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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 ELIZABETH LEE WELLER,

8 Plaintiff,

9 v.

10 COMMISSIONER OF THE SOCIAL
11 SECURITY ADMINISTRATION,

12 Defendant.

No. 2:16-CV-0331-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

13 BEFORE THE COURT are the parties' cross-motions for summary
14 judgment (ECF Nos. 15; 16). This matter was submitted for consideration without
15 oral argument. The Court has reviewed the administrative record and the parties'
16 completed briefing, and is fully informed. For the reasons discussed below, the
17 Court **GRANTS** Defendant's Motion for Summary Judgment (ECF No. 16) and
18 **DENIES** Plaintiff's Motion for Summary Judgment (ECF No. 15).

19 **JURISDICTION**

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

1 **ISSUES**

2 Plaintiff seeks judicial review of the Commissioner’s final decision denying
3 her disability insurance benefits and supplemental security income under Title II
4 and XVI of the Social Security Act. Plaintiff raises two issues for this Court’s
5 review:

6 (1) Whether the ALJ improperly discredited Plaintiff’s symptom claims.

7 (2) Whether the ALJ improperly weighed medical opinion evidence.

8 ECF No. 15 at 12. The Court evaluates each issue in turn.

9 **STANDARD OF REVIEW**

10 A district court’s review of a final decision of the Commissioner of Social
11 Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is
12 limited: the Commissioner’s decision will be disturbed “only if it is not supported
13 by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153,
14 1158 (9th Cir. 2012). “Substantial evidence” means relevant evidence that “a
15 reasonable mind might accept as adequate to support a conclusion.” *Id.* at 1159
16 (quotation and citation omitted). This requires “more than a mere scintilla[,] but
17 less than a preponderance.” *Id.* (quotation and citation omitted). “An ALJ can
18 satisfy the ‘substantial evidence’ requirement by ‘setting out a detailed and
19 thorough summary of the facts and conflicting clinical evidence, stating his
20 interpretation thereof, and making findings.’” *Garrison*, 759 F.3d at 1012)

1 (quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)). In determining
2 whether this standard has been satisfied, a reviewing court must consider the entire
3 record as a whole rather than searching for supporting evidence in isolation. *Id.*

4 In reviewing a denial of benefits, a district court may not substitute its
5 judgment for that of the Commissioner. If the evidence in the record “is
6 susceptible to more than one rational interpretation, [the court] must uphold the
7 ALJ’s findings if they are supported by inferences reasonably drawn from the
8 record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district
9 court “may not reverse an ALJ’s decision on account of an error that is harmless.”

10 *Id.* An error is harmless “where it is inconsequential to the [ALJ’s] ultimate
11 nondisability determination.” *Id.* at 1115 (quotation and citation omitted). The
12 party appealing the ALJ’s decision generally bears the burden of establishing that
13 it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009). We review
14 only the reasons provided by the ALJ in the disability determination and may not
15 affirm the ALJ on a ground upon which the ALJ did not rely. *Orn v. Astrue*, 495
16 F.3d 625, 630 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d 871, 874 (9th
17 Cir. 2003)).

18 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

19 A claimant must satisfy two conditions to be considered “disabled” within
20 the meaning of the Social Security Act. First, the claimant must be “unable to

1 engage in any substantial gainful activity by reason of any medically determinable
2 physical or mental impairment which can be expected to result in death or which
3 has lasted or can be expected to last for a continuous period of not less than twelve
4 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
5 impairment must be “of such severity that he is not only unable to do his previous
6 work[,] but cannot, considering his age, education, and work experience, engage in
7 any other kind of substantial gainful work which exists in the national economy.”
8 *Id.* §§ 423(d)(2)(A), 1382c(a)(3)(B).

9 The Commissioner has established a five-step sequential analysis to
10 determine whether a claimant satisfies the above criteria. *See id.* §§
11 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
12 considers the claimant’s work activity. *Id.* §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).
13 If the claimant is engaged in “substantial gainful activity,” the Commissioner must
14 find that the claimant is not disabled. *Id.* §§ 404.1520(b), 416.920(b).

15 If the claimant is not engaged in substantial gainful activities, the analysis
16 proceeds to step two. At this step, the Commissioner considers the severity of the
17 claimant’s impairment. *Id.* §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
18 claimant suffers from “any impairment or combination of impairments which
19 significantly limits [his or her] physical or mental ability to do basic work
20 activities,” the analysis proceeds to step three. *Id.* §§ 404.1520(c), 416.920(c). If

1 the claimant's impairment does not satisfy this severity threshold, however, the
2 Commissioner must find that the claimant is not disabled. *Id.*

3 At step three, the Commissioner compares the claimant's impairment to
4 several impairments recognized by the Commissioner to be so severe as to
5 preclude a person from engaging in substantial gainful activity. *Id.* §§
6 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
7 severe than one of the enumerated impairments, the Commissioner must find the
8 claimant disabled and award benefits. *Id.* §§ 404.1520(d), 416.920(d).

9 If the severity of the claimant's impairment does meet or exceed the severity
10 of the enumerated impairments, the Commissioner must pause to assess the
11 claimant's "residual functional capacity." Residual functional capacity ("RFC"),
12 defined generally as the claimant's ability to perform physical and mental work
13 activities on a sustained basis despite his or her limitations (*id.* §§ 404.1545(a)(1),
14 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

15 At step four, the Commissioner considers whether, in view of the claimant's
16 RFC, the claimant is capable of performing work that he or she has performed in
17 the past ("past relevant work"). *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). If
18 the claimant is capable of performing past relevant work, the Commissioner must
19 find that the claimant is not disabled. *Id.* §§ 404.1520(f), 416.920(f). If the
20 claimant is incapable of performing such work, the analysis proceeds to step five.

1 At step five, the Commissioner considers whether, in view of the claimant's
2 RFC, the claimant is capable of performing other work in the national economy.
3 *Id.* §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination, the
4 Commissioner must also consider vocational factors such as the claimant's age,
5 education and work experience. *Id.* If the claimant is capable of adjusting to other
6 work, the Commissioner must find that the claimant is not disabled. *Id.* §§
7 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
8 work, the analysis concludes with a finding that the claimant is disabled and is
9 therefore entitled to benefits. *Id.*

10 The claimant bears the burden of proof at steps one through four above.
11 *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009). If the
12 analysis proceeds to step five, the burden shifts to the Commissioner to establish
13 that (1) the claimant is capable of performing other work; and (2) such work
14 "exists in significant numbers in the national economy." 20 C.F.R. §§
15 404.1560(c); 416.960(c)(2); *Bray*, 554 F.3d at 1222.

16 ADMINISTRATIVE PROCEEDINGS

17 Plaintiff filed applications for disability insurance benefits and supplemental
18 security income disability benefits on October 15, 2012, alleging disability
19 beginning on October 15, 2012. Tr. 13. Plaintiff's application was denied initially
20 and upon reconsideration. Tr. 13. Plaintiff thereafter filed a written request for

1 hearing. Tr. 13. A hearing was held before an Administrative Law Judge (ALJ)
2 on March 4, 2015. Tr. 13. In a decision filed on April 15, 2015, the ALJ denied
3 Plaintiff's application for benefits. Tr. 26.

4 At step one, the ALJ found that Plaintiff met the insured status requirement
5 through December 31, 2012 and that Plaintiff had not engaged in substantial
6 gainful activity since October 5, 2012. Tr. 15. At step two, the ALJ found that
7 Plaintiff had the following severe impairments: neck and low back pain secondary
8 to degenerative disc disease; right hip tendonitis; and depression and anxiety. Tr.
9 15. At step three, the ALJ found that Plaintiff does not have an impairment or
10 combination of impairments that meets or medically equals a listed impairment.

11 Tr. 19. The ALJ then concluded that Plaintiff had the RFC to perform light work:

12 She has the ability, in an 8-hour day with normal breaks, to sit up to 6
13 hours and stand and/or walk up to 6 hours each. She can lift and/or carry
14 up to 20 pounds occasionally (up to 1/3 of the workday) and 10 pounds
15 frequently (up to 2/3 of the workday). She is with unlimited ability to
16 push or pull (other than as defined for lift and carry). She is with
17 unlimited ability to balance with the ability to occasionally climb ramps
18 or stairs, stoop (including bending at the waist), kneel, crouch (including
19 bending at the knees), and crawl. She can never climb ladders, ropes or
20 scaffolds. She has the ability to remember locations and work-like
procedures; understand, remember, and carry out very short and simple
instructions; maintain attention and concentration for periods between
legally required breaks; perform activities within a schedule, maintain
regular attendance, and be punctual within customary tolerances; and
sustain an ordinary routine without special supervision. She has the
ability to get along with co-workers or peers without being distracted by
them; make simple work-related decisions; ask simple questions or
request assistance; complete a normal workday and workweek without
interruptions from psychologically based symptoms and perform at a

1 consistent pace without an unreasonable number and length of rest
2 periods. She would work best with no contact with the general public; in
3 proximity to hut not close cooperation with co-workers; in proximity to
4 but not close cooperation with supervisors, although she could accept
5 instructions and respond appropriately; and in a routine, predictable
6 work environment. She has the ability to maintain socially appropriate
7 behavior and adhere to basic standards of neatness and cleanliness. She
8 has the ability to respond to changes in the work setting; be aware of
9 normal hazards and take appropriate precautions; travel in unfamiliar
10 places or use public transportation (such as buses); and set realistic goals
11 or make plans independently of others.

12 Tr. 20-21. At step four, the ALJ found Plaintiff is not capable of performing past
13 relevant work. Tr. 24. The ALJ proceeded to step five and found that, considering
14 Plaintiff's age, education, work experience, and RFC, there are jobs in significant
15 numbers in the national economy that Plaintiff could perform, such as small parts
16 assembly, bottle packer/caser, and housekeeper/cleaner. Tr. 25. On that basis, the
17 ALJ concluded that Plaintiff was not disabled as defined in the Social Security Act.
18 Tr. 26.

19 Plaintiff thereafter filed a request for review with the Appeal's Council,
20 which was denied. Tr. 1. The ALJ's decision became the final decision of the
Commissioner. 20 C.F.R. §§ 404.981, 422.201.

DISCUSSION

A. Adverse Credibility Determination

In social security proceedings, a claimant must prove the existence of
physical or mental impairment with "medical evidence consisting of signs,

1 symptoms, and laboratory findings.” 20 C.F.R. §§ 416.908; 416.927. As long as
2 the impairment “could reasonably be expected to produce [the] symptoms,” the
3 claimant may offer a subjective evaluation as to the severity of the impairment.
4 *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (*en banc*). If an ALJ finds
5 the claimant’s subjective assessment unreliable, “the ALJ must make a credibility
6 determination with findings sufficiently specific to permit [a reviewing] court to
7 conclude that the ALJ did not arbitrarily discredit claimant's testimony.” *Thomas*
8 *v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002).

9 If there is no evidence of malingering, the ALJ’s reasons for discrediting the
10 claimant’s testimony must be “specific, clear and convincing.” *Chaudhry v. Astrue*,
11 688 F.3d 661, 672 (9th Cir. 2012) (quotation and citation omitted). In making this
12 determination, the ALJ may consider, *inter alia*: (1) the claimant’s reputation for
13 truthfulness; (2) inconsistencies in the claimant’s testimony or between his
14 testimony and his conduct; (3) the claimant’s daily living activities; (4) the
15 claimant’s work record; and (5) testimony from physicians or third parties
16 concerning the nature, severity, and effect of the claimant’s condition. *Id.* The
17 ALJ “must specifically identify the testimony she or he finds not to be credible and
18 must explain what evidence undermines the testimony.” *Holohan v. Massanari*,
19 246 F.3d 1195, 1208 (9th Cir. 2001).

1 The ALJ gave clear and convincing reasons for discounting Plaintiff's
2 subjective complaints. Plaintiff concedes there is positive evidence of malingering
3 given Dr. Dalley's finding that the MMPI was consistent with malingering.
4 Plaintiff attempts to soften the blow by noting the result was likely a plea for help
5 rather than a "fake bad" for secondary gain, ECF No. 15 at 14-15, but this is of no
6 help for Plaintiff. Evidence of malingering undercuts Plaintiff's credibility,
7 irrespective of the end-goal for such mistruth. Beside this, the ALJ reasonably
8 found numerous, significant inconsistencies with Plaintiff's representations
9 throughout the medical records. Tr. 22-23. Further the ALJ reasonably found
10 Plaintiff's activities were inconsistent with her reported limitations. Tr. 22-23.

11 Plaintiff complains that the ALJ erred in relying on the Plaintiff's failure to
12 seek medical care. ECF No. 17 at 3. Even if improper, the ALJ provided ample,
13 clear, and convincing reasons for finding Plaintiff was not credible, and these
14 findings are supported by substantial evidence. Accordingly, even if the ALJ erred
15 on this point, it was harmless. *Molina v. Astrue*, 674 F.3d at 1111.

16 **B. Medical Opinion of Dr. Dalley**

17 A treating physician's opinions are generally entitled to substantial weight in
18 social security proceedings. *Bray*, 554 F.3d at 1228 (citation omitted); *Orn*, 495
19 F.3d at 631 ("By rule, the Social Security Administration favors the opinion of a
20 treating physician over non-treating physicians.") (citing 20 C.F.R. § 404.1527)).

1 “[I]f a treating physician’s opinion is ‘well-supported by medically acceptable
2 clinical and laboratory diagnostic techniques and is not inconsistent with the other
3 substantial evidence in the case record, it will be given controlling weight.’” *Orn*,
4 495 F.3d at 631 (quoting 20 C.F.R. § 404.1527(d)(2)) (brackets omitted).

5 “To reject an uncontradicted opinion of a treating or examining doctor, an
6 ALJ must state clear and convincing reasons that are supported by substantial
7 evidence. If a treating or examining doctor's opinion is contradicted by another
8 doctor's opinion, an ALJ may only reject it by providing specific and legitimate
9 reasons that are supported by substantial evidence. Also, when evaluating
10 conflicting medical opinions, an ALJ need not accept the opinion of a doctor if that
11 opinion is brief, conclusory, and inadequately supported by clinical findings.”

12 *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005) (citation omitted).

13 Further, an ALJ may discount a medical opinion if that opinion is based “‘to a
14 large extent’ on an applicant’s self-reports and not on clinical evidence” and the
15 ALJ properly finds the applicant to be not credible. *Ghanim v. Colvin*, 763 F.3d
16 1154, 1162 (9th Cir. 2014) (quoting *Tommasetti v. Astrue*, 533 F.3d 1035, 1041
17 (9th Cir. 2008)).

18 The ALJ assigned no weight to the opinion of Dr. Dalley that Plaintiff had
19 marked and severe limitations in the ability to perform basic work activity. Tr. 24.

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1 The ALJ explained:

2 Dr. Dalley gave little support for his opinion in his evaluation, admitting that
3 with a rule out for malingering, it was difficult to determine the severity and
4 frequency of the claimant’s reported anxiety and depression and even
5 recommended reevaluation when she was “more motivated” to give more
6 realistic and valid responses. Likewise, Dr. Veraldi testified that it was
7 “tough” to assess how well the claimant was doing given the invalid MMPI.
8 Additionally, Dr. Veraldi testified there was no support for several of the
9 diagnoses given by Dr. Dalley, which were instead based on her reported
10 symptoms and not on valid diagnostic criteria.

11 Tr. 24. Dr. Veraldi testified that there was no support for several of the diagnoses
12 given by Dr. Dalley, so the ALJ may discredit Dr. Dalley’s opinion by providing a
13 specific and legitimate reason. *See Bayliss v. Barnhart*, 427 F.3d at 1216.

14 Plaintiff’s general lack of credibility, the positive finding of malingering in the
15 tests given by Dr. Dalley, Dr. Dalley’s limited explanation for the opinion and the
16 fact that Dr. Dalley’s evaluation heavily depended on Plaintiff’s reports all provide
17 specific and legitimate reasons for not relying on Dr. Dalley’s evaluation and these
18 underlying findings are supported by substantial evidence.¹ *See Bayliss v.*
19 *Barnhart*, 427 F.3d at 1216; *see also Ghanim v. Colvin*, 763 F.3d at 1162.

20 //

1 Plaintiff disputes the standard applied to reviewing Dr. Dalley’s opinion.
2 ECF No. 17 at 1. Even if correct, the reasons provided meet the higher standard—
3 *i.e.*, clear and convincing.

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment (ECF No. 15) is **DENIED**.

3 2. Defendant's Motion for Summary Judgment (ECF No. 16) is

4 **GRANTED.**

5 The District Court Executive is directed to enter this Order and judgment
6 accordingly, furnish copies to counsel, and close the file.

7 **DATED** August 8, 2017.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

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THOMAS O. RICE
Chief United States District Judge