at 7.

11 **VII. Discussion**

12 **A. The ALJ’s determination that Ms. Sandoval’s substance abuse was a** 13 **contributing factor material to the determination of disability is** 14 **supported by substantial evidence.**

15 If a claimant is found disabled and there is medical evidence of a substance
16 use disorder, the ALJ must determine if the substance use disorder is a contributing
17 factor material to the determination of disability. 42 U.S.C. § 1382c(a)(3)(J).

18 Where the medical record indicates drug addiction, the ALJ must evaluate “which
19 of [the claimant’s] current physical and mental limitations . . . would remain if
20 [she] stopped using drugs or alcohol and then determine whether any or all of [the]

1 remaining limitations would be disabling.” 20 C.F.R. § 416.935(b)(2). If a
2 claimant’s remaining limitations would not be disabling, the drug use is “a
3 contributing factor material to the determination of disability.” 20 C.F.R. §
4 416.935(b)(2)(i). An individual is not disabled pursuant to the Social Security Act
5 where substance use is a contributing factor material to the determination of
6 disability. 42 U.S.C. § 1382(a)(3)(J).

7 The ALJ found that Ms. Sandoval had “improved functioning at times when
8 her substance abuse has not predominated.” AR 21. This is supported by the
9 record.

10 In support of the finding, the ALJ references mental status examinations
11 from July 10, 2013; August 29, 2013; November 27, 2013; and April 25, 2014, that
12 show Ms. Sandoval’s “memory and intellectual functioning were unimpaired.” AR
13 21, 463, 468, 472, 476. These findings, which reflect no evidence of drug use,
14 contrast examinations during periods in which the record demonstrates that Ms.
15 Sandoval was using drugs. For example, Ms. Sandoval complained of problems
16 with concentration and focus and described her memory as “very bad” during an
17 evaluation with consultative examiner Dr. Mary Pellicer, M.D. AR 307. This
18 examination occurred in a period in which Ms. Sandoval was using drugs, as
19 demonstrated by her chart on February 20, 2013, indicates she was using “street
20

1 drugs,” AR 313, and a positive test for methamphetamine on April 4, 2013, AR
2 321.

3 The Court will not disturb a finding supported by substantial evidence. *Hill*,
4 698 F.3d at 1158-59. The ALJ’s determination that Ms. Sandoval’s substance
5 abuse was a contributing factor material to the determination of disability is
6 supported by substantial evidence.

7 **B. The ALJ did not err in evaluating the medical evidence.**

8 The Ninth Circuit has distinguished between three classes of medical
9 providers in defining the weight to be given to their opinions: (1) treating
10 providers, those who actually treat the claimant; (2) examining providers, those
11 who examine but do not treat the claimant; and (3) non-examining providers, those
12 who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th
13 Cir. 1996) (as amended).

14 A treating provider’s opinion is given the most weight, followed by an
15 examining provider, and finally a non-examining provider. *Id.* at 830-31. In the
16 absence of a contrary opinion, a treating or examining provider’s opinion may not
17 be rejected unless “clear and convincing” reasons are provided. *Id.* at 830. If a
18 treating or examining provider’s opinion is contradicted, it may only be discounted
19 for “specific and legitimate reasons that are supported by substantial evidence in
20 the record.” *Id.* at 830-31. The ALJ may meet the specific and legitimate standard

1 by “setting out a detailed and thorough summary of the facts and conflicting
2 clinical evidence, stating [his or her] interpretation thereof, and making findings.”
3 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (internal citation
4 omitted).

5 **a. Dr. Aaron Burdge, PhD**

6 The ALJ gave little weight to the opinion of psychologist Dr. Burdge, who
7 examined Ms. Sandoval in September 2012. AR 24, 277-81. This finding is based
8 on specific and legitimate reasons supported by substantial evidence.

9 Critically, the ALJ correctly noted that Dr. Burdge did not have an accurate
10 clinical picture of Ms. Sandoval’s substance use. AR 24. Dr. Burdge did not
11 diagnose Ms. Sandoval with a substance use disorder, and noted that Ms. Sandoval
12 reported being clean for 6 months. AR 277. He did not recommend chemical
13 dependency assessment or treatment. AR 280. An ALJ may properly discredit a
14 doctor’s opinion if it is contradicted by objective evidence or other findings.
15 *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). The record demonstrates
16 a long-standing, serious drug problem. Dr. Burdge’s opinion does not consider this,
17 which significantly undermines the opinion.

18 Dr. Burdge opined marked restrictions in multiple areas, including:
19 performing activities within a schedule, maintaining regular attendance, and being
20 punctual within customary tolerances without special supervision; communicating

1 and performing effectively in a work setting; completing a normal work day and
2 work week without interruptions from psychologically based symptoms; and
3 maintaining appropriate behavior in a work setting. AR 279-80. Yet his mental
4 status examination found Ms. Sandoval to have normal speech and to be
5 cooperative, alert, and attentive, with occasional eye contact. AR 281. Further, her
6 thought process and content, orientation, perception, memory, concentration, and
7 abstract thinking were all within normal limits. AR 281. In addition, Ms.
8 Sandoval's score on the Personality Assessment Inventory were invalid. AR 278.
9 Dr. Burdge's clinical observations were inconsistent with the marked limitations he
10 opined. Inconsistencies between a physician's opinion and the medical record are
11 also sufficient grounds to reject a medical opinion. *See Tommasetti v. Astrue*, 533
12 F.3d 1035, 1041 (9th Cir. 2008).

13 Ms. Sandoval takes issue with these findings by the ALJ, but the Court will
14 not reverse a decision because it is available to multiple interpretations. *See*
15 *Molina*, 674 F.3d at 1111 (finding that if the evidence in the record "is susceptible
16 to more than one rational interpretation, [the court] must uphold the ALJ's findings
17 if they are supported by inferences reasonably drawn from the record.")

18 **b. Dr. Mary Pellicer, MD**

19 The ALJ gave little weight to the portion of the opinion of Dr. Pellicer, who
20 examined Ms. Sandoval on March 7, 2013, that Ms. Sandoval would require more

1 frequent breaks due to pelvic pain. AR 25, 312. As the ALJ notes, this is
2 inconsistent with Dr. Pellicer’s findings. An ALJ may properly discredit a doctor’s
3 opinion if it is contradicted by objective evidence or other findings. *Bayliss*, 427
4 F.3d at 1216. Dr. Pellicer found 4/5 or 4/5 in all of the major muscle group testing,
5 that Ms. Sandoval does not require an assistive device, and that she can squat
6 “fairly normally.” AR 311. While Ms. Sandoval did walk with a slight limp, AR
7 309, 311, this does not appear to be related to her pelvic pain.

8 Dr. Pellicer believed this pelvic pain resulted from an ovarian cyst or chronic
9 scarring from Ms. Sandoval’s hysterectomy. AR 311. Dr. Pellicer, however, found
10 Ms. Sandoval’s abdomen free of masses. AR 309. Likewise, when she was treated
11 for a urinary tract infection in September 2013, the hospital found no masses in her
12 abdomen, and no reproducible pain was noted. AR 437.

13 Moreover, the record does not demonstrate significant treatment for pelvic
14 pain, despite Ms. Sandoval’s allegations that they are severely limiting. The only
15 treatment sought for pelvic pain was due a fall down the stairs in July 2011. AR
16 272. As the ALJ noted, “[c]onsidering the severity of [Ms. Sandoval’s] complaints
17 of pelvic pain, one would expect her to have sought medical relief to resolve such
18 pain during the prior four years.” AR 25.

1 The ALJ provided specific and legitimate reasons that are supported by
2 substantial evidence in the record to reject Dr. Pellicer’s limitations related to Ms.
3 Sandoval’s pelvic pain.

4 **C. The ALJ properly rejected Ms. Sandoval’s symptom testimony.**

5 An ALJ engages in a two-step analysis to determine whether a claimant’s
6 testimony regarding subjective symptoms is credible. *Tommasetti*, 533 F.3d at
7 1039. First, the claimant must produce objective medical evidence of an underlying
8 impairment or impairments that could reasonably be expected to produce some
9 degree of the symptoms alleged. *Id.* Second, if the claimant meets this threshold,
10 and there is no affirmative evidence suggesting malingering, “the ALJ can reject
11 the claimant’s testimony about the severity of [his] symptoms only by offering
12 specific, clear, and convincing reasons for doing so.” *Id.*

13 In weighing a claimant's credibility, the ALJ may consider many factors,
14 including, “(1) ordinary techniques of credibility evaluation, such as the claimant's
15 reputation for lying, prior inconsistent statements concerning the symptoms, and
16 other testimony by the claimant that appears less than candid; (2) unexplained or
17 inadequately explained failure to seek treatment or to follow a prescribed course of
18 treatment; and (3) the claimant's daily activities.” *Smolen v. Chater*, 80 F.3d 1273,
19 1284 (9th Cir. 1996).

1 Accordingly, **IT IS ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is **DENIED**.

3 2. Defendant's Motion for Summary Judgment, **ECF No. 18**, is

4 **GRANTED**.

5 3. Judgment shall be entered in favor of Defendant and against Plaintiff.

6 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
7 Order, forward copies to counsel and **close the file**.

8 **DATED** this 4th day of December, 2017.

9
10 *s/Robert H. Whaley*
11 **ROBERT H. WHALEY**
Senior United States District Judge