

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

Jan 22, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SANDRA H.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

NO: 2:17-CV-403-FVS

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

BEFORE THE COURT are the parties' cross motions for summary judgment. ECF Nos. 14 and 21. This matter was submitted for consideration without oral argument. The plaintiff is represented by Attorney Cory J. Brandt. The defendant is represented by Special Assistant United States Attorney Daphne Banay. The Court has reviewed the administrative record, the parties' completed briefing, and is fully informed. For the reasons discussed below, the court **DENIES** Plaintiff's Motion for Summary Judgment, ECF No. 14, and **GRANTS** Defendant's Motion for Summary Judgment, ECF No. 21.

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ~ 1

1 **JURISDICTION**

2 Plaintiff Sandra H.<sup>1</sup> filed for disability insurance benefits on September 22,  
3 2014, and for supplemental security income on March 24, 2015. Tr. 278-85, 287-  
4 92. In both applications, Plaintiff alleged a disability onset date of January 24,  
5 2014. Tr. 279, 287. Benefits were denied initially, Tr. 172-75, and upon  
6 reconsideration, Tr. 177-83. Plaintiff appeared for a hearing before an  
7 administrative law judge (“ALJ”) on September 7, 2016. Tr. 88-125. Plaintiff was  
8 represented by counsel and two medical experts testified at the hearing. *Id.* A  
9 supplemental hearing was held on February 6, 2017. Tr. 37-87. Plaintiff was  
10 represented by counsel and testified at the supplemental hearing. *Id.* The ALJ  
11 denied benefits, Tr. 15-36, and the Appeals Council denied review. Tr. 1-6. The  
12 matter is now before this court pursuant to 42 U.S.C. §§ 405(g); 1383(c)(3).

13 **BACKGROUND**

14 The facts of the case are set forth in the administrative hearing and  
15 transcripts, the ALJ’s decision, and the briefs of Plaintiff and the Commissioner.  
16 Only the most pertinent facts are summarized here.

17  
18  
19 \_\_\_\_\_  
20 <sup>1</sup> In the interest of protecting Plaintiff’s privacy, the Court will use Plaintiff’s first  
21 name and last initial, and, subsequently, Plaintiff’s first name only, throughout this  
decision.

1 Plaintiff was 51 years old at the time of her alleged onset of disability. *See*  
2 Tr. 136. She completed high school and two years of college. Tr. 331. Plaintiff  
3 has work history as a teacher aide and companion. Tr. 78-81. Since her alleged  
4 onset of disability, Plaintiff has had several jobs, each for only a few months, but  
5 was unable to continue working because she “was injured.” Tr. 63-65. At the  
6 time of the hearing, Plaintiff was working part-time, 30 hours a week, as an  
7 activities assistant. Tr. 60-61. Plaintiff also testified that she had other  
8 “intermittent” sources of income at the time of the hearing, including: teaching  
9 CPR and first aid, and taking on a home health client two days a week. Tr. 73.

10 In January 2014 Plaintiff fractured her right upper extremity, which also  
11 impacted her already “extremely weak” left upper extremity. Tr. 55-56. At the  
12 hearing, Plaintiff testified that she has trouble with “fine motor grasping” activities,  
13 such as, ironing, lifting, shaving, folding laundry, writing with a pen for more than  
14 three or four minutes, cutting, and anything that “manipulates the hand.” Tr. 56-  
15 57. She reported that she could use a computer keyboard and mouse, or lift a  
16 gallon of milk, for brief periods but not on a repetitive basis. Tr. 57-59. Plaintiff  
17 testified that she has been provided home health services through DSHS since her  
18 right arm fracture, which included help with dressing, a little bit of cleaning,  
19 errands, and a little bit of personal care. Tr. 57-58. Plaintiff also testified that she  
20 had left hip pain when she walked a lot, difficulty concentrating and staying on  
21 task, and “a little bit of short-term memory issues.” Tr. 59, 68-69.

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 as a whole rather than searching  
12 for 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. If the evidence in the record “is  
15 susceptible to more than one rational interpretation, [the court] must uphold the  
16 ALJ’s findings if they are supported by inferences reasonably drawn from the  
17 record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district  
18 court “may not reverse an ALJ’s decision on account of an error that is harmless.”  
19 *Id.* An error is harmless “where it is inconsequential to the [ALJ’s] ultimate  
20 nondisability determination.” *Id.* at 1115 (quotation and citation omitted). The  
21

1 party appealing the ALJ's decision generally bears the burden of establishing that  
2 it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

### 3 **FIVE-STEP EVALUATION PROCESS**

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

14 The Commissioner has established a five-step sequential analysis to  
15 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§  
16 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner  
17 considers the claimant's work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),  
18 416.920(a)(4)(i). If the claimant is engaged in "substantial gainful activity," the  
19 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
20 404.1520(b), 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. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the  
4 claimant suffers from “any impairment or combination of impairments which  
5 significantly limits [his or her] physical or mental ability to do basic work  
6 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),  
7 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,  
8 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.  
9 §§ 404.1520(c), 416.920(c).

10           At step three, the Commissioner compares the claimant’s impairment to  
11 severe impairments recognized by the Commissioner to be so severe as to preclude  
12 a person from engaging in substantial gainful activity. 20 C.F.R. §§  
13 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more  
14 severe than one of the enumerated impairments, the Commissioner must find the  
15 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

16           If the severity of the claimant’s impairment does not meet or exceed the  
17 severity of the enumerated impairments, the Commissioner must pause to assess  
18 the claimant’s “residual functional capacity.” Residual functional capacity (RFC),  
19 defined generally as the claimant’s ability to perform physical and mental work  
20 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§  
21

1 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the  
2 analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's  
4 RFC, the claimant is capable of performing work that he or she has performed in  
5 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).  
6 If the claimant is capable of performing past relevant work, the Commissioner  
7 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).  
8 If the claimant is incapable of performing such work, the analysis proceeds to step  
9 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. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,  
13 the Commissioner must also consider vocational factors such as the claimant's age,  
14 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
15 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the  
16 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
17 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other  
18 work, analysis concludes with a finding that the claimant is disabled and is  
19 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

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

1 the burden shifts to the Commissioner to establish that (1) the claimant is capable  
2 of performing other work; and (2) such work “exists in significant numbers in the  
3 national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v. Astrue*,  
4 700 F.3d 386, 389 (9th Cir. 2012).

### 5 **ALJ’S FINDINGS**

6 At step one, the ALJ found Plaintiff has engaged in substantial gainful  
7 activity since the alleged onset date, however, there has been a continuous 12-  
8 month period during which Plaintiff did not engage in substantial gainful activity.

9 Tr. 20-21. At step two, the ALJ found Plaintiff has the following severe  
10 impairments: left hip disorder, right shoulder disorder, depressive disorder, and  
11 personality disorder. Tr. 21. At step three, the ALJ found that prior to the date last  
12 insured, Plaintiff does not have an impairment or combination of impairments that  
13 meets or medically equals the severity of a listed impairment. Tr. 22. The ALJ  
14 then found that Plaintiff had the RFC

15 to perform a range of light work as defined in 20 CFR 404.1567(b) and  
16 416.967(b). The claimant can lift no more than 20 pounds at a time  
17 occasionally and can lift or carry up to 10 pounds at a time frequently;  
18 would have no limitations on sitting, standing, and walking in an eight-  
19 hour work day with normal breaks; can occasionally crawl; never climb  
20 ladders, ropes, or scaffolds; avoid concentrated exposure to heavy  
21 industrial-type vibration; avoid all work at unprotected heights; can  
occasionally reach overhead with her right upper extremity and can  
occasionally reach in all other directions with her right upper extremity  
outside of eighteen inches of the body (no limitations on reaching  
within eighteen inches of the body). Mentally, the claimant can  
understand, remember, and carry out simple, routine work tasks and  
instructions; can have no contact with the general public; can work with  
or in vicinity of co-workers but not in a teamwork type setting; can



1 handle normal supervision but no over-the-shoulder or confrontational  
2 type of supervision; and cannot perform fast-paced or strict production  
3 quota type work.

4 Tr. 24. At step four, the ALJ found that Plaintiff is unable to perform any past  
5 relevant work. Tr. 28. At step five, the ALJ found that considering Plaintiff's age,  
6 education, work experience, and RFC, there are jobs that exist in significant  
7 numbers in the national economy that Plaintiff can perform, including: electronic  
8 worker, small products assembler, and marker II. Tr. 29. On that basis, the ALJ  
9 concluded that Plaintiff has not been under a disability, as defined in the Social  
10 Security Act, from January 24, 2014, through the date of the decision. Tr. 30.

## 11 **ISSUES**

12 Plaintiff seeks judicial review of the Commissioner's final decision denying  
13 her disability insurance benefits under Title II of the Social Security Act and  
14 supplemental security income benefits under Title XVI of the Social Security Act.

15 ECF No. 14. Plaintiff raises the following issues for this Court's review:

- 16 1. Whether the ALJ properly considered Plaintiff's symptom claims; and
- 17 2. Whether the ALJ erred at step five.

## 18 **DISCUSSION**

### 19 **A. Plaintiff's Symptom Claims**

20 An ALJ engages in a two-step analysis when evaluating a claimant's  
21 testimony regarding subjective pain or symptoms. "First, the ALJ must determine  
whether there is objective medical evidence e of an underlying impairment which

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

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) (internal  
11 citations and quotations omitted). “General findings are insufficient; rather, the  
12 ALJ must identify what testimony is not credible and what evidence undermines  
13 the claimant’s complaints.” *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th  
14 Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he ALJ  
15 must make a credibility determination with findings sufficiently specific to permit  
16 the court to conclude that the ALJ did not arbitrarily discredit claimant’s  
17 testimony.”). “The clear and convincing [evidence] standard is the most  
18 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,  
19 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,  
20 924 (9th Cir. 2002)).

1 Here, Plaintiff generally contends that the ALJ improperly rejected  
2 Plaintiff's subjective complaints. ECF No. 14 at 15-16. However, Plaintiff's sole  
3 argument, without citation to legal authority or the longitudinal record, is that the  
4 ALJ failed to specify how the normal exam findings and activities undermine  
5 Plaintiff's complaints, "specifically [Plaintiff's] complaints of fine manipulation  
6 limitations." ECF No. 14 at 16. This argument is unavailing and arguably fails to  
7 challenge the ALJ's reasons with the requisite specificity. *Carmickle v. Comm'r of*  
8 *Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (court may decline to  
9 address issue not raised with specificity in Plaintiff's briefing).

10 As an initial matter, despite Plaintiff's claims to the contrary, the ALJ did  
11 "identif[y] Plaintiff's alleged limitations in detail, which included those of fine  
12 manipulative limitations," including: her reports of weakness in her bilateral  
13 shoulders, which limits what she is able to do with her hands; her testimony that  
14 her right and left shoulder impairments make it difficult to do activities such as  
15 folding laundry, writing, ironing; her testimony that she had a home healthcare  
16 worker who helped her with activities of daily living, and that she continues to  
17 struggle with these tasks; and her testimony that she is able to use a keyboard and  
18 lift a gallon of milk, but cannot do either on a repetitive basis. ECF No. 21 at 4  
19 (citing Tr. 25, 56-59, 362). Next, the ALJ found, "after careful consideration of  
20 the evidence" that Plaintiff's medically determinable impairments could  
21 reasonably be expected to cause some of the alleged symptoms; however,

1 Plaintiff's "statements concerning the intensity, persistence and limiting effects of  
2 these symptoms are not entirely consistent with the medical evidence and other  
3 evidence in the record" for several reasons. Tr. 25.

4 *1. Lack of Objective Medical Evidence*

5 First, "after reviewing the longitudinal medical evidence of record," the ALJ  
6 found that Plaintiff is not as limited as she has alleged." Tr. 25. An ALJ may not  
7 discredit a claimant's pain testimony and deny benefits solely because the degree  
8 of pain alleged is not supported by objective medical evidence. *Rollins*, 261 F.3d  
9 at 857; *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991); *Fair*, 885 F.2d at  
10 601. However, the medical evidence is a relevant factor in determining the  
11 severity of a claimant's pain and its disabling effects. *Rollins*, 261 F.3d at 857; 20  
12 C.F.R. § 404.1529(c)(2).

13 Here the ALJ set out, in detail, medical evidence contradicting Plaintiff's  
14 claims of disabling physical limitations.<sup>2</sup> Tr. 25-26. For example, the ALJ noted

15 \_\_\_\_\_  
16 <sup>2</sup> The ALJ additionally found that "although [Plaintiff] clearly suffers from  
17 underlying mental health issues, there is minimal evidence of treatment for these  
18 conditions in the record." Tr. 26. The ALJ further noted that Plaintiff was  
19 "described throughout the record as presenting with normal mood and affect, as  
20 well-oriented, with intact memory, and with good insight." Tr. 26 (citing Tr. 558,  
21 641, 644, 650, 660, 662, 675, 682, 699, 712, 724, 861, 873, 879, 887, 891,898,

1 that despite reporting ongoing difficulties with her right shoulder subsequent to an  
2 injury in January 2014, physical findings suggested improvement after the initial  
3 injury, including: March 2014 imaging results that showed healing; May 2014  
4 improvement in elbow mobility, reaching, and range of motion; June 2014 imaging  
5 that showed fracture was healed; July 2014 notes of improvement in range of  
6 motion, and increased strength and functioning, of her right shoulder; September  
7 2014 reports that her shoulder was much improved and release of Plaintiff from  
8 follow-up care; and January 2015 notation of slight decrease in strength of right  
9 shoulder, but equal bilateral strength in forearms and wrists. Tr. 25 (citing Tr. 411-  
10 17, 422, 433-34, 511, 556, 559, 701); *see Tommasetti v. Astrue*, 533 F.3d 1035,  
11 1040 (9th Cir. 2008) (a favorable response to treatment can undermine a claimant's  
12 complaints of debilitating pain or other severe limitations). The ALJ also  
13 specifically noted that there is minimal evidence of treatment for her shoulder  
14 complaints after December 2014. Tr. 25; *see Burch*, 400 F.3d at 680 (minimal  
15 objective evidence is a factor which may be relied upon in discrediting a claimant's  
16 testimony, although it may not be the only factor). In July 2015, treatment notes  
17 indicate Plaintiff had decreased range of motion and tenderness in her right  
18 shoulder, but grip strength, strength, sensation and reflexes were intact; and in  
19 \_\_\_\_\_  
20 944). However, neither party identified or challenged this finding in their briefing;  
21 thus, the Court declines to address the issue. *Carmickle*, 533 F.3d at 1161 n.2.

1 early 2016 Plaintiff had good range of motion in both her left and right upper  
2 extremities. Tr. 25-26 (citing Tr. 736, 781). Finally, the ALJ noted minimal  
3 evidence of treatment for Plaintiff's left hip, and an evaluation in July 2015  
4 revealed full strength in the lower extremities, normal range of motion in the hips,  
5 normal gait, and ability to ambulate without difficulties. Tr. 26, 736-37.

6 Based on the foregoing evidence, the ALJ reasonably concluded that the  
7 longitudinal medical evidence of record does not support the severity of Plaintiff's  
8 claimed physical limitations. Tr. 25. This lack of corroboration of Plaintiff's  
9 claimed limitations by the medical evidence was a clear and convincing reason,  
10 supported by substantial evidence, for the ALJ to discount Plaintiff's symptom  
11 claims.

## 12 2. *Daily Activities*

13 Second, the ALJ noted that Plaintiff's activities suggest she is not as limited  
14 as she has alleged. Tr. 25-26. Evidence about daily activities may properly be  
15 considered by the ALJ when evaluating Plaintiff's symptom claims. *Fair*, 885  
16 F.2d at 603. However, a claimant need not be utterly incapacitated in order to be  
17 eligible for benefits. *Id.*; *see also Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007)  
18 (“the mere fact that a plaintiff has carried on certain activities . . . does not in any  
19 way detract from her credibility as to her overall disability.”). Regardless, even  
20 where daily activities “suggest some difficulty functioning, they may be grounds  
21

1 for discrediting the [Plaintiff's] testimony to the extent that they contradict claims  
2 of a totally debilitating impairment.” *Molina*, 674 F.3d at 1113.

3 Here, as noted by the ALJ, Plaintiff testified that she has difficulty with  
4 activities like folding laundry, writing, and ironing as a result of limitations in both  
5 of her upper extremities. Tr. 25, 56. She further reported that she could use a  
6 keyboard and lift a gallon of milk, but could not do either of these activities on a  
7 repetitive basis; and had difficulty with concentration, distractibility, and memory.  
8 Tr. 25, 57-59, 68-69. Plaintiff also testified that she had a home healthcare worker  
9 who helped her with activities of daily living, and that she continues to struggle  
10 with these tasks. Tr. 25, 58. However, as noted by the ALJ, Plaintiff reported in  
11 August 2014 that she only experienced increased pain in her shoulder after playing  
12 guitar for two hours; in November 2014 she noted that was seeking employment  
13 and taking a dance class; and in March 2016 she indicated she was going to the  
14 gym on a regular basis and handling her job as a caregiver “well.” Tr. 25 (citing  
15 Tr. 667, 683, 689, 921). In addition, Plaintiff testified at the hearing that she was  
16 working 30 hours as an activities assistant, and was leading a church service. Tr.  
17 26, 60-61, 74-75. Finally, as noted by the ALJ, Plaintiff reported in July 2015 that  
18 she was independent in self-care, did household chores, played guitar and wrote  
19 music, went shopping, and drove a car. Tr. 26, 735.

20 Based on this evidence, and regardless of evidence that could be considered  
21 favorable to Plaintiff, it was reasonable for the ALJ to conclude that the activities

1 performed by Plaintiff during the adjudicatory period suggest she is not as limited  
2 as she has alleged. Tr. 26; *Molina*, 674 F.3d at 1113 (Plaintiff’s activities may be  
3 grounds for discrediting Plaintiff’s testimony to the extent that they contradict  
4 claims of a totally debilitating impairment); *Burch v. Barnhart*, 400 F.3d 676, 679  
5 (9th Cir. 2005) (“where evidence is susceptible to more than one rational  
6 interpretation, it is the [Commissioner’s] conclusion that must be upheld.”). This  
7 was a clear, convincing, and largely unchallenged reason for the ALJ to discredit  
8 Plaintiff’s symptom claims.

9 The Court concludes that the ALJ provided clear and convincing reasons,  
10 supported by substantial evidence, for rejecting Plaintiff’s symptom claims.

### 11 **B. Step Five**

12 Plaintiff argues the ALJ erred at step five. At step five of the sequential  
13 evaluation analysis, the burden shifts to the Commissioner to establish that (1) the  
14 claimant is capable of performing other work; and (2) such work “exists in  
15 significant numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2);  
16 416.960(c)(2); *Beltran*, 700 F.3d at 389. The ALJ can do this through the  
17 testimony of a vocational expert or by reference to defendant's Medical–Vocational  
18 Guidelines (the “Grids”). *Tackett*, 180 F.3d at 1100–1101; *Osenbrock v. Apfel*,  
19 240 F.3d 1157, 1162 (9th Cir. 2000).

20 First, Plaintiff contends that the ALJ failed to account for Plaintiff’s  
21 subjective complaints regarding her “fine manipulation limitations”; and therefore



1 erred at step five by posing an incomplete hypothetical to the vocational expert  
2 (“VE”). ECF No. 14 at 17. Plaintiff is correct that “[i]f an ALJ's hypothetical does  
3 not reflect all of the claimant's limitations, the expert's testimony has no  
4 evidentiary value to support a finding that the claimant can perform jobs in the  
5 national economy.” *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th  
6 Cir.2009) (citation and quotation marks omitted). However, as discussed in detail  
7 above, the ALJ's rejection of Plaintiff’s symptom claims was supported by the  
8 record and free of legal error. The hypothetical proposed to the vocational expert  
9 contained the limitations reasonably identified by the ALJ and supported by  
10 substantial evidence in the record.

11         Second, Plaintiff argues the ALJ “failed to meet his ‘affirmative  
12 responsibility’ to ensure that the VE’s testimony was consistent with the DOT.”  
13 ECF No. 14 at 18. The ALJ may rely on vocational expert testimony that  
14 “contradicts the DOT, but only insofar as the record contains persuasive evidence  
15 to support the deviation.” *Johnson v. Shalala*, 60 F.3d 1428, 1435 (9th Cir.1995).  
16 The ALJ, furthermore, has the affirmative responsibility to ask the vocational  
17 expert about possible conflicts between her testimony and information in the DOT,  
18 and “elicit a reasonable explanation for any discrepancy” with the DOT. *Haddock*  
19 *v. Apfel*, 196 F.3d 1084, 1091 (10th Cir.1999); Social Security Ruling (SSR) 00–  
20 4p, *available at* 2000 WL 1898704 \*1. The ALJ also must explain in his or her  
21 decision how the discrepancy or conflict was resolved. SSR 00–4p at \*4.

1 Here, in accordance with the assessed RFC, the hypothetical presented to the  
2 VE by the ALJ stated, in part, that Plaintiff “cannot perform fast-paced or strict  
3 production quota style type work.” Tr. 24, 82. Based on the hypothetical, the VE  
4 testified that Plaintiff could perform work that exists in the national economy,  
5 including: electronics worker (DOT 726.687-010, *available at* 1991 WL 679633);  
6 small products assembler (DOT 739.687-030, *available at* 1991 WL 680180); and  
7 marker II (DOT 920.687-126, *available at* 1991 WL 687992).<sup>3</sup> Tr. 83-84.

8 Plaintiff “generally alleges that all three jobs the [VE] identified, and which the  
9 ALJ relied on at step five, are production jobs and that “[a]ccording to the DOT, all  
10 three of these jobs are classified as manufacturing jobs under the Standard  
11 Industrial Classifications Index” and therefore Plaintiff alleges that the [VE’s]  
12 testimony was not consistent with the DOT and that the ALJ erred by not resolving  
13 this conflict.” ECF No. 21 at 10-11 (citing ECF No. 14 at 18-19). However,  
14 Plaintiff misstates the restriction in the hypothetical as prohibiting all “production  
15 type jobs,” whereas a close reading of the ALJ’s hypothetical indicates that  
16 Plaintiff was only restricted to “no fast-paced or strict production quota-type

17 \_\_\_\_\_  
18 <sup>3</sup> Here, as noted by Defendant, the ALJ fulfilled his affirmative responsibility to  
19 confirm with the VE that his testimony would be consistent with the DOT and the  
20 SCO (Selected Characteristics of Occupations), and that the VE would alert to ALJ  
21 to “any variances at all from those publications.” Tr. 77.

1 work.” Tr. 24, 82. Thus, the hypothetical did not preclude Plaintiff from  
2 performing all production work; rather, Plaintiff was only precluded from fast-  
3 paced or strict production quota-type work.

4 Defendant acknowledges that one of the jobs identified by the VE, small  
5 products assembler (DOT 739.687-030, *available at* 1991 WL 680180), requires  
6 “attaining precise set limits, tolerances, and standards” according to the DOT  
7 description. ECF No. 21 at 12. However, the DOT descriptions of the additional  
8 two jobs identified by the VE, electronics worker (DOT 726.687-010, *available at*  
9 1991 WL 679633) and marker II (DOT 920.687-126, *available at* 1991 WL  
10 687992), do not include any indication that they require fast paced or strict  
11 production quota-type work, nor does Plaintiff cite to any such restrictions. In her  
12 reply brief, Plaintiff generally cites the DOT descriptions for electronics worker  
13 and marker II, but primarily relies on the categorization of these jobs according to  
14 “O\*NET, the Department of Labor’s replacement for the DOT,” as support for her  
15 argument that these jobs are “production/quota jobs” and therefore “do not fit  
16 within the ALJ’s hypothetical.” ECF No. 22 at 6-8. However, the salient issue is  
17 whether the DOT job description conflicts with the VE testimony, not whether the  
18 classification under O\*NET conflicts with the VE testimony. Because Plaintiff  
19 fails to demonstrate any conflict between the DOT description of electronics  
20 worker and marker II, and the VE testimony, the ALJ did not err in relying on the  
21 VE’s testimony that Plaintiff could perform these jobs at step five.

1 Based on the foregoing, the Court finds no error in the ALJ's determination  
2 at step five that the VE's testimony was consistent with the information contained  
3 in the DOT, and based on that VE testimony, that there are jobs in significant  
4 numbers in the national economy that Plaintiff can perform. *See* Tr. 29-30.

### 5 CONCLUSION

6 A reviewing court should not substitute its assessment of the evidence for  
7 the ALJ's. *Tackett*, 180 F.3d at 1098. To the contrary, a reviewing court must  
8 defer to an ALJ's assessment as long as it is supported by substantial evidence. 42  
9 U.S.C. § 405(g). As discussed in detail above, the ALJ provided clear and  
10 convincing reasons to discount Plaintiff's symptom claims, and the ALJ did not err  
11 at step five. After review the court finds the ALJ's decision is supported by  
12 substantial evidence and free of harmful legal error.

### 13 ACCORDINGLY, IT IS HEREBY ORDERED:

- 14 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is **DENIED**.
- 15 2. Defendant's Motion for Summary Judgment, **ECF No. 21**, is

16 **GRANTED.**

17 The District Court Clerk is directed to enter this Order and provide copies to  
18 counsel. Judgement shall be entered for Defendant and the file shall be **CLOSED**.

19 **DATED** January 22, 2019.

20 *s/ Rosanna Malouf Peterson*  
21 ROSANNA MALOUF PETERSON  
United States District Judge