

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

Oct 31, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STACI D.,¹

Plaintiff,

v.

ANDREW M. SAUL, Commissioner of
Social Security,²

Defendant.

No. 4:18-CV-5190-EFS

**ORDER DENYING PLAINTIFF'S
SUMMARY-JUDGMENT MOTION
AND GRANTING DEFENDANT'S
SUMMARY-JUDGMENT MOTION**

Before the Court are the parties' cross summary-judgment motions. ECF Nos. 11 & 16. Plaintiff Staci D. appeals a denial of benefits by the Administrative Law Judge (ALJ). She alleges the ALJ erred by 1) failing to make specific findings

¹ To protect the privacy of the social-security Plaintiff, the Court refers to her by first name and last initial or by "Plaintiff." *See* LCivR 5.2(c).

² Andrew M. Saul is now the Commissioner of the Social Security Administration. Accordingly, the Court substitutes Andrew M. Saul as the Defendant. *See* Fed. R. Civ. P. 25(d).

1 at step three, 2) improperly weighing the medical opinions, and 3) discounting
2 Plaintiff's symptom reports. In contrast, Defendant Commissioner of Social
3 Security asks the Court to affirm the ALJ's decision finding Plaintiff not disabled.
4 After reviewing the record and relevant authority, the Court denies Plaintiff's
5 Motion for Summary Judgment, ECF No. 11, and grants Defendant's Motion for
6 Summary Judgment, ECF No. 16.

7 I. Five-Step Disability Determination

8 A five-step sequential evaluation process is used to determine whether an
9 adult claimant is disabled.³ Step one assesses whether the claimant is currently
10 engaged in substantial gainful activity.⁴ If the claimant is engaged in substantial
11 gainful activity, benefits are denied.⁵ If not, the disability-evaluation proceeds to
12 step two.⁶

13 Step two assesses whether the claimant has a medically severe impairment,
14 or combination of impairments, which significantly limits the claimant's physical
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19 ³ 20 C.F.R. §§ 404.1520(a), 416.920(a).

20 ⁴ *Id.* §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

21 ⁵ *Id.* §§ 404.1520(b), 416.920(b).

22 ⁶ *Id.* §§ 404.1520(b), 416.920(b).

1 or mental ability to do basic work activities.⁷ If the claimant does not, benefits are
2 denied.⁸ If the claimant does, the disability-evaluation proceeds to step three.⁹

3 Step three compares the claimant's impairment(s) to several recognized by
4 the Commissioner to be so severe as to preclude substantial gainful activity.¹⁰ If an
5 impairment meets or equals one of the listed impairments, the claimant is
6 conclusively presumed to be disabled.¹¹ If an impairment does not, the disability-
7 evaluation proceeds to step four.

8 Step four assesses whether an impairment prevents the claimant from
9 performing work she performed in the past by determining the claimant's residual
10 functional capacity (RFC).¹² If the claimant is able to perform prior work, benefits
11 are denied.¹³ If the claimant cannot perform prior work, the disability-evaluation
12 proceeds to step five.

13 Step five, the final step, assesses whether the claimant can perform other
14 substantial gainful work—work that exists in significant numbers in the national
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16 ⁷ 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

17 ⁸ *Id.* §§ 404.1520(c), 416.920(c).

18 ⁹ *Id.* §§ 404.1520(c), 416.920(c).

19 ¹⁰ *Id.* §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

20 ¹¹ *Id.* §§ 404.1520(d), 416.920(d).

21 ¹² *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

22 ¹³ *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

1 economy—in light of the claimant’s RFC, age, education, and work experience.¹⁴ If
2 so, benefits are denied. If not, benefits are granted.¹⁵

3 The claimant has the initial burden of establishing entitlement to disability
4 benefits under steps one through four.¹⁶ At step five, the burden shifts to the
5 Commissioner to show that the claimant is not entitled to benefits.¹⁷

6 II. Factual and Procedural Summary

7 Plaintiff filed Title II and XVI applications, alleging a disability onset date of
8 September 30, 2010.¹⁸ Her claims were denied initially and upon reconsideration.¹⁹

12 ¹⁴ 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Kail v. Heckler*, 722 F.2d 1496,
13 1497–98 (9th Cir. 1984).

14 ¹⁵ 20 C.F.R. §§ 404.1520(g), 416.920(g).

15 ¹⁶ *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

16 ¹⁷ *Id.*

17 ¹⁸ AR 15. The relevant period for Plaintiff’s Title II claim is from September 30,
18 2010, the alleged onset date, through December 31, 2015, the date she last met the
19 insurance requirements. AR 15 & 17. For Plaintiff’s Title XVI claim, the relevant
20 benefits period began the month following the April 15, 2015 application. 20 C.F.R.
21 § 416.335.

22 ¹⁹ AR 155-63 & 166-72.

1 An administrative hearing was held before Administrative Law Judge Stephanie
2 Martz.²⁰

3 In denying Plaintiff's disability claims, the ALJ made the following findings:

- 4 • Step one: Plaintiff had not engaged in substantial gainful activity
5 since September 30, 2010, the alleged onset date;
- 6 • Step two: Plaintiff had the following medically determinable severe
7 impairments: status-post cervical arthropathy, discectomy, and
8 fusion; left and right first carpometacarpal joint arthritis, status-post
9 left wrist arthroplasty; right middle trigger finger; history of hearing
10 loss; substance use disorder; major depressive disorder vs. adjustment
11 disorder; anxiety disorder, post-traumatic stress disorder; and panic
12 disorder;
- 13 • Step three: Plaintiff did not have an impairment or combination of
14 impairments that met or medically equaled the severity of one of the
15 listed impairments;
- 16 • RFC: Plaintiff had the RFC to perform light work with the following
17 limitations:

18 [She] can lift and/or carry 20 pounds occasionally, and 10
19 pounds frequently. [She can] sit for about six hours in an
20 eight-hour workday, and stand and/or walk for about six
21 hours in an eight-hour workday, with regular breaks.
Moreover, [she] can frequently reach, handle, finger, and feel.
[She] has an unlimited ability to balance. [She] can

22 ²⁰ AR 39-76.

1 frequently stoop, crouch, and crawl. [She] should avoid
2 concentrated exposure to extreme cold, extreme heat,
3 vibration, and hazards. The noise level in the work
4 environment should be moderate or less, as that is defined by
5 the Dictionary of Occupational Titles (DOT). [She] can
6 understand, remember, and carry out simple tasks. [She] can
7 have superficial contact with coworkers, but should work
8 independently, and not on a team or tandem tasks. [She]
9 cannot work with the general public. [She] would need a
10 routine and predictable work environment with few changes;

- Step four: Plaintiff was not capable of performing past relevant work;
and
- Step five: considering Plaintiff's RFC, age, education, and work
history, Plaintiff was capable of performing work that existed in
significant numbers in the national economy, such as cleaner
housekeeping, assembler (production), and mail clerk.²¹

13 When assessing the medical-opinion evidence, the ALJ assigned:

- great weight to the examining opinions of Emma Billings, Ph.D. and
William Drenguis, M.D.;
- significant weight to the reviewing opinions of John Gilbert, Ph.D.
and John Robertson, Ph.D.;
- no weight to Gordon Hale, M.D.'s reviewing opinion as it related to
Plaintiff's asthma but significant weight to the remainder of his
opinion;

22 ²¹ AR 18-28.

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- both significant weight and little weight to various portions of J. Brooke Sjostrom, LHMC’s evaluating opinion, which was co-signed by Thomas Genthe, Ph.D.; and
 - little weight to the examining opinions of Rebekah Cline, Psy.D. and Amie Shah, M.D.²²; the reviewing opinion of Trula Thompson, M.D.; and the treating opinions of Carolyn O’Connor, M.D., and Sean Duffy, M.D.²³
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8 The ALJ also found that Plaintiff’s medically determinable impairments
9 could reasonably be expected to cause some of the alleged symptoms, but that her
10 statements concerning the intensity, persistence, and limiting effects of those
11 symptoms were not entirely consistent with the medical evidence and other
12 evidence in the record.²⁴

13 Plaintiff requested review of the ALJ’s decision by the Appeals Council,
14 which denied review.²⁵ Plaintiff timely appealed to this Court.

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18 ²² The ALJ mistakenly referred to Dr. Shah as “Dr. Annie Shah,” rather than “Dr.
19 *Amie* Shah.” AR 26, 735. This error is inconsequential.

20 ²³ AR 24-27.

21 ²⁴ AR 22.

22 ²⁵ AR 1-6 & 295-96.

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III. Standard of Review

A district court’s review of the Commissioner’s final decision is limited.²⁶ The Commissioner’s decision is set aside “only if it is not supported by substantial evidence or is based on legal error.”²⁷ Substantial evidence is “more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”²⁸ Moreover, because it is the role of the ALJ and not the Court to weigh conflicting evidence and make credibility assessments, the Court upholds the ALJ’s findings “if they are supported by inferences reasonably drawn from the record.”²⁹ The Court considers the entire record as a whole.³⁰

²⁶ 42 U.S.C. § 405(g).

²⁷ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

²⁸ *Id.* at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)).

²⁹ *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

³⁰ *See Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The Court “must consider the entire record as whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion,” not simply that evidence cited by the ALJ or by the parties.); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) (“An ALJ's failure to cite specific evidence does not indicate that such evidence was not considered[.]”).

1 Further, the Court may not reverse an ALJ decision due to a harmless
2 error.³¹ An error is harmless “where it is inconsequential to the [ALJ’s] ultimate
3 nondisability determination.”³² The party appealing the ALJ’s decision generally
4 bears the burden of establishing harm.³³

5 IV. Applicable Law and Analysis

6 **A. Step Three (Listings): The ALJ’s step-three findings are supported** 7 **by the record.**

8 Plaintiff argues the ALJ erred at step three by 1) finding that Plaintiff’s
9 impairments did not meet the paragraph C criteria for listings 12.02, 12.03, 12.04,
10 12.06, and 12.15 and 2) failing to make the specific findings.

11 At step three, the ALJ must determine if a claimant’s impairments meet or
12 equal a listed impairment.³⁴ The ALJ must support her listings finding with more
13 than a boilerplate finding that a listing was not satisfied: the finding may be
14 supported by the ALJ’s “articulation of the reason(s) why the individual is or is not
15 disabled at a later step in the sequential evaluation process” so long as the Court
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19 ³¹ *Molina*, 674 F.3d at 1111.

20 ³² *Id.* at 1115 (quotation and citation omitted).

21 ³³ *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

22 ³⁴ 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4).
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1 can meaningfully review the basis for the step-three decision.³⁵ To meet a listed
2 impairment, the claimant has the burden of establishing that she meets each
3 characteristic of a listed impairment relevant to her claim.³⁶

4 On this record, the ALJ's listings analysis and findings are adequate and
5 supported by substantial evidence. Focusing on the challenged paragraph C
6 criteria analysis, the ALJ considered Plaintiff's mental impairments singly and in
7 combination and found that they did not meet or medically equal the paragraph C
8 criteria for listings 12.04, 12.06, and 12.15.³⁷ More specifically, the ALJ found
9 "there is no objective evidence that [Plaintiff's] mental impairments are 'serious
10 and persistent' with medical treatment in a highly structured setting; and a
11 minimal capacity to adapt to changes in the environment, or to the demands that
12 are not already part of daily life."³⁸ The ALJ also highlighted that "no treating or
13 examining physician has reported clinical findings equivalent in severity to the
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16 ³⁵ Social Security Ruling (SSR) 17-2p, 2017 WL 3928306, at *4; *see also Lewis v.*
17 *Apfel*, 236 F.3d 503, 512 (9th Cir. 2001); *Gonzalez v. Sullivan*, 914 F.2d 1197, 1200-
18 01 (9th Cir. 1990).

19 ³⁶ 20 C.F.R. §§ 404.1525(d), 416.925(d); *Burch v. Barnhart*, 400 F.3d 676, 683 (9th
20 Cir. 2005).

21 ³⁷ AR 19 & 20.

22 ³⁸ AR 20.
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1 criteria of any listed impairment, nor does the evidence show medical findings that
2 were the same or equivalent to those of any listed impairment.”³⁹

3 These listings findings by the ALJ must be read in conjunction with the
4 entire ALJ decision.⁴⁰ Here, the ALJ discussed the medical records and medical
5 opinions related to Plaintiff’s mental impairments at great length.⁴¹ The ALJ’s
6 analysis in its entirety as to Plaintiff’s mental-health impairments permits the
7 Court to meaningfully review the ALJ’s finding that Plaintiff’s mental impairments
8 did not satisfy the listings paragraph C criteria.

9 In addition, the ALJ’s finding that Plaintiff did not satisfy the paragraph C
10 criteria is reasonable and supported by substantial evidence. The record reflects
11 that Plaintiff has more than a minimal capacity to adapt to changes in the
12 environment and to the demands that are not already part of daily life even when
13 not residing in a substance abuse treatment center, especially so when she is
14 abstinent from drugs.⁴²

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16 ³⁹ AR 21.

17 ⁴⁰ SSR 17-2p.

18 ⁴¹ AR 19-26.

19 ⁴² *See, e.g.*, AR 542, 549, 627, 636, 874, 882, 885, 888, 899, 902 (noting that
20 Plaintiff’s affect and mood were normal or congruent); AR 776 (noting that Plaintiff
21 was benefiting from therapy and that she appeared “to be functioning rather well
22 and engaged in a variety of activities”); AR 840 (noting that Plaintiff reported her
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1 Finally, because the criteria for the undiscussed listings 12.02 and 12.03 are
2 the same as those required for listings 12.04, 12.06, and 12.15, the ALJ's analysis
3 adequately addressed the requirements for each of the listings challenged by
4 Plaintiff.⁴³

5 Accordingly, the ALJ's listings findings are rational and supported by
6 substantial evidence.

7 **B. Medical Opinions: The ALJ's weighing of the medical opinions is**
8 **supported by the record.**

9 Plaintiff challenges the ALJ's weighing of the medical opinions as to both
10 Plaintiff's physical (exertional) and mental (non-exertional) limitations.

11 The weighing of medical-source opinions is dependent upon the nature of the
12 medical relationship, i.e., 1) a treating physician; 2) an examining physician who
13 examined but did not treat the claimant; and 3) a non-examining physician who
14 neither treated nor examined the claimant.⁴⁴ Generally, more weight is given to
15 the opinion of a treating physician than to the opinion of a non-treating
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18 longest abstinence period was nine months and that she used pills the day she
19 graduated from treatment); AR 848-52 (drug treatment discharge summary); 20
20 C.F.R. pt. 404, subpt. P, app. 1 § 12.00D, G.

21 ⁴³ 20 C.F.R. pt. 404, subpt. P, app. 1 § 12.00G.

22 ⁴⁴ *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014).
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1 physician.⁴⁵ When a treating physician’s opinion is not contradicted by another
2 physician, it may be rejected only for “clear and convincing” reasons, and when it is
3 contradicted, it may not be rejected without “specific and legitimate reasons”
4 supported by substantial evidence in the record.⁴⁶ The opinion of a nonexamining
5 physician serves as substantial evidence if it is supported by other independent
6 evidence in the record.⁴⁷

7 As discussed below, Plaintiff failed to establish that the ALJ’s weighing of
8 the medical-opinion evidence was erroneous.

9 1. Plaintiff’s Exertional Limitations

10 Plaintiff contends the ALJ erred by discounting the treating opinions of Dr.
11 O’Connor and Dr. Duffy and the examining opinion of Dr. Shah, instead giving
12 weight to the examining opinion of Dr. Drenguis and the reviewing opinion of Dr.
13 Hale. Dr. Drenguis and Dr. Hale opined that Plaintiff could perform light work
14 with manipulative and postural limitations, while Dr. Shah, Dr. O’Connor, and Dr.
15 Duffy opined a sedentary-work limitation.⁴⁸ While a different rational
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17 ⁴⁵ *Id.*

18 ⁴⁶ *Id.*

19 ⁴⁷ *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

20 ⁴⁸ Plaintiff did not challenge the ALJ’s decision to discount Dr. Thompson’s
21 sedentary limitation. The Court highlights that, although Dr. Thompson checked
22 boxes indicating that Plaintiff was limited to sedentary work, Dr. Thompson
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1 interpretation of the medical records could be reached, the ALJ's weighing of the
2 medical opinions as to Plaintiff's physical limitations was reasonable, meaningfully
3 articulated, and supported by substantial evidence.⁴⁹

4 As to Dr. Shah's opinion, the ALJ discounted Dr. Shah's examining opinion
5 because it was 1) inconsistent with the objective evidence, which did not generally
6 show motor muscle strength loss or limitations in walking and standing; 2)
7 inconsistent with the examination and review of records by Dr. Drenguis the next
8 month; and 3) a check-box opinion. The ALJ reasonably found that Dr. Shah's
9 notes and the longitudinal medical record did not support a sedentary limitation as
10 there was no noted loss of associated muscle strength or walking or standing
11 limitations.⁵⁰ In addition, the ALJ reasonably determined that Dr. Shah's check-

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13 stated, "Form shows [Plaintiff] medically at [sedentary] RFC, but based on
14 objective medical, appears most likely to be found at light RFC with some
15 positional and possibly handling restrictions." AR 799.

16 ⁴⁹ See *Burch*, 400 F.3d at 679 (recognizing that where the evidence is subject to
17 more than one rational interpretation, the ALJ's interpretation, if reasonable, will
18 be upheld).

19 ⁵⁰ See, e.g., AR 733-38; AR 454 (noting that Plaintiff "has chronic musculoskeletal
20 neck pain that . . . [does] not justif[y] chronic narcotic use," as she had well-
21 preserved range of motion, negative straight leg raise, and sensory/motor exam of
22 arms and legs was intact and symmetric); AR 640 (noting neck had normal range of
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1 box sedentary opinion was not consistent with Dr. Drenguis' more detailed
2 findings, which revealed normal muscle strength and motion (other than reduced
3 back and neck range of motion).⁵¹ Plaintiff failed to establish error by the ALJ in
4 giving little weight to Dr. Shah's sedentary opinion.

5 Likewise, the ALJ reasonably discounted Dr. O'Connor's and Dr. Duffy's
6 treating opinions. The ALJ meaningfully explained that she discounted Dr.
7 O'Connor's opinion because it was 1) inconsistent with Dr. Drenguis' examination;
8 2) a cursory check-box opinion not supported by either the longitudinal objective
9 medical evidence or Dr. O'Connor's evaluation; and 3) inconsistent with the
10 evidence suggesting drug-seeking behavior.⁵² These findings were supported by

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12 motion; upper extremities, hips, knees, and ankles were normal; normal gait and
13 balance; and all four extremities moved without difficulty). *See Bray v. Comm'r of*
14 *Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) (recognizing that a medical
15 opinion may be rejected if it is conclusory or inadequately supported).

16 ⁵¹ AR 742-45 (Normal "heel-to-shin testing. Station is stable with a negative
17 Romberg. Gate is normal. The claimant could tandem walk and toe-heel walk. She
18 could hop and perform a full squat. She could stand on either leg." Limited back
19 range of motion, but negative straight leg raise and motor strength was 5/5 and
20 bilaterally symmetrical for all major muscle groups of the upper and lower
21 extremities.).

22 ⁵² AR 26-27.

1 substantial evidence. As indicated above, Dr. Drenguis observed normal muscle
2 strength and tone and found Plaintiff had a negative leg raise and full range of
3 motion of her extremities (other than some reduced range of motion in the neck
4 and back). Plaintiff contends that Dr. Drenguis incorrectly diagnosed Plaintiff's
5 cervical impairment as a chronic cervical sprain, thereby impacting his opined
6 limitations, whereas Dr. O'Connor (and Dr. Duffy) diagnosed Plaintiff's cervical
7 condition as more serious. Regardless of the diagnosis for Plaintiff's cervical
8 condition following surgery in 2012, the ALJ reasonably interpreted the objective
9 medical findings, including observations of Plaintiff's normal gait and normal lower
10 and upper extremity muscle strength as inconsistent with Dr. O'Connor's (and Dr.
11 Duffy's) unexplained sedentary-work limitation.⁵³ In addition, as discussed below,
12 the record reflects that, although Plaintiff has cervical and hand impairments that
13 reasonably caused some pain, the level of pain alleged by Plaintiff was not
14 supported by her normal muscle tone and movement. Moreover, as discussed
15 below, the record suggested drug-seeking behavior by Plaintiff.

16 Similarly, the ALJ reasonably discounted Dr. Duffy's opinion because it was
17 a cursory check-box opinion, which was inconsistent with Dr. Drenguis'

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19 ⁵³ AR 511, 636, & 643 (noting that upper extremities, hips, knees, and ankles were
20 normal, along with normal gait and balance, and ability to move all four
21 extremities without difficulty); AR 526, 532, 542, & 612 (noting same, except neck
22 was supple with slightly decreased range of motion).
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1 observations and opinion and the subsequent progress notes by treating physician
2 Dr. Sandeep Msutta.⁵⁴ When Dr. Msutta examined Plaintiff for reported back and
3 hip pain, Dr. Msutta observed normal posture and gait; normal range of motion in
4 Plaintiff's back and knees; full hip strength; and normal hip extension but impeded
5 hip flexion due to pain in low back and anterior hip. For the low back and hip pain,
6 Dr. Msutta recommended gentle stretching and exercises, staying active, and over
7 the counter anti-inflammatory or acetaminophen.⁵⁵

8 This record contained conflicting medical opinions as to Plaintiff's exertional
9 limitations, i.e., whether Plaintiff was capable of light work with positional and
10 manipulative limitations or whether Plaintiff was only capable of sedentary work
11 with positional and manipulative limitations. It was the ALJ's responsibility to
12 weigh the conflicting medical opinions and the underlying medical records.⁵⁶ The
13 ALJ's interpretation of the medical records and opinions as to Plaintiff's physical
14 impairments and finding that the sedentary opinions were not consistent with the
15 record are reasonable, meaningfully articulated, and supported by substantial
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19 ⁵⁴ AR 27. *See Bray*, 554 F.3d at 1228 (recognizing that a medical opinion may be
20 rejected if it is conclusory or inadequately supported).

21 ⁵⁵ AR 879-80.

22 ⁵⁶ *See Lingenfelter*, 504 F.3d at 1042.
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1 evidence in the record.⁵⁷ The record reasonably supports the ALJ’s light-work
2 RFC, including postural, noise-level, and frequent manipulative limitations.⁵⁸
3 Plaintiff fails to establish the ALJ erred in this regard.

4 2. Plaintiff’s Non-Exertional Limitations

5 Plaintiff argues the ALJ erred by discounting the treating opinions of Dr.
6 O’Connor and Dr. Duffy, the examining opinion of Dr. Cline, and a portion of the
7 joint examining opinion of Ms. Sjostrom and Dr. Genthe. While a different rational
8 interpretation of the medical records could be reached, the Court finds the ALJ’s
9 weighing of the medical opinions as to Plaintiff’s nonexertional limitations was
10 meaningfully articulated, reasonable, and supported by substantial evidence.

11 a. *Ms. Sjostrom and Dr. Genthe*

12 The ALJ discounted Ms. Sjostrom and Dr. Genthe’s joint “opinion” that
13 Plaintiff’s “general cognitive ability and ability to sustain attention, concentration,
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15 ⁵⁷ See *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008); *Burch*, 400 F.3d
16 at 679.

17 ⁵⁸ *Rounds v. Comm’r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015) (“[T]he
18 ALJ is responsible for translating and incorporating clinical findings into a succinct
19 RFC.”); *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008) (“[A]n
20 ALJ’s assessment of a claimant adequately captures restrictions related to
21 concentration, persistence, or pace where the assessment is consistent with
22 restrictions identified in the medical testimony.”).

1 and mental control was in the borderline range.”⁵⁹ Plaintiff contends Ms. Sjostrom
2 and Dr. Genthe’s finding that Plaintiff was in the borderline range was an objective
3 *finding* from the WAIS-IV test—not a medical opinion—and therefore, Plaintiff
4 argues, without legal citation, it was erroneous for the ALJ to discount this
5 objective finding. A “medical opinion” is defined as “statements from acceptable
6 medical sources that reflect judgments about the nature and severity of your
7 impairment(s), including your symptoms, diagnosis and prognosis, what you can
8 still do despite impairment(s), and your physical or mental restrictions.”⁶⁰ Here,
9 the ALJ reasonably considered the joint finding as to Plaintiff’s “borderline”
10 general cognitive ability and ability to sustain attention, concentration, and mental
11 control to be a medical opinion. Ms. Sjostrom and Dr. Genthe expressed concern
12 about whether Plaintiff’s substance abuse was causing severe disruptions in her
13 work performance, including the impact it had on Plaintiff’s anxiety, which in turn
14 impacted her concentration and attention span.⁶¹ In this regard, the joint opinion
15 stated:

16 As an example, the respondent presents with certain bizarre and
17 dramatic symptoms without the levels of anxiety and wariness in
18 dealing with the environment that would be expected to accompany
19 these symptoms. Although this pattern does not necessarily indicate a
level of distortion that would render the test results invalid, the
interpretive hypotheses presented in this report must be reviewed

20 ⁵⁹ AR 25.

21 ⁶⁰ 20 C.F.R. § 404.1527(a)(1).

22 ⁶¹ AR 434-35.

1 with this tendency in mind. The scale elevations are likely to over
2 represent the extent and degree of clinical symptomatology in
3 particular areas.⁶²

4 The ALJ's decision to discount the "borderline" opinion because it was inconsistent
5 with the record, including largely normal mental status findings and the
6 inconsistent examining opinion of Dr. Billings, who found that Plaintiff could work
7 so long as she did not have any public contacts, is a reasonable weighing of the
8 joint opinion. Plaintiff failed to establish error in this regard.

9 *b. Dr. Cline and Dr. Thompson*

10 The ALJ discounted Dr. Cline's examining opinion and Dr. Thompson's
11 reviewing opinion because they were inconsistent with 1) the contemporaneous
12 observations and examining medical source opinions of Dr. Billings and Dr.
13 Drenguis, and 2) Plaintiff's reporting to treating psychologist Dr. Baumann.⁶³
14 First, Plaintiff argues the ALJ erred by finding that Dr. Cline's opinion was
15 inconsistent with Dr. Billing's opinion. Dr. Billings though found that Plaintiff
16 could work so long as she did not have any public contact. Therefore, Dr. Billings'
17 opinion is inconsistent with Dr. Cline's opinion, which identified that Plaintiff had
18 moderate difficulties following detailed instructions, performing activities within a
19 schedule, maintaining regular attendance, being punctual within customary

21 ⁶² AR 433.

22 ⁶³ AR 26.

1 tolerances without special supervision, adapting to changes in a routine work
2 setting, making simple work-related decisions, being aware of normal hazards and
3 taking appropriate precautions, and setting realistic goals and planning
4 independently; and marked limitations with communication and performing
5 effectively in a work setting, completing a normal work day and work week without
6 interruptions from psychologically based symptoms, and maintaining appropriate
7 behavior in a work setting.⁶⁴ That Dr. Cline's and Dr. Thompson's opinions were
8 inconsistent with Dr. Billing's opinion was a legitimate and specific reason to
9 discount these more limiting opinions.

10 Plaintiff also contends the ALJ failed to explain how Dr. Cline's and Dr.
11 Thompson's opinions were inconsistent with Plaintiff's reporting to treating
12 psychologist Dr. Baumann. This argument is unpersuasive as Dr. Baumann's
13 treatment notes indicated improvement as to Plaintiff's anxiety and mood.
14 Moreover, noticeably absent from Dr. Baumann's notes were observations
15 consistent with marked anxiety or a marked inability to complete a normal
16 workday, communicate, or maintain appropriate behavior.⁶⁵

19 ⁶⁴ Compare AR 728-32 with AR 756-63.

20 ⁶⁵ AR 26 (citing AR 770, 773, 874, 883, 886, & 893). See *Lingenfelter*, 504 F.3d at
21 1042 (recognizing that the ALJ is to consider the consistency of the medical opinion
22 with the record as a whole).

1 On this record, the ALJ’s decision to discount Dr. Cline’s and Dr.
2 Thompson’s opinions is rational and supported by substantial evidence.

3 *c. Dr. Gilbert and Dr. Robertson*

4 Plaintiff contends the ALJ erred by failing to incorporate Dr. Gilbert’s and
5 Dr. Robertson’s reviewing opinions, which included opinions that Plaintiff would
6 have occasional lapses in concentration, persistence, and pace, and would benefit
7 from additional time to adjust to workplace changes.⁶⁶ However, Plaintiff’s
8 argument fails to appreciate that these state agency reviewing consultants
9 ultimately opined that Plaintiff “is able to perform at least [simple routine tasks
10 (SRT)] in a competitive work environment with occasional lapses in [concentration,
11 persistence, and pace (CPP)], *though CPP remains adequate for SRT.*”⁶⁷ Plaintiff
12 fails to establish that Dr. Gilbert and Dr. Robertson intended to use the term
13 “occasional” as it is defined for purposes of *physical* limitations.⁶⁸ Moreover, the
14 language used by these doctors indicates that they did not intend to so define
15 occasional but instead found Plaintiff’s concentration, persistence and pace was
16 adequate to perform simple, routine tasks. Consistent with Dr. Gilbert’s and Dr.
17 Robertson’s opinions, the ALJ crafted an RFC that limited Plaintiff to simple tasks
18 and a routine and predictable work environment with few changes.

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20 ⁶⁶ AR 90-92, 107-09, 128-30, & 147-49.

21 ⁶⁷ AR 92, 109, 129, & 148 (emphasis added).

22 ⁶⁸ See SSR 83-10.
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1 Plaintiff failed to establish the ALJ erred in weighing the medical opinions.

2 **C. Plaintiff's Symptom Reports: The ALJ's weighing of Plaintiff's**
3 **symptom reports is supported by the record.**

4 Plaintiff argues the ALJ failed to provide valid reasons for rejecting her
5 symptom reports. When examining a claimant's symptom reports, the ALJ must
6 make a two-step inquiry. "First, the ALJ must determine whether there is objective
7 medical evidence of an underlying impairment which could reasonably be expected
8 to produce the pain or other symptoms alleged."⁶⁹ Second, "[i]f the claimant meets
9 the first test and there is no evidence of malingering, the ALJ can only reject the
10 claimant's testimony about the severity of the symptoms if [the ALJ] gives 'specific,
11 clear and convincing reasons' for the rejection."⁷⁰

12 The ALJ found that Plaintiff's medically determinable impairments could
13 reasonably be expected to cause some of the alleged symptoms but that her
14 statements concerning the intensity, persistence, and limiting effects of those
15 symptoms were not entirely consistent with the evidence.⁷¹ Specifically, the ALJ
16 found Plaintiff's symptom reports inconsistent with her childcaring
17 responsibilities, presentation to numerous medical providers, affirmative evidence
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19 ⁶⁹ *Molina*, 674 F.3d at 1112.

20 ⁷⁰ *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lingenfelter*, 504
21 F.3d at 1036).

22 ⁷¹ AR 22-23.

1 of drug-seeking behavior, and unremarkable objective findings in the medical
2 record.⁷²

3 As to Plaintiff's childcare responsibilities, the Commissioner elected not to
4 rely on this reason as grounds to support the ALJ's decision.⁷³ The Court agrees
5 that Plaintiff's childcaring responsibilities cannot serve as a clear-and-convincing
6 basis on this record because the ALJ failed to adequately articulate the basis for
7 this finding.⁷⁴ However, the ALJ's other findings were supported clear-and-
8 convincing reasons to discount Plaintiff's physical and mental symptom reports.

9 As to Plaintiff's statements about her disabling hand and neck impairments,
10 the ALJ found these statements inconsistent with the objective medical record.⁷⁵
11 Symptom reports cannot be solely discounted on the grounds that they were not
12 fully corroborated by the objective medical evidence.⁷⁶ However, medical evidence
13 is a relevant factor in considering the severity of the reported symptoms.⁷⁷ In
14

15 ⁷² *Id.*

16 ⁷³ ECF No. 16 at 10, n.2.

17 ⁷⁴ *See Trevizo v. Berryhill*, 871 F.3d 664, 675-76 (9th Cir. 2017) (The record must
18 identify the nature, scope, and duration of the care involved and this care must be
19 "hands on" rather than a "one-off" care activity.).

20 ⁷⁵ AR 22.

21 ⁷⁶ *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

22 ⁷⁷ *Id.*

1 contrast to Plaintiff's reported disabling symptoms due to her hand and neck
2 impairments, the ALJ found that the medical evidence supported a finding that
3 Plaintiff was able to perform light duty work with postural and frequent
4 manipulation limitations. This finding is rational and supported by substantial
5 evidence. As the ALJ highlighted, while imaging supported that Plaintiff's hand
6 and neck conditions were severe impairments, the medical records indicated that
7 Plaintiff's range of motion and strength were generally normal or, if limited, the
8 deficits were mild and not as severely disabling as Plaintiff claimed.⁷⁸ For instance,
9 the ALJ highlighted that although Plaintiff had cervical, low thoracic, and upper
10 lumbar spine tenderness along with hand tenderness, she had full grip strength, a
11 negative straight leg raise, normal muscle bulk and tone with full motor strength
12 and bilateral symmetry in all major muscle groups of the upper and lower
13 extremities.⁷⁹ On this record, that Plaintiff's reports of disabling neck and hand
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15 ⁷⁸ AR 22.

16 ⁷⁹ AR 741. *See also* AR 447-48 (Post surgery records reflecting that Plaintiff was
17 doing well, her station was upright, gait stable, good strength in both upper
18 extremities, and good grip strength.); AR 452-53 (noting good range of motion in all
19 major joints although tender to palpation over the left posterior neck; axial
20 compression on the cervical spine did not reproduce left arm symptoms; slightly
21 diminished muscle strength in left arm compared to right); AR 454 (After observing
22 that Plaintiff had well-preserved range of motion, mild left mid cervical
23

1 pain were inconsistent with the objective medical evidence was a relevant factor for
2 the ALJ to consider when weighing Plaintiff's symptom reports.

3 Plaintiff correctly highlights that the ALJ's pin cites fail to cite to medical
4 records containing the specific page with the physical or musculoskeletal findings.
5 However, this citation error is harmless, because when the medical record is read in
6 its entirety, the ALJ's finding that Plaintiff's disabling neck and back pain reports
7 were inconsistent with the providers' observations and tests is supported by the
8 record.⁸⁰ Moreover, the ALJ's analysis and citations—although slightly off
9

11 paraspinous tenderness, mild pain with axial compression of the vertebral column
12 noted in the neck, and mild lumbosacral paraspinous tenderness, the provider
13 stated that Plaintiff "has chronic musculoskeletal neck pain that I do not believe
14 justifies chronic narcotic use."); AR 463 (noting normal upper extremities strength,
15 4/5 hand grip on left and 5/5 hand grip on right, normal gait, normal muscle town
16 in all four extremities, Spurling's test positive to the left); AR 766 (noting strong
17 and equal bilateral grip).

18 ⁸⁰ See *Lingenfelter*, 504 F.3d at 1035 (The Court "must consider the entire record as
19 whole, weighing both the evidence that supports and the evidence that detracts
20 from the Commissioner's conclusion," not simply that evidence cited by the ALJ or
21 by the parties.); *Black*, 143 F.3d at 386 ("An ALJ's failure to cite specific evidence
22 does not indicate that such evidence was not considered[.]").

1 numerically—allowed this Court to engage in a meaningful review of the basis for
2 the ALJ’s findings.

3 Plaintiff also argues that the ALJ failed to rely on “objective medical
4 evidence” to support her findings. “Objective medical evidence” means “signs,
5 laboratory findings, or both.”⁸¹ In turn, “signs” is defined as “one or more
6 anatomical, physiological, or psychological abnormalities that can be observed,
7 apart from [the claimant’s] statements (symptoms). Signs must be shown by
8 medically clinical diagnostic techniques.”⁸² Evidence obtained from the application
9 of a medically acceptable clinical diagnostic technique, such as evidence of reduced
10 joint motion, muscle spasm, sensory deficits, or motor disruption” is considered
11 objective medical evidence.⁸³ Here, the ALJ appropriately relied on the medical
12 providers’ observations regarding Plaintiff’s range of motion, strength, and gait as
13 objective medical evidence. As discussed previously, the ALJ rationally interpreted
14 the objective medical evidence as inconsistent with Plaintiff’s claims of physical
15 disability.

16 The ALJ also discounted Plaintiff’s symptom claims, both physical and
17 mental claims, because Plaintiff’s statements about her abstinence from substance
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19 ⁸¹ 20 C.F.R. § 404.1502(f).

20 ⁸² *Id.* § 404.1502(g).

21 ⁸³ 3 Soc. Sec. Law & Prac. § 36:26, Consideration of objective medical evidence
22 (2019).

1 use were not reliable and her actions suggested drug-seeking behavior—calling
2 into question her veracity and the severity of her reported limitations.⁸⁴ Drug-
3 seeking behavior can be a clear and convincing reason to discount a claimant’s
4 reported symptoms.⁸⁵ On this record, the ALJ’s finding that Plaintiff gave
5 inconsistent statements about her abstinence from substance use and drug-seeking
6 behavior is clear and convincing and supported by substantial evidence. The record
7 reflects that Plaintiff continued to abuse substances even when she claimed she
8 was not using and failed to seek treatment from and establish a relationship with a
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10 ⁸⁴ AR 23. Plaintiff contends the ALJ failed to provide findings for discounting
11 Plaintiff’s disabling mental health symptoms and instead only discounted her
12 testimony about her physical limitations. This argument fails to recognize that the
13 ALJ discounted both Plaintiff’s reported physical and mental symptoms because
14 her statements about her substance use were unreliable and her actions suggested
15 drug-seeking behavior. AR 23. Furthermore, the ALJ found Plaintiff’s mental
16 symptom reports inconsistent with the objective findings of Dr. Billings. AR 23
17 (citing AR 756-63, Dr. Billings’ psychological assessment).

18 ⁸⁵ See *Edlund v. Massanari*, 253 F.3d 1152, 1157 (9th Cir. 2001) (holding that
19 evidence of drug seeking behavior undermines a claimant’s reported symptoms);
20 *Gray v. Comm’r, of Soc. Sec.*, 365 F. App’x 60, 63 (9th Cir. 2010) (recognizing that
21 evidence of drug-seeking behavior is a valid reason for discounting a claimant’s
22 symptom claims).
23

1 chronic pain specialist as directed by her treating physician.⁸⁶ Plaintiff contends
2 the ALJ misrepresented aspects of the record in reaching this conclusion and
3 highlights that Dr. O'Connor had prescribed narcotics to Plaintiff for over a year,
4 thereby supporting Plaintiff's argument that Dr. O'Connor considered Plaintiff's
5 pain to be legitimate. However, the ALJ's interpretation of Dr. O'Connor's medical
6 records and the remaining record—that Plaintiff's pain was not so severe as to
7 require the continued prescription of narcotics, or that if it was, Plaintiff failed to
8 follow the medical advice of seeking treatment from a chronic pain provider, and
9 moreover that her largely normal mobility, strength, and muscle tone indicated
10 that her pain was not as disabling as she claimed it to be is supported by

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12 ⁸⁶ See, e.g., AR 518-22 (Nov. 2014: noting that Plaintiff reported that she went to
13 the pain clinic and was not happy with the consultation as she felt “they suggested
14 she was using pain medication for her anxiety”); AR 508-12 (Jan. 2015: detailing
15 that Plaintiff was upset with her treatment provider that she could not provide a
16 urine sample when she wanted to and actually had not followed through with
17 referral to pain center, instead failing to show for her appointment at the pain
18 center on three different occasions); AR 568-70 (Feb. 2015: Instead of seeking care
19 for her claimed chronic pain from a pain center as directed by Dr. O'Connor,
20 Plaintiff instead sought treatment from a new medical provider without providing
21 the new provider with her medical records from Dr. O'Connor.); AR 492 (March
22 2015: urine positive for amphetamines, cannabinoids, and methamphetamines).

1 substantial evidence and serves as a clear and convincing reason to discount
2 Plaintiff's reported symptoms.

3 The ALJ also reasonably considered that Plaintiff's disabling mental
4 limitations were inconsistent with Dr. Billings' examining opinion.⁸⁷ The only non-
5 exertional limitation that Dr. Billings opined was that Plaintiff was "unable to
6 work in any capacity requiring public contact due to her Posttraumatic Stress
7 Disorder and anxiety."⁸⁸ The RFC is consistent with Dr. Billings' opinion, which
8 was clearly contrary to Plaintiff's reported disabling mental limitations.

9 In summary, Plaintiff failed to establish the ALJ erred by discounting
10 Plaintiff's symptom reports.

11 V. Conclusion

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

- 13 1. The Clerk's Office is directed to substitute Andrew M. Saul,
14 Commissioner of Social Security, as the Defendant.
- 15 2. Plaintiff's Motion for Summary Judgment, **ECF No. 11**, is **DENIED**.
- 16 3. The Commissioner's Motion for Summary Judgment, **ECF No. 16**, is
17 **GRANTED**.

21 ⁸⁷ AR 23 (citing AR 756-63).

22 ⁸⁸ AR 763.

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4. The Clerk’s Office shall enter **JUDGMENT** in favor of Defendant.

5. The case shall be **CLOSED**.

IT IS SO ORDERED. The Clerk’s Office is directed to file this Order, provide copies to all counsel, and close the file.

DATED this 30th day of October 2019.

_____ s/Edward F. Shea
EDWARD F. SHEA
Senior United States District Judge