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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SARA N. GRANADOS,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

No. 2:14-CV-0195-JTR

ORDER GRANTING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT are cross-Motions for Summary Judgment. ECF No. 13, 18. Attorney Lora Lee Stover represents Sara N. Granados (Plaintiff); Special Assistant United States Attorney Terrye E. Shea represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and briefs filed by the parties, the Court **GRANTS** Defendant’s Motion for Summary Judgment and **DENIES** Plaintiff’s Motion for Summary Judgment.

JURISDICTION

Plaintiff filed applications for a period of disability, Disability Insurance Benefits and Supplemental Security Income (SSI) on December 15, 2010, alleging disability since March 31, 2007, due to diabetes, high cholesterol, high blood pressure, macular edema and mental disorders. Tr. 291. The applications were

1 denied initially and upon reconsideration. Administrative Law Judge (ALJ) R. J.
2 Payne held a hearing on March 20, 2013, Tr. 48-97, and issued an unfavorable
3 decision on April 4, 2013, Tr. 24-40. The Appeals Council denied review on May
4 23, 2014. Tr. 1-6. The ALJ's April 2013 decision became the final decision of the
5 Commissioner, which is appealable to the district court pursuant to 42 U.S.C. §
6 405(g). Plaintiff filed this action for judicial review on June 17, 2014. ECF No. 1.

7 **STATEMENT OF FACTS**

8 The facts of the case are set forth in the administrative hearing transcript, the
9 ALJ's decision, and the briefs of the parties. They are only briefly summarized
10 here.

11 Plaintiff was born in El Salvador on January 25, 1960, and was 47 years old
12 on the March 31, 2007, alleged onset date. Tr. 287. Plaintiff graduated from high
13 school in the United States and last worked in June 2008. Tr. 75, 291-292.
14 Plaintiff reported she stopped working when her documents were stolen, and she
15 has not worked since that time. Tr. 291. As noted above, Plaintiff alleges
16 disability due to diabetes, high cholesterol, high blood pressure, macular edema
17 and mental disorders. Tr. 291. Plaintiff's function report indicates "mental
18 disorder, medication and [poor] vision" limit her ability to work. Tr. 298. At the
19 administrative hearing, Plaintiff testified she has emotional problems and is
20 depressed. Tr. 76. She also described her main physical problem as right shoulder
21 pain. Tr. 81, 90.

22 Alexander B. White, M.D., an internal medicine physician, testified as a
23 medical expert at the administrative hearing. Tr. 52-60. He stated Plaintiff has
24 type 2 diabetes and a history of back aches, problems with her left shoulder, a right
25 clavicle fracture, and a left knee patella fracture. Tr. 53-56. He also noted the
26 record reflected Plaintiff had macular edema and depression. Tr. 56.

27 Margaret Moore, Ph.D., also testified as a medical expert at the
28 administrative hearing. Tr. 60-72. Dr. Moore indicated that in 2010 Plaintiff's

1 perceived limitations and complaints were very minimal and then “we start to see a
2 much more significant complaint and sometimes surprisingly so.” Tr. 61. Dr.
3 Moore stated the record was not clear as to why that happened, but noted “a
4 number of indicators that there may well be some symptom exaggeration . . . and
5 some less than ideal effort presented for these various evaluations.” Tr. 61. Dr.
6 Moore testified the record reflected Plaintiff was very organized, well prepared
7 with her documents and working toward some reasonable goals in 2010, but then a
8 change occurred and Plaintiff adopted “a disability mindset” with a stated goal of
9 receiving SSI. Tr. 62.

10 Dr. Moore also discussed the psychotic features noted in the record. Tr. 62-
11 63. Dr. Moore mentioned the possibility of cultural issues at play and opined that
12 the record did not reflect psychosis. Tr. 63. She testified that Plaintiff had a
13 “somewhat dependent personality style with some mixed depression and anxiety,
14 and . . . some motivational issues.” Tr. 64. Dr. Moore opined that Plaintiff, if
15 motivated, would be able to maintain full-time work on a regular and continuous
16 basis in a competitive work environment. Tr. 67.

17 Dr. Moore further commented about the potential effect of Plaintiff’s
18 language skills on her examination test scores in the record. Tr. 69-70. She
19 indicated that while English is not Plaintiff’s first language, the records dating back
20 to 1996 reflect that Plaintiff finished school, has been in the United States for a
21 long time, and has been able to negotiate the community. Tr. 69. It appears Dr.
22 Moore found the reliability of Plaintiff’s psychological examinations was not
23 undermined by her English language abilities. Tr. 69-71.

24 **STANDARD OF REVIEW**

25 The ALJ is responsible for determining credibility, resolving conflicts in
26 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
27 1039 (9th Cir. 1995). The Court reviews the ALJ’s determinations of law de novo,
28 deferring to a reasonable interpretation of the statutes. *McNatt v. Apfel*, 201 F.3d

1 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is
2 not supported by substantial evidence or if it is based on legal error. *Tackett v.*
3 *Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as
4 being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put
5 another way, substantial evidence is such relevant evidence as a reasonable mind
6 might accept as adequate to support a conclusion. *Richardson v. Perales*, 402
7 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational
8 interpretation, the court may not substitute its judgment for that of the ALJ.
9 *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169
10 F.3d 595, 599 (9th Cir. 1999). Nevertheless, a decision supported by substantial
11 evidence will still be set aside if the proper legal standards were not applied in
12 weighing the evidence and making the decision. *Browner v. Secretary of Health*
13 *and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence
14 supports the administrative findings, or if conflicting evidence exists that will
15 support a finding of either disability or non-disability, the ALJ's determination is
16 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

17 SEQUENTIAL EVALUATION PROCESS

18 The Commissioner has established a five-step sequential evaluation process
19 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
20 416.920(a); *see, Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one
21 through four, the burden of proof rests upon the claimant to establish a prima facie
22 case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This
23 burden is met once a claimant establishes that a physical or mental impairment
24 prevents him from engaging in his previous occupation. 20 C.F.R. §§
25 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the
26 ALJ proceeds to step five, and the burden shifts to the Commissioner to show that
27 (1) the claimant can make an adjustment to other work; and (2) specific jobs exist
28 in the national economy which claimant can perform. *Batson v. Commissioner of*

1 *Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make
2 an adjustment to other work in the national economy, a finding of “disabled” is
3 made. 20 C.F.R. §§ 404.1520(a)(4)(i-v), 416.920(a)(4)(i-v).

4 **ADMINISTRATIVE DECISION**

5 On April 4, 2013, the ALJ issued a decision finding Plaintiff was not
6 disabled as defined in the Social Security Act. At step one, the ALJ found Plaintiff
7 had not engaged in substantial gainful activity since March 31, 2007, the alleged
8 onset date. Tr. 26. At step two, the ALJ determined Plaintiff had the following
9 severe impairments: diabetes mellitus, type 2; right shoulder osteoarthritis of the
10 acromioclavicular (AC) joint; status post left knee patella fracture; mild macular
11 edema; depression, not otherwise specified (NOS); adjustment disorder; dysthymic
12 disorder; and personality disorder, NOS. Tr. 26. At step three, the ALJ found
13 Plaintiff did not have an impairment or combination of impairments that met or
14 medically equaled the severity of one of the listed impairments. Tr. 27.

15 The ALJ assessed Plaintiff’s residual function capacity (RFC) and
16 determined she could perform a range of light exertion level work (lift and carry 20
17 pounds occasionally and 10 pounds frequently and stand and/or walk and sit for 6
18 hours total in an 8-hour workday), except that she can only frequently climb ramps
19 or stairs; she can never climb ladders, ropes, or scaffolds; she can only
20 occasionally crawl and reach overhead with the right shoulder; her near acuity, far
21 acuity, depth perception, accommodation, color vision and field of vision
22 bilaterally is limited to frequent; she must avoid concentrated exposure to extreme
23 heat, extreme cold, humidity, and hazards (machinery, heights, etc.); and she is
24 mildly to moderately limited in working in coordination with or proximity to
25 others without being distracted by them, in responding appropriately to changes in
26 the work setting, and in setting realistic goals or making plans independently of
27 others. Tr. 29. Given this RFC, the ALJ concluded at step four that Plaintiff was
28 able to perform her past relevant work as an apartment manager as the job was

1 actually performed. Tr. 40. Accordingly, the ALJ found Plaintiff was not under a
2 disability from March 31, 2007, the alleged onset date, through the date of the
3 ALJ's decision, April 4, 2013. Tr. 40.

4 ISSUES

5 The question presented is whether substantial evidence exists to support the
6 ALJ's decision denying benefits and, if so, whether that decision is based on
7 proper legal standards.

8 Plaintiff's opening brief mentions the following three issues for review:
9 (1) the ALJ erred in assessing Plaintiff's RFC; (2) the ALJ erred in finding
10 Plaintiff was capable of performing past work as an apartment manager; and
11 (3) the evidence of record does not support the decision that Plaintiff is not
12 disabled. ECF No. 13 at 8. However, the three-page argument section of
13 Plaintiff's opening brief fails to specifically address how the ALJ erred in
14 assessing Plaintiff's RFC (issue 1) or how the weight of the evidence of record
15 fails to support the ALJ's ultimate disability determination (issue 3). ECF No. 13
16 at 10-12. Plaintiff's only supported argument in her opening brief is her assertion
17 that the ALJ's RFC assessment is incompatible with the capacities required of an
18 individual to perform work as an apartment manager. ECF No. 13 at 10-12; *see*
19 *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994) ("We review only issues
20 which are argued specifically and distinctly in a party's opening brief. We will not
21 manufacture arguments for an appellant, and a bare assertion does not preserve a
22 claim." (citations omitted)); *Brownfield v. City of Yakima*, 612 F.3d 1140, 1149
23 (9th Cir. 2010) (refusing to address claims that were only "argue[d] in passing");
24 *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008)
25 ("issues not argued with specificity in briefing will not be addressed").

26 The only issue argued with specificity in Plaintiff's opening brief is the
27 assertion that the ALJ erred at step four of the sequential evaluation process
28 because the RFC assessment by the ALJ was incompatible with the capacities

1 required of an individual to be employed as an apartment manager. ECF No. 13 at
2 10. This challenge of the ALJ’s step four determination is the only issue properly
3 before the Court in this case.

4 DISCUSSION

5 A. Residual Functional Capacity Determination

6 As indicated above, the ALJ found that Plaintiff retained the residual
7 functional capacity to perform light exertion level work with certain restrictions.
8 Tr. 29. Residual functional capacity is defined as “the most you can still do despite
9 your limitations.” 20 C.F.R. § 404.1545(a)(1). The ALJ must base his RFC
10 determination on the entire record, including medical records, physicians’
11 opinions, and the claimant’s description of her limitations.

12 1. Plaintiff’s Credibility

13 The ALJ determined that Plaintiff’s medically determinable impairments
14 could reasonably be expected to cause her alleged symptoms; however, her
15 statements concerning the intensity, persistence and limiting effects of these
16 symptoms were not entirely credible. Tr. 36. Plaintiff has not challenged this
17 adverse credibility determination.¹

18 The ALJ indicated the following reasons for why he found Plaintiff was not
19 entirely credible: the weight of the evidence fails to document clinical
20 abnormalities that could reasonably be expected to have produced symptoms or
21 limitations consistent with Plaintiff’s allegations; no doctor has stated Plaintiff
22 could not work at the light exertion level; the record reveals medications have been
23

24 ¹While Plaintiff avers in one sentence of the argument section of her opening
25 brief that the ALJ erred by “ignor[ing] the effects of pain from her physical
26 impairments,” ECF No. 13 at 11, the ALJ did not ignore evidence of Plaintiff’s
27 alleged pain, he merely found it was not credible, Tr. 39. Plaintiff does not allege
28 that the ALJ’s adverse credibility determination is erroneous.

1 relatively effective in controlling Plaintiff's symptoms; there are indications
2 Plaintiff has not been entirely compliant with recommended treatment; evidence
3 reflects Plaintiff's exaggeration; there are many inconsistencies between Plaintiff's
4 statements and the objective medical evidence; there is evidence of Plaintiff's
5 motivation for secondary gain; there is evidence Plaintiff stopped working for
6 reasons not related to her allegedly disabling conditions; Plaintiff described daily
7 activities that are not limited to the extent one would expect given her complaints
8 of disabling symptoms and limitations; and the objective medical findings do not
9 support Plaintiff's allegations/self-reports of functioning. Tr. 36-39.

10 The rationale provided by the ALJ for finding Plaintiff not entirely credible
11 is fully supported by the evidence of record, and the ALJ's determination that
12 Plaintiff's statements were not fully credible is uncontested by Plaintiff. *See*
13 *Paladin Assocs., Inc. v. Mont. Power Co.*, 328 F.3d 1145, 1164 (9th Cir. 2003)
14 (issues not specifically and distinctly contested in a party's opening brief are
15 considered waived). The ALJ's finding that Plaintiff lacks credibility is a
16 significant component of the ALJ's conclusion that she was not disabled under the
17 Social Security Act.

18 **2. Medical Evidence**

19 Although the first sentence of the argument section of Plaintiff's opening
20 brief asserts "the evidence from the providers and the opinions expressed by Dr.
21 Greene, Dr. Arnold and Dr. Moore have allowed her to meet her burden at Step
22 Four," ECF No. 13 at 10, Plaintiff does not explain how the ALJ erred with respect
23 to his assessment of these medical professionals. Plaintiff additionally fails to
24 accompany this assertion with an analysis or discussion of applicable law and
25 facts. As previously discussed, issues not argued with specificity in an opening
26 brief will not be addressed. *Carmickle*, 533 F.3d at 1161 n.2. The Court thus finds
27 that Plaintiff has waived any argument regarding the ALJ's assessment of the
28 medical evidence of record in this case.

1 In any event, the ALJ considered and addressed the evidence of record from
2 Community Health Association of Spokane (CHAS), William Greene, Ph.D.,
3 Jason H. Jones, M.D., John Arnold, Ph.D., Brian Mitchell, M.D., Spokane Mental
4 Health, Frontier Behavioral Health, medical expert White, and medical expert
5 Moore; properly evaluated this evidence; and provided adequate rationale,
6 supported by substantial evidence, for the weight accorded to each medical
7 professional. Tr. 30-39. The Court finds the ALJ did not err in his assessment of
8 the medical evidence of record.

9 The ALJ's RFC determination is supported by substantial evidence and free
10 of error.

11 **B. Step Four Determination**

12 Plaintiff's opening brief contests the ALJ's determination at step four of the
13 sequential evaluation process. Plaintiff, citing the Dictionary of Occupational
14 Titles (DOT), argues that, given her RFC, she is not capable of performing her past
15 relevant work as an apartment manager as the position is generally performed.
16 ECF No. 13 at 10-12.

17 "At Step Four, claimants have the burden of showing that they can no longer
18 perform their past relevant work." *Pinto v. Massanari*, 249 F.3d 840, 845 (9th Cir.
19 2001); *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005). "To determine
20 whether a claimant has the [RFC] to perform h[er] past relevant work, the [ALJ]
21 must ascertain the demands of the claimant's former work and then compare the
22 demands with h[er] present capacity." *Villa v. Heckler*, 797 F.2d 794, 797-798
23 (9th Cir. 1986); *Marcia v. Sullivan*, 900 F.2d 172, 177 n.6 (9th Cir. 1990). A
24 claimant is not disabled under the Social Security Act if she can perform (1) a
25 specific prior job as "actually performed"; or (2) the same kind of work as it is
26 "generally performed" in the national economy. *Pinto*, 249 F.3d at 845 (citing

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1 Social Security Ruling (SSR) 82-61²). A claimant’s ability to do either is
2 sufficient to deny the claim at step four, and the ALJ is not required to address
3 both. *Pinto*, 249 F.3d at 845. A claimant’s testimony and/or a properly completed
4 vocational report are appropriate sources for defining past work as actually
5 performed. *Pinto*, 249 F.3d at 845; SSR 82-41; SSR 82-61.

6 The “Work History Report” Plaintiff completed as part of her application for
7 benefits indicated her apartment manager job consisted of supervising, renting
8 apartments, showing apartments, reporting repairs, cleaning apartments when
9 vacant, watering plants and vacuuming. Tr. 314. She indicated she was the lead
10 worker and supervised two employees, but she was not involved with hiring and
11 firing decisions. Tr. 314. The job required lifting no more than 10 pounds,
12 standing for 6 hours, walking for 6 hours, and sitting for 2 hours. Tr. 314. At the
13 administrative hearing, Plaintiff indicated her apartment manager job consisted of
14 taking applications for apartments and showing the apartments to potential tenants.
15 Tr. 79-81. She testified she would help tenant applicants by giving them
16 applications for the apartment, which they would fill out and return to her. Tr. 80.
17 She would then give the applications to the owners who were responsible for
18 interviewing the applicants and finalizing the process. Tr. 80. Nothing was

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20 ²Although they do not carry the “force of law,” Social Security Rulings are
21 binding on ALJs. *See* 20 C.F.R. § 402.35(b)(1); *Bray v. Commissioner of Social*
22 *Security Administration*, 554 F.3d 1219, 1224 (9th Cir. 2009). Such rulings
23 “reflect the official interpretation of the [Social Security Administration] and are
24 entitled to some deference as long as they are consistent with the Social Security
25 Act and regulations.” *Molina v. Astrue*, 674 F.3d 1104, 1113 n.5 (9th Cir. 2012)
26 (citations and internal quotation marks omitted); *see also Heckler v. Edwards*, 465
27 U.S. 870, 873 n.3 (1984) (discussing weight and function of Social Security
28 Rulings).

1 introduced into the record to contradict Plaintiff’s description of her past relevant
2 work as an apartment manager, and the ALJ did not make any adverse findings
3 regarding Plaintiff’s description of this past work.

4 The ALJ compared Plaintiff’s RFC with the physical and mental demands of
5 Plaintiff’s past relevant work as an apartment manager as it was “actually
6 performed” and concluded Plaintiff was capable of performing this past relevant
7 work. Tr. 40. This determination is fully supported. Since the ALJ’s conclusion
8 regarding Plaintiff’s previous work as “actually performed” is supported by
9 substantial evidence in the record, the Court need not address Plaintiff’s argument
10 regarding the DOT, which relates to the determination of how a job is generally
11 performed in the national economy.³ See SSR 82-61 (“The [DOT] descriptions can
12 be relied upon -- for jobs that are listed in the DOT -- to define the job as it is
13 usually performed in the national economy.”).

14 Based on the foregoing, the ALJ did not err at step four of the sequential
15 evaluation process by finding Plaintiff, given her RFC, could perform her past
16 relevant work as an apartment manager as she actually performed the job. See
17 *Pinto*, 249 F.3d at 845; SSR 82-61.

18 **C. Plaintiff’s English Language Skills**

19 Without citing relevant law or facts, one sentence in the argument section of
20 Plaintiff’s opening brief asserts “the ALJ failed to address how Plaintiff’s limited
21 knowledge of the English language affects employability.” ECF No. 13 at 11.

22 The Ninth Circuit has recognized that a person’s ability to communicate
23 must be considered when evaluating whether a claimant can perform past relevant
24 work. *Pinto*, 249 F.3d at 846 (stating “[t]he ability to communicate is an important
25 skill to be considered when determining what jobs are available to a claimant.

26
27 ³Indeed, the ALJ did not make any conclusions regarding Plaintiff’s past
28 relevant work as generally performed in the national economy.

1 Illiteracy seriously impacts an individual’s ability to perform work-related
2 functions, such as understanding and following instructions, communicating in the
3 workplace, and responding appropriately to supervision.”). In *Pinto*, the Ninth
4 Circuit declined to reach the question of whether language skills may properly be
5 considered at step four of the disability evaluation process. *See Pinto*, 249 F.3d at
6 846 n.5 (citing conflicting authority). However, because the ALJ in *Pinto*
7 acknowledged the plaintiff’s illiteracy but failed to take the next step in the
8 analysis, i.e., to actually address “the impact of [the plaintiff’s] illiteracy” on her
9 ability to perform her past relevant work, the court of appeals remanded the case
10 for further consideration. *Id.* at 846 n.5, 847.

11 Unlike *Pinto*, the ALJ in this case, consistent with the evidence of record,
12 did not find that Plaintiff was illiterate. *See, e.g., Esquivias v. Astrue*, 2012 WL
13 2458116, at *8 (C.D. Cal. 2012) (holding that “because the ALJ’s RFC assessment
14 of plaintiff did not include illiteracy, the ALJ was not required to consider
15 illiteracy at step four of the disability determination.” (citing *Pinto*, 249 F.3d at
16 847)). Dr. Moore testified at the administrative hearing that while English is not
17 Plaintiff’s first language, the records dating back to 1996 show that Plaintiff
18 finished school, has been in the United States for a long time, and has been able to
19 negotiate the community. Tr. 69. The ALJ noted, and the record reflects, that
20 Plaintiff completed high school in the United States and had also passed a course
21 for naturalization in the United States. Tr. 31-32. Although a language barrier is
22 noted throughout the record, Dr. Greene indicated Plaintiff was able to read the
23 PAI with minimal help which demonstrates she is able to understand and read
24 simple instructions in English. Tr. 38-39. Moreover, at the administrative hearing,
25 a Spanish language interpreter was available, but Plaintiff did not rely on the
26 interpreter to translate nearly all of the questions asked and was able to respond to
27 the questions in English. Tr. 38.

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1 The ALJ did not ignore evidence regarding Plaintiff's ability to
2 communicate in English; he merely determined the record did not support a finding
3 that Plaintiff's English language skills had an impact on her ability to perform her
4 past relevant work as an apartment manager as she had actually performed that job.
5 The ALJ did not err in this regard.

6 **CONCLUSION**

7 Having reviewed the record and the ALJ's findings, the Court finds the
8 ALJ's decision is supported by substantial evidence and free of legal error.
9 Accordingly, **IT IS ORDERED:**

10 1. Defendant's Motion for Summary Judgment, **ECF No. 18**, is
11 **GRANTED.**

12 2. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **DENIED.**

13 The District Court Executive is directed to file this Order and provide a copy
14 to counsel for Plaintiff and Defendant. **Judgment shall be entered for Defendant**
15 **and the file shall be CLOSED.**

16 DATED March 3, 2015.



A handwritten signature in black ink, appearing to be "M" or "Rodgers".

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JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE