

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

Jun 23, 2021

SEAN F. MCAVOY, CLERK

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

JEANETTE S.,¹
Plaintiff,

vs.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 2:20-cv-00224-MKD

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

ECF Nos. 16, 18

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 16, 18. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing,

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 is fully informed. For the reasons discussed below, the Court denies Plaintiff's
2 motion, ECF No. 16, and grants Defendant's motion, ECF No. 18.

3 **JURISDICTION**

4 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);
5 1383(c)(3).

6 **STANDARD OF REVIEW**

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

18 In reviewing a denial of benefits, a district court may not substitute its
19 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
20 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one

1 rational interpretation, [the court] must uphold the ALJ’s findings if they are
2 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
3 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
4 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
5 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
6 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
7 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
8 *Sanders*, 556 U.S. 396, 409-10 (2009).

9 **FIVE-STEP EVALUATION PROCESS**

10 A claimant must satisfy two conditions to be considered “disabled” within
11 the meaning of the Social Security Act. First, the claimant must be “unable to
12 engage in any substantial gainful activity by reason of any medically determinable
13 physical or mental impairment which can be expected to result in death or which
14 has lasted or can be expected to last for a continuous period of not less than twelve
15 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
16 impairment must be “of such severity that he is not only unable to do his previous
17 work[,] but cannot, considering his age, education, and work experience, engage in
18 any other kind of substantial gainful work which exists in the national economy.”
19 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

1 The Commissioner has established a five-step sequential analysis to
2 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
3 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
4 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
5 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
6 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
7 404.1520(b), 416.920(b).

8 If the claimant is not engaged in substantial gainful activity, the analysis
9 proceeds to step two. At this step, the Commissioner considers the severity of the
10 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
11 claimant suffers from “any impairment or combination of impairments which
12 significantly limits [his or her] physical or mental ability to do basic work
13 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
14 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
15 however, the Commissioner must find that the claimant is not disabled. *Id.*

16 At step three, the Commissioner compares the claimant’s impairment to
17 severe impairments recognized by the Commissioner to be so severe as to preclude
18 a person from engaging in substantial gainful activity. 20 C.F.R. §§
19 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
20

1 severe than one of the enumerated impairments, the Commissioner must find the
2 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

3 If the severity of the claimant’s impairment does not meet or exceed the
4 severity of the enumerated impairments, the Commissioner must pause to assess
5 the claimant’s “residual functional capacity.” Residual functional capacity (RFC),
6 defined generally as the claimant’s ability to perform physical and mental work
7 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
8 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the
9 analysis.

10 At step four, the Commissioner considers whether, in view of the claimant’s
11 RFC, the claimant is capable of performing work that he or she has performed in
12 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

13 If the claimant is capable of performing past relevant work, the Commissioner
14 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).
15 If the claimant is incapable of performing such work, the analysis proceeds to step
16 five.

17 At step five, the Commissioner considers whether, in view of the claimant’s
18 RFC, the claimant is capable of performing other work in the national economy.
19 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
20 the Commissioner must also consider vocational factors such as the claimant’s age,

1 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
2 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
4 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
5 work, analysis concludes with a finding that the claimant is disabled and is
6 therefore entitled to benefits. *Id.*

7 The claimant bears the burden of proof at steps one through four above.
8 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
9 step five, the burden shifts to the Commissioner to establish that 1) the claimant is
10 capable of performing other work; and 2) such work “exists in significant numbers
11 in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*
12 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

13 **ALJ’S FINDINGS**

14 On March 7, 2017, Plaintiff applied both for Title II disability insurance
15 benefits and Title XVI supplemental security income benefits alleging a disability
16 onset date of January 1, 2010. Tr. 347, 517-18, 623-37. The applications were
17 denied initially and on reconsideration. Tr. 550-56, 558-63. Plaintiff appeared
18 before an administrative law judge (ALJ) on September 13, 2018. Tr. 470-92. On
19 November 13, 2018, the ALJ denied Plaintiff’s claim. Tr. 344-69.

1 At step one of the sequential evaluation process, the ALJ found Plaintiff,
2 who met the insured status requirements through December 31, 2015, has not
3 engaged in substantial gainful activity since January 1, 2010. Tr. 350. At step
4 two, the ALJ found that Plaintiff has the following severe impairments: lumbar
5 spine degenerative disc disease and scoliosis, obesity (with body mass index of 25-
6 32), and polysubstance use disorder (including opiates, benzodiazepines, and
7 alcohol). *Id.*

8 At step three, the ALJ found Plaintiff does not have an impairment or
9 combination of impairments that meets or medically equals the severity of a listed
10 impairment. Tr. 352. The ALJ then concluded that Plaintiff has the RFC to
11 perform medium work with the following limitations:

12 [Plaintiff] is limited to frequent climbing of ladders/ropes/scaffolds;
13 she is limited to simple, routine tasks with a reasoning level of 2 or
14 less; and she can have only occasional contact with coworkers and
15 supervisors.

16 Tr. 354.

17 At step four, the ALJ found Plaintiff has no past relevant work. Tr. 361. At
18 step five, the ALJ found that, considering Plaintiff's age, education, work
19 experience, RFC, and testimony from the vocational expert, there were jobs that
20 existed in significant numbers in the national economy that Plaintiff could perform,
such as kitchen helper, laundry worker, and industrial cleaner. Tr. 361-62.

Alternatively, the ALJ found that even if Plaintiff was further limited to sedentary

1 work with no overhead reaching with the left upper extremity, no more than
2 frequent reaching, handling, and fingering with the left upper extremity, no public
3 contact, and only occasional work changes, she would be able to perform that
4 exists in significant numbers in the national economy, including addresser, final
5 assembler, and microfilm document preparer. Tr. 362. Therefore, the ALJ
6 concluded Plaintiff was not under a disability, as defined in the Social Security
7 Act, from the alleged onset date of January 1, 2010, through the date of the
8 decision. *Id.*

9 On May 6, 2020, the Appeals Council denied review of the ALJ's decision,
10 Tr. 1-7, making the ALJ's decision the Commissioner's final decision for purposes
11 of judicial review. *See* 42 U.S.C. § 1383(c)(3).

12 ISSUES

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

16 Plaintiff raises the following issues for review:

- 17 1. Whether the ALJ properly evaluated Plaintiff's symptom claims; and
- 18
19
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1 2. Whether the ALJ properly assessed Plaintiff’s RFC.²

2 ECF No. 16 at 9.

3 **DISCUSSION**

4 **A. Plaintiff’s Symptom Claims**

5 Plaintiff faults the ALJ for failing to rely on reasons that were clear and
6 convincing in discrediting her symptom claims.³ ECF No. 16 at 11-13. An ALJ
7 engages in a two-step analysis to determine whether to discount a claimant’s
8 testimony regarding subjective symptoms. SSR 16–3p, 2016 WL 1119029, at *2.
9 “First, the ALJ must determine whether there is objective medical evidence of an
10 underlying impairment which could reasonably be expected to produce the pain or

11
12 ² Plaintiff lists two additional issues, arguing the ALJ erred in finding Plaintiff
13 capable of performing medium work, and in finding Plaintiff capable of substantial
14 gainful activity at step five. ECF No. 16 at 9. However, Plaintiff only addresses
15 these issues within her argument regarding the ALJ’s RFC findings; as such, the
16 Court addresses all three issues within the RFC section.

17 ³ The Court notes that Plaintiff references evidence that was rejected by the ALJ
18 and the Appeals Council, ECF No. 16 at 6, but Plaintiff does not challenge the
19 rejection of the evidence. Thus, any challenge is waived. *See Carmickle v.*
20 *Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008).

1 other symptoms alleged.” *Molina*, 674 F.3d at 1112 (quotation marks omitted).

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

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

18 Factors to be considered in evaluating the intensity, persistence, and limiting
19 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,
20 duration, frequency, and intensity of pain or other symptoms; 3) factors that

1 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
2 side effects of any medication an individual takes or has taken to alleviate pain or
3 other symptoms; 5) treatment, other than medication, an individual receives or has
4 received for relief of pain or other symptoms; 6) any measures other than treatment
5 an individual uses or has used to relieve pain or other symptoms; and 7) any other
6 factors concerning an individual's functional limitations and restrictions due to
7 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §§
8 404.1529(c), 416.929(c). The ALJ is instructed to "consider all of the evidence in
9 an individual's record," to "determine how symptoms limit ability to perform
10 work-related activities." SSR 16-3p, 2016 WL 1119029, at *2.

11 The ALJ found that Plaintiff's medically determinable impairments could
12 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff's
13 statements concerning the intensity, persistence, and limiting effects of her
14 symptoms were not entirely consistent with the evidence. Tr. 355.

15 *1. Inconsistent Objective Medical Evidence*

16 The ALJ found Plaintiff's symptom claims were inconsistent with the
17 objective medical evidence. Tr. 356-57. An ALJ may not discredit a claimant's
18 symptom testimony and deny benefits solely because the degree of the symptoms
19 alleged is not supported by objective medical evidence. *Rollins v. Massanari*, 261
20 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.

1 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989); *Burch v. Barnhart*, 400
2 F.3d 676, 680 (9th Cir. 2005). However, the objective medical evidence is a
3 relevant factor, along with the medical source's information about the claimant's
4 pain or other symptoms, in determining the severity of a claimant's symptoms and
5 their disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2),
6 416.929(c)(2).

7 The ALJ found Plaintiff's physical symptoms were inconsistent with the
8 objective medical evidence. Tr. 356-57. Imaging demonstrated only mild
9 degenerative disc changes/narrowing at L5-S1 in November 2017, and while later
10 imaging showed more severe scoliosis, it still demonstrated no vertebral body
11 compression deformity, no spondylolisthesis, and only mild facet arthropathy. Tr.
12 356 (citing Tr. 920, 929, 931). The ALJ noted the records contain physical
13 examinations that demonstrate some abnormalities, including antalgic gait and
14 limited range of motion, but further noted Plaintiff generally had normal strength,
15 sensation, reflexes, gait, coordination, no focal deficits, and no atrophy. Tr. 356-57
16 (citing, .e.g, Tr. 767, 770, 780, 784, 997, 1006). In November 2017, Plaintiff had
17 some abnormalities on examination, including limited range of motion, and a
18 positive straight leg raise, but Plaintiff also had normal strength, muscle tone and
19 bulk, sensation, and reflexes, and the examiner opined there was little objective
20 evidence of limitations. Tr. 356-57 (citing Tr. 925-27).

1 Plaintiff argues the medical evidence is consistent with her complaints, as
2 the records contain evidence of Plaintiff's neck, back, and shoulder impairments
3 and obesity. ECF No. 16 at 12. However, the ALJ's interpretation of the evidence
4 is reasonable, thus Plaintiff's alternative interpretation of the evidence does not
5 impact the validity of the ALJ's interpretation. *See Tommasetti v. Astrue*, 533 F.3d
6 1035, 1038 (9th Cir. 2008) (“[W]hen the evidence is susceptible to more than one
7 rational interpretation” the court will not reverse the ALJ's decision). Plaintiff
8 further argues Dr. Garages' opinion is consistent with Plaintiff's allegations. ECF
9 No. 16 at 12. However, Plaintiff does not challenge the ALJ's rejection of Dr.
10 Garages' opinion, and Dr. Garages' opinion that Plaintiff is capable of light work
11 is not a disabling opinion and thus is not consistent with Plaintiff's allegations. *See*
12 *Tr. 927*.

13 Next, the ALJ found Plaintiff's complaints of mental health symptoms were
14 inconsistent with the objective medical evidence. *Tr. 357*. Plaintiff was generally
15 observed as being alert, oriented, in no acute distress, and having normal thoughts,
16 cognition, memory, concentration, and insight/judgment. *Id.* (citing, e.g., *Tr. 824*,
17 *827*, *836*, *845*, *848*). Plaintiff was noted as having no depression, anxiety, nor
18 agitation on multiple occasions. *Tr. 357* (citing *Tr. 939*, *950*, *959*). At an August
19 2017 psychological consultative examination, Plaintiff had normal memory,
20 comprehension, speech, and emotions, and she was pleasant and cooperative. *Tr.*

1 353, 357 (citing Tr. 914-18). On this record, the ALJ reasonably concluded that
2 Plaintiff's symptom claims are inconsistent with the objective medical evidence.
3 This finding is supported by substantial evidence and was a clear and convincing
4 reason, along with the other reasons offered, to discount Plaintiff's symptom
5 complaints.

6 2. *Conservative Treatment*

7 The ALJ found Plaintiff's conservative treatment was inconsistent with
8 Plaintiff's symptom claims. Tr. 354-57. Evidence of "conservative treatment" is
9 sufficient to discount a claimant's testimony regarding the severity of an
10 impairment. *Parra v. Astrue*, 481 F.3d 742 (9th Cir. 2007) (citing *Johnson v.*
11 *Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995) (treating ailments with an over-the-
12 counter pain medication is evidence of conservative treatment sufficient to
13 discount a claimant's testimony regarding the severity of an impairment)); *see also*
14 *Tommasetti*, 533 F.3d at 1039 (holding that the ALJ permissibly inferred that the
15 claimant's "pain was not as all-disabling as he reported in light of the fact that he
16 did not seek an aggressive treatment program" and "responded favorably to
17 conservative treatment including physical therapy and the use of anti-inflammatory
18 medication, a transcutaneous electrical nerve stimulation unit, and a lumbosacral
19 corset").

1 The ALJ noted that while Plaintiff complained of disabling limitations, she
2 had received generally limited and conservative treatment. Tr. 356. Plaintiff's
3 physical treatment included medication and physical therapy, but no more
4 aggressive treatment for her back impairment. *Id.* Plaintiff's mental health
5 treatment consisted entirely of medication prescribed by her primary care
6 physician; she had not sought counseling despite referrals for counseling. Tr. 357,
7 867. Plaintiff failed to challenge this reasoning, thus any challenge is waived. *See*
8 *Carmickle*, 533 F.3d at 1161 n.2. On this record, the ALJ reasonably concluded
9 that Plaintiff's symptom claims were inconsistent with her conservative and
10 limited treatment. This finding is supported by substantial evidence and was a
11 clear and convincing reason to discount Plaintiff's symptom complaints.

12 3. *Activities of Daily Living*

13 The ALJ found Plaintiff's activities of daily living were inconsistent with
14 Plaintiff's symptom claims. Tr. 358. The ALJ may consider a claimant's activities
15 that undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can
16 spend a substantial part of the day engaged in pursuits involving the performance
17 of exertional or non-exertional functions, the ALJ may find these activities
18 inconsistent with the reported disabling symptoms. *Fair*, 885 F.2d at 603; *Molina*,
19 674 F.3d at 1113. "While a claimant need not vegetate in a dark room in order to
20 be eligible for benefits, the ALJ may discount a claimant's symptom claims when

1 the claimant reports participation in everyday activities indicating capacities that
2 are transferable to a work setting” or when activities “contradict claims of a totally
3 debilitating impairment.” *Molina*, 674 F.3d at 1112-13.

4 The ALJ found Plaintiff’s reported daily functioning and activities were
5 inconsistent with her allegations of more limiting symptoms. Tr. 358. Plaintiff
6 reported living with a fiancé, managing her own care, hygiene, and medications,
7 preparing meals and performing chores every couple of days, caring for a dog
8 including taking him for a one mile walk daily, grocery shopping, attending
9 appointments, and leaving her home multiple times per day on her own. *Id.* (citing
10 Tr. 483, 694-701, 915). Plaintiff also reported enjoying camping, fishing,
11 watching movies and the news. Tr. 358 (citing Tr. 915). Plaintiff contends the
12 ALJ failed to indicate the frequency Plaintiff engaged in the activities or whether
13 they increased her pain. ECF No. 16 at 12. However, at the hearing, Plaintiff
14 testified she walks her dog for one hour per day, walking for a total of one mile,
15 and testified that walking more than one mile caused fatigue due to being
16 overweight, but testified she did not have increased pain from walking. Tr. 483.
17 The ALJ also cited to evidence in which Plaintiff reported engaging in a variety of
18 activities every week, as discussed *supra*. The totality of Plaintiff’s activities is
19 inconsistent with her allegations of disabling limitations. On this record, the ALJ
20 reasonably concluded that Plaintiff’s symptom claims are inconsistent with her

1 activities of daily living. This finding is supported by substantial evidence and was
2 a clear and convincing reason to discount Plaintiff's symptom complaints.

3 *4. Inconsistent Statements*

4 The ALJ found Plaintiff made inconsistent statements about her substance
5 use. Tr. 358. In evaluating a claimant's symptom claims, an ALJ may consider
6 the consistency of an individual's own statements made in connection with the
7 disability-review process with any other existing statements or conduct under other
8 circumstances. *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996) (The ALJ
9 may consider "ordinary techniques of credibility evaluation," such as reputation for
10 lying, prior inconsistent statements concerning symptoms, and other testimony that
11 "appears less than candid.").

12 The ALJ noted Plaintiff made conflicting statements, and failed to disclose
13 her substance use at some appointments. Tr. 358. At the psychological
14 consultative examination, Plaintiff did not report her recent opioid use. Tr. 357.
15 At her psychological consultative examination, Plaintiff reported her last substance
16 use as 2017 when she was arrested for a DUI, and failed to report her recent
17 substance use. Tr. 915. At her physical consultative examination, Plaintiff
18 reported she did not use alcohol, nor recreational drugs, and did not report any
19 recent substance use. Tr. 923. Plaintiff reported drinking one to two beers daily in
20 December 2017, but a different treatment note from the same month indicated

1 Plaintiff had been heavily drinking and was having withdrawal seizures. Tr. 351
2 (citing Tr. 1009, 1163, 1187). Plaintiff reported to a provider that she had not been
3 using any opiates prior to a surgery in 2019, despite her medical records indicating
4 she was on a longstanding opiate prescription. Tr. 178. On this record, the ALJ
5 reasonably found Plaintiff made inconsistent statements about her substance use.
6 This was a clear and convincing reason, supported by substantial evidence, to
7 reject Plaintiff's symptom claims.

8 *5. Drug-Seeking Behavior*

9 The ALJ found Plaintiff engaged in drug-seeking behavior. Tr. 358. Drug
10 seeking behavior can be a clear and convincing reason to discount a claimant's
11 credibility. *See Edlund*, 253 F.3d at 1157 (holding that evidence of drug seeking
12 behavior undermines a claimant's credibility); *Gray v. Comm'r, of Soc. Sec.*, 365
13 F. App'x 60, 63 (9th Cir. 2010) (evidence of drug-seeking behavior is a valid
14 reason for finding a claimant not credible); *Lewis v. Astrue*, 238 F. App'x 300, 302
15 (9th Cir. 2007) (inconsistency with the medical evidence and drug-seeking
16 behavior sufficient to discount credibility); *Morton v. Astrue*, 232 F. App'x 718,
17 719 (9th Cir. 2007) (drug-seeking behavior is a valid reason for questioning a
18 claimant's credibility).

19 The ALJ noted the medical records contain multiple appointments where
20 Plaintiff repeatedly requested opioid medications. Tr. 358 (citing, e.g., 807, 818-

1 19, 936, 939, 948). Plaintiff reported her medication, including clonazepam and
2 hydrocodone, was stolen on multiple occasions, and asked for early refills from
3 different providers. Tr. 807, 818. Plaintiff's provider noted that his medical center
4 had received a phone call cautioning them about Plaintiff seeking medication from
5 multiple medical offices. Tr. 807. Plaintiff also told Ms. Schorzman a different
6 clinic was requesting that Ms. Schorzman prescribe Plaintiff klonopin and soma;
7 however, when Ms. Schorzman called the clinic, she was informed they did not
8 make the request and were in fact unwilling to prescribe the medications to
9 Plaintiff. Tr. 818. In 2018, Plaintiff overused her hydrocodone and her provider
10 declined to prescribe it to her any longer. Tr. 936. Plaintiff also reported opiate
11 overuse in 2019. Tr. 176. The records note Plaintiff has a history of
12 benzodiazepine withdrawal-related seizures. Tr. 1187. On this record, the ALJ
13 reasonably found Plaintiff engaged in drug-seeking behavior. This was a clear and
14 convincing reason, supported by substantial evidence, to reject Plaintiff's symptom
15 claims.

16 *6. Work History*

17 The ALJ noted Plaintiff's poor, inconsistent work history prior to her alleged
18 onset date indicates her underemployment is due to something longer standing,
19 rather than her medical conditions. Tr. 358. Evidence of a poor work history that
20 suggests a claimant is not motivated to work is a permissible reason to discredit a

1 claimant's testimony that she is unable to work. *Thomas*, 278 F.3d at 959; SSR
2 96-7 (factors to consider in evaluating credibility include "prior work record and
3 efforts to work"); *Smolen*, 80 F.3d at 1284; 20 C.F.R. § 404.1529 (work record can
4 be considered in assessing credibility); 20 C.F.R. § 416.929 (same).

5 The ALJ found Plaintiff had a pattern of low and intermittent earnings even
6 before her alleged onset date. Tr. 358 (citing Tr. 638-42, 646-47, 649-52).

7 Plaintiff's typical annual earnings, even before her alleged onset date, was under
8 \$4,000. Tr. 642. Plaintiff alleges her disability began January 10, 2010, however
9 Plaintiff had no earnings in 2008 nor 2009, while she earned over \$8,000 in 2011
10 and had intermittent earnings through 2017. *Id.* Plaintiff's 2010 alleged onset date
11 corresponds to a period when Plaintiff was incarcerated for six months and then
12 released to attend drug treatment, Tr. 626, 915, indicating that Plaintiff's lack of
13 earnings in 2010 was due to her incarceration and not due to her disability.

14 Similarly, Plaintiff contends her work history is consistent with her allegations that
15 she lost jobs due to her impairments and her intermittent work history is consistent
16 with her reported inability to consistently work due to her impairments, ECF No.
17 16 at 12-13. However, the records demonstrate that many of the gaps in Plaintiff's
18 work history are due to her periods of incarceration. Plaintiff was incarcerated for
19 periods in 2008, 2009, 2010, 2014, and 2016. Tr. 676-77, 915. The ALJ noted that
20 such a work history indicates Plaintiff's lack of work may be due to something

1 other than her medical conditions, such as a lack of motivation to work. Tr. 358.

2 At her consultative examination, Plaintiff reported she cannot work in part because
3 of her “extensive criminal history.” Tr. 913. On this record, the ALJ reasonably
4 found Plaintiff’s poor work history was inconsistent with Plaintiff’s allegation of
5 disabling limitations beginning at the alleged onset date. This was a clear and
6 convincing reason, supported by substantial evidence, to reject Plaintiff’s symptom
7 claims.

8 **B. Plaintiff’s RFC**

9 Plaintiff faults the ALJ for not limiting Plaintiff to “sedentary to light work”
10 and for not accounting for limitations caused by Plaintiff’s mental health
11 symptoms. ECF No. 16 at 13. At step four of the sequential evaluation, the ALJ
12 must determine the claimant’s RFC. 20 C.F.R. §§ 404.1520(a)(4)(iv),
13 416.920(a)(4)(iv). “[T]he ALJ is responsible for translating and incorporating
14 clinical findings into a succinct RFC.” *Rounds v. Comm’r Soc. Sec. Admin.*, 807
15 F.3d 996, 1006 (9th Cir. 2015). “[A]n ALJ’s assessment of a claimant adequately
16 captures restrictions related to concentration, persistence, or pace where the
17 assessment is consistent with restrictions identified in the medical testimony.”
18 *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008). To the extent
19 the evidence could be interpreted differently, it is the role of the ALJ to resolve
20 conflicts and ambiguity in the evidence. *Morgan v. Comm’r Soc. Sec. Admin.*, 169

1 F.3d 595, 599-600 (9th Cir. 1999). Where evidence is subject to more than one
2 rational interpretation, the ALJ's conclusion will be upheld. *Burch*, 400 F.3d at
3 679; *Hill*, 698 F.3d at 1158 (recognizing the court only disturbs the ALJ's findings
4 if they are not supported by substantial evidence).

5 While Plaintiff contends she should have been limited to "sedentary to light"
6 work, she does not point to any opinion evidence or objective medical evidence to
7 support her claim. ECF No. 16 at 13. Plaintiff fails to point to any medical
8 opinion and the undersigned has identified no medical opinions in the record that
9 support Plaintiff's argument; Dr. Irwin opined Plaintiff's physical impairments
10 were non-severe, while Dr. Garges opined Plaintiff is limited to light work, and Dr.
11 Wolfe opined Plaintiff is limited to medium work. Tr. 358-59, 490, 540, 927.
12 Further, the ALJ made an alternative step five finding in which he determined that
13 even if Plaintiff was limited to sedentary work, Plaintiff would still be capable of
14 performing work that exists in sufficient numbers in the national economy. Tr.
15 362. As such, any error in failing to limit Plaintiff to light or sedentary work
16 would be harmless. *See Molina*, 674 F.3d at 1115.

17 Similarly, Plaintiff contends the ALJ failed to account for her psychological
18 limitations but does not point to opinion evidence or objective medical evidence to
19 support her argument. ECF No. 16 at 13-14. Plaintiff argues she should have been
20 limited to no public contact, no fast-paced work or work that requires production

1 quotas, and there should have been a limitation regarding her difficulty staying on
2 task; Plaintiff argues such failure to include such limitations was harmful error. *Id.*
3 However, the ALJ already limited Plaintiff to simple, routine tasks with a
4 reasoning level of 2 or less and only occasionally contact with coworkers and
5 supervisors. Tr. 354. The ALJ's alternative hypothetical included a limitation to
6 no public contact, and only occasional work changes, and the ALJ found Plaintiff
7 was capable of working even with the additional limitations. Tr. 362. As such,
8 any error in the ALJ failing to include limitations regarding public contact again is
9 harmless. *See Molina*, 674 F.3d at 1115. The vocational expert testified that a
10 limitation to no public contact was only disabling in combination with additional
11 limitations in Plaintiff's ability to reach and/or finger/handle. *Id.* at 13-14 (citing
12 Tr. 490).

13 Plaintiff argues that she was not capable of reaching in all directions on a
14 frequent basis, but again does not point to any opinion evidence or objective
15 medical evidence to support her argument. ECF No. 16 at 15. There are no
16 medical opinions to support Plaintiff's argument that she is limited to less than
17 frequent reaching; Dr. Irwin opined Plaintiff's physical impairments are non-
18 severe, while Dr. Wolfe and Dr. Garges opined Plaintiff had no manipulative
19 limitations. Tr. 358-59, 490, 540, 927. Plaintiff argues additional medical records
20 that were submitted untimely demonstrated she had an ongoing shoulder

1 impairment. ECF No. 16 at 6. However, as discussed *supra*, Plaintiff did not
2 challenge the ALJ nor Appeals Council's consideration of the additional medical
3 records.

4 Next, Plaintiff argues the ALJ's incomplete hypothetical led to an error at
5 step five. ECF No. 16 at 14-15. However, Plaintiff does not set forth any
6 arguments specific to the ALJ's step five findings, but rather reiterates her earlier
7 arguments. A claimant fails to establish that a step five determination is flawed by
8 simply restating argument that the ALJ improperly discounted certain evidence,
9 when the record demonstrates the evidence was properly rejected. *Stubbs–*
10 *Danielson*, 539 F.3d at 1175-76. Plaintiff is not entitled to remand on these
11 grounds.

12 CONCLUSION

13 Having reviewed the record and the ALJ's findings, the Court concludes the
14 ALJ's decision is supported by substantial evidence and free of harmful legal error.

15 Accordingly, **IT IS HEREBY ORDERED:**

16 1. Plaintiff's Motion for Summary Judgment, **ECF No. 16**, is **DENIED**.

17 2. Defendant's Motion for Summary Judgment, **ECF No. 18**, is

18 **GRANTED.**

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

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

3 DATED June 23, 2021.

4 *s/Mary K. Dimke*
5 MARY K. DIMKE
6 UNITED STATES MAGISTRATE JUDGE

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