

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

May 23, 2022

SEAN F. McAVOY, CLERK

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AMANDA P.,¹

Plaintiff,

v.

KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:21-cv-03021-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 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.

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. See LCivR 5.2(c).

1 **JURISDICTION**

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

3 **STANDARD OF REVIEW**

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

15 In reviewing a denial of benefits, a district court may not substitute its
16 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
17 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
18 rational interpretation, [the court] must uphold the ALJ’s findings if they are
19 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
20 F.3d 1104, 1111 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R. §

1 416.902(a). Further, a district court “may not reverse an ALJ’s decision on
2 account of an error that is harmless.” *Id.* An error is harmless “where it is
3 inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.* at 1115
4 (quotation and citation omitted). The party appealing the ALJ’s decision generally
5 bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S.
6 396, 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. § 1382c(a)(3)(A). Second, the claimant’s impairment must be
14 “of such severity that he is not only unable to do his previous work[,] but cannot,
15 considering his age, education, and work experience, engage in any other kind of
16 substantial gainful work which exists in the national economy.” 42 U.S.C. §
17 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. §
20 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s work

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

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

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

18 If the severity of the claimant’s impairment does not meet or exceed the
19 severity of the enumerated impairments, the Commissioner must pause to assess
20 the claimant’s “residual functional capacity.” Residual functional capacity (RFC),

1 defined generally as the claimant's ability to perform physical and mental work
2 activities on a sustained basis despite his or her limitations, 20 C.F.R. §
3 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

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

10 At step five, the Commissioner considers whether, in view of the claimant's
11 RFC, the claimant is capable of performing other work in the national economy.
12 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
13 must also consider vocational factors such as the claimant's age, education and
14 past work experience. *Id.* If the claimant is capable of adjusting to other work, the
15 Commissioner must find that the claimant is not disabled. 20 C.F.R. §
16 416.920(g)(1). If the claimant is not capable of adjusting to other work, the
17 analysis concludes with a finding that the claimant is disabled and is therefore
18 entitled to benefits. *Id.*

19 The claimant bears the burden of proof at steps one through four above.
20 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to

1 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
2 capable of performing other work; and (2) such work “exists in significant
3 numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*,
4 700 F.3d 386, 389 (9th Cir. 2012).

5 **ALJ’S FINDINGS**

6 On September 11, 2015, Plaintiff applied for Title XVI supplemental
7 security income benefits alleging an amended disability onset date of September
8 11, 2015.² Tr. 16, 261, 358-63, 705. The application was denied initially, and on
9 reconsideration. Tr. 283-91, 295-301. Plaintiff appeared before an administrative
10 law judge (ALJ) on August 11, 2017. Tr. 239-60. On February 28, 2018, the ALJ
11 denied Plaintiff’s claim. Tr. 13-33. Plaintiff appealed the decision to the Appeals
12 Council, which declined to review the decision. Tr. 1-7. Plaintiff then appealed
13 the decision to this Court, which resulted in a remand. Tr. 792-801. On October
14 27, 2020, a remand hearing was held. Tr. 729-52. On November 23, 2020, the
15 ALJ again denied Plaintiff’s claim. Tr. 702-28.

16
17 ² Plaintiff previously applied for Title XVI benefits in 2005, 2006, 2009, and 2012,
18 and she applied for Childhood Disability Beneficiary benefits in 2005; the
19 applications were denied at the initial and reconsideration levels and were not
20 appealed. Tr. 263, 756.

1 At step one of the sequential evaluation process, the ALJ found Plaintiff has
2 not engaged in substantial gainful activity since September 11, 2015. Tr. 707. At
3 step two, the ALJ found that Plaintiff has the following severe impairments:
4 learning disorder (math); knee impairment (knee pain status post-dislocated
5 patella); obesity; anxiety related disorder; and depression. Tr. 708.

6 At step three, the ALJ found Plaintiff does not have an impairment or
7 combination of impairments that meets or medically equals the severity of a listed
8 impairment. Tr. 709. The ALJ then concluded that Plaintiff has the RFC to
9 perform light work with the following limitations:

10 [Plaintiff] can occasionally lift and carry 20 pounds and frequently lift
11 and carry 10 pounds with no limits on sitting, standing, or walking
12 during the workday. Postural activities include frequent climbing of
13 steps [and] stairs, occasional climbing of ladders, ropes, and scaffolds,
14 frequent balance, stoop, crouch, kneel, and crawl. Manipulative
15 capabilities[:] no limits reaching in all directions, no limits on
16 hand[l]ing, fingering, or feeling and no environmental limits.
17 [Plaintiff] can understand, remember, and carry out simple
18 instructions and exercise simple workplace judgment. She can
19 perform work that is learned on the job in less than 30 days by short
20 demonstration and practice or repetition. She can respond
appropriately to supervisors and coworkers and can deal with
occasional changes in the work environment. She has no difficulty
working with the public.

Tr. 711.

At step four, the ALJ found Plaintiff has no past relevant work. Tr. 719. At
step five, the ALJ found that, considering Plaintiff's age, education, work
experience, RFC, and testimony from the vocational expert, there were jobs that

1 existed in significant numbers in the national economy that Plaintiff could perform,
2 such as marker, assembler II, and cashier II. Tr. 720. Therefore, the ALJ
3 concluded Plaintiff was not under a disability, as defined in the Social Security
4 Act, from the date of the application through the date of the decision. *Id.*

5 Per 20 C.F.R. § 416.1484, the ALJ's decision following this Court's prior
6 remand became the Commissioner's final decision for purposes of judicial review.

7 ISSUES

8 Plaintiff seeks judicial review of the Commissioner's final decision denying
9 her supplemental security income benefits under Title XVI of the Social Security
10 Act. Plaintiff raises the following issues for review:

- 11 1. Whether the ALJ properly evaluated Plaintiff's symptom claims; and
- 12 2. Whether the ALJ properly evaluated the medical opinion evidence.

13 ECF No. 15 at 2.

14 DISCUSSION

15 A. Plaintiff's Symptom Claims

16 Plaintiff faults the ALJ for failing to rely on reasons that were clear and
17 convincing in discrediting her symptom claims. ECF No. 15 at 6-12. An ALJ
18 engages in a two-step analysis to determine whether to discount a claimant's
19 testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at *2.
20 "First, the ALJ must determine whether there is objective medical evidence of an

1 underlying impairment which could reasonably be expected to produce the pain or
2 other symptoms alleged.” *Molina*, 674 F.3d at 1112 (quotation marks omitted).

3 “The claimant is not required to show that [the claimant’s] impairment could
4 reasonably be expected to cause the severity of the symptom [the claimant] has
5 alleged; [the claimant] need only show that it could reasonably have caused some
6 degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

7 Second, “[i]f the claimant meets the first test and there is no evidence of
8 malingering, the ALJ can only reject the claimant’s testimony about the severity of
9 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
10 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
11 omitted). General findings are insufficient; rather, the ALJ must identify what
12 symptom claims are being discounted and what evidence undermines these claims.
13 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*
14 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
15 explain why it discounted claimant’s symptom claims). “The clear and
16 convincing [evidence] standard is the most demanding required in Social Security
17 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
18 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 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 an individual takes or has taken to alleviate pain or
4 other symptoms; 5) treatment, other than medication, an individual receives or has
5 received for relief of pain or other symptoms; 6) any measures other than treatment
6 an individual uses or has used to relieve pain or other symptoms; and 7) any other
7 factors concerning an individual’s functional limitations and restrictions due to
8 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §
9 416.929(c). The ALJ is instructed to “consider all of the evidence in an
10 individual’s record,” to “determine how symptoms limit ability to perform work-
11 related activities.” SSR 16-3p, 2016 WL 1119029, at *2.

12 The ALJ found that Plaintiff’s medically determinable impairments could
13 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff’s
14 statements concerning the intensity, persistence, and limiting effects of her
15 symptoms were not entirely consistent with the evidence. Tr. 712.

16 *1. Inconsistent Objective Medical Evidence*

17 The ALJ found Plaintiff’s symptom allegations were inconsistent with the
18 objective medical evidence. Tr. 713-14. 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 v. Barnhart*, 400
3 F.3d 676, 680 (9th Cir. 2005). However, the objective medical evidence is a
4 relevant factor, along with the medical source's information about the claimant's
5 pain or other symptoms, in determining the severity of a claimant's symptoms and
6 their disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. § 416.929(c)(2).

7 First, the ALJ found that Plaintiff's reported physical symptoms were not as
8 severe as she claimed. Tr. 713. While Plaintiff alleges significant limitations due
9 to physical impairments, she has had normal gait, range of motion, strength, and
10 straight leg raise testing at multiple examinations. *Id.* (citing Tr. 478, 1391-93,
11 1461-62). The ALJ also noted Plaintiff did not appear to be in pain at her
12 appointments. Tr. 713. Under the step two analysis, the ALJ considered the
13 imaging that showed no to only mild abnormalities, and normal back examinations,
14 as well as Plaintiff's lack of physical therapy. Tr. 708. The majority of the
15 medical records related to Plaintiff's physical symptoms precede her alleged onset
16 date, and the ALJ reasonably found the limited evidence pertaining to Plaintiff's
17 physical symptoms during the relevant period are inconsistent with her claims.
18 Plaintiff does not point to any evidence that contradicts the ALJ's finding.

19 Second, the ALJ found Plaintiff's reported mental health and cognitive
20 symptoms were not as severe as she claimed. Tr. 713-14. While Plaintiff alleges

1 disabling psychological limitations, the records generally document Plaintiff
2 having normal orientation, eye contact, mood, affect, thoughts, memory, and
3 attention. Tr. 713 (citing, e.g., Tr. 468, 510-11, 1060, 1203, 1394). Plaintiff had
4 some abnormalities on examination, including dysphoric mood, blunted affect, and
5 irritable and reactive behavior, but even at examinations where she had some
6 abnormalities, Plaintiff maintained normal memory and concentration. Tr. 714
7 (citing Tr. 701, 1305-06, 1320). While Plaintiff alleges she has anxiety attacks out
8 of nowhere, Tr. 372, she has reported to medical providers she only experiences
9 such attacks when she hears gun shots or fireworks and otherwise denied anxiety-
10 related symptoms, Tr. 1302. Plaintiff has alleged disability in part due to
11 intellectual disability, but the ALJ noted Plaintiff had a stable, borderline IQ score.
12 Tr. 713-14.

13 Plaintiff argues the records are consistent with her allegations, as the ALJ
14 acknowledged that the records document Plaintiff routinely having abnormalities
15 on examination, including abnormal memory, mood, and behavior. ECF No. 15 at
16 6-7 (citing Tr. 714). However, even at appointments where Plaintiff had some
17 abnormalities on examination, the ALJ noted Plaintiff had multiple normal
18 findings. Tr. 714. While Plaintiff offers an alternative interpretation of the
19 evidence, the Court may not reverse the ALJ's decision based on Plaintiff's
20 disagreement with the ALJ's interpretation of the record. *See Tommasetti v.*

1 *Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (“[W]hen the evidence is susceptible
2 to more than one rational interpretation” the court will not reverse the ALJ’s
3 decision). The ALJ’s finding that Plaintiff’s symptom claims are inconsistent with
4 the objective evidence is supported by substantial evidence. This was a clear and
5 convincing reason, along with the other reasons offered, to reject Plaintiff’s
6 symptom claims.

7 2. *Lack of Treatment*

8 The ALJ found Plaintiff’s lack of treatment is not consistent with her
9 allegations. Tr. 714. An unexplained, or inadequately explained, failure to seek
10 treatment or follow a prescribed course of treatment may be considered when
11 evaluating the claimant’s subjective symptoms. *Orn v. Astrue*, 495 F.3d 625, 638
12 (9th Cir. 2007). Evidence of a claimant’s self-limitation and lack of motivation to
13 seek treatment are appropriate considerations in determining the credibility of a
14 claimant’s subjective symptom reports. *Osenbrock v. Apfel*, 240 F.3d 1157, 1165-
15 66 (9th Cir. 2001). When there is no evidence suggesting that the failure to seek or
16 participate in treatment is attributable to a mental impairment rather than a
17 personal preference, it is reasonable for the ALJ to conclude that the level or
18 frequency of treatment is inconsistent with the alleged severity of complaints.
19 *Molina*, 674 F.3d at 1113-14. But when the evidence suggests lack of mental
20 health treatment is partly due to a claimant’s mental health condition, it may be

1 inappropriate to consider a claimant's lack of mental health treatment when
2 evaluating the claimant's failure to participate in treatment. *Nguyen v. Chater*, 100
3 F.3d 1462, 1465 (9th Cir. 1996).

4 In May 2016, Plaintiff reported she had last seen a physician eight months
5 prior, and she reported no current medical problems. Tr. 714, 1366. In May 2017,
6 Plaintiff reported back pain but stated it was untreated, and reported she did not
7 have a primary care physician and had not had a physical examination with the last
8 year. Tr. 1366. In August 2018, Plaintiff presented to establish care. Tr. 714
9 (citing Tr. 1448). While Plaintiff alleges disability beginning in September 2015,
10 she reported in May 2016 that she had not had any mental health treatment. Tr.
11 714. In March 2016, Plaintiff told a provider she did not want therapy because her
12 symptoms do not bother her daily and she wanted to end therapy. Tr. 715 (citing
13 Tr. 1187). During treatment, the records note Plaintiff did not meet criteria for a
14 major mood problem and she was not significantly symptomatic for trauma issues,
15 thus she was diagnosed with a single depressive episode in partial remission. Tr.
16 714 (citing Tr. 1183). Later, her anxiety was labeled as sub-clinical. Tr. 714
17 (citing Tr. 698). In July 2017, Plaintiff wanted to end services as she was no
18 longer required to receive mental health services to receive financial benefits. Tr.
19 714 (citing Tr. 1374). At another appointment, Plaintiff reported she was only
20 engaging in counseling to keep financial benefits. Tr. 715 (citing Tr. 1359).

1 Plaintiff has also reported she is not interested in psychotropic medication for
2 anxiety because her anxiety does not occur that often. Tr. 715 (citing Tr. 1055,
3 1057, 1063).

4 Plaintiff argues the ALJ failed to consider that she did not seek additional
5 mental health services because of her lack of insight into her symptoms, and her
6 personality disorder impairs her decision-making related to treatment. ECF No. 15
7 at 8-9 (citing Tr. 438, 511, 701, 988, 1318). However, some of the cited medical
8 records fall outside of the relevant adjudicative period, and none of the records
9 explicitly state that Plaintiff's impairments limit her ability to access mental health
10 treatment. Plaintiff did not present any arguments at the hearing regarding her lack
11 of ongoing mental health treatment. *See* Tr. 733-45. Further, the ALJ did not find
12 Plaintiff's personality disorder is a severe medically determinable impairment and
13 Plaintiff did not challenge the ALJ's finding. Tr. 708; ECF No. 15 at 9. The
14 ALJ's finding that Plaintiff's limited treatment is inconsistent with her allegations
15 is supported by substantial evidence. The ALJ did not error in failing to consider
16 Plaintiff's reasons for not seeking care, when there is not evidence of such reasons
17 in the medical records and such reasons were not presented to the ALJ. Further,
18 any error in failing to consider the impact Plaintiff's mental health symptoms may
19 have on her ability to access care is harmless as the ALJ gave other supported

1 reasons to reject Plaintiff's symptom claims, as discussed herein. *See Molina*, 674
2 F.3d at 1115.

3 *3. Situational Stressors*

4 The ALJ found situational stressors contributed to Plaintiff's symptoms. Tr.
5 715. If a claimant suffers from limitations that are transient and result from
6 situational stressors, as opposed to resulting from a medical impairment, an ALJ
7 may properly consider this fact in discounting Plaintiff's symptom claims. *See*
8 *Wright v. Colvin*, No. 13-CV-3068-TOR, 2014 WL 3729142, at *5 (E.D. Wash.
9 July 25, 2014) (symptom testimony properly rejected in part because the record
10 squarely supported the ALJ's conclusion that Plaintiff's symptoms were
11 attributable to situational stressors rather than impairments mental health
12 symptoms were situational"); *but see Bryant v. Astrue*, No. C12-5040-RSM-JPD,
13 2012 WL 5293018, at *5-7 (W.D. Wash. Sept. 24, 2012) (concluding Plaintiff's
14 stressors appeared to have a constant presence affecting ability to work on a
15 continuing basis, rather than temporary exacerbation).

16 The ALJ noted Plaintiff had multiple situations that exacerbated her mental
17 health symptoms during the relevant period. Tr. 715. Plaintiff reported major life
18 changes that caused stress in November 2015, and she reported going through a
19 breakup in September 2018. *Id.* (citing Tr. 473, 1329). A few months after the
20 breakup, Plaintiff reported feeling better and being in a new relationship. Tr. 1329.

1 Plaintiff also testified that her symptoms occurred less frequently when she was
2 not involved in stressful situations. Tr. 715, 742-45. Plaintiff argues that stress
3 consistently aggravated her symptoms, and that such aggravation is consistent with
4 her inability to work due to her symptoms as a job would also exacerbate her
5 symptoms. ECF No. 15 at 10. Any error in the ALJ's analysis that Plaintiff's
6 symptoms are caused by situational stressors is harmless as the ALJ gave other
7 supported reasons to reject Plaintiff's symptom claims, as discussed herein. *See*
8 *Molina*, 674 F.3d at 1115.

9 *4. Activities of Daily Living*

10 The ALJ found Plaintiff's activities of daily living are inconsistent with her
11 allegations. Tr. 715-16. The ALJ may consider a claimant's activities that
12 undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can spend a
13 substantial part of the day engaged in pursuits involving the performance of
14 exertional or non-exertional functions, the ALJ may find these activities
15 inconsistent with the reported disabling symptoms. *Fair*, 885 F.2d at 603; *Molina*,
16 674 F.3d at 1113. "While a claimant need not vegetate in a dark room in order to
17 be eligible for benefits, the ALJ may discount a claimant's symptom claims when
18 the claimant reports participation in everyday activities indicating capacities that
19 are transferable to a work setting" or when activities "contradict claims of a totally
20 debilitating impairment." *Molina*, 674 F.3d at 1112-13.

1 The ALJ noted Plaintiff has engaged in multiple activities that are
2 inconsistent with her reported limitations. Tr. 712. Plaintiff is able to take public
3 transportation and receives rides from friends. Tr. 712, 715 (citing Tr. 1344).
4 Plaintiff reported spending time socializing with her husband and friends, and she
5 reported going to a party. Tr. 715-16 (citing Tr. 1351, 1356). While Plaintiff
6 alleges she cannot lift more than 10 pounds, Tr. 965, Plaintiff has reported she can
7 lift 30 pounds, Tr. 715 (citing Tr. 1459). Plaintiff has engaged in job hunting,
8 trying to obtain her GED, and getting services from Vocational Rehabilitation, and
9 she obtained a job in December 2018. Tr. 716 (citing Tr. 1184, 1301, 1329, 1422,
10 1427, 1444). Plaintiff has also reported having no issues with her personal care,
11 and being able to help with house work and care for a cat, prepare her own meals,
12 go out alone, shop, socialize daily, follow written and spoken instructions, handle
13 stress and changes, finish things she starts, and get along with authority figures.
14 Tr. 373-78. Plaintiff reported she has no issues getting along with others, and there
15 has been no changes in her social activities since she reportedly became disabled.
16 Tr. 377. This was a clear and convincing reason, supported by substantial
17 evidence, to reject Plaintiff's symptom claims.

18 5. *Employment History*

19 The ALJ found Plaintiff's allegations were inconsistent with Plaintiff's
20 employment history. Tr. 716. When assessing a Plaintiff's claims, an ALJ may

1 consider a Plaintiff seeking work during a period of alleged disability. *See Bray v.*
2 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009) (approving of
3 ALJ’s rejection of Plaintiff’s symptom testimony in part because Plaintiff sought
4 work during period of alleged disability); *see also Woznick v. Colvin*, No. 6:15-cv-
5 00111-AA, 2016 WL 1718363, at *4 (D. Or. Apr. 29, 2016) (ALJ reasonably
6 discredited Plaintiff’s symptom testimony in light of her efforts to seek work);
7 *Lizarraga v. Colvin*, No. CV 14-9116-FFM, 2016 WL 1604704, at *4 (C.D. Cal.
8 Apr. 21, 2016) (same). Further, Plaintiff’s own perception of her ability to work is
9 a proper consideration in determining credibility. *See No. 2:16-cv-00402-MKD,*
10 *Barnes v. Comm’r of Soc. Sec.*, 2018 WL 545722, at *5 (E.D. Wash. Jan. 24, 2018)
11 (“Evidence of Plaintiff’s preparedness to return to work, even if an optimistic self-
12 assessment, is significant to the extent that the Plaintiff is willing and able to work,
13 as that belief indicates her allegation of symptoms precluding work are not
14 credible.”).

15 The ALJ noted that Plaintiff reported she cannot work because she does not
16 have a GED, rather than due to her disability. Tr. 250, 460, 716, 1414. As
17 discussed *supra*, she continued to job hunt, pursue her GED, and engage in
18 employment services during the relevant period. Tr. 716. She obtained work in
19 December 2018. *Id.* (citing Tr. 1329). Plaintiff had some difficulties with
20 obtaining her GED, but they were related to the weather, transportation, and

1 challenges getting her transcripts, rather than any difficulties due to her symptoms.
2 Tr. 716 (citing Tr. 1280, 1361). Plaintiff's earning records show some earnings in
3 2016, 2017, 2018, and 2019. Tr. 910. She reported her last job was at Dollar Tree
4 in 2019, and it ended because a manager made changes to the schedule without
5 notifying her, and after requesting a transfer to another store, the company instead
6 stated she had quit. Tr. 737. Plaintiff did not challenge this reason, thus any
7 argument is waived. *See Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155,
8 1161 n.2 (9th Cir. 2008). The ALJ reasonably found Plaintiff's work history,
9 including her job hunting, pursuit of her GED, and attempts to work, were
10 inconsistent with her allegations.

11 On this record, the ALJ reasonably concluded that Plaintiff's work history is
12 inconsistent with her allegations. This finding is supported by substantial evidence
13 and was a clear and convincing reason to discount Plaintiff's symptom complaints.
14 Plaintiff is not entitled to remand on these grounds.

15 **B. Medical Opinion Evidence**

16 Plaintiff contends the ALJ erred in his analysis of the medical opinions of
17 Thomas Genthe, Ph.D., and Tasmyn Bowes, Psy.D. ECF No. 15 at 12-19.

18 There are three types of physicians: "(1) those who treat the claimant
19 (treating physicians); (2) those who examine but do not treat the claimant
20 (examining physicians); and (3) those who neither examine nor treat the claimant

1 [but who review the claimant’s file] (nonexamining [or reviewing] physicians).”
2 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).
3 Generally, a treating physician’s opinion carries more weight than an examining
4 physician’s, and an examining physician’s opinion carries more weight than a
5 reviewing physician’s. *Id.* at 1202. “In addition, the regulations give more weight
6 to opinions that are explained than to those that are not, and to the opinions of
7 specialists concerning matters relating to their specialty over that of
8 nonspecialists.” *Id.* (citations omitted).

9 If a treating or examining physician’s opinion is uncontradicted, the ALJ
10 may reject it only by offering “clear and convincing reasons that are supported by
11 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
12 “However, the ALJ need not accept the opinion of any physician, including a
13 treating physician, if that opinion is brief, conclusory and inadequately supported
14 by clinical findings.” *Bray*, 554 F.3d at 1228 (internal quotation marks and
15 brackets omitted). “If a treating or examining doctor’s opinion is contradicted by
16 another doctor’s opinion, an ALJ may only reject it by providing specific and
17 legitimate reasons that are supported by substantial evidence.” *Bayliss*, 427 F.3d at
18 1216 (citing *Lester*, 81 F.3d at 830-31). The opinion of a nonexamining physician
19 may serve as substantial evidence if it is supported by other independent evidence
20 in the record. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

1 *I. Dr. Genthe*

2 Dr. Genthe, an examining source, rendered opinions on Plaintiff's
3 functioning in 2012 and in 2015. Tr. 460-64, 506-13. Plaintiff only challenges the
4 ALJ's rejection of the 2015 opinion. ECF No. 15 at 13-16. On August 10, 2015,
5 Dr. Genthe diagnosed Plaintiff with panic disorder and other specified depressive
6 disorder, mild. Tr. 508. Dr. Genthe opined Plaintiff has no to mild limitations in
7 her ability to ask simple questions or request assistance and communicate and
8 perform effectively in a work setting; marked limitations in her ability to
9 understand, remember, and persist in tasks by following detailed instructions, and
10 adapt to changes in a routine work setting; and moderate limitations in the
11 remaining areas of functioning. Tr. 508-09. Dr. Genthe opined Plaintiff's
12 impairments overall have a moderate severity rating and vocational
13 training/services would minimize or eliminate barriers to employment. Tr. 509.
14 The ALJ gave Dr. Genthe's opinion some weight. Tr. 717.

15 First, the ALJ found Dr. Genthe's opinion was entitled to less weight
16 because Dr. Genthe did not review any records. *Id.* The extent to which a medical
17 source is "familiar with the other information in [the claimant's] case record" is
18 relevant in assessing the weight of that source's medical opinion. *See* 20 C.F.R. §
19 416.927(c)(6). Dr. Genthe noted that he did not review any records for the
20 evaluation. Tr. 506. Plaintiff argues this is not a valid reason to reject Dr.

1 Genthe’s opinion, because he based his opinion on his examination of Plaintiff.
2 ECF No. 15 at 14. Dr. Genthe’s examination report gives specific details about
3 Plaintiff’s scores from 2005, and an evaluation in 2013, and it is unclear if such
4 information came from a review of records. Tr. 506. However, Dr. Genthe lacked
5 knowledge of Plaintiff’s inconsistent statements, her reports that she rarely had
6 panic attacks, and other evidence that is inconsistent with his opinion. *See* Tr. 714-
7 15. This was a specific and legitimate reason to reject Dr. Genthe’s opinion.

8 Second, the ALJ found Dr. Genthe’s opinion indicated Plaintiff’s limitations
9 were temporary in nature. Tr. 717. Temporary limitations are not enough to meet
10 the durational requirement for a finding of disability. 20 C.F.R. § 416.905(a)
11 (requiring a claimant’s impairment to be expected to last for a continuous period of
12 not less than twelve months); 42 U.S.C. § 423(d)(1)(A) (same); *Carmickle*, 533
13 F.3d at 1165 (affirming the ALJ’s finding that treating physicians’ short-term
14 excuse from work was not indicative of “claimant’s long-term functioning”). Dr.
15 Genthe opined Plaintiff’s intellectual impairment will last indefinitely, and her
16 psychological impairments will cause limitations for six months. Tr. 509.
17 However, Dr. Genthe did not diagnose Plaintiff with an intellectual disability. Tr.
18 506. As Dr. Genthe opined Plaintiff’s psychological limitations would last only
19 six months, and vocational services would minimize or eliminate barriers to
20 employment, the ALJ reasonably found Dr. Genthe’s opinion was entitled to less

1 weight because it was based on temporary limitations. This was a specific and
2 legitimate reason to reject the opinion.

3 Third, the ALJ found Dr. Genthe's opinion was contradicted by the opinion
4 of Dr. VanFossen. Tr. 717. Generally, an ALJ should accord more weight to the
5 opinion of an examining physician than to that of a non-examining physician. *See*
6 *Andrews*, 53 F.3d at 1040-41. However, the opinion of a nonexamining physician
7 may serve as substantial evidence if it is "supported by other evidence in the record
8 and [is] consistent with it." *Id.* at 1041. Dr. VanFossen reviewed Dr. Genthe's
9 opinion and found Dr. Genthe's opinion is not supported by the medical evidence,
10 as Plaintiff appears "quite capable of completing simple labor tasks that do not
11 involve performing many calculations . . . The ratings are adjusted to the mild
12 range." Tr. 514. Dr. VanFossen opined that the opinion that Plaintiff is primarily
13 impaired by cognitive factors is not supported by recent normal IQ testing. *Id.*, Tr.
14 717. However, Dr. Genthe stated Plaintiff presented with "primary cognitive
15 deficits as the reason why she was currently not employed," Tr. 509, which
16 appears to be based on Plaintiff's report that she has a learning disability that
17 impairs her ability to work, Tr. 506. The ALJ reasonably found Dr. Genthe's
18 opinion is inconsistent with Dr. VanFossen's opinion, and the ALJ discussed the
19 evidence that supports the opinion. Tr. 717. This was a specific and legitimate
20 reason to reject Dr. Genthe's opinion.

1 2. *Dr. Bowes*

2 Dr. Bowes, an examining source, conducted two examinations and rendered
3 two opinions on Plaintiff's functioning. Tr. 1301-07, 1316-21.

4 a. 2018 Opinion

5 On May 24, 2018, Dr. Bowes diagnosed Plaintiff with persistent depressive
6 disorder with major depressive episodes and unspecified anxiety disorder. Tr.
7 1303. Dr. Bowes opined Plaintiff has no to mild limitations in her ability to
8 understand, remember, and persist in tasks by following very short and simple
9 instructions, make simple work-related decisions, be aware of normal hazards and
10 take appropriate precautions, and ask simple questions or request assistance;
11 marked limitations in her ability to understand, remember, and persist in tasks by
12 following detailed instructions and perform activities within a scheduled, maintain
13 regular attendance, and be punctual within customary tolerances without special
14 supervision; and moderate limitations in the remaining areas of functioning. Tr.
15 1304. She opined Plaintiff's impairments overall have a moderate rating, the
16 limitations are expected to last six to 12 months, and vocational training/services
17 would minimize or eliminate barriers to employment. Tr. 1304-05. The ALJ gave
18 the 2018 opinion little weight. Tr. 718.

19 First, the ALJ found Dr. Bowes' 2018 opinion is entitled to less weight
20 because she did not review any records. *Id.* The extent to which a medical source

1 is “familiar with the other information in [the claimant’s] case record” is relevant
2 in assessing the weight of that source’s medical opinion. *See* 20 C.F.R. §
3 416.927(c)(6). Dr. Bowes noted she did not review any previous psychological
4 evaluations. Tr. 1301. As with Dr. Genthe’s opinion, although the opinion was
5 based on an evaluation, the ALJ reasonably found the opinion is entitled to less
6 weight because Dr. Bowes did not review any records.

7 Second, the ALJ found Dr. Bowes’ opinion indicated the limitations may be
8 temporary in nature. Tr. 718. Temporary limitations are not enough to meet the
9 durational requirement for a finding of disability. 20 C.F.R. § 416.905(a)
10 (requiring a claimant’s impairment to be expected to last for a continuous period of
11 not less than twelve months); 42 U.S.C. § 423(d)(1)(A) (same); *Carmickle*, 533
12 F.3d at 1165 (affirming the ALJ’s finding that treating physicians’ short-term
13 excuse from work was not indicative of “claimant’s long-term functioning”). Dr.
14 Bowes opined Plaintiff’s limitations would last six to 12 months, and stated
15 vocational services would minimize or eliminate barriers to employment, and if
16 Plaintiff received treatment, she should be able to work. Tr. 1305. While a
17 limitation that lasts 12 months satisfies the duration requirement, Dr. Bowes’
18 opinion as a whole indicates she did not believe Plaintiff’s limitations were likely
19 to prevent her from working if she received employment services and/or treatment.
20 Further, any error in rejecting the opinion in part due to the limitations being

1 temporary would be harmless, as the ALJ gave other supported reasons to reject
2 the opinion. *See Molina*, 674 F.3d at 1115.

3 Third, the ALJ found Dr. Bowes' opinion was inconsistent with treatment
4 records. Tr. 718. A medical opinion may be rejected if it is unsupported by
5 medical findings. *Bray*, 554 F.3d at 1228; *Batson v. Comm'r of Soc. Sec. Admin.*,
6 359 F.3d 1190, 1195 (9th Cir. 2004); *Thomas*, 278 F.3d at 957; *Tonapetyan v.*
7 *Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001); *Matney v. Sullivan*, 981 F.2d 1016,
8 1019 (9th Cir. 1992). An ALJ may discredit physicians' opinions that are
9 unsupported by the record as a whole. *Batson*, 359 F.3d at 1195. Moreover, an
10 ALJ is not obligated to credit medical opinions that are unsupported by the medical
11 source's own data and/or contradicted by the opinions of other examining medical
12 sources. *Tommasetti*, 533 F.3d at 1041. The ALJ found Dr. Bowes' opinion was
13 unsupported by the treatment records, which document relatively benign
14 symptoms. Tr. 718. As discussed *supra*, while the medical records contain some
15 abnormalities on examination, the records also contain many normal examinations,
16 and even at examinations when Plaintiff has some abnormalities, she presented
17 with several other normal findings. The ALJ reasonably found Dr. Bowes' 2018
18 opinion was inconsistent with the treatment records.

1 b. 2019 Opinion

2 On June 10, 2019, Dr. Bowes diagnosed Plaintiff with borderline personality
3 disorder, PTSD, and unspecified depressive disorder. Tr. 1318. Dr. Bowes opined
4 Plaintiff has no to mild limitations in her ability to understand, remember, and
5 persist in tasks by following very short and simple instructions, learn new tasks,
6 perform routine tasks without special supervision, make simple work-related
7 decisions, and be aware of normal hazards and take appropriate precautions;
8 moderate limitations in her ability to understand, remember, and persist in tasks by
9 following detailed instructions, adapt to changes in a routine work setting, ask
10 simple questions or request assistance, and set realistic goals and plan
11 independently; marked limitations in her ability to perform activities within a
12 schedule, maintain regular attendance, and be punctual within customary
13 tolerances without special supervision, maintain appropriate behavior in a work
14 setting, and complete a normal workday/workweek without interruptions from
15 psychologically based symptoms; and severe limitations in her ability to
16 communicate and perform effectively in a work setting. Tr. 1319. She opined
17 Plaintiff's impairments overall have a marked severity rating, the limitations are
18 expected to last 12 months or longer, and vocational trainings/services would not
19 minimize or eliminated barriers to employment. *Id.* The ALJ did not specify the

1 amount of weight given to the 2019 opinion but gave multiple reasons to reject the
2 opinion. Tr. 718.

3 First, the ALJ found Dr. Bowes' 2019 opinion lacks a supporting
4 explanation and is not supported by the examination. *Id.* The Social Security
5 regulations "give more weight to opinions that are explained than to those that are
6 not." *Holohan*, 246 F.3d at 1202. "[T]he ALJ need not accept the opinion of any
7 physician, including a treating physician, if that opinion is brief, conclusory and
8 inadequately supported by clinical findings." *Bray*, 554 at 1228. The ALJ noted
9 Dr. Bowes' 2019 opinion does not contain a reasonable explanation for the
10 changes from the 2018 opinion. Tr. 718. The ALJ also found the opinion is not
11 supported by a narrative explanation nor the mental status examinations. *Id.*
12 Plaintiff argues the opinion is supported by the examination, which documented
13 abnormalities including irritability, lability, and dysphoria on examination. ECF
14 No. 15 at 18. However, Dr. Bowes also noted Plaintiff had normal thoughts,
15 orientation, perception, memory, fund of knowledge, concentration, abstract
16 thoughts, and insight/judgment. Tr. 1320. As noted by the ALJ, Dr. Bowes'
17 examination does not contain an explanation regarding the changes in her opinion
18 from 2018 to 2019, despite Plaintiff's similar presentation at both examinations.
19 This was a specific and legitimate reason to reject Dr. Bowes' opinion.

1 Second, the ALJ found the opinion is inconsistent with the record as a
2 whole. Tr. 718. An ALJ may discredit physicians' opinions that are unsupported
3 by the record as a whole. *Batson*, 359 F.3d at 1195. The ALJ found Dr. Bowes'
4 opinion was inconsistent with Plaintiff's benign presentation to treating providers,
5 her lack of treatment, her reported lack of symptoms on multiple occasions, and
6 inconsistencies in the record. Tr. 718. As discussed *supra*, the ALJ identified
7 multiple inconsistencies in the record such as Plaintiff's job hunting and pursuing
8 her GED during the relevant time period, and the ALJ considered Plaintiff's lack
9 of ongoing mental health treatment and multiple largely normal mental status
10 examinations throughout the record. This was a specific and legitimate reason to
11 reject Dr. Bowes' 2019 opinion. Plaintiff is not entitled to remand on these
12 grounds.

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 free of harmful legal error.
16 Accordingly, **IT IS HEREBY ORDERED:**

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

18 2. Defendant's Motion for Summary Judgment, **ECF No. 16**, is
19 **GRANTED**.

20 3. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

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

DATED May 23, 2022.

s/Mary K. Dimke
MARY K. DIMKE
UNITED STATES DISTRICT JUDGE