

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
..

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT **Nov 21, 2018**

EASTERN DISTRICT OF WASHINGTON SEAN F. McAVOY, CLERK

MYSTICAL L.,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:17-cv-03166-MKD

ORDER DENYING PLAINTIFF’S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 15, 20

Before the Court are the parties’ cross-motions for summary judgment. ECF Nos. 15, 20. The parties consented to proceed before a magistrate judge. ECF No. 7. The Court, having reviewed the administrative record and the parties’ briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff’s Motion, ECF No. 15, and grants Defendant’s Motion, ECF No. 20.

ORDER - 1

1 **JURISDICTION**

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);
3 1383(c)(3).

4 **STANDARD OF REVIEW**

5 A district court’s review of a final decision of the Commissioner of Social
6 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
7 limited; the Commissioner’s decision will be disturbed “only if it is not supported
8 by substantial evidence or is based on legal error.” Hill v. Astrue, 698 F.3d 1153,
9 1158 (9th Cir. 2012). “Substantial evidence” means “relevant evidence that a
10 reasonable mind might accept as adequate to support a conclusion.” Id. at 1159
11 (quotation and citation omitted). Stated differently, substantial evidence equates to
12 “more than a mere scintilla[,] but less than a preponderance.” Id. (quotation and
13 citation omitted). In determining whether the standard has been satisfied, a
14 reviewing court must consider the entire record as a whole rather than searching
15 for supporting evidence in isolation. Id.

16 In reviewing a denial of benefits, a district court may not substitute its
17 judgment for that of the Commissioner. Edlund v. Massanari, 253 F.3d 1152,
18 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
19 rational interpretation, [the court] must uphold the ALJ’s findings if they are
20 supported by inferences reasonably drawn from the record.” Molina v. Astrue, 674

1 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
2 ALJ’s decision on account of an error that is harmless.” Id. An error is harmless
3 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
4 Id. at 1115 (quotation and citation omitted). The party appealing the ALJ’s
5 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
6 *Sanders*, 556 U.S. 396, 409-10 (2009).

7 **FIVE-STEP EVALUATION PROCESS**

8 A claimant must satisfy two conditions to be considered “disabled” within
9 the meaning of the Social Security Act. First, the claimant must be “unable to
10 engage in any substantial gainful activity by reason of any medically determinable
11 physical or mental impairment which can be expected to result in death or which
12 has lasted or can be expected to last for a continuous period of not less than twelve
13 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
14 impairment must be “of such severity that he is not only unable to do his previous
15 work[,] but cannot, considering his age, education, and work experience, engage in
16 any other kind of substantial gainful work which exists in the national economy.”
17 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

18 The Commissioner has established a five-step sequential analysis to
19 determine whether a claimant satisfies the above criteria. See 20 C.F.R. §§
20 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner

1 considers the claimant's work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
2 416.920(a)(4)(i). If the claimant is engaged in "substantial gainful activity," the
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
4 404.1520(b), 416.920(b).

5 If the claimant is not engaged in substantial gainful activity, the analysis
6 proceeds to step two. At this step, the Commissioner considers the severity of the
7 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
8 claimant suffers from "any impairment or combination of impairments which
9 significantly limits [his or her] physical or mental ability to do basic work
10 activities," the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
11 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
12 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
13 §§ 404.1520(c), 416.920(c).

14 At step three, the Commissioner compares the claimant's impairment to
15 severe impairments recognized by the Commissioner to be so severe as to preclude
16 a person from engaging in substantial gainful activity. 20 C.F.R. §§
17 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
18 severe than one of the enumerated impairments, the Commissioner must find the
19 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

1 If the severity of the claimant's impairment does not meet or exceed the
2 severity of the enumerated impairments, the Commissioner must pause to assess
3 the claimant's "residual functional capacity." Residual functional capacity (RFC),
4 defined generally as the claimant's ability to perform physical and mental work
5 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
6 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the
7 analysis.

8 At step four, the Commissioner considers whether, in view of the claimant's
9 RFC, the claimant is capable of performing work that he or she has performed in
10 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

11 If the claimant is capable of performing past relevant work, the Commissioner
12 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).

13 If the claimant is incapable of performing such work, the analysis proceeds to step
14 five.

15 At step five, the Commissioner considers whether, in view of the claimant's
16 RFC, the claimant is capable of performing other work in the national economy.
17 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
18 the Commissioner must also consider vocational factors such as the claimant's age,
19 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
20 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the

1 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
2 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
3 work, analysis concludes with a finding that the claimant is disabled and is
4 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

5 The claimant bears the burden of proof at steps one through four above.
6 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
7 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
8 capable of performing other work; and (2) such work “exists in significant
9 numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2);
10 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

11 **ALJ’S FINDINGS**

12 On July 11, 2014, Plaintiff filed applications for Title II disability insurance
13 benefits and for Title XVI supplemental security income benefits, alleging an
14 amended disability onset date of March 31, 2011. Tr. 49-50, 211-17.¹ The
15 applications were denied initially, Tr. 142-48, and on reconsideration, Tr. 153-57.
16 Plaintiff appeared at a hearing before an administrative law judge (ALJ) on April
17

18 ¹ Although Plaintiff’s disability insurance benefits application was included in the
19 record at Tr. 211-17, Plaintiff’s SSI application was not included in the
20 administrative record. Neither party argued any error in this regard.

1 8, 2016. Tr. 45-78. On May 26, 2016, the ALJ denied Plaintiff's claim. Tr. 23-
2 38.

3 At step one, the ALJ found that Plaintiff had not engaged in substantial
4 gainful activity since March 31, 2011. Tr. 25. At step two, the ALJ found Plaintiff
5 had the following severe impairments: degenerative disc disease, sacroiliitis,
6 coccydynia, and obesity. Tr. 26. At step three, the ALJ found Plaintiff did not
7 have an impairment or combination of impairments that meets or medically equals
8 the severity of a listed impairment. Tr. 29. The ALJ then concluded that Plaintiff
9 had the RFC to perform light work with the following limitations:

10 [Plaintiff] must be permitted to change position from sit to stand or stand to
11 sit approximately every thirty minutes at the work station and [Plaintiff]
12 would remain in the other position for approximately thirty minutes, which
13 would result in standing and sitting for approximately half of the day each;
never climb ladders, ropes, and scaffolds; occasionally climb ramps and
stairs, stoop, kneel, crouch; never crawl; and avoid concentrated exposure to
vibrations in the workplace.

14 Tr. 30.

15 At step four, the ALJ found Plaintiff was unable to perform any past relevant
16 work. Tr. 36. At step five, the ALJ found that, considering Plaintiff's age,
17 education, work experience, RFC, and testimony from a vocational expert, there
18 were other jobs that existed in significant numbers in the national economy that
19 Plaintiff could perform, such as laundry folder and ticket taker. Tr. 37. The ALJ
20 concluded Plaintiff was not under a disability, as defined in the Social Security

1 Act, from March 31, 2011, through May 26, 2016, the date of the ALJ's decision.

2 Tr. 38.

3 On July 27, 2017, the Appeals Council denied review, Tr. 1-7, making the
4 ALJ's decision the Commissioner's final decision for purposes of judicial review.

5 See 42 U.S.C. § 1383(c)(3).

6 ISSUES

7 Plaintiff seeks judicial review of the Commissioner's final decision denying
8 her disability income benefits under Title II and supplemental security income
9 benefits under Title XVI of the Social Security Act. ECF No. 15. Plaintiff raises
10 the following issues for this Court's review:

- 11 1. Whether the ALJ properly weighed Plaintiff's symptom claims;
- 12 2. Whether the ALJ properly weighed the medical opinion evidence;
- 13 3. Whether the ALJ properly found at step five that Plaintiff could perform
14 other work in the national economy.

15 ECF No. 15 at 4.

16 DISCUSSION

17 A. Plaintiff's Symptom Claims

18 Plaintiff faults the ALJ for failing to rely on reasons that were clear and
19 convincing in discrediting her subjective symptom claims. ECF No. 15 at 17-20.

20 An ALJ engages in a two-step analysis to determine whether to discount a

1 claimant’s testimony regarding subjective symptoms.² SSR 16-3p, 2016 WL
2 1119029, at *2. “First, the ALJ must determine whether there is objective medical
3 evidence of an underlying impairment which could reasonably be expected to
4 produce the pain or other symptoms alleged.” Molina, 674 F.3d at 1112 (quotation
5 marks omitted). “The claimant is not required to show that her impairment could
6 reasonably be expected to cause the severity of the symptom she has alleged; she
7 need only show that it could reasonably have caused some degree of the
8 symptom.” Vasquez v. Astrue, 572 F.3d 586, 591 (9th Cir. 2009).

9 Second, “[i]f the claimant meets the first test and there is no evidence of
10 malingering, the ALJ can only reject the claimant’s testimony about the severity of
11 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
12 rejection.” Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations

13 _____
14 ² At the time of the ALJ’s decision in May 2016, the regulation that governed the
15 evaluation of symptom claims was SSR 16-3p, which superseded SSR 96-7p
16 effective March 24, 2016. SSR 16-3p; Titles II and XVI: Evaluation of Symptoms
17 in Disability Claims, 81 Fed. Reg. 15776, 15776 (Mar. 24, 2016). The ALJ’s
18 decision did not cite SSR 16-3p, but cited SSR 96-4p, which was rescinded
19 effective June 14, 2018, in favor of the more comprehensive SSR 16-3p. Neither
20 party argued any error in this regard.

1 omitted). General findings are insufficient; rather, the ALJ must identify what
2 symptom claims are being discounted and what evidence undermines these claims.
3 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*
4 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
5 explain why it discounted claimant’s symptom claims). “The clear and convincing
6 [evidence] standard is the most demanding required in Social Security cases.”
7 *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r*
8 *of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

9 Factors to be considered in evaluating the intensity, persistence, and limiting
10 effects of an individual’s symptoms include: 1) daily activities; 2) the location,
11 duration, frequency, and intensity of pain or other symptoms; 3) factors that
12 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
13 side effects of any medication an individual takes or has taken to alleviate pain or
14 other symptoms; 5) treatment, other than medication, an individual receives or has
15 received for relief of pain or other symptoms; 6) any measures other than treatment
16 an individual uses or has used to relieve pain or other symptoms; and 7) any other
17 factors concerning an individual’s functional limitations and restrictions due to
18 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §§
19 404.1529(c)(1)-(3), 416.929(c)(1)-(3) (2011). The ALJ is instructed to “consider
20
--

1 all of the evidence in an individual’s record,” “to determine how symptoms limit
2 ability to perform work-related activities.” SSR 16-3p, 2016 WL 1119029, at *2.

3 The ALJ found that Plaintiff’s medically determinable impairments could
4 reasonably be expected to cause the alleged symptoms, but that Plaintiff’s
5 statements concerning the intensity, persistence, and limiting effects of her
6 symptoms were not entirely consistent with the evidence. Tr. 31-32.

7 1. Supporting Medical Evidence

8 The ALJ found the severity of Plaintiff’s symptom complaints were not
9 consistent with the medical evidence. Tr. 32-34. An ALJ may not discredit a
10 claimant’s symptom testimony and deny benefits solely because the degree of the
11 symptoms alleged is not supported by objective medical evidence. *Rollins v.*
12 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341,
13 346-47 (9th Cir. 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989).
14 However, the medical evidence is a relevant factor in determining the severity of a
15 claimant’s pain and its disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §§
16 404.1529(c)(2), 416.929(c)(2). Minimal objective evidence is a factor which may
17 be relied upon to discount a claimant’s testimony, although it may not be the only
18 factor. *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005).

19 Here, the ALJ noted that Plaintiff testified to significant daily back pain that
20 caused her to be unable to walk or sit for more than 45 minutes at a time. Tr. 31;

1 see Tr. 57-58. However, the ALJ noted that the objective imaging in the record did
2 not support the level of impairment alleged. Tr. 32; see Tr. 377 (February 2012
3 MRI showed mild degenerative joint disease, small annular tear L5-S1, moderate
4 to severe facet joint hypertrophy at that level with mild to moderate left greater
5 than right foraminal narrowing); Tr. 419 (February 2012 MRI impression: mild
6 degenerative changes of the lumbar spine most pronounced at the L5/S1 level); Tr.
7 378 (MRI from late 2013 showed moderate to severe facet arthropathy at L5-S1
8 and small annular tear at that level; recent plain films are essentially negative); Tr.
9 415 (October 30, 2013 MRI showed no significant change from February 2012
10 MRI); Tr. 389, 504 (Plaintiff's treating provider interpreted the October 2013 MRI
11 as showing mild disc disease); Tr. 565 (April 2015 MRI showed mild lumbar
12 degeneration and no significant changes from February 2012); Tr. 583 (updated
13 MRI reviewed in March 2016 showed no significant stenosis). The ALJ also noted
14 that physical examinations also showed mild results. Tr. 32-33; see Tr. 408
15 (October 22, 2010 examination showed normal gait and station, left hip elevated
16 compared to the right, no vertebral column tenderness, some SI joint tenderness);
17 Tr. 344 (August 15, 2011 examination showed tenderness to palpation at L5 level,
18 no muscle spasm, no tenderness to palpation over sacroiliac joints, straight leg test
19 negative bilaterally, and Fabere examination negative); Tr. 339 (September 19,
20 2011 examination showed tenderness to palpation at L5 level, no tenderness to

1 palpation over sacroiliac joints, and straight leg test negative bilaterally); Tr. 404
2 (January 10, 2012 examination showed Plaintiff moved easily from chair to exam
3 table, had no decreased range of motion, had full strength, and was able to straight
4 leg raise); Tr. 363 (June 13, 2012 examination showed full strength and normal
5 sensation throughout, no gross abnormalities upon lumbar spine exam, very little
6 tenderness upon palpation of the paravertebral musculature, full range of motion,
7 no signs of facet pain with facet maneuvers, negative Patrick's exam, and negative
8 straight leg test bilaterally); Tr. 293 (August 15, 2013 examination showed
9 Plaintiff's back was normal to inspection and palpation, some tenderness, full
10 strength to knee and ankle and hip, and negative straight leg raise bilaterally); Tr.
11 377 (September 27, 2013 examination showed full extremity strength and negative
12 straight leg test bilaterally); Tr. 378 (January 10, 2014 examination showed
13 ambulation with normal gait, pain-free passive range of motion of the hips, full
14 strength with hip flexion, knee flexion, knee extension, dorsiflexion, and plantar
15 flexion of the ankles bilaterally with no clonus and intact patellar tendon and
16 Achilles reflexes; tension nerve roots signs equivocal). The ALJ reasonably
17 concluded, based on this record, that the medical evidence did not support the level
18 of impairment Plaintiff alleged. Tr. 32-33.

19 Plaintiff challenges the ALJ's finding by identifying evidence in the record
20 that Plaintiff asserts supports Plaintiff's symptom complaints. ECF No. 15 at 8-9,

1 17-18; see Tr. 419 (February 2012 MRI impression: mild degenerative changes of
2 the lumbar spine most pronounced at the L5/S1 level); Tr. 377 (interpreting
3 February 2012 MRI as showing moderate to severe facet joint hypertrophy); Tr.
4 575 (September 11, 2015: abnormal lumbar range of motion and positive straight
5 leg test). It is the ALJ's responsibility to resolve conflicts in the medical evidence.
6 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). Where the ALJ's
7 interpretation of the record is reasonable as it is here, it should not be second-
8 guessed. *Rollins*, 261 F.3d at 857. The Court must consider the ALJ's decision in
9 the context of "the entire record as a whole," and if the "evidence is susceptible to
10 more than one rational interpretation, the ALJ's decision should be upheld." *Ryan*
11 *v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (internal quotation
12 marks omitted). Here, the ALJ's interpretation of the evidence is reasonable and is
13 supported by substantial evidence.

14 2. Improvement with Treatment

15 The ALJ found Plaintiff's testimony was inconsistent with her record of
16 improvement with treatment. Tr. 32-33. The effectiveness of medication and
17 treatment is a relevant factor in determining the severity of a claimant's symptoms.
18 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3) (2011); see *Warre v. Comm'r of Soc.*
19 *Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (conditions effectively controlled
20 with medication are not disabling for purposes of determining eligibility for

1 benefits) (internal citations omitted); see also *Tommasetti v. Astrue*, 533 F.3d 1035,
2 1040 (9th Cir. 2008) (a favorable response to treatment can undermine a claimant's
3 complaints of debilitating pain or other severe limitations). Here, the ALJ noted
4 that Plaintiff testified that she received neither short-term nor long-term relief from
5 physical therapy. Tr. 32-33; see Tr. 56-57. However, the ALJ also noted that the
6 record indicated that Plaintiff reported improvement with physical therapy on
7 several occasions. Tr. 33; see Tr. 407 (December 23, 2010: Plaintiff reported
8 improvement in her pain after completing physical therapy and was not using
9 medications for pain); Tr. 365 (August 29, 2012: Plaintiff reported good control of
10 her low back pain following one month of physical therapy); Tr. 574 (November 5,
11 2015: Plaintiff reported some improvement with physical therapy and expressed a
12 desire to continue but at a slower pace); Tr. 583 (March 18, 2016: Plaintiff
13 reported recent physical therapy made a big difference for her).

14 Plaintiff challenges the ALJ's conclusion by offering evidence of Plaintiff's
15 reports that physical therapy was not helpful to her. ECF No. 15 at 18; see Tr. 411
16 (April 16, 2010: Plaintiff was permitted to stop physical therapy as it was not
17 helpful); Tr. 408 (October 22, 2010: Plaintiff reported that past physical therapy
18 was not helpful); Tr. 343 (August 11, 2011: Plaintiff reported past physical therapy
19 resulted in only some minimal improvement); Tr. 395 (September 19, 2012:
20 Plaintiff reported no significant improvement in her pain with physical therapy).

1 Where evidence is subject to more than one rational interpretation, the ALJ's
2 conclusion will be upheld. Burch, 400 F.3d at 679. The Court will only disturb
3 the ALJ's findings if they are not supported by substantial evidence. Hill, 698 F.3d
4 at 1158. Based on this record, the ALJ reasonably concluded that the record did
5 reflect some improvement with physical therapy, which was inconsistent with
6 Plaintiff's testimony. Tr. 32-33. The ALJ's finding is supported by substantial
7 evidence.

8 3. Conservative Treatment

9 The ALJ found Plaintiff's symptom complaints were inconsistent with her
10 record of receiving conservative treatment. Tr. 33. Evidence of "conservative
11 treatment" is sufficient to discount a claimant's testimony regarding the severity of
12 an impairment. Parra v. Astrue, 481 F.3d 742, 751 (9th Cir. 2007) (citing Johnson
13 v. Shalala, 60 F.3d 1428, 1434 (9th Cir. 1995) (treating ailments with an over-the-
14 counter pain medication is evidence of conservative treatment sufficient to
15 discount a claimant's testimony regarding the severity of an impairment)); see also
16 Tommasetti, 533 F.3d at 1039 (holding that the ALJ permissibly inferred that the
17 claimant's "pain was not as all-disabling as he reported in light of the fact that he
18 did not seek an aggressive treatment program" and "responded favorably to
19 conservative treatment including physical therapy and the use of anti-inflammatory
20 medication, a transcutaneous electrical nerve stimulation unit, and a lumbosacral

1 corset”). Here, the ALJ noted that Plaintiff’s allegations of complete disability
2 were inconsistent with the record of Plaintiff consistently being denied as a
3 surgical candidate. Tr. 33-34; see Tr. 377 (September 27, 2013 treatment note
4 indicated there were no surgical options available to Plaintiff); Tr. 379 (January 10,
5 2014 treatment note indicated Plaintiff was recently declined as a surgical
6 candidate by neural surgery group); Tr. 382 (February 21, 2014 consultation report
7 indicated no surgical intervention needed); Tr. 529 (February 20, 2015 consultation
8 report indicated no surgical option available and back pain is best treated
9 conservatively); Tr. 584 (March 18, 2016 consultation report indicated no
10 operative intervention is necessary). The ALJ also noted that Plaintiff’s treatment
11 providers consistently recommended more conservative treatments instead of
12 surgery. Tr. 33; see Tr. 382 (February 21, 2014: Plaintiff prescribed pain
13 medication and recommended to physical therapy for core strengthening); Tr. 385
14 (April 25, 2014: Plaintiff reported marked improvement with medication and was
15 recommended to continue with conservative options of medication and physical
16 therapy); Tr. 529 (February 20, 2015: Plaintiff was recommended to keep weight
17 down, exercise at home, use ibuprofen, and pursue epidural steroid injection if
18 needed); Tr. 561 (April 20, 2015: Plaintiff reported pain relief with occasional use
19 of Vicodin); Tr. 576 (September 11, 2015 physical therapy assessment
20 recommended home exercise program); Tr. 584 (March 18, 2016: Plaintiff was

1 recommended a combination of SI Joint injection and Coccyx injection;
2 neurosurgeon recommended ongoing conservative treatment with physical therapy
3 and occasional injections). Plaintiff argues that the ALJ's finding is not supported
4 because Plaintiff did not experience lasting relief with conservative measures.
5 ECF No. 15 at 7; see Tr. 396 (September 5, 2012: Plaintiff reported no
6 improvement with physical therapy and excessive numbness from medial branch
7 blocks); Tr. 381 (February 21, 2014: Plaintiff reported past limited relief from
8 epidural steroid injection and bilateral facet injections, and no significant relief
9 from medial branch blocks); Tr. 563 (March 3, 2015: Plaintiff reported she did not
10 feel medication had helped with her pain). However, where evidence is subject to
11 more than one rational interpretation, the ALJ's conclusion will be upheld. Burch,
12 400 F.3d at 679. The Court will only disturb the ALJ's findings if they are not
13 supported by substantial evidence. Hill, 698 F.3d at 1158. Based on this record,
14 the ALJ reasonably concluded that Plaintiff's history of conservative treatment
15 measures was inconsistent with her allegations of complete disability. Tr. 33. This
16 finding is supported by substantial evidence.

17 4. Daily Activities

18 The ALJ found Plaintiff's symptom complaints were inconsistent with her
19 daily activities. Tr. 34. A claimant's reported daily activities can form the basis
20 for an adverse credibility determination if they consist of activities that contradict

1 the claimant's "other testimony" or if those activities are transferable to a work
2 setting. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007); see also *Fair*, 885 F.2d
3 at 603 (daily activities may be grounds for an adverse credibility finding "if a
4 claimant is able to spend a substantial part of his day engaged in pursuits involving
5 the performance of physical functions that are transferable to a work setting.")).
6 "While a claimant need not vegetate in a dark room in order to be eligible for
7 benefits, the ALJ may discredit a claimant's testimony when the claimant reports
8 participation in everyday activities indicating capacities that are transferable to a
9 work setting" or when activities "contradict claims of a totally debilitating
10 impairment." *Molina*, 674 F.3d at 1112-13 (internal quotation marks and citations
11 omitted).

12 Although Plaintiff testified to significant daily back pain, causing her to be
13 unable to walk or sit for more than 45 minutes at a time, the ALJ found Plaintiff
14 had no limitation in her activities of daily living. Tr. 28-29; see Tr. 57-58. In her
15 function report, Plaintiff reported her daily activities to include feeding and bathing
16 her children, taking the dogs outside, bathing the dogs as needed, doing dishes,
17 preparing meals, doing laundry, performing housework, shopping, attending
18 church weekly, and attending other community events. Tr. 270-73. Plaintiff
19 indicated she had no limitations in personal care activities. Tr. 270. Plaintiff also
20 worked a part-time job for several years during the relevant period. Tr. 52.

1 Additionally, the ALJ noted that Plaintiff’s counselor observed that Plaintiff’s
2 contention that she could not sit for any length of time was inconsistent with her
3 husband’s report that Plaintiff spends “all day long on the computer.” Tr. 27; see
4 Tr. 457. The ALJ reasonably concluded that these activities were inconsistent with
5 the level of impairment alleged. Tr. 34. This finding is supported by substantial
6 evidence.

7 5. Motivation to Work

8 The ALJ found Plaintiff’s symptom complaints were inconsistent with her
9 work-seeking activities. Tr. 34. Working with an impairment supports a
10 conclusion that the impairment is not disabling. See *Drouin v. Sullivan*, 966 F.2d
11 1255, 1258 (9th Cir. 1992); see also *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d
12 1219, 1227 (9th Cir. 2009) (seeking work despite impairment supports inference
13 that impairment is not disabling). Additionally, Plaintiff’s own perception of her
14 ability to work is a proper consideration in determining credibility. See *Barnes v.*
15 *Comm’r of Soc. Sec.*, No. 2:16-cv-00402-MKD, 2018 WL 545722 (E.D. Wash.
16 Jan. 24, 2018) (“Evidence of Plaintiff’s preparedness to return to work, even if an
17 optimistic self-assessment, is significant to the extent that the Plaintiff is willing
18 and able to work, as that belief indicates her allegation of symptoms precluding
19 work are not credible.”). Here, the ALJ noted that Plaintiff reported consistently
20 seeking work during the relevant period and was unsuccessful at finding work due

1 to reasons other than her impairments. Tr. 34; see Tr. 54 (Plaintiff testified that
2 she has been applying for jobs but was limited based on geographic location and
3 experience); Tr. 363 (Plaintiff reported trying to find employment but was
4 unsuccessful because “there is nothing out there”). Plaintiff also worked part-time
5 during the relevant period. Tr. 52. The ALJ reasonably concluded that Plaintiff’s
6 efforts to find work were inconsistent with an inability to work due to disability.
7 Tr. 34; see *Bray*, 554 F.3d at 1227 (approving of ALJ’s rejection of Plaintiff’s
8 symptom testimony in part because Plaintiff sought work during period of alleged
9 disability); see also *Woznick v. Colvin*, No. 6:15-cv-00111-AA, 2016 WL
10 1718363, at *4 (D. Or. Apr. 29, 2016) (ALJ reasonably discredited Plaintiff’s
11 symptom testimony in light of her efforts to seek work); *Lizarraga v. Colvin*, No.
12 CV 14-9116-FFM, 2016 WL 1604704, at *4 (C.D. Cal. Apr. 21, 2016) (same).
13 This finding is supported by substantial evidence.

14 6. Unemployment Benefits

15 The ALJ found Plaintiff’s claim of complete disability was inconsistent with
16 her receipt of unemployment benefits. Tr. 34. “Continued receipt of
17 unemployment benefits does cast doubt on a claim of disability, as it shows that an
18 applicant holds himself out as capable of working.” *Ghanim*, 763 F.3d at 1165
19 (citing *Copeland v. Bowen*, 861 F.2d 536, 542 (9th Cir. 1988). Here, the ALJ
20 observed that Plaintiff received unemployment benefits during the relevant period,

1 which indicated Plaintiff had declared herself as willing and able to work and as
2 actively seeking employment opportunities. Tr. 34; see Tr. 234. While the record
3 does not indicate whether Plaintiff held herself out as available for full-time or
4 part-time work,³ the Court finds the ALJ appropriately considered this factor in
5 light of the record, discussed supra, that Plaintiff was working during the relevant
6 period and described actively looking for work. Tr. 234; see Tr. 54, 363. Even if
7 the ALJ erred in this analysis, the error is harmless. An error is harmless where the
8 ALJ lists additional reasons, supported by substantial evidence, for discrediting
9 Plaintiff's symptom complaints. See *id.* at 1162-63; *Molina*, 674 F.3d at 1115
10 (“[S]everal of our cases have held that an ALJ’s error was harmless where the ALJ
11 provided one or more invalid reasons for disbelieving a claimant’s testimony, but
12 also provided valid reasons that were supported by the record.”); *Batson v.*
13 *Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004) (holding that any
14 error the ALJ committed in asserting one impermissible reason for claimant’s lack
15 of credibility did not negate the validity of the ALJ’s ultimate conclusion that the
16 claimant’s testimony was not credible). As discussed supra, the ALJ provided

17
18
19 ³ See *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161-62 (9th Cir.
20 2008).

1 several other clear and convincing reasons to discredit Plaintiff's symptom
2 testimony. Plaintiff is not entitled to relief on these grounds.

3 **B. Medical Opinion Evidence**

4 Plaintiff challenges the ALJ's consideration of the medical opinions of
5 William Bothamley, M.D., Bruce Eather, Ph.D., and Linina Ragan, NP. ECF No.
6 15 at 4-14.

7 There are three types of physicians: "(1) those who treat the claimant
8 (treating physicians); (2) those who examine but do not treat the claimant
9 (examining physicians); and (3) those who neither examine nor treat the claimant
10 [but who review the claimant's file] (nonexamining [or reviewing] physicians)." *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).
11 Generally, a treating physician's opinion carries more weight than an examining
12 physician's, and an examining physician's opinion carries more weight than a
13 reviewing physician's. *Id.* at 1202. "In addition, the regulations give more weight
14 to opinions that are explained than to those that are not, and to the opinions of
15 specialists concerning matters relating to their specialty over that of
16 nonspecialists." *Id.* (citations omitted).

17
18 If a treating or examining physician's opinion is uncontradicted, the ALJ
19 may reject it only by offering "clear and convincing reasons that are supported by
20 substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).

1 “However, the ALJ need not accept the opinion of any physician, including a
2 treating physician, if that opinion is brief, conclusory and inadequately supported
3 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
4 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or
5 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
6 may only reject it by providing specific and legitimate reasons that are supported
7 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-
8 831).

9 1. Dr. Bothamley

10 Dr. Bothamley, Plaintiff’s treating provider, opined on May 5, 2015, and
11 again on March 8, 2016, that Plaintiff’s back pain and migraines caused pain, that
12 Plaintiff would need to lie down during the day, that Plaintiff’s conditions were
13 likely chronic, that working on a regular and continuous basis would cause
14 Plaintiff’s condition to deteriorate, and that Plaintiff would likely miss four or
15 more days of work per month due to her impairments. Tr. 547-48, 570-71. The
16 ALJ gave this opinion little weight. Tr. 35. Because Dr. Bothamley’s opinion was

1 contradicted by Dr. Virji, Tr. 136-37, the ALJ was required to provide specific and
2 legitimate reasons for rejecting the opinion.⁴ Bayliss, 427 F.3d at 1216.

3 First, the ALJ found Dr. Bothamley's opinion was inconsistent with his
4 treatment record. Tr. 35. Incongruity between a doctor's medical opinion and
5 treatment records or notes is a specific and legitimate reason to discount a doctor's
6 opinion. Tommasetti, 533 F.3d at 1041. The ALJ noted that despite the severe
7 limitations Dr. Bothamley opined, Dr. Bothamley prescribed conservative
8 treatment. Tr. 35; see Tr. 397 (July 23, 2012: Dr. Bothamley would not feel
9 comfortable prescribing narcotic drugs for Plaintiff's condition); Tr. 395
10 (September 19, 2012: Dr. Bothamley recommended physical therapy); Tr. 394
11 (October 9, 2012: Plaintiff declined to pursue treatment at Vancouver pain center;
12 Dr. Bothamley suggested Lidoderm patch); Tr. 388 (May 29, 2014: Dr. Bothamley

13 _____
14 ⁴ Plaintiff asserts that Dr. Bothamley's opinion was not contradicted because no
15 other medical provider gave an opinion as to whether Plaintiff needed to lie down
16 during the day or how many days of work she would miss per month due to her
17 impairments. ECF No. 15 at 5-6. However, Dr. Virji opined Plaintiff could
18 perform work equivalent to the light exertional level with some postural and
19 environmental limitations, which contradicts the less-than-sedentary exertional
20 limitations Dr. Bothamley opined. Tr. 136-37.

1 recommended acupuncture); Tr. 553 (August 25, 2015: Plaintiff referred to
2 physical therapy); Tr. 574 (November 5, 2015: Dr. Bothamley recommended
3 Plaintiff continue physical therapy). The ALJ also noted that the observations in
4 Dr. Bothamley's treatment notes were inconsistent with the opined limitations. Tr.
5 35; see Tr. 389 (December 6, 2013: Plaintiff's spinal MRI showed mild results);
6 Tr. 562 (April 26, 2015: physical examination showed some tenderness in lower
7 back); Tr. 554 (August 3, 2015: Plaintiff presented complaining of right leg;
8 physical examination was normal); Tr. 552-53 (August 25, 2015: Plaintiff
9 ambulated without difficulty and tenderness in low back was mild); Tr. 574
10 (November 5, 2015: Plaintiff in no distress and ambulated with normal gait).
11 Plaintiff challenges the ALJ's finding by noting that Dr. Bothamley also referred
12 Plaintiff out for specialist evaluations. ECF No. 15 at 7. However, as discussed
13 supra, Plaintiff's specialist consultations also resulted in recommendations of
14 conservative treatment. See Tr. 377, 379, 382, 385, 529, 561, 576, 584. The ALJ
15 reasonably concluded, based on this record, that Dr. Bothamley's severe opined
16 limitations were inconsistent with the milder findings and conservative treatment
17 recommendations in his treatment notes. Tr. 35. This finding is supported by
18 substantial evidence.

19 Second, the ALJ found Dr. Bothamley's opinion was inconsistent with the
20 medical evidence as a whole. Tr. 35. Relevant factors to evaluating any medical

1 opinion include the amount of relevant evidence that supports the opinion, the
2 quality of the explanation provided in the opinion, and the consistency of the
3 medical opinion with the record as a whole. *Lingenfelter v. Astrue*, 504 F.3d 1028,
4 1042 (9th Cir. 2007); *Orn*, 495 F.3d at 631. An ALJ may choose to give more
5 weight to an opinion that is more consistent with the evidence in the record. 20
6 C.F.R. §§ 404.1527(c)(4), 416.927(c)(4) (2012) (“the more consistent an opinion is
7 with the record as a whole, the more weight we will give to that opinion”). Dr.
8 Bothamley opined Plaintiff’s limitations were attributable in part to migraine
9 headaches. Tr. 547-48, 570-71. However, the ALJ observed that the record
10 contained little objective evidence of limiting migraine headaches after her alleged
11 onset date in March 2011 until Plaintiff began reporting headaches in 2015. Tr. 26,
12 35; see Tr. 545 (Plaintiff evaluated for migraines in August 2006); Tr. 542
13 (Plaintiff evaluated for migraines in November 2008); Tr. 343 (Plaintiff reported a
14 history of headaches and occasional headaches on August 15, 2011); Tr. 401
15 (Plaintiff reported headaches as a temporary side effect of Cymbalta on April 20,
16 2012); Tr. 390 (Plaintiff reported headache and was diagnosed with rhinosinusitis);
17 Tr. 381 (Plaintiff reported frequent headaches on February 21, 2014); Tr. 559 (Dr.
18 Bothamley noted Plaintiff had a history of problems with headaches); Tr. 556-57
19 (Plaintiff reported increased headaches in June 2015). Plaintiff was evaluated by a
20 neurologist for headaches on July 23, 2015, and reported some light and noise

1 sensitivity but that her headaches were not as bad as they used to be and that she
2 used over the counter medication to manage symptoms. Tr. 566. The neurologist
3 found Plaintiff's headaches were mainly perimenstrual and did not indicate a need
4 for imaging or prescription medication. Tr. 567. The ALJ reasonably concluded
5 that the record contained insufficient evidence of limiting headaches to support the
6 significant limitations Dr. Bothamley opined. Tr. 26, 35. This finding is supported
7 by substantial evidence.

8 Third, the ALJ found Dr. Bothamley's opinion was based on Plaintiff's self-
9 reports. Tr. 35. A physician's opinion may be rejected if it based on a claimant's
10 subjective complaints which were properly discounted. *Tonapetyan v. Halter*, 242
11 F.3d 1144, 1149 (9th Cir. 2001); *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d
12 595, 602 (9th Cir. 1999); *Fair*, 885 F.2d at 604. "[W]hen an opinion is not more
13 heavily based on a patient's self-reports than on clinical observations, [this] is no
14 evidentiary basis for rejecting the opinion." *Ghanim*, 763 F.3d at 1162. The ALJ
15 found that Dr. Bothamley's opinion that Plaintiff would need to lie down during
16 the day was based on Plaintiff's self-reports. Tr. 35. Although Plaintiff asserts
17 that this conclusion is "unexplained," ECF No. 15 at 8, Dr. Bothamley's report
18 reflects that where prompted to indicate the reason for and duration of Plaintiff's
19 need to lay down during the day, Dr. Bothamley responded "[S]he states it is
20 variable – but it is always due to back pain." Tr. 580. This finding is clearly based

1 on Plaintiff's self-report. Additionally, as discussed supra, the lack of medical
2 evidence supporting Dr. Bothamley's opined limitations further indicates that Dr.
3 Bothamley's opinion relied substantially on Plaintiff's self-reports. Because the
4 ALJ properly found Plaintiff's symptom testimony was not consistent with the
5 evidence, see supra, this was a specific and legitimate reason to discredit Dr.
6 Bothamley's opinion. This finding is supported by substantial evidence.

7 Plaintiff argues generally that the ALJ erred in discrediting Dr. Bothamley's
8 opinion by failing to apply the appropriate factors to the evaluation of a treating
9 provider's opinion. ECF No. 15 at 6-7 (citing *Trevizo v. Berryhill*, 871 F.3d 664,
10 676 (9th Cir. 2017)). Unlike *Trevizo*, here the ALJ noted that Dr. Bothamley was a
11 treating provider, cited to Dr. Bothamley's treatment notes throughout the ALJ's
12 decision, identified substantial evidence that was inconsistent with Dr.
13 Bothamley's opinion, and made findings based on the ALJ's summary of the facts
14 and conflicting clinical evidence. Compare Tr. 26-36 with *Trevizo*, 871 F.3d at
15 675-77. Furthermore, the ALJ identified substantial evidence that was consistent
16 with the opinion of reviewing examiner Dr. Virji. Tr. 35-36; see *Andrews*, 53 F.3d
17 at 1041 (the opinion of a nonexamining physician may serve as substantial
18 evidence if it is supported by other evidence in the record and is consistent with it).
19 The ALJ reasonably credited the opinion of Dr. Virji over that of Dr. Bothamley.
20 This finding is supported by substantial evidence.

1 2. Dr. Eather

2 Dr. Eather reviewed the administrative record on February 2, 2015, and
3 opined that Plaintiff was moderately limited in her ability to understand and
4 remember detailed instructions; moderately limited in her ability to carry out
5 detailed instructions; moderately limited in her ability to maintain attention and
6 concentration for extended periods; that her concentration, persistence, and pace
7 would be diminished at times due to depression, anxiety, and pain focus but that
8 she would be able to complete routine tasks over a normal eight-hour workday
9 with customary breaks; that Plaintiff was moderately limited in her ability to
10 interact appropriately with the general public; that Plaintiff's pain would likely
11 reduce stress tolerance for dealing with the general public but that she would be
12 able to interact for brief periods with others in a work setting and accept
13 supervision; that Plaintiff was moderately limited in her ability to ability to
14 respond appropriately to changes in the work setting; and that Plaintiff would be
15 able to adapt to occasional changes in a work setting, avoid normal hazards, and
16 travel. Tr. 137-39. The ALJ gave this opinion little weight. Tr. 28. Because Dr.
17 Eather's opinion was contradicted by Dr. Miller, Tr. 508, the ALJ was required to
18 provide specific and legitimate reasons for rejecting the opinion. Bayliss, 427 F.3d
19 at 1216.

1 First, the ALJ found Dr. Eather's opinion was inconsistent with the medical
2 evidence in the record. Tr. 28. Relevant factors to evaluating any medical opinion
3 include the amount of relevant evidence that supports the opinion, the quality of
4 the explanation provided in the opinion, and the consistency of the medical opinion
5 with the record as a whole. Lingenfelter, 504 F.3d at 1042; Orn, 495 F.3d at 631.
6 An ALJ may choose to give more weight to an opinion that is more consistent with
7 the evidence in the record. 20 C.F.R. §§ 404.1527(c)(4), 416.927(c)(4) (2012)
8 ("the more consistent an opinion is with the record as a whole, the more weight we
9 will give to that opinion"). The ALJ noted that despite the limitations Dr. Eather
10 opined, Plaintiff's treatment history was minimal. Tr. 26-28. In March 2012,
11 Plaintiff reported "some issues" with depression and was started on medication.
12 Tr. 402. Plaintiff discontinued this medication by May 2012 because it did not
13 improve her pain and because of side effects. Tr. 400. Tr. 27-28. Plaintiff
14 engaged in therapy from June to December 2012, but these sessions focused
15 relationship issues with Plaintiff's husband. Tr. 471-500. After a gap in treatment,
16 Plaintiff re-engaged in treatment from June 2014 to January 2015, again focused
17 on Plaintiff's relationship with her husband. Tr. 464-70, 510-28. In July 2014,
18 Plaintiff stated she was not interested in starting medication because her symptoms
19 had improved. Tr. 440. The ALJ noted that although Plaintiff's therapists often
20 noted Plaintiff had a depressed mood, they made no findings of social or cognitive

1 limitations. Tr. 27; see Tr. 441-503, 510-28. Plaintiff's mental status
2 examinations were largely normal. Tr. 377 (September 27, 2013); Tr. 507-08
3 (November 18, 2014); Tr. 550 (August 25, 2015). Additionally, the ALJ noted that
4 Plaintiff did not testify to any ongoing mental health impairments at the hearing,
5 noting only that her past mental health treatment was to deal with stress after
6 losing her job and that she did not intend to return to treatment. Tr. 28; see Tr. 51-
7 64. The ALJ reasonably concluded that this record indicated that despite the
8 existence of a mental impairment, Plaintiff had minimal limitations in functioning.
9 Tr. 26. This was a specific and legitimate reason to discredit Dr. Eather's opined
10 limitations.

11 Second, the ALJ found Dr. Eather's opinion was inconsistent with Plaintiff's
12 daily activities. Tr. 28. An ALJ may discount a medical source opinion to the
13 extent it conflicts with the claimant's daily activities. *Morgan*, 169 F.3d at 601-02.
14 The ALJ found Plaintiff had no limitation in her daily activities. Tr. 28-29.
15 Plaintiff reported her daily activities to include feeding and bathing her children,
16 taking the dogs outside, bathing the dogs as needed, doing dishes, preparing meals,
17 doing laundry, and performing housework. Tr. 270-72. Plaintiff indicated she had
18 no limitations in personal care activities. Tr. 270. Plaintiff reported her hobbies to
19 include watching television, playing online games, and playing games with her
20 children. Tr. 273. Plaintiff also reported visiting with friends and family,

1 attending church weekly, traveling to her in-laws' house, and participating in
2 community events. Id. Additionally, Plaintiff worked a part-time job for several
3 years during the relevant period. Tr. 52. The ALJ reasonably concluded that these
4 activities were inconsistent with the limitations in public interaction and
5 concentration, persistence, and pace that Dr. Eather opined. Tr. 28. This was a
6 specific and legitimate reason to discredit Dr. Eather's opinion.

7 Third, the ALJ found Dr. Eather's opinion was based on an incomplete
8 review of the record. Tr. 28. The extent to which a medical source is "familiar
9 with the other information in [the claimant's] case record" is relevant in assessing
10 the weight of that source's medical opinion. See 20 C.F.R. §§ 404.1527(c)(6),
11 416.927(c)(6) (2012). The ALJ noted that Dr. Eather's review of the evidence
12 occurred on February 2, 2015. Tr. 28. Over 40 pages of evidence in the record
13 post-date Dr. Eather's review. Tr. 529-31, 547-87. The ALJ observed that these
14 treatment notes did not document significant mental health observations or
15 treatment. Tr. 28. In light of the ALJ's finding that Dr. Eather's opinion was not
16 supported by the minimal evidence in the record, the ALJ reasonably considered
17 the lack of support in the subsequent medical evidence in evaluating Dr. Eather's
18 opinion. Tr. 28. This was a specific and legitimate reason to discredit Dr. Eather's
19 opinion.

1 3. Ms. Ragan

2 Ms. Ragan treated Plaintiff on June 13, 2012, and opined that Plaintiff was
3 capable of gainful employment despite Plaintiff’s expressed desire to obtain
4 disability benefits to be a full-time stay-at-home mom. Tr. 364. The ALJ gave this
5 opinion significant weight. Tr. 32. As a nurse practitioner, Ms. Ragan is an “other
6 source.” 20 C.F.R. §§ 404.1513(d), 416.913(d) (2013). The opinion of an “other
7 source” may still be entitled to weight depending on the particular facts of a case.
8 20 C.F.R. §§ 404.1527(f), 416.927(f) (2012) (“Although we will consider these
9 opinions using the same factors as listed in paragraph (c)(1) through (c)(6), not
10 every factor for weighing opinion evidence will apply in every case”); see also
11 *Revels v. Berryhill*, 874 F.3d 648, 665 (9th Cir. 2017) (“[T]hough [the nurse
12 practitioner] is not an ‘acceptable medical source,’ she is an ‘other source’ and
13 there are strong reasons to assign weight to her opinion.”). The standard to reject
14 opinion evidence does not apply where the ALJ credits the evidence. See *Orteza v.*
15 *Shalala*, 50 F.3d 748, 750 (9th Cir. 1995).

16 Here, the ALJ found Ms. Ragan’s opinion was consistent with her own
17 examination findings. Tr. 32. An opinion is entitled to more weight where it is
18 supported by relevant medical evidence. 20 C.F.R. §§ 404.1527(c)(2)(iii),
19 416.927(c)(2)(iii) (2012). The ALJ noted that Ms. Ragan’s examination of
20 Plaintiff revealed normal gait, full strength, normal sensation, no gross

1 abnormalities of lumbar spine, very little tenderness, full range of motion, and
2 negative straight leg raise bilaterally. Tr. 32; see Tr. 363. Second, the ALJ found
3 Ms. Ragan’s opinion was consistent with the opinions and recommendations of
4 other medical providers in the record. Tr. 32. The ALJ noted that Ms. Ragan’s
5 recommendation to physical therapy and exercise was consistent with the
6 recommendations of other providers. Tr. 32; compare Tr. 364 with Tr. 382, 385,
7 529, 561, 576. Third, the ALJ found Ms. Ragan’s opinion was consistent with
8 Plaintiff’s job-seeking activities. Tr. 32. The ALJ noted that Plaintiff reported
9 looking for work during the relevant period, which was consistent with Ms.
10 Ragan’s opinion that Plaintiff was capable of working. Tr. 32; see Tr. 52, 54, 363.
11 The ALJ’s decision to give Ms. Ragan’s opinion significant weight is supported by
12 substantial evidence.

13 Plaintiff challenges the ALJ’s finding, arguing that the ALJ should have
14 discredited Ms. Ragan’s opinion for a variety of reasons. ECF No. 15 at 14.
15 Plaintiff essentially invites this Court to reweigh the evidence. The Court “may
16 neither reweigh the evidence nor substitute its judgment for that of the
17 Commissioner.” *Blacktongue v. Berryhill*, 229 F. Supp. 3d 1216, 1218 (W.D.
18 Wash. 2017) (citing *Thomas*, 278 F.3d at 954); see also *Tommasetti*, 533 F.3d at
19 1038 (“[W]hen the evidence is susceptible to more than one rational interpretation”
20 the court will not reverse the ALJ’s decision). The ALJ’s evaluation of Ms.

1 Ragan’s opinion is a rational interpretation of the evidence and is supported by
2 substantial evidence.

3 **C. Step Five**

4 Plaintiff challenges the ALJ’s conclusion at step five that Plaintiff was
5 capable of performing other work in the national economy. ECF No. 15 at 14-17.

6 First, Plaintiff asserts the ALJ did not identify enough jobs that exist in significant
7 numbers in the national economy that Plaintiff could perform. ECF No. 15 at 15.

8 At step five of the sequential evaluation analysis, the burden shifts to the

9 Commissioner to establish that (1) the claimant is capable of performing other
10 work; and (2) such work “exists in significant numbers in the national economy.”

11 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); Beltran, 700 F.3d at 389. There is no

12 “bright-line rule for what constitutes a ‘significant number’ of jobs.” Beltran, 700

13 F.3d at 389. Here, the vocational expert testified that an individual with Plaintiff’s

14 RFC was capable of performing the jobs of laundry folder, with 199,300 jobs

15 available in the national economy, or ticket taker, with 133,700 jobs available in

16 the national economy. Tr. 71. These numbers sufficiently establish that these jobs

17 exist in significant numbers in the national economy.⁵ See *Gutierrez v. Comm’r of*

18
19 ⁵ Plaintiff also cites to POMS ID 25025.030 as authority that the ALJ was required
20 to identify at least three occupations existing in significant numbers in the national

1 Soc. Sec., 740 F.3d 519, 528-29 (9th Cir. 2014) (finding 25,000 in the national
2 economy to be a sufficiently significant number).

3 Next, Plaintiff asserts that the vocational expert’s testimony was unreliable
4 in light of information Plaintiff presents from the Occupational Employment
5 Statistics (OES) program. ECF No. 15 at 15-17. “The Bureau of Labor Statistics
6 provides employment statistics for various occupations based on its [OES]
7 program. The OES program uses the Office of Management and Budget’s
8 Standard Occupational Classification (‘SOC’) for classifying ‘workers and jobs
9 into occupational categories for the purpose of collecting, calculating, analyzing,
10 and disseminating data.” *Leija v. Colvin*, No. 1:13-cv-1575 GSA, 2015 WL
11 1439933, at *5 (E.D. Cal. Mar. 27, 2015) (internal citations omitted).

12 A vocational expert’s testimony constitutes substantial evidence in support
13 of an ALJ’s findings. *Thomas*, 278 F.3d at 960. However, the court may “remand
14 _____
15 economy that Plaintiff could perform. ECF No. 15 at 15. “POMS constitutes an
16 agency interpretation that does not impose judicially enforceable duties on either
17 this court or the ALJ.” *Lockwood v. Comm’r Soc. Sec. Admin.*, 616 F.3d 1068,
18 1073 (9th Cir. 2010). The Court finds that the two occupations identified by the
19 ALJ exist in significant numbers in the national economy and satisfy the ALJ’s
20 step five burden.

1 a case when the vocational expert's testimony is 'fundamentally flawed.'" *Dunn v.*
2 *Colvin*, No. 13cv1219-MMA, 2014 WL 2159275, at *9 (S.D. Cal. May 23, 2014)
3 (citing *Farias v. Colvin*, 519 F. App'x 439, 440 (9th Cir. 2013) (granting remand
4 where "a reasonable mind would not accept the VE's testimony")). In this case,
5 the vocational expert testified that an individual with Plaintiff's RFC was capable
6 of performing the job of laundry folder, DOT code 369.687-018. Tr. 71. In
7 response to a question from Plaintiff's counsel, the vocational expert testified that
8 the job of laundry folder fell within the OES group of "laundry and dry cleaning
9 workers," and that the vocational expert did not know how many unique DOT
10 codes fell within that OES category. Tr. 76. The vocational expert was not asked
11 about and did not testify to the OES category for ticket taker, the other occupation
12 identified as consistent with Plaintiff's RFC. Tr. 69-77.

13 Plaintiff's challenges to the vocational expert's testimony do not show that
14 the testimony was "fundamentally flawed." *Dunn*, 2014 WL 2159275 at *9. First,
15 Plaintiff asserts that the vocational expert's testimony was unreliable because she
16 did not know the total number of DOT codes that fall within the OES category of
17 laundry and dry cleaning workers. ECF No. 15 at 16. However, information about
18 other DOT codes is not relevant to the vocational expert's testimony about the
19 number jobs under the DOT code for laundry folder that were available in the
20 national economy. Second, Plaintiff asserts the vocational expert's testimony was

1 unreliable because the vocational expert’s employment numbers may have
2 included part-time work. ECF No. 15 at 16. However, “there is no case law
3 stating that the ALJ cannot consider part-time work in the step five analysis.”
4 Wright v. Colvin, No. CV 12-1893-SP, 2014 WL 5456044, at *6 (C.D. Cal. Oct.
5 27, 2014); see also King v. Astrue, No. C 09-05322 MEJ, 2011 WL 1791553, at
6 *19 (N.D. Cal. May 10, 2011) (noting that the regulations only require that a
7 significant number of jobs exist either in the region where the claimant lives or in
8 several other regions of the country). Finally, Plaintiff asserts that the employment
9 number the vocational expert gave for the ticket taker job was inconsistent with the
10 employment numbers for a similar OES group of occupations. ECF No. 15 at 16.
11 However, Plaintiff “did not question the vocational expert about the OES
12 calculations on which [Plaintiff] now relies, and therefore there is no foundation in
13 the record explaining how counsel has translated the DOT job codes into the
14 Standard Occupational Classification (“SOC”) system used by OES.” Ledesma v.
15 Berryhill, No. 16-882-AGR, 2017 WL 2347181, at *4 (C.D. Cal. May 30, 2017).
16 Accordingly, Plaintiff does not establish that the vocational expert’s testimony was
17 “fundamentally flawed.” Dunn, 2014 WL 2159275 at *9.

18 Overall, the ALJ’s evaluation of the vocational expert’s testimony is
19 supported by substantial evidence and the ALJ properly identified jobs that exist in
20

1 significant numbers in the national economy that Plaintiff could perform. The
2 ALJ's step five finding is legally sufficient.

3 **CONCLUSION**

4 Having reviewed the record and the ALJ's findings, this court concludes the
5 ALJ's decision is supported by substantial evidence and free of harmful legal error.

6 Accordingly, **IT IS HEREBY ORDERED:**

- 7 1. Plaintiff's Motion for Summary Judgment, ECF No. 15, is **DENIED**.
- 8 2. Defendant's Motion for Summary Judgment, ECF No. 20, is **GRANTED**.
- 9 3. The Court enter **JUDGMENT** in favor of Defendant.

10 The District Court Executive is directed to file this Order, provide copies to
11 counsel, and **CLOSE THE FILE**.

12 DATED November 21, 2018.

13 s/Mary K. Dimke
14 MARY K. DIMKE
15 UNITED STATES MAGISTRATE JUDGE
16
17
18
19
20