

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

Mar 30, 2021

SEAN F. McAVOY, CLERK

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9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF WASHINGTON

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12 KRISTI H.,

13 Plaintiff,

14  
15 v.

16 ANDREW M. SAUL,  
17 COMMISSIONER OF SOCIAL  
18 SECURITY,

19 Defendant.

No. 4:20-CV-05123-JTR

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

20  
21 **BEFORE THE COURT** are cross-motions for summary judgment. ECF  
22 No. 13, 14. Attorney Chad Hatfield represents Kristi H. (Plaintiff); Special  
23 Assistant United States Attorney Lars Nelson represents the Commissioner of  
24 Social Security (Defendant). The parties have consented to proceed before a  
25 magistrate judge. ECF No. 6. After reviewing the administrative record and the  
26 briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary  
27 Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

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ORDER GRANTING DEFENDANT'S MOTION . . . - 1

1 **JURISDICTION**

2 Plaintiff filed an application for Disability Insurance Benefits on March 7,  
3 2017, alleging disability since December 31, 2016, due to depression, seizure  
4 disorder, degenerative disc disease, high cholesterol, memory loss,  
5 hypothyroidism, restless leg syndrome, ADHD, migraines, and insomnia. Tr. 95-  
6 96. The application was denied initially and upon reconsideration. Tr. 128-34, 136-  
7 42. Administrative Law Judge (ALJ) Marie Palachuk held a hearing on June 6,  
8 2019, Tr. 45-74, and issued an unfavorable decision on June 26, 2019, Tr. 21-31.  
9 Plaintiff requested review from the Appeals Council. Tr. 200-02. The Appeals  
10 Council denied the request for review on May 28, 2020. Tr. 1-5. The ALJ’s June  
11 2019 decision became the final decision of the Commissioner, which is appealable  
12 to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for  
13 judicial review on July 28, 2020. ECF No. 1.

14 **STATEMENT OF FACTS**

15 Plaintiff was born in 1966 and was 51 years old as of her date last insured in  
16 March, 2018. Tr. 30. She has her GED and her work history primarily consisted of  
17 owning and running a bar with her husband. Tr. 234-35. Following her husband’s  
18 death, she attempted to continue running the bar, but was unable to maintain the  
19 business. Tr. 64, 68-69. She has sought treatment over the years for a variety of  
20 physical issues as well as her mental health.

21 **STANDARD OF REVIEW**

22 The ALJ is responsible for determining credibility, resolving conflicts in  
23 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
24 1039 (9th Cir. 1995). The ALJ’s determinations of law are reviewed *de novo*, with  
25 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
26 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
27 only if it is not supported by substantial evidence or if it is based on legal error.  
28 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is

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

#### 14 SEQUENTIAL EVALUATION PROCESS

15 The Commissioner has established a five-step sequential evaluation process  
16 for determining whether a person is disabled. 20 C.F.R. § 404.1520(a); *Bowen v.*  
17 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of  
18 proof rests upon the claimant to establish a prima facie case of entitlement to  
19 disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a  
20 claimant establishes that a physical or mental impairment prevents the claimant  
21 from engaging in past relevant work. 20 C.F.R. § 404.1520(a)(4). If a claimant  
22 cannot perform past relevant work, the ALJ proceeds to step five, and the burden  
23 shifts to the Commissioner to show (1) the claimant can make an adjustment to  
24 other work; and (2) the claimant can perform specific jobs that exist in the national  
25 economy. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193-94 (9th Cir.  
26 2004). If a claimant cannot make an adjustment to other work in the national  
27 economy, the claimant will be found disabled. 20 C.F.R. § 404.1520(a)(4)(v).

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1                                    **ADMINISTRATIVE FINDINGS**

2            On June 26, 2019 the ALJ issued a decision finding Plaintiff was not  
3 disabled as defined in the Social Security Act.

4            At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
5 activity from the alleged onset date through the date last insured of March 31,  
6 2018. Tr. 23.

7            At step two, the ALJ determined Plaintiff had the following severe  
8 impairments: multi-level degenerative disc and joint disease; migraines; bipolar  
9 disorder; attention deficit disorder; and alcohol use disorder. *Id.*

10           At step three, the ALJ found Plaintiff did not have an impairment or  
11 combination of impairments that met or medically equaled the severity of one of  
12 the listed impairments. Tr. 24-25.

13           The ALJ assessed Plaintiff’s Residual Functional Capacity (RFC) and found  
14 she could perform work at the light exertional level, except:

15                        She can frequently perform all postural activities except for no  
16 climbing of ladders, ropes and scaffolds. She is to avoid even  
17 moderate exposure to vibration and hazards. The claimant is able to  
18 understand, remember, and carry out simple routine tasks/instructions  
19 for two hour intervals between regularly scheduled breaks in a  
20 predictable environment with only seldom change, simple judgments,  
21 and no fast paced production rate of pace (consistent with “low  
22 pressure” work setting). She can have only occasional and brief public  
23 contact.

24 Tr. 25-26.

25           At step four, the ALJ found Plaintiff was unable to perform her past relevant  
26 work as bartender, short order cook, or bar manager. Tr. 29-30.

27           At step five, the ALJ determined that, based on the testimony of the  
28 vocational expert, and considering Plaintiff’s age, education, work experience, and  
RFC, there were jobs that existed in significant numbers in the national economy

1 that Plaintiff was capable of performing, including the jobs of mail clerk,  
2 warehouse checker, and garment sorter. Tr. 30-31.

3 The ALJ thus concluded Plaintiff was not under a disability within the  
4 meaning of the Social Security Act at any time from the alleged onset date through  
5 the date last insured. Tr. 31.

## 6 ISSUES

7 The question presented is whether substantial evidence supports the ALJ's  
8 decision denying benefits and, if so, whether that decision is based on proper legal  
9 standards.

10 Plaintiff contends the ALJ erred by (1) improperly rejecting medical opinion  
11 evidence; (2) improperly disregarding lay witness testimony; (3) improperly  
12 discounting Plaintiff's subjective complaints; and (4) making step five findings  
13 that did not consider all of Plaintiff's relevant limitations.

## 14 DISCUSSION

### 15 1. Medical opinion evidence

16 Plaintiff alleges the ALJ improperly rejected the opinion from her treating  
17 doctor, Suzanne Staudinger, and failed to incorporate limitations recommended by  
18 a state agency doctor, despite assigning significant weight to the opinion. ECF No.  
19 13 at 8-13.

20 When a treating physician's opinion is contradicted by another physician,  
21 the ALJ is required to provide "specific and legitimate reasons," based on  
22 substantial evidence, to reject the opinion. *Andrews v. Shalala*, 53 F.3d 1035, 1041  
23 (9th Cir. 1995). The specific and legitimate standard can be met by the ALJ setting  
24 out a detailed and thorough summary of the facts and conflicting clinical evidence,  
25 stating her interpretation thereof, and making findings. *Magallanes v. Bowen*, 881  
26 F.2d 747, 751 (9th Cir. 1989). The ALJ is required to do more than offer her  
27 conclusions, she "must set forth [her] interpretations and explain why they, rather  
28

1 than the doctors', are correct." *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir.  
2 1988).

3 **a. Dr. Staudinger**

4 In June 2018, Dr. Suzanne Staudinger completed a medical source statement  
5 in support of Plaintiff's disability claim. Tr. 413-14. She noted diagnoses of  
6 fibromyalgia, hypothyroid, migraines, ADHD, chronic low back pain, bipolar  
7 disorder, and depression. Tr. 413. She opined Plaintiff could lift and carry 10-20  
8 pounds, could sit for two to four hours, and could stand for two hours. *Id.* She  
9 stated Plaintiff's pain would interfere with her ability to concentrate and maintain  
10 pace on a frequent basis, and that Plaintiff would need unscheduled breaks,  
11 walking breaks, or breaks to recline three or four times per day for 15 minutes  
12 each. Tr. 414. Dr. Staudinger predicted Plaintiff would miss four or more days of  
13 work per month were she to attempt to work full time. *Id.*

14 Dr. Staudinger's opinion was contradicted by the consultative examiner, the  
15 medical expert at the hearing, and the state agency reviewing doctor. Tr. 54, 118-  
16 19, 410-11. Therefore, the ALJ was required to offer specific and legitimate  
17 reasons for discounting the opinion.

18 The ALJ gave this opinion little weight, noting it was not supported by  
19 minimal findings on exam and ongoing chart notes, was inconsistent with Dr.  
20 Staudinger's own notes, appeared to be based primarily on Plaintiff's subjective  
21 complaints, and was contradicted by the state agency reviewing sources, the  
22 consultative examiner, and the medical expert testimony. Tr. 27.

23 Plaintiff argues the ALJ's analysis was insufficient, as she did not identify  
24 any specific contradictions between the opinion and any treatment notes, and there  
25 is objective imaging evidence supporting the opinion. ECF No. 13 at 9-10. Plaintiff  
26 further argues the ALJ cannot merely assume that an opinion is based on self-  
27 reports and must explain how she reached that conclusion. *Id.* at 10-11. Defendant  
28 argues the ALJ reasonably found the opinion to be contradicted by other sources

1 and unsupported by minimal findings in the record and Dr. Staudinger’s own  
2 exams, which did not demonstrate objective findings consistent with her opinion.  
3 ECF No. 14 at 10-15.

4 An ALJ may reasonably consider an opinion’s consistency with the record  
5 as a whole and support from the objective medical signs and findings. 20 C.F.R. §  
6 404.1527(c). The contradictory opinions from multiple other acceptable sources  
7 constitute substantial evidence in support of the ALJ’s finding. Dr. Staudinger’s  
8 records also contradict her opinion: she stated that Plaintiff demonstrated 11+ of  
9 the standard fibromyalgia tenderpoints; yet her records reflect only four  
10 tenderpoints on exam. Tr. 414, 512. The records from her two other visits contain  
11 no notable objective findings. Tr. 477-78, 517. The ALJ’s interpretation is  
12 supported by substantial evidence.

13 While Plaintiff offers an alternative interpretation of the record, “if the  
14 evidence can reasonably support either affirming or reversing a decision, we may  
15 not substitute our judgment for that of the Commissioner.” *Lingenfelter v. Astrue*,  
16 504 F.3d 1028, 1035 (9th Cir. 2007). The ALJ identified substantial evidence in  
17 support of her conclusion.

18 ***b. State agency doctor Renee Eisenhauer***

19 On initial review of Plaintiff’s file, the state agency doctor, Thomas Clifford,  
20 opined Plaintiff was capable of performing simple, routine tasks, noting she was  
21 likely to have difficulty with concentration for extended periods when her attention  
22 waxes and wanes, and that she would likely function best with limited contact with  
23 coworkers. Tr. 103-04. On reconsideration, Dr. Renee Eisenhauer stated Plaintiff  
24 could “understand, recall and execute simple one and two step tasks but would  
25 have difficulty with more complex tasks,” then stated she was “able to sustain  
26 simple and repetitive tasks as well as well-learned semi-skilled work for 2-hour  
27 increments of time with regular breaks during a normal eight-hour workday.” Tr.  
28 120. She noted Plaintiff “may experience some vacillations in [her] ability to

1 concentrate and the pace of work may vary accordingly,” but that she could  
2 perform within normal tolerances. *Id.* Doctor Eisenhauer further limited Plaintiff to  
3 no more than superficial contact with the public and coworkers, and noted she  
4 should have tasks that were “routine enough to obviate the need for frequent  
5 supervisor contact.” Tr. 121. The ALJ gave these opinions significant weight,  
6 summarizing Dr. Clifford’s opinion and noting Dr. Eisenhauer “used slightly  
7 different terminology.” Tr. 29.

8 Plaintiff argues the ALJ erred in failing to account for Dr. Eisenhauer’s  
9 statement limiting Plaintiff to performing simple one-to-two step tasks, which  
10 would have created an inconsistency with the jobs identified at step five. ECF No.  
11 13 at 11-13. Defendant argues the ALJ reasonably interpreted Dr. Eisenhauer’s  
12 opinion as a whole, and formulated an RFC that is supported by all of the medical  
13 source opinions. ECF No. 14 at 15-17.

14 The Court finds no error. Had Dr. Eisenhauer clearly stated Plaintiff was  
15 limited to no more than one-to-two step tasks, the ALJ would have erred in failing  
16 to address the limitation. *See e.g., Rounds v. Comm'r Soc. Sec. Admin.*, 807 F.3d  
17 996, 1003 (9th Cir. 2015). However, Dr. Eisenhauer’s further statements regarding  
18 repetitive and well-learned semi-skilled work are broader than the limitation to  
19 one-to-two step work. The ALJ reasonably interpreted Dr. Eisenhauer’s opinion  
20 along with Dr. Clifford’s opinion, and formulated an RFC consistent with the  
21 various opinions.

## 22 **2. Plaintiff’s symptom statements**

23 Plaintiff alleges the ALJ erred in rejecting her symptom testimony without  
24 providing adequate reasons. ECF No. 13 at 15-17.

25 It is the province of the ALJ to make determinations regarding a claimant’s  
26 subjective statements. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).  
27 However, the ALJ’s findings must be supported by specific cogent reasons.  
28 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative



1 evidence of malingering, the ALJ’s reasons for rejecting a claimant’s testimony  
2 must be “specific, clear and convincing.” *Smolen v. Chater*, 80 F.3d 1273, 1281  
3 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). “General  
4 findings are insufficient: rather the ALJ must identify what testimony is not  
5 credible and what evidence undermines the claimant’s complaints.” *Lester*, 81 F.3d  
6 at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

7         The ALJ found Plaintiff’s medically determinable impairments could  
8 reasonably be expected to cause the alleged symptoms; however, she found  
9 Plaintiff’s statements concerning the intensity, persistence and limiting effects of  
10 her symptoms to not be entirely consistent with the medical evidence and other  
11 evidence in the record. Tr. 26. The ALJ found Plaintiff’s allegations were  
12 inconsistent with reports of doing well on her medications when taken as  
13 prescribed, she had only conservative treatment, there were no indications of more  
14 serious symptoms, her migraines improved with treatment, she had issues  
15 complying with her mental health medications, her presentation was incongruent  
16 with her subjective complaints, and she was not forthcoming with specifics about  
17 her alcohol use. Tr. 26-27.

18         In evaluating a claimant’s reports, an ALJ may consider the course and  
19 effectiveness of treatment, including improvement with medication. Social  
20 Security Ruling 16-3p. The ALJ reasonably considered the record in concluding  
21 Plaintiff’s conditions improved when she was compliant with her medications. Tr.  
22 346-47, 350, 362, 406, 474, 485. The ALJ also reasonably considered other factors  
23 pertaining to the reliability of Plaintiff’s reports, such as her presentation being  
24 incongruent with her reports to her counselor and her lack of candor regarding her  
25 alcohol use. Tr. 27.

### 26 **3. Lay witness testimony**

27         Plaintiff’s sister, Edie Howell, submitted a function report commenting on  
28 Plaintiff’s conditions and abilities. Tr. 264-71. Plaintiff asserts the ALJ failed to

1 address the opinion. ECF No. 13 at 13-15.<sup>1</sup> However, the ALJ did discuss it, and  
2 found the statements were of limited evidentiary value given the limited amount of  
3 contact between Ms. Howell and Plaintiff. Tr. 26. An ALJ need only offer germane  
4 reasons for rejecting an opinion from a third party. *Dodrill v. Shalala*, 12 F.3d 915,  
5 919 (9th Cir. 1993). The amount of time a witness has spent with a claimant, and  
6 thus the basis for their opinions, is a germane factor for an ALJ to consider. *See*  
7 *Crane v. Shalala*, 76 F.3d 251, 254 (9th Cir. 1996). Therefore, the ALJ did not err  
8 with respect to Ms. Howell's report.

9 **4. Step five**

10 Plaintiff argues the vocational expert testimony was of no value due to the  
11 ALJ omitting relevant limitations from the hypothetical questions posed to the  
12 expert. ECF No. 13 at 17-19. Plaintiff's argument is based on successfully showing  
13 that the ALJ erred in her treatment of the symptom statements and medical  
14 opinions. Because the Court finds that the ALJ did not harmfully err in her  
15 treatment of the evidence, Plaintiff's argument is without merit.

16 **CONCLUSION**

17 Having reviewed the record and the ALJ's findings, the Court finds the  
18 ALJ's decision is supported by substantial evidence and free of legal error and is  
19 affirmed. Therefore, **IT IS HEREBY ORDERED:**

20 1. Defendant's Motion for Summary Judgment, **ECF No. 14**, is  
21 **GRANTED.**

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

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27 <sup>1</sup> In her reply brief Plaintiff asserts the ALJ failed to provide germane  
28 reasons for rejecting the opinion, but offers no further analysis. ECF No. 15 at 7-8.

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

4 **IT IS SO ORDERED.**

5 DATED March 30, 2021.



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JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE