

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

**Feb 01, 2019**

SEAN F. MCAVOY, CLERK

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

RACHEL B.,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 1:18-cv-03026-MKD

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

ECF Nos. 15, 16

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 15, 16. 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. 16.

**JURISDICTION**

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

1 **STANDARD OF REVIEW**

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

13 In reviewing a denial of benefits, a district court may not substitute its  
14 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,  
15 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one  
16 rational interpretation, [the court] must uphold the ALJ’s findings if they are  
17 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674  
18 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an  
19 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless  
20 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”

1 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s  
2 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*  
3 *Sanders*, 556 U.S. 396, 409-10 (2009).

#### 4 **FIVE-STEP EVALUATION PROCESS**

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

15 The Commissioner has established a five-step sequential analysis to  
16 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §  
17 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s work  
18 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in “substantial  
19 gainful activity,” the Commissioner must find that the claimant is not disabled. 20  
20 C.F.R. § 416.920(b).

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

9 At step three, the Commissioner compares the claimant's impairment to  
10 severe impairments recognized by the Commissioner to be so severe as to preclude  
11 a person from engaging in substantial gainful activity. 20 C.F.R. §  
12 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the  
13 enumerated impairments, the Commissioner must find the claimant disabled and  
14 award benefits. 20 C.F.R. § 416.920(d).

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

1 At step four, the Commissioner considers whether, in view of the claimant's  
2 RFC, the claimant can perform work that she has performed in the past (past  
3 relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant can perform past  
4 relevant work, the Commissioner must find that the claimant is not disabled. 20  
5 C.F.R. § 416.920(f). If the claimant is incapable of performing such work, the  
6 analysis proceeds to step five.

7 At step five, the Commissioner considers whether, in view of the claimant's  
8 RFC, the claimant can perform other work in the national economy. 20 C.F.R. §  
9 416.920(a)(4)(v). In making this determination, the Commissioner must also  
10 consider vocational factors such as the claimant's age, education, and past work  
11 experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant can adjust to other work,  
12 the Commissioner must find that the claimant is not disabled. 20 C.F.R. §  
13 416.920(g)(1). If the claimant is not capable of adjusting to other work, analysis  
14 concludes with a finding that the claimant is disabled and is therefore entitled to  
15 benefits. 20 C.F.R. § 416.920(g)(1).

16 The claimant bears the burden of proof at steps one through four above.  
17 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to  
18 step five, the burden shifts to the Commissioner to establish that (1) the claimant  
19 can perform other work; and (2) such work "exists in significant numbers in the  
20

1 national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386,  
2 389 (9th Cir. 2012).

3 “A finding of ‘disabled’ under the five-step inquiry does not automatically  
4 qualify a claimant for disability benefits.” *Parra v. Astrue*, 481 F. 3d 742, 746 (9th  
5 Cir. 2007) (citing *Bustamante v. Massanari*, 262 F.3d 949, 954 (9th Cir. 2001)).

6 When there is medical evidence of drug or alcohol addiction (DAA), the ALJ must  
7 determine whether the drug or alcohol addiction is a material factor contributing to  
8 the disability. 20 C.F.R. § 416.935(a). In order to determine whether drug or  
9 alcohol addiction is a material factor contributing to the disability, the ALJ must  
10 evaluate which of the current physical and mental limitations would remain if the  
11 claimant stopped using drugs or alcohol, then determine whether any or all of the  
12 remaining limitations would be disabling. 20 C.F.R. § 416.935(b)(2). If the  
13 remaining limitations would not be disabling, drug or alcohol addiction is a  
14 contributing factor material to the determination of disability. *Id.* If the remaining  
15 limitations would be disabling, the claimant is disabled independent of the drug or  
16 alcohol addiction and the addiction is not a contributing factor material to  
17 disability. *Id.* The claimant has the burden of showing that DAA is not a  
18 contributing factor material to disability. *Parra*, 481 F.3d at 748.

1 **ALJ’S FINDINGS**

2 On September 12, 2014, Plaintiff applied for supplemental security income  
3 benefits alleging a disability onset date of August 4, 2014. Tr. 215-20. The  
4 application was denied initially, Tr. 140-44, and on reconsideration, Tr. 153-56.  
5 Plaintiff appeared before an administrative law judge (ALJ) on January 18, 2017.  
6 Tr. 69-102. On March 9, 2017, the ALJ denied Plaintiff’s claim. Tr. 12-35.

7 At step one of the sequential evaluation process, the ALJ found Plaintiff has  
8 not engaged in substantial gainful activity since September 12, 2014. Tr. 17. At  
9 step two, the ALJ found that Plaintiff has the following severe impairments: type 1  
10 diabetes on insulin pump; right deQuervain’s tenosynovitis; posttraumatic stress  
11 disorder (PTSD); major depressive disorder; methamphetamine abuse; cannabis  
12 use disorder; and benzodiazepine dependence. Tr. 17. At step three, the ALJ  
13 found Plaintiff’s mental impairments, considering her substance abuse disorders,  
14 meet sections 12.04 and 12.15 of 20 C.F.R. Part 404, Subpart P, Appendix 1. Tr.  
15 18. However, the ALJ found that if Plaintiff stopped the substance use, she would  
16 not have an impairment or combination of impairments that meets or medically  
17 equals any of the impairments listed in 20 C.F.R. Part 404, Subpart P, Appendix 1.  
18 Tr. 20. The ALJ then concluded that if Plaintiff stopped the substance use,  
19 Plaintiff would have the RFC to perform light work with the following limitations:

20 [Plaintiff] can occasionally climb ladders, ropes, and scaffolds and  
can frequently kneel, crouch, and crawl. She is limited to frequent

1 handling and fingering. She is limited to occasional exposure to  
2 extreme cold and to vibration and is limited to occasional exposure  
3 to hazardous conditions such as proximity to moving machinery  
4 and unprotected heights. [Plaintiff] is limited to tasks that can be  
5 learned in 30 days or less, involving no more than simple work-  
6 related decisions and few workplace changes. She is limited to  
7 occasional and superficial public interaction. [Plaintiff] is able to  
8 interact with co-workers on a casual or superficial basis, but would  
9 not do well as a member of a highly interactive or interdependent  
10 work group.

11 Tr. 22.

12 At step four, the ALJ found Plaintiff is unable to perform any past relevant  
13 work. Tr. 29. At step five, the ALJ found that, considering Plaintiff's age,  
14 education, work experience, RFC, and testimony from the vocational expert, there  
15 were jobs that existed in significant numbers in the national economy that Plaintiff  
16 could perform, such as, production line solderer, electrical accessories assembler,  
17 and inspector/hand packager. Tr. 30. Therefore, the ALJ concluded Plaintiff was  
18 not under a disability, as defined in the Social Security Act, from the application  
19 date of September 12, 2014, though the date of the decision. Tr. 30.

20 On December 19, 2017, the Appeals Council denied review of the ALJ's  
21 decision, Tr. 1-6, making the ALJ's decision the Commissioner's final decision for  
22 purposes of judicial review. *See* 42 U.S.C. § 1383(c)(3).



1 As an initial matter, the record provides substantial evidence to support the  
2 ALJ's finding that Plaintiff used drugs. The medical record reflects that Plaintiff  
3 was not straightforward about her marijuana, methamphetamine, or prescription  
4 use. Plaintiff frequently reported that she neither used drugs nor had a history of  
5 abusing drugs. Tr. 455-70, 339-44, 372-97, 333-37, 330-31. But in October 2014,  
6 she tested positive for cannabinoids, in addition to the prescribed amphetamine and  
7 benzodiazepine. Tr. 377, 387. On two other occasions, within days of denying  
8 that she used drugs, Plaintiff tested positive for methamphetamines. Tr. 990, 960-  
9 61, 883. Later Plaintiff would frequently admit she used marijuana either daily or  
10 occasionally. Tr. 403, 863, 915, 789-19, 1138-44, 1153-60, 1086-1101, 1492-52,  
11 1121-30. For instance, during her initial assessment in January 2016 with Central  
12 Washington Comprehensive Mental Health, Plaintiff denied any abuse or history  
13 of abusing drugs, other than using marijuana three times a day. Tr. 862-63; *see*  
14 *also* Tr. 858, 863. Then in February 2016, she admitted to recent  
15 methamphetamine use. Tr. 697. In March 2016, she admitted previous drug and  
16 narcotic pain prescription abuse but submitted that she had been clean for the past  
17 month. Tr. 1213. In June 2016, Plaintiff reported that she self-discontinued all  
18 prescriptions in October 2015 and began self-medicating with street drugs,  
19 including methamphetamines, from about October to November 2015. Tr. 915,  
20 925; *see also* Tr. 915, 931 (reflecting the time period that Plaintiff initially tried

1 lamotrigine). Plaintiff also admitted that she continued to use marijuana nearly  
2 daily for PTSD and chronic backpain. Tr. 915. Based on this record, the ALJ  
3 reasonably concluded that Plaintiff abused substances from at least October 2014  
4 through March 2016. Tr. 18. *See Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir.  
5 2005) (recognizing that even where evidence is subject to more than one rational  
6 interpretation, the ALJ's conclusion will be upheld). That Plaintiff continued to  
7 use marijuana after March 2016 does not affect the ALJ's rational ruling that  
8 Plaintiff's methamphetamine and prescription abuse materially contributed to her  
9 mental-health limitations during the alleged disability period.

10 Plaintiff argues the ALJ mischaracterized her substance abuse, submitting  
11 that the record reflects that Plaintiff was frequently upfront with her providers  
12 about her cannabis use, which is legal in Washington; her use of methamphetamine  
13 was for self-medication purposes; and the other narcotics, which she tested positive  
14 for, were prescribed. ECF No. 15 at 5. However, regardless of whether marijuana  
15 is legal for personal use in Washington, the ALJ was required to assess whether  
16 Plaintiff's marijuana use, methamphetamine use, and prescription pain abuse  
17 materially contributed to her disability. Plaintiff's medical providers themselves  
18 referred to Plaintiff's drug use as abuse. *See, e.g.*, Tr. 435, 1089, 1128, 1150, 1154  
19 ("abuses marijuana"; Tr. 856 ("history of substance abuse"); Tr. 928 ("cannabis  
20

1 abuse”). On this record, the ALJ’s finding that Plaintiff abused drugs is rational,  
2 supported, and not a mischaracterization of Plaintiff’s substance abuse.

3       Next, there is substantial evidence in the record to support the ALJ’s  
4 conclusion that Plaintiff’s drug abuse materially contributed to Plaintiff’s  
5 disability. Here, the record reflects that during the period Plaintiff abused drugs  
6 she was more regularly anxious, depressed, tearful, upset, and presented with  
7 labile, blunt, or verbose affect, dysphoric mood, rapid speech, and vague and  
8 circumstantial reporting. Tr. 956, 941, 945-46, 923-24, 929, 935. Also, during the  
9 period that Plaintiff abused drugs, she reported “falling apart,” Tr. 934; needing  
10 help with everything, Tr. 934; being unable to sleep and eat, Tr. 928; and being  
11 tearful with poor energy and no desire to eat much during the day, Tr. 864.

12       The ALJ cited to substantial evidence in the record that once Plaintiff  
13 stopped abusing drugs her functioning substantially improved. Tr. 21. Plaintiff’s  
14 memory, attention, and concentration were intact in June, July, August, September,  
15 October, November, and December 2016. Tr. 881, 887, 892, 898, 903, 911, 916.  
16 Likewise, Plaintiff consistently presented as clean and casually dressed from June  
17 to December 2016. Tr. 881, 887, 892, 898, 903, 911, 916. Plaintiff’s normal  
18 appearance, memory, attention, and concentration support the ALJ’s rational  
19 finding that Plaintiff had no more than a moderate limitation in understanding,  
20 remembering, and applying information and adapting or managing herself when

1 she stopped abusing drugs, as compared to her marked limitations in these abilities  
2 when she abused drugs. Tr. 19-21.

3 Plaintiff contends that medical evidence after March 2016 shows that she  
4 still had marked limitations. ECF No. 15 at 5-6. But one of the records cited by  
5 Plaintiff was during March 2016, *see* Tr. 1215, and others related to situational  
6 stressors that Plaintiff was dealing with, *see* Tr. 693-94 (reporting a recent assault);  
7 Tr. 921-22 (anxious and tangential due to chaos within her family and need to find  
8 her own housing); Tr. 1212 (mildly distressed, agitated, and anxious over wanting  
9 to be on an insulin pump and her brother's serious illness); Tr. 907 (dealing with  
10 stress of brother returning to live in the same house); Tr. 920 (dealing with  
11 detoxing from her medications and building relationship with her mom); Tr. 971  
12 (mildly distressed and dealing with sinus issues); Tr. 977 (mildly distressed and  
13 dealing with recovering from pneumonia). The other cited post-March 2016  
14 records are consistent with the ALJ's moderate-limitation finding relating to  
15 Plaintiff's abilities to interact with others and adapt or manage herself. *See* Tr. 859  
16 (Plaintiff will continue to experience anxiety for at least six months.); Tr. 977, 981  
17 (active, alert, anxious, orientated, mild distress); Tr. 909 (presented with a slightly  
18 uplifted mood and congruent affect); Tr. 891 (reporting that her depressive  
19 symptoms are adequately treated with medication but still bothered by anxiety;  
20 presented as orientated, alert, and cooperative with speech at normal rate and

1 volume and neutral mood and constricted affect); Tr. 981 (mildly distressed and  
2 anxious though orientated, active, and alert); Tr. 1205 (mildly distressed with good  
3 insight); Tr. 880-81, 886-87, 892, 898 (orientated, speech within normal limits,  
4 neutral mood, constricted affect, fair insight and judgment, and reporting that her  
5 anxiety is better). Thus, the record reflects that after Plaintiff stopped abusing  
6 methamphetamine and prescription pills, her mental-health conditions improved.  
7 While Plaintiff endorsed self-harm thoughts the two months after she self-  
8 discontinued medication, she did not have any plan or intent and appeared genuine  
9 and otherwise had normal mental status exams. Tr. 892, 898, 902, 903, 920. The  
10 ALJ's finding that Plaintiff was moderately limited (rather than markedly limited)  
11 in her abilities to interact with others and adapt or manage herself when she was  
12 not abusing methamphetamine and prescription pills, in addition to marijuana, is  
13 rational and supported by the record. Tr. 19-21. The ALJ's conclusion that  
14 Plaintiff did not meet her burden to show that her substance abuse did not  
15 materially contribute to her disability is supported by the record.

#### 16 **B. Plaintiff's Symptom Claims**

17 Plaintiff faults the ALJ for failing to rely on reasons that were clear and  
18 convincing in discrediting her symptom claims. ECF No. 15 at 16-20.

19 An ALJ engages in a two-step analysis to determine whether to discount a  
20 claimant's testimony regarding subjective symptoms. SSR 16-3p, 2016 WL

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

8       Second, “[i]f the claimant meets the first test and there is no evidence of  
9 malingering, the ALJ can only reject the claimant’s testimony about the severity of  
10 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the  
11 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations  
12 omitted). General findings are insufficient. The ALJ must identify what symptom  
13 claims are being discounted and what evidence undermines these claims. *Id.*;  
14 *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995); *Thomas v. Barnhart*, 278 F.3d  
15 947, 958 (9th Cir. 2002). “The clear and convincing [evidence] standard is the  
16 most demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d  
17 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d  
18 920, 924 (9th Cir. 2002)).

19       Factors to be considered in evaluating the intensity, persistence, and limiting  
20 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,

1 duration, frequency, and intensity of pain or other symptoms; 3) factors that  
2 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and  
3 side effects of any medication the claimant takes or taken to alleviate pain or other  
4 symptoms; 5) treatment, other than medication, the claimant receives or received  
5 for relief of pain or other symptoms; 6) any measures other than treatment the  
6 claimant uses or used to relieve pain or other symptoms; and 7) any other factors  
7 concerning the claimant’s functional limitations and restrictions due to pain or  
8 other symptoms. SSR 16-3p, 2016 WL 1119029, at \*7; 20 C.F.R. § 416.929(c)(1)-  
9 (3). The ALJ is instructed to “consider all of the evidence in an individual’s  
10 record” “to determine how symptoms limit ability to perform work-related  
11 activities.” SSR 16-3p, 2016 WL 1119029, at \*2.

12 While the ALJ determined that Plaintiff’s medically determinable  
13 impairments could reasonably be expected to cause some of the alleged symptoms,  
14 the ALJ discounted Plaintiff’s claims concerning the intensity, persistence, and  
15 limiting effects of the symptoms. Tr. 23.

16 *1. Inconsistent with Objective Medical Evidence*

17 The ALJ found the severity of Plaintiff’s symptom claims unsupported by  
18 the objective medical evidence. Tr. 23-24. An ALJ may not discredit a claimant’s  
19 symptom testimony and deny benefits solely because the degree of the symptoms  
20 alleged is not supported by objective medical evidence. *Rollins v. Massanari*, 261

1 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.  
2 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989); *Burch*, 400 F.3d at 680.  
3 However, the medical evidence is a relevant factor in determining the severity of a  
4 claimant's symptoms and their disabling effects. *Rollins*, 261 F.3d at 857; 20  
5 C.F.R. § 416.929(c)(2). Here, the ALJ found that Plaintiff's reported significant  
6 upper extremity dysfunction, diabetes symptoms, and symptoms related to her  
7 mood disorder and PTSD were not as severe as she claimed. Tr. 23-24.

8 First, as to Plaintiff's upper extremities, a nerve conduction study in June  
9 2014 was normal, Tr. 427; during a December 2014 emergency room visit,  
10 Plaintiff had intact range of motion in all extremities, intact sensation, steady gait,  
11 and intact motor functioning, Tr. 353-53; during a February 2015 exam, Plaintiff  
12 had normal range of motion, normal sensory function, and normal elbow and wrist  
13 findings other than some bilateral wrist and neck tenderness, Tr. 436-37; and  
14 Plaintiff had normal motor strength, normal movement of extremities, and normal  
15 ambulation in September 2015 and May 2016, Tr. 1129, 986, 1146-47. The ALJ  
16 noted that Plaintiff's wrist x-rays in September 2015 were normal, Tr. 438, 442,  
17 and the September 2016 neurological examination was normal, Tr. 1023. X-rays  
18 in October 2015 of the pelvis and hips were unremarkable. Tr. 671. Consistent  
19 with Dr. Kopp and Dr. Haynes' December 2014 opinion that Plaintiff's physical  
20 limitations would improve, Tr. 429-30, 432, the more recent evidence indicates

1 that Plaintiff's exertional and manipulation limitations did improve and are not as  
2 severe as claimed by Plaintiff.

3       Second, as to Plaintiff's diabetes, the ALJ concluded that the condition  
4 caused some physical limitations, but they were not as severe as Plaintiff alleged.  
5 Tr. 24. The ALJ determined that, when Plaintiff managed her diabetes and took  
6 gabapentin as prescribed, Plaintiff experienced normal gait, motor strength, and  
7 tone. Tr. 24 (citing Tr. 1097-98, 790-91, 971-72).

8       Third, the ALJ concluded that the medical evidence indicated that Plaintiff's  
9 mood disorder and PTSD were not as limiting as she alleged during periods of  
10 sobriety. Tr. 24. For instance, from June through December 2016, Plaintiff's  
11 memory, concentration, and attention were intact, she showed full/congruent to  
12 constricted/mild affect, normal speech, and neutral mood. Tr. 983 (May 2016:  
13 reporting that she is doing better after ceasing benzodiazepines in February 2016  
14 and starting trauma therapy); Tr. 887, 892, 897-98, 903, 911, 916 (June to Nov.  
15 2016: alert; cooperative; mild/constricted to congruent/full affect; neutral mood;  
16 normal speech; intact memory, attention, and concentration; logical and linear  
17 thought form; and fair insight and judgment). Plaintiff submits that the record  
18 shows that her mental-health symptoms waxed and waned. ECF No. 15 at 17-18.  
19 While waxing and waning of mental-health symptoms is common, the objective  
20 medical evidence establishes that Plaintiff's mental health symptoms fluctuated

1 significantly before the spring of 2016 because Plaintiff abused drugs and was not  
2 engaging in therapy, and then after the spring of 2016, Plaintiff's mental-health  
3 symptoms were relatively stable and moderate. Tr. 887, 892, 897-98, 903, 911,  
4 916.

5 Based on this record, the ALJ reasonably concluded that the objective  
6 medical evidence is not consistent with Plaintiff's allegations of disabling  
7 limitations.

## 8 *2. Effective Treatment*

9 The ALJ discounted Plaintiff's reported symptoms because her physical and  
10 mental health improved with medication and therapy. Tr. 24. The effectiveness of  
11 treatment is a relevant factor in determining the severity of a claimant's symptoms.  
12 20 C.F.R. § 416.929(c)(3); *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001,  
13 1006 (9th Cir. 2006); *Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008).  
14 Here, the ALJ noted that Plaintiff's diabetes symptoms quickly resolved with  
15 medical treatment. Tr. 24 (citing Tr. 1097-98, 790-91, 971-72). As to Plaintiff's  
16 mental-health symptoms, Plaintiff had significant improvement when restarting her  
17 mental-health therapy, consistently using medications, and ending  
18 methamphetamine and prescription abuse. Tr. 24 (citing Tr. 886); *see also* Tr. 880;  
19 887, 892, 897-98, 903, 911, 916. The record supports the ALJ's conclusion that  
20

1 Plaintiff's impairments were not as limiting as Plaintiff claimed when treated with  
2 medication and therapy.

3 Plaintiff argues however that because the ALJ's analysis about Plaintiff's  
4 diabetes contained an incomplete sentence the ALJ's decision that Plaintiff's  
5 diabetes was not as limiting as claimed was unsupported. ECF No. 15 at 17 (citing  
6 Tr. 24 ("This evidence indicates that the diabetes causes occasional difficulties but  
7 does not . . . [omission in original]"). Notwithstanding this incomplete sentence,  
8 the ALJ's decision, when read in its entirety, adequately explains the ALJ's finding  
9 that when Plaintiff complied with the recommended diet, took gabapentin as  
10 prescribed, ceased drug abuse, and otherwise complied with treatment  
11 recommendations, her diabetes was not as limiting as Plaintiff reported. Plaintiff  
12 also argues the ALJ failed to recognize that Plaintiff complained of medication  
13 side effects and that medication was ineffective. ECF No. 15 at 18-19. However,  
14 the cited records either pre-dated March 2016 (and therefore were during a period  
15 when Plaintiff was using methamphetamine or not taking medications as  
16 prescribed), *see* Tr. 454, 478-82, 508, 515, 542, 923, 928, 934, 941, 943, 952, 957,  
17 or related to a side effect that was later resolved by a medication change, *see* Tr.  
18 906, 880, 891, 897-99. Moreover, Plaintiff admitted that during her drug-use  
19 period she would fabricate a medication side-effect in order to discontinue use of a  
20 medication. Tr. 902. The ALJ's decision to discount Plaintiff's reported mental

1 and physical symptoms because the medical evidence reflected that her conditions  
2 improved by medication management and therapy is a clear and convincing reason  
3 to discount Plaintiff's reported symptoms.

4 *3. Failure to Follow Treatment Recommendations*

5 The ALJ discounted Plaintiff's reported symptoms because she did not  
6 consistently comply with treatment advice. Tr. 25. Unexplained, or inadequately  
7 explained, failure to seek treatment or follow a prescribed course of treatment may  
8 serve as a basis to discount the claimant's reported symptoms, unless there is a  
9 good reason for the failure. *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007).

10 Here, the ALJ found that Plaintiff did not consistently comply with medical advice  
11 for her diabetes and mental health. Tr. 25. While Plaintiff's self-management of  
12 her diabetes improved in the spring of 2016, Plaintiff herself recognized that she  
13 had not previously attended to her diabetes. *See, e.g.*, Tr. 339 (admitting that she is  
14 not taking good care of her diabetes and that she is noncompliant with home  
15 glucose monitoring); Tr. 1209, 1213 (wanting to get back on the insulin pump to  
16 better control sugars); *see also* Tr. 1097 (noting that while Plaintiff was in the  
17 hospital to address diabetes she routinely ate foods that were not part of her  
18 carbohydrate-controlled diet). As to Plaintiff's mental health, the ALJ noted that  
19 Plaintiff admitted in June 2016 that she was off all medications, thereby suggesting  
20 that her symptoms were not as limiting as she claimed. Tr. 25 (citing Tr. 920); *see*

1 also Tr. 902 (Medical provider cautioned Plaintiff to stop her self-discontinuation  
2 of medication because it made it difficult for the provider to determine the level of  
3 benefit that Plaintiff received from the medication.). The ALJ's finding that  
4 Plaintiff did not consistently comply with treatment advice is rational, supported,  
5 and constitutes a clear-and-convincing reason to discount Plaintiff's reported  
6 symptoms.

#### 7 4. Exaggeration

8 The ALJ also found Plaintiff's symptom claims not credible because she  
9 exaggerated and fabricated her symptoms. Tr. 25. The tendency to exaggerate is  
10 a permissible reason to discount a claimant's symptom claims. *Tonapetyan v.*  
11 *Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001). Moreover, in evaluating symptom  
12 claims, the ALJ may utilize ordinary evidence-evaluation techniques, such as  
13 considering prior inconsistent statements. *Smolen v. Chater*, 80 F.3d 1273, 1284  
14 (9th Cir. 1996). Here, the ALJ found that Plaintiff was noted in October 2014 to  
15 be very histrionic and endorsed pain anywhere she was touched even though there  
16 was no external evidence of an acute injury, Tr. 374-75; and on another occasion,  
17 Plaintiff was a vague, contradictory, and tangential history, Tr. 928, 934-35.  
18 Plaintiff also admitted fabricating information to gain a desired outcome. Tr. 902  
19 (admitting she fabricated medication side-effects to cease taking a medication).  
20 While Plaintiff challenges the ALJ's reliance on the observations of consultative

1 examiner Dr. Toews, the afore-mentioned exaggeration, inconsistencies, and  
2 fabrications are supported by the record and serve as a clear-and-convincing reason  
3 to discount Plaintiff's reported symptoms.

4 *5. Inconsistent Statements Regarding Drug Use and Drug-Seeking Behavior*

5 The ALJ discounted Plaintiff's symptom claims because she misreported her  
6 use of drugs and engaged in drug-seeking behavior. Tr. 26. Drug-seeking  
7 behavior and conflicting inconsistent statements about drug use are appropriate  
8 grounds for the ALJ to discount a claimant's reported symptoms. *Thomas*, 278  
9 F.3d at 959; *Edlund*, 253 F.3d at 1157; *Gray v. Comm'r, of Soc. Sec.*, 365 Fed.  
10 App'x. 60, 63 (9th Cir. 2010); *Lewis v. Astrue*, 238 Fed. App'x. 300, 302 (9th Cir.  
11 2007); *Morton v. Astrue*, 232 Fed. App'x. 718, 719 (9th Cir. 2007). Here, the ALJ  
12 found that, while the evidence indicated that Plaintiff used marijuana and  
13 methamphetamine and abused prescription medications from October 2014 until  
14 early 2016 and then continued to use marijuana, Tr. 915, Plaintiff either repeatedly  
15 abused drugs or gave inconsistent statements about her drug use. Tr. 18, 26. As  
16 explained *supra* in the DAA section, the ALJ's finding in this regard is supported  
17 by substantial evidence. While Plaintiff frequently reported that she neither used  
18 drugs nor had a history of abusing drugs, Tr. 455-70, 339-44, 372-97, 333-37, 330-  
19 31, she nonetheless tested positive for drugs beyond those prescribed. Tr. 377,  
20 387, 990, 960-61, 883; *see also* Tr. 1108 (noting that the "historian" reported that

1 Plaintiff had methamphetamine abuse, marijuana abuse, and prescription drug  
2 abuse). The record reflects that Plaintiff became more upfront about her drug  
3 usage in 2016. In February 2016, Plaintiff admitted to recent methamphetamine  
4 use, Tr. 697, and then in March 2016, she admitted previous drug and narcotic pain  
5 prescription abuse and reported that she had been clean for the past month, Tr.  
6 1213. In June 2016, Plaintiff reported that she self-discontinued all prescriptions  
7 in October 2015 and began self-medicating with street drugs, including  
8 methamphetamine, from about October to November 2015. Tr. 915, 925; *see also*  
9 Tr. 915, 931. Plaintiff also admitted that she continued to use marijuana nearly  
10 daily for PTSD and chronic backpain. Tr. 915. Based on a complete review of the  
11 record, Plaintiff's inconsistent reports since the alleged disability onset date of  
12 August 4, 2014, about her drug use and drug-seeking behavior constitutes a clear-  
13 and-convincing reason, supported by the record, to discount Plaintiff's reported  
14 symptoms.

15 *6. Inconsistent with Plaintiff's Daily Activities*

16 Finally, the ALJ found Plaintiff's symptom claims inconsistent with her  
17 daily activities. Tr. 25. The ALJ may consider a claimant's activities that  
18 undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can spend a  
19 substantial part of the day engaged in pursuits involving the performance of  
20 exertional or non-exertional functions, the ALJ may find these activities

1 inconsistent with the reported disabling symptoms. *Fair*, 885 F.2d at 603; *Molina*,  
2 674 F.3d at 1113. “While a claimant need not vegetate in a dark room in order to  
3 be eligible for benefits, the ALJ may discount a claimant’s symptom claims when  
4 the claimant reports participation in everyday activities indicating capacities that  
5 are transferable to a work setting” or when activities “contradict claims of a totally  
6 debilitating impairment.” *Molina*, 674 F.3d at 1112-13. As to Plaintiff’s  
7 exertional and manipulation abilities, the ALJ noted that Dr. Toews observed  
8 Plaintiff use her phone repeatedly, handle small blocks, sling a backpack  
9 containing medications and other items over her shoulder with ease, and walk with  
10 a normal gait. Tr. 408. The ALJ also noted that Plaintiff was observed to text with  
11 both hands in February 2015. Tr. 436. The ALJ also highlighted that Plaintiff was  
12 able to push a car over a hill in September 2015. Tr. 1112. As to Plaintiff’s mental  
13 impairments, the ALJ highlighted that Plaintiff advised Dr. Toews she would travel  
14 with a man she just met. Tr. 399-422. The ALJ also noted that Plaintiff  
15 considered returning to school in August 2016, Tr. 907, and in November 2016,  
16 Plaintiff was socializing more and was in a new relationship, Tr. 885. Plaintiff  
17 challenges the accuracy of Dr. Toews’ observations on the grounds that Dr. Toews  
18 is biased against claimants. ECF No. 15 at 15-16. However, the Court need not  
19 resolve Plaintiff’s challenge to Dr. Toews’ observations because any error made by  
20 the ALJ when assessing whether Plaintiff’s daily activities were inconsistent with

1 her reported limitations is harmless as the ALJ identified numerous specific, clear,  
2 and convincing reasons to discount Plaintiff's symptom claims. *See Carmickle v.*  
3 *Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008); *Molina*, 674  
4 F.3d at 1115 (“[S]everal of our cases have held that an ALJ’s error was harmless  
5 where the ALJ provided one or more invalid reasons for disbelieving a claimant’s  
6 testimony, but also provided valid reasons that were supported by the record.”);  
7 *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004)  
8 (holding that any error the ALJ committed in asserting one impermissible reason  
9 for claimant’s lack of credibility did not negate the validity of the ALJ’s ultimate  
10 conclusion that the claimant’s testimony was not credible). Therefore, because the  
11 ALJ provided other clear-and-convincing reasons for discounting Plaintiff’s  
12 reported symptoms, *see supra*, the Court need not resolve whether the ALJ  
13 appropriately relied on Dr. Toews’ observations about Plaintiff’s abilities,  
14 Plaintiff’s indicated desire to attend college, or other reported activities as  
15 inconsistent with Plaintiff’s claimed abilities.

### 16 **C. Medical Opinion Evidence**

17 Plaintiff faults the ALJ for improperly discounting the opinions of Matthew  
18 Johnson, M.D.; James Kopp, M.D., James Haynes, M.D, and Maria Mondragon,  
19  
20

1 L.C.S.W. and for relying on an improper basis for assigning limited weight to the  
2 opinion of Jay Toews, Ed.D. Tr. 11-16.

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

14       If a treating or examining physician’s opinion is uncontradicted, the ALJ  
15 may reject it only by offering “clear and convincing reasons that are supported by  
16 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).  
17 “However, the ALJ need not accept the opinion of any physician, including a  
18 treating physician, if that opinion is brief, conclusory, and inadequately supported  
19 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228  
20 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or

1 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ  
2 may only reject it by providing specific and legitimate reasons that are supported  
3 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-  
4 831). The opinion of a nonexamining physician may serve as substantial evidence  
5 if it is supported by other independent evidence in the record. *Andrews v. Shalala*,  
6 53 F.3d 1035, 1041 (9th Cir. 1995).

7 “Only physicians and certain other qualified specialists are considered  
8 ‘[a]cceptable medical sources.’” *Ghanim*, 763 F.3d at 1161; *see* 20 C.F.R. §  
9 416.902<sup>1</sup>. However, an ALJ is required to consider evidence from non-acceptable  
10 medical sources, such as therapists. 20 C.F.R. § 416.927(f).<sup>2</sup> An ALJ may reject  
11 the opinion of a non-acceptable medical source by giving reasons germane to the  
12 opinion. *Ghanim*, 763 F.3d at 1161.

13 *1. Dr. Johnson*

14 Dr. Johnson treated Plaintiff for several years until April 2015. Tr. 472-549,  
15 950, 983, 990-1002. Dr. Johnson completed four state disability evaluation forms.

---

17 <sup>1</sup> Before March 27, 2017, the definition of an acceptable medical source was  
18 located at 20 C.F.R. § 416.913.

19 <sup>2</sup> Before March 27, 2017, the requirement that an ALJ consider evidence from non-  
20 acceptable medical sources was located at 20 C.F.R. § 416.913(d).

1 Tr. 603-05 (July 12, 2012); Tr. 610-13 (Jan. 2 and 18, 2013); Tr. 606-08 (Dec. 27,  
2 2013); Tr. 598-99 (Feb. 19, 2015). Three of these forms were before Plaintiff's  
3 alleged disability onset date of August 4, 2014. On the 2015 form, Dr. Johnson  
4 diagnosed Plaintiff with severe anxiety and depression, PTSD, ADD, chronic pain,  
5 and a recent concussion. Tr. 598. Dr. Johnson opined that Plaintiff was severely  
6 limited as she was unable to lift at least two pounds or stand or walk, she was  
7 unable to focus or concentrate, and that she had trouble with social settings and  
8 therefore was not able to work. Tr. 598-99. Similarly, on the 2012 and 2013  
9 evaluation forms, Dr. Johnson opined that Plaintiff was either severely limited or  
10 limited to sedentary work because of her chronic pain and mental-health  
11 conditions, which impacted her ability to concentrate. Tr. 603-04, 606-07, 610-11.

12 The ALJ assigned very light weight to Dr. Johnson's opinions. Tr. 27-28.  
13 Because Dr. Johnson's opinions were contradicted by the opinions of the State  
14 agency doctors Matthew Comrie, Psy.D., Tr. 113-15, and Bruce Eather, Ph.D., Tr.  
15 131-32, the ALJ was required to provide specific and legitimate reasons for  
16 rejecting Dr. Johnson's opinions. *See Bayliss*, 427 F.3d at 1216.

17 First, the ALJ discounted Dr. Johnson's "severely limited" opinion and his  
18 opinion that Plaintiff was limited to sedentary work because they were not  
19 supported by the objective medical evidence. Tr. 28. Factors to evaluating a  
20 medical opinion include the amount of relevant evidence that supports the opinion

1 and the consistency of the medical opinion with the record. *Lingenfelter v. Astrue*,  
2 504 F.3d 1028, 1042 (9th Cir. 2007); *Orn*, 495 F.3d at 631; 20 C.F.R. §  
3 416.927(c)(4). A medical opinion may be rejected if it is unsupported by medical  
4 findings and treatment notes. *Bray*, 554 F.3d at 1228; *Batson*, 359 F.3d at 1195;  
5 *Thomas*, 278 F.3d at 957; *Tommasetti*, 533 F.3d at 1041; *Matney v. Sullivan*, 981  
6 F.2d 1016, 1019 (9th Cir. 1992). First, the ALJ’s decision to discount Dr.  
7 Johnson’s opinion that Plaintiff was “severely limited,” i.e., “[u]nable to lift at  
8 least [two] pounds or unable to stand or walk,” is supported by substantial  
9 evidence. Tr. 28. For instance, a nerve conduction study in June 2014 was  
10 normal, Tr. 427; x-rays of Plaintiff’s wrists in September 2015 were normal, Tr.  
11 438, 442; and the September 2016 neurological examination was normal, Tr. 1023.  
12 Moreover, when not recovering from acute physical injuries, Plaintiff had intact  
13 range of motion in all extremities, intact sensation, steady gait, and intact motor  
14 functioning, Tr. 353-53, 437, 489-93, 986. Likewise, that Dr. Johnson frequently  
15 observed Plaintiff ambulating normally is inconsistent with Dr. Johnson’s 2012  
16 sedentary opinion. *See, e.g.*, Tr. 478, 487, 493, 497, 503, 507, 518, 522, 997, 1001.  
17 In addition, Dr. Johnson marked that his sedentary opinion was not supported by  
18 testing or lab reports. Tr. 603. Plaintiff also did not cite any medical records that  
19 support Dr. Johnson’s sedentary opinion. Based on the objective medical  
20 evidence, the ALJ’s decision to discount Dr. Johnson’s extreme opinions relating

1 to Plaintiff's exertional abilities because they were inconsistent with the objective  
2 findings is a legitimate and specific reason supported by the record.

3       Second, the ALJ discounted Dr. Johnson's opinion that Plaintiff is "severely  
4 limited" because it was contradicted by the observations of Plaintiff's actual  
5 functioning. Tr. 28. A physician's opinion may be rejected if it is unsupported by  
6 treatment notes and findings. *Bray*, 554 F.3d at 1228; *Connett v. Barnhart*, 340  
7 F.3d 871, 875 (9th Cir. 2003). Here, even when Dr. Toews' challenged  
8 observations are disregarded, the record still supports the ALJ's rational decision  
9 to discount Dr. Johnson's opinion on the grounds that it is not supported by the  
10 clinical observations of Plaintiff's functioning. When not recovering from acute  
11 physical injuries, Plaintiff was observed with intact range of motion in all  
12 extremities, intact sensation, steady gait, and intact motor functioning. Tr. 353-53,  
13 437, 489-93, 986. After a February 2015 accident, Plaintiff was observed with a  
14 limp but was also observed texting with both hands, not in pain, and with normal  
15 range of movement in her extremities. Tr. 1155-56, 697-98. Moreover, Dr.  
16 Johnson's later observations of Plaintiff reflected that Plaintiff was ambulating  
17 normally. Tr. 482, 997, 1001.

18       Third, the ALJ discounted Dr. Johnson's sedentary opinion because it  
19 appeared to be based more on Plaintiff's pain complaints rather than objective  
20 evidence. Tr. 28. A physician's opinion may be rejected if it based on a

1 claimant's properly discounted complaints. *Tonapetyan*, 242 F.3d at 1149;  
2 *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999); *Fair*,  
3 885 F.2d at 604. However, when an opinion is not more heavily based on a  
4 patient's discounted self-reports than on clinical observations, there is no  
5 evidentiary basis for rejecting the opinion. *Ghanim*, 763 F.3d at 1162; *Ryan v.*  
6 *Comm'r of Soc. Sec. Admin.*, 528 F.3d 1194, 1199-200 (9th Cir. 2008). As  
7 discussed, *see supra*, Plaintiff's symptom complaints were properly discounted and  
8 Plaintiff failed to establish that the objective medical evidence, including Dr.  
9 Johnson's clinical findings, supports Dr. Johnson's sedentary opinion. Therefore,  
10 the ALJ's decision to discount Dr. Johnson's sedentary opinion because it  
11 appeared to be more heavily based on Plaintiff's properly discounted subjective  
12 complaints rather than objective medical findings is supported by substantial  
13 evidence and is a legitimate and specific reason for discounting Dr. Johnson's  
14 sedentary opinion.

15 Finally, the ALJ discounted Dr. Johnson's opinions because he did not  
16 include any objective clinical findings to support his opinions. Tr. 28. Factors to  
17 evaluating a medical opinion include the amount of relevant evidence that supports  
18 the opinion, the quality of the explanation provided in the opinion, and the  
19 consistency of the medical opinion with the record. *Lingenfelter*, 504 F.3d at  
20 1042; *Orn*, 495 F.3d at 631. A medical opinion may be rejected by the ALJ if it is

1 conclusory or inadequately supported. *Bray*, 554 F.3d at 1228; *Thomas*, 278 F.3d  
2 at 957. Here, Plaintiff argues that the ALJ was silent as to Dr Johnson’s findings  
3 that Plaintiff could not work full-time and was unable to focus or concentrate.  
4 ECF No. 15 at 8-9. However, the ALJ’s statement that “Dr. Johnson’s reports do  
5 not include any objective clinical findings to support his opinions,” Tr. 28, applies  
6 to Dr. Johnson’s opinions about Plaintiff’s inability to work full-time and inability  
7 to focus or concentrate, as the ALJ previously discussed that Dr. Johnson’s  
8 “severely limited” and sedentary opinions were not supported by the record, Tr.  
9 27-28. *Cf. Hill*, 698 F.3d at 1160 (reversing the ALJ because the ALJ failed to  
10 address a medical opinion that the claimant was unlikely to sustain full-time  
11 employment). The ALJ’s decision to discount Dr. Johnson’s opinions about  
12 Plaintiff’s inability to work full-time, focus, or concentrate is supported by  
13 substantial evidence. First, the evaluation forms do not mention what  
14 observations, clinical findings, or tests Dr. Johnson relied on in reaching his  
15 opinions. Tr. 603-05, 610-13, 606-08, 598-99. Second, while Dr. Johnson’s  
16 treatment notes reflect that Plaintiff’s anxiety waxed and waned, her recent and  
17 remote memory were normal; moreover, Plaintiff was abusing drugs when Dr.  
18 Johnson treated her, thereby materially impacting her mental symptoms. *See, e.g.*,  
19 Tr. 522 (Sept. 15, 2014: normal mood and affect; recent and remote memory  
20 normal); Tr. 518 (Oct. 7, 2014: anxious, recent and remote memory normal); Tr.

1 507 (Oct. 31, 2014: normal mood and affect; recent and remote memory normal);  
2 Tr. 503 (Nov. 20, 2014: recent and normal memory normal); Tr. 497 (Dec. 2,  
3 2014: normal mood and affect; recent and remote memory normal); Tr. 489 (Dec.  
4 10, 2014: same); Tr. 484 (Jan. 2, 2015: same); Tr. 1001 (March 3, 2015: anxious,  
5 constant talking, high pressure of speech, though recent and remote memory were  
6 normal); Tr. 997 (March 13, 2015: recent and remote memory were normal; alert  
7 and active although anxious); Tr. 990-93 (April 2, 2015: normal mood and affect;  
8 recent and remote memory normal but tested positive for methamphetamine).  
9 Plaintiff failed to establish how these clinical notes or the longitudinal objective  
10 medical evidence support Dr. Johnson's extreme opinion that Plaintiff's focus and  
11 concentration difficulties equate to an inability to work. Moreover, the RFC  
12 contained social, concentration, and pace limitations, limiting Plaintiff to tasks that  
13 can be learned in thirty days or less and involve no more than simple work-related  
14 decisions; few workplace changes; occasional and superficial public interaction;  
15 and casual or superficial interactions with coworkers with no involvement with  
16 highly interactive or interdependent work groups. Tr. 22. *See Stubbs-Danielson v.*  
17 *Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008) (“[T]he ALJ is responsible for  
18 translating and incorporating clinical findings into a succinct RFC.”).

19 Plaintiff also contends the ALJ failed to apply the appropriate analytical  
20 factors, citing 20 C.F.R. § 416.927(c) and *Trevizo v. Berryhill*, 871 F.3d 664 (9th

1 Cir. 2017). ECF No. 15 at 9. The ALJ must evaluate every medical opinion  
2 received according to the factors set forth by the Social Security Administration.  
3 20 C.F.R. § 416.927(c). But the ALJ is not required to make an express statement  
4 that he considered all the factors nor take each factor one-by-one, instead the  
5 record must reflect that the ALJ considered whether the opinion was supported by  
6 and consistent with the record. *Kelly v. Berryhill*, 732 Fed App'x 558, 562-63 n.4  
7 (9th Cir. May 1, 2018) (unpublished opinion). Here, although at the hearing  
8 Plaintiff's counsel identified that Dr. Johnson was Plaintiff's personal physician,  
9 Tr. 76, the ALJ did not mention that Dr. Johnson was Plaintiff's treating physician  
10 nor identify the length of the treating relationship in the written decision.  
11 Nonetheless, the ALJ's reasons for rejecting Dr. Johnson's opinion speak to the §  
12 416.927(c) factors and demonstrate that the ALJ's consideration of the opinion was  
13 in line with the regulation. The ALJ considered Dr. Johnson's contradicted  
14 opinions to be neither supported by his clinical notes nor the remaining objective  
15 medical findings. Tr. 28. While the ALJ's paragraph pertaining to Dr. Johnson  
16 did not detail each of the inconsistent medical records, the ALJ previously  
17 discussed the objective medical evidence relating to Plaintiff's exertional and non-  
18 exertional abilities. Tr. 20-21, 23-26. The ALJ also analyzed each of the medical  
19 opinions and explained how much weight he gave to each opinion and why. Tr.  
20 26-28. The record reflects the ALJ considered Dr. Johnson's opinions together

1 with the other evidence and then, after setting out a detailed and thorough  
2 summary of the facts and conflicting clinical and opinion evidence, provided  
3 specific and legitimate reasons explaining why he discounted Dr. Johnson's  
4 opinion. Section 416.927(c) was satisfied.

5 *2. Dr. Kopp and Dr. Haynes*

6 In December 2014, Dr. Kopp and Dr. Haynes conducted an independent  
7 medical evaluation of Plaintiff for State Department of Labor and Industries  
8 purposes. Tr. 423-33. Dr. Kopp provided the orthopedic expertise and Dr. Haynes  
9 provided the neurological expertise. Dr. Kopp and Dr. Haynes reviewed the listed  
10 medical records and conducted a physical examination. Tr. 423-33. These  
11 physicians jointly opined that Plaintiff likely had deQuervain tenosynovitis, rather  
12 than carpal tunnel syndrome but that if Plaintiff had carpal tunnel syndrome it was  
13 relatively mild. Tr. 429. They opined that Plaintiff was not able to work at that  
14 time as a car hop as she needed to wear a wrist brace on her right wrist. Tr. 429-  
15 30. They opined that Plaintiff had no limits standing, walking, and sitting; was  
16 limited to lifting five pounds on her left side; restricted on her right side from  
17 pushing and pulling; and limited on her right side to simple non-repetitive grasping  
18 and manipulations. Tr. 429-30.

19 The ALJ assigned this opinion some weight. Tr. 27. Because this opinion  
20 was contradicted by the opinion of Dr. Leslie Arnold, Tr. 128-31, the ALJ was

1 required to provide specific and legitimate reasons for rejecting Dr. Kopp and Dr.  
2 Haynes' opinion. *See Bayliss*, 427 F.3d at 1216.

3 First, the ALJ discounted Dr. Kopp and Dr. Haynes' opinion that Plaintiff  
4 was limited to lifting five pounds and had manipulation, pushing, and pulling  
5 restrictions because these restrictions were inconsistent with the clinical findings.  
6 Factors to evaluating a medical opinion include the amount of relevant evidence  
7 that supports the opinion and the consistency of the medical opinion with the  
8 record. *Lingenfelter*, 504 F.3d at 1042; *Orn*, 495 F.3d at 631. A medical opinion  
9 may be rejected if it is unsupported by medical findings. *Bray*, 554 F.3d at 1228;  
10 *Batson*, 359 F.3d at 1195; *Thomas*, 278 F.3d at 957; *Tonapetyan*, 242 F.3d at 1149.  
11 Here, the ALJ noted that the clinical findings revealed that Plaintiff repeatedly  
12 presented with intact upper extremity functioning. Tr. 27. For instance, a nerve  
13 conduction study in June 2014 was normal, Tr. 427; during a December 2014  
14 emergency room visit, Plaintiff had intact range of motion in all extremities, intact  
15 sensation, steady gait, and intact motor functioning, Tr. 353-53; during a February  
16 2015 exam, other than some bilateral wrist and neck tenderness, Plaintiff had  
17 normal range of motion, sensory function, and elbow and wrist findings, Tr. 436-  
18 37; and Plaintiff had normal motor strength, movement of extremities, and  
19 ambulation in September 2015 and May 2016, Tr. 986, 1129, 1146-47. Plus,  
20 Plaintiff's wrist x-rays in September 2015 were normal, Tr. 438, 442, and the

1 September 2016 neurological examination was normal, Tr. 1023. Based on the  
2 clinical findings that are inconsistent with the opined limitations, the ALJ's  
3 decision to discount Dr. Kopp and Dr. Haynes' opinion is a legitimate and specific  
4 reason supported by substantial evidence.

5       Second, the ALJ discounted Dr. Kopp and Dr. Haynes' opinion because it  
6 was inconsistent with Plaintiff's observed activities. Tr. 27. It is reasonable for an  
7 ALJ to consider a claimant's activities, which undermine claims of totally  
8 disabling pain. *Rollins*, 261 F.3d at 857. Here, the ALJ noted that Plaintiff was  
9 observed typing on her phone and manipulating small objects without apparent  
10 difficulty. Tr. 27. For instance, disregarding Dr. Toews' challenged observations,  
11 Plaintiff was observed in February 2015 texting with both hands with no apparent  
12 pain. Tr. 436, 438. Plaintiff was also frequently observed to ambulate normally  
13 with normal range of extremity movement. *See, e.g.*, Tr. 353, 437, 487, 493, 497,  
14 503, 507, 518, 522, 986, 997, 1001, 1023, 1113, 1192. While Plaintiff's observed  
15 use of her phone is likely inadequate by itself to undermine Plaintiff's claims of  
16 disability, Plaintiff's frequent normal ambulation and the lack of longitudinal  
17 clinical findings supporting manipulation or postural limitations provides  
18 substantial evidence to support the ALJ's decision to discount Dr. Kopp and Dr.  
19 Haynes' opinion as inconsistent with Plaintiff's observed activities.

1 Third, the ALJ discounted Dr. Kopp and Dr. Haynes' opinion because  
2 Plaintiff was not at maximum medical improvement, thereby indicating that their  
3 opined restrictions were not permanent restrictions. Tr. 27. Temporary limitations  
4 are not enough to meet the durational requirement for a finding of disability. 20  
5 C.F.R. § 416.905(a) (requiring a claimant's impairment to be expected to last for a  
6 continuous period of not less than twelve months); 42 U.S.C. § 423(d)(1)(A)  
7 (same); *Carmickle*, 533 F.3d at 1165 (affirming the ALJ's finding that treating  
8 physicians' short-term excuse from work was not indicative of "claimant's long-  
9 term functioning"). Because Dr. Kopp found that Plaintiff was not at maximum  
10 medical improvement for her wrist injury and other limitations, Tr. 432, the ALJ  
11 rationally discounted Dr. Kopp and Dr. Haynes' opinion.

12 Finally, Plaintiff argues that the ALJ failed to consider the 20 C.F.R. §  
13 416.927(c) factors. ECF No. 15 at 12-13. The ALJ must evaluate every medical  
14 opinion received according to the factors set forth by the Social Security  
15 Administration. 20 C.F.R. § 416.927(c). While the ALJ did not detail these  
16 factors in chronological order in one paragraph, the ALJ did consider the §  
17 416.927(c) factors. The ALJ noted that Dr. Kopp and Dr. Haynes conducted a  
18 consultative medical evaluation, discussed the basis for their opinion, and  
19 compared the opinion to the record. The ALJ discounted these options because  
20 they were inconsistent with the clinical findings and because the opinion was

1 issued when Plaintiff was not at maximum medical improvement. The ALJ  
2 adequately considered the applicable § 416.927(c) factors.

3 *3. Ms. Mondragon*

4 On January 11, 2016, Ms. Mondragon evaluated Plaintiff and completed  
5 both an Initial Assessment form, Tr. 862-67, and a form for Department of Social  
6 and Health Services (DSHS), Tr. 619-21. On the Initial Assessment form, Ms.  
7 Mondragon identified that Plaintiff had a history of PTSD and major depressive  
8 disorder (recurrent moderate) and that Plaintiff used cannabis daily to cope with  
9 anxiety. Tr. 864. Ms. Mondragon opined that Plaintiff's inability to work or meet  
10 other appropriate responsibilities would continue for six months or more without  
11 treatment. Tr. 865. On the DSHS form, Ms. Mondragon diagnosed Plaintiff with  
12 PTSD, major depressive disorder (recurrent moderate), and cannabis use  
13 (moderate). Tr. 619. Ms. Mondragon stated that Plaintiff struggled with  
14 "significant symptoms of anxiety that interfere with [her] ability to interact with  
15 others, to stay in a crowded place for too long, [and cause] difficulty with  
16 concentration and ability to follow instructions as directed." Tr. 619. Ms.  
17 Mondragon also opined that Plaintiff's anxiety symptoms may exacerbate  
18 outbursts of anger and feeling scared and panicked. Tr. 619. Based on Plaintiff's  
19 mental and emotional issues, Ms. Mondragon opined that Plaintiff was limited to  
20 working one to ten hours a week. Tr. 619.

1 The ALJ assigned Ms. Mondragon's opinion in the Initial Assessment little  
2 weight but did not discuss what weight was given to Ms. Mondragon's DSHS  
3 opinion. Tr. 27. Plaintiff challenges the ALJ's failure to discuss Ms. Mondragon's  
4 DSHS opinion. ECF No. 15 at 14-15. However, because Ms. Mondragon's DSHS  
5 opinion was consistent with and prepared the same day as the Initial Assessment  
6 opinion, any error by the ALJ in failing to discuss the DSHS opinion is harmless as  
7 no reasonable ALJ would reach a different disability determination based on the  
8 substantially similar and same-day opinions. *Stout v. Comm'r Soc. Sec. Admin.*,  
9 454 F.3d 1050, 1056 (9th Cir. 2006) (recognizing that an error is harmless if the  
10 court can confidently conclude that no reasonable ALJ, when considering the  
11 undiscussed opinion, would reach a different disability determination).

12 Because licensed mental health therapist Ms. Mondragon was an "other  
13 source," the ALJ was obligated to give a germane reason before discounting her  
14 opinion. *See Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

15 First, the ALJ discounted Ms. Mondragon's opinion because it was based on  
16 Plaintiff's subjective reports, rather than objective medical findings. Tr. 27.  
17 Factors to evaluating a medical opinion include the amount of relevant evidence  
18 that supports the opinion and the consistency of the medical opinion with the  
19 record. *Lingenfelter*, 504 F.3d at 1042; *Orn*, 495 F.3d at 631. A medical opinion  
20 may be rejected if it is based on a claimant's subjective complaints, which were

1 properly discounted. *Tonapetyan*, 242 F.3d at 1149; *Morgan*, 169 F.3d at 602;  
2 *Fair*, 885 F.2d at 604. However, when an opinion is not more heavily based on a  
3 patient’s self-reports than on clinical observations, there is no evidentiary basis for  
4 rejecting the opinion. *Ghanim*, 763 F.3d at 1162; *Ryan*, 528 F.3d at 1199-1200. A  
5 clinical interview and mental status evaluation are objective measures and cannot  
6 be discounted as a “self-report.” *Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir.  
7 2017). Here, the ALJ noted that Ms. Mondragon’s report cited to Plaintiff’s self-  
8 reports and that it included no testing of Plaintiff’s functioning. Tr. 865. While  
9 Ms. Mondragon’s report noted that Plaintiff completed PCL-5 and PHQ-9 tests,  
10 these tests were expressly based on Plaintiff’s self-reports. Tr. 864 (“[A]s a client  
11 self-report”). There was no mention that Ms. Mondragon observed conduct by  
12 Plaintiff consistent with Plaintiff’s reported limitations. Accordingly, on this  
13 record, the ALJ’s decision to discount Ms. Mondragon’s opinion because it was  
14 more heavily based on Plaintiff’s properly discounted self-reports, *see supra*, than  
15 on objective medical findings is a germane reason, supported by substantial  
16 evidence.

17         Second, the ALJ discounted Ms. Mondragon’s opinion because the  
18 determination of whether one can work is reserved to the Commissioner. A  
19 statement by a medical source that a claimant is “unable to work” is not a medical  
20 opinion and is not due “any special significance.” 20 C.F.R. § 416.927(d).

1 Nevertheless, the ALJ is required to consider medical source opinions about any  
2 issue, including issues reserved to the Commissioner, by evaluating the opinion,  
3 considering the evidence in the record, and applying the applicable 20 C.F.R. §  
4 416.927(d) factors. SSR 96-5p at \*2-3. Here, even though Plaintiff's ability to  
5 work is a matter reserved for the Commissioner, the ALJ evaluated Ms.  
6 Mondragon's opinion and determined that it was more heavily based on Plaintiff's  
7 discounted self-reports rather than objective findings. The ALJ's finding in this  
8 regard is rational and supported by substantial evidence.

9 Third, the ALJ discounted Ms. Mondragon's opinion because it appeared  
10 that she was unaware of Plaintiff's ongoing drug abuse. Tr. 27. The fact that a  
11 medical report reflects a claimant's functioning while using drugs or alcohol is a  
12 valid consideration when evaluating a medical opinion. *Chavez v. Colvin*, No.  
13 3:14-cv-01178-JE, 2016 WL 8731796, at \*8 (D. Or. July 25, 2016). Therefore, an  
14 ALJ may properly reject a medical opinion that is rendered without knowledge of a  
15 claimant's substance abuse. *Coffman v. Astrue*, 469 Fed. App'x 609, 611 (9th Cir.  
16 2012); *Serpa v. Colvin*, No. 11-cv-121-RHW, 2013 WL 4480016, \*8 (E.D. Wash.  
17 Aug. 19, 2013). While Ms. Mondragon was aware that Plaintiff was using  
18 marijuana daily, Ms. Mondragon was unaware that Plaintiff had also been abusing  
19 methamphetamine and narcotic pain prescriptions. Tr. 1212-16; *cf.* Tr. 855-60  
20 (March 15, 2016 addendum material: noting no history of abuse alcohol or drugs).

1 Ms. Mondragon’s lack of information about Plaintiff’s ongoing drug abuse  
2 (beyond her marijuana use) when Ms. Mondragon completed her opinion in  
3 January 2016 is a germane reason to discount her opinion.

4 Fourth, the ALJ discounted Ms. Mondragon’s “unable to work” opinion  
5 because it was outside her expertise as a mental health counselor. The ALJ is  
6 correct that Ms. Mondragon’s opinion is entitled to less weight than that of an  
7 acceptable medical source. 20 C.F.R. § 416.927; *Gomez v. Chater*, 74 F.3d 967,  
8 970-71 (9th Cir. 1996). However, her credentials are not a germane reason for  
9 rejecting the opinion because ALJs are directed to consider medical evidence from  
10 all sources. 20 C.F.R. § 416.913(e)(2). Any error though in the ALJ’s analysis  
11 was harmless because the ALJ identified other germane reasons to discount Ms.  
12 Mondragon’s opinion. *See Molina*, 674 F.3d at 1115.

13 Finally, the ALJ discounted Ms. Mondragon’s opinion because she did not  
14 identify whether she considered any vocational factors when concluding that  
15 Plaintiff was unable to work. Tr. 27. An ALJ may reject an opinion that does “not  
16 show how [a claimant’s] symptoms translate into specific functional deficits which  
17 preclude work activity.” *Morgan*, 169 F.3d at 601. Here, on the Initial  
18 Assessment form, Ms. Mondragon, noted that Plaintiff’s psychological conditions  
19 impacted her ability to sleep and live independently and that she must rely on  
20 others for housing, food, and clothing. Tr. 864-65. On the DSHS form, which the

1 ALJ did not discuss, Ms. Mondragon stated that Plaintiff struggled with  
2 “significant symptoms of anxiety that interfere with [her] ability to interact with  
3 others, to stay in a crowded place for too long, [and cause] difficulty with  
4 concentration and ability to follow instructions as directed.” Tr. 619. The ability  
5 to interact with others, follow instructions, and maintain concentration are  
6 vocational factors. Accordingly, the ALJ erred in discounting Ms. Mondragon’s  
7 opinion because she did not consider vocational factors. However, any error in  
8 discounting Ms. Mondragon’s opinion on this basis is harmless because the ALJ  
9 offered other germane reasons supported by substantial evidence—that Ms.  
10 Mondragon’s opinion was based more heavily on Plaintiff’s discounted self-reports  
11 than on objective medical evidence and issued without awareness of Plaintiff’s  
12 ongoing drug abuse—to discount Ms. Mondragon’s opinion. *See Molina*, 674 F.3d  
13 at 1115.

14 In summary, while the ALJ failed to discuss Ms. Mondragon’s DSHS  
15 opinion, this error was harmless because the ALJ properly discounted Ms.  
16 Mondragon’s similar Initial Assessment opinion on the grounds that it was too  
17 heavily based on Plaintiff’s discounted self-reports and failed to account for  
18 Plaintiff’s ongoing drug abuse.

1           4. *Dr. Toews*

2           On January 16, 2015, Dr. Toews performed a psychological evaluation of  
3 Plaintiff. Tr. 399-422. Dr. Toews was unable to diagnose Plaintiff due to a  
4 suspected secondary-gain motivation and opiate pain medication dependence. Tr.  
5 408-09. Because there were inconsistencies between Plaintiff's performance during  
6 the mental status examination and the test results, Dr. Toews determined it was too  
7 difficult to determine Plaintiff's residual functional status. Tr. 408.

8           The ALJ assigned this opinion little weight. Tr. 27. Because Dr. Toews'  
9 opinion was contradicted by the opinions of the State agency doctors Matthew  
10 Comrie, Psy.D., Tr. 113-15, and Bruce Eather, Ph.D., Tr. 131-32, the ALJ was  
11 required to provide specific and legitimate reasons for discounting Dr. Toews'  
12 opinion. *See Bayliss*, 427 F.3d at 1216.

13           The ALJ discounted Dr. Toews' opinion because he did not include a  
14 functional assessment. Tr. 27. An ALJ may reject an opinion that does "not show  
15 how [a claimant's] symptoms translate into specific functional deficits which  
16 preclude work activity." *Morgan*, 169 F.3d at 601. Here, Dr. Toews stated "[i]t is  
17 difficult to determine [Plaintiff's] residual functional status" because Plaintiff  
18 exhibited poor motivation and effort. Tr. 408. Dr. Toews suspected secondary  
19 gain motivation. Tr. 408. Plaintiff argues that, while the ALJ properly gave Dr.  
20 Toews' opinion limited weight, the ALJ should have discounted Dr. Toews'

1 observations and findings as well. ECF No. 15 at 15-16. Plaintiff contends that  
2 Dr. Toews' opinion was based on incorrect observations and inappropriate  
3 attitudes toward claimants. Plaintiff did not cite legal authority to support her  
4 argument that the ALJ should have discounted Dr. Toews' observations as  
5 inaccurate and based on bias. Regardless of the accuracy of Dr. Toews'  
6 observations, Dr. Toews elected not to opine as to Plaintiff's residual function  
7 status. Accordingly, the ALJ appropriately discounted Dr. Toews' opinion because  
8 he did not translate Plaintiff's symptoms into specific functional deficits  
9 precluding work activity. The ALJ provided a specific and legitimate reason  
10 supported by substantial evidence to discount Dr. Toews' opinion. Moreover, the  
11 Court did not rely on Dr. Toews' challenged observations and findings in  
12 concluding that the ALJ's decision is rational and supported by the record.

### 13 CONCLUSION

14 Having reviewed the record and the ALJ's findings, the Court concludes the  
15 ALJ's decision is supported by substantial evidence and is free of harmful legal  
16 error. Accordingly, **IT IS HEREBY ORDERED:**

17 1. Plaintiff's Motion for Summary Judgment, **ECF No. 15**, is **DENIED**.

