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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 KEENA V. HENRY,

8 Plaintiff,

Case No. C18-856 MJP

9 v.

10 NANCY A. BERRYHILL, Deputy
11 Commissioner of Social Security for Operations,

12 Defendant.

**ORDER AFFIRMING THE
COMMISSIONER'S FINAL
DECISION AND DISMISSING THE
CASE WITH PREJUDICE**

13 Plaintiff seeks review of the denial of her applications for Supplemental Security Income
14 and Disability Insurance Benefits. Plaintiff contends the ALJ erred by discounting the opinions
15 of an examining doctor. Dkt. 7. As discussed below, the Court **AFFIRMS** the Commissioner's
16 final decision and **DISMISSES** the case with prejudice.

17 **BACKGROUND**

18 Plaintiff is currently 28 years old, has a high school education, and has worked as a
19 teacher's aide and a janitor. Administrative Record (AR) 20-21. Plaintiff applied for benefits in
20 2014, alleging disability since birth. AR 88. Plaintiff's applications were denied initially and on
21 reconsideration. AR 86, 87, 112, 113. After the ALJ conducted a hearing in November 2016,
22 the ALJ issued a decision finding plaintiff not disabled. AR 10-22.

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1 **THE ALJ'S DECISION**

2 Utilizing the five-step disability evaluation process,¹ the ALJ found:

3 **Step one:** Plaintiff has not engaged in substantial gainful activity since the application
4 date.

5 **Step two:** Plaintiff has the following severe impairments: obesity, disorder of skin
6 tissue, affective disorder, anxiety disorder, and substance abuse disorder.

7 **Step three:** These impairments do not meet or equal the severity of a listed impairment.²

8 **Residual Functional Capacity:** Plaintiff can perform light work. She can never climb
9 ladders, rope, and scaffolding. She can occasionally balance, kneel, crouch, crawl, and
10 climb ramps and stairs. She can frequently stoop. She should avoid concentrated
11 exposure to humidity, extreme heat, and hazards. She can perform simple routine tasks,
12 in a routine work environment with simple work-related decisions. She can only have
13 superficial interaction with coworkers and supervisors, and incidental interaction with the
14 public that is not a required element of her job.

15 **Step four:** Plaintiff has no past relevant work.

16 **Step five:** As there are jobs that exist in significant numbers in the national economy that
17 plaintiff can perform, she is not disabled.

18 AR 12-22. The Appeals Council denied plaintiff's request for review, making the ALJ's
19 decision the Commissioner's final decision. AR 1.

20 **DISCUSSION**

21 This Court may set aside the Commissioner's denial of social security benefits only if the
22 ALJ's decision is based on legal error or not supported by substantial evidence in the record as a
23 whole. *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017). Each of an ALJ's findings must
be supported by substantial evidence. *Reddick v. Chater*, 157 F.3d 715, 721 (9th Cir. 1998).

"Substantial evidence" is more than a scintilla, less than a preponderance, and is such relevant

¹ 20 C.F.R. §§ 404.1520, 416.920.

² 20 C.F.R. Part 404, Subpart P. Appendix 1.

1 evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
2 *Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989).

3 The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and
4 resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
5 Cir. 1995). While the Court is required to examine the record as a whole, it may neither reweigh
6 the evidence nor substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*, 278
7 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one interpretation,
8 the Commissioner’s interpretation must be upheld if rational. *Burch v. Barnhart*, 400 F.3d 676,
9 680-81 (9th Cir. 2005).

10 Plaintiff contends the ALJ erred by discounting the opinions of examining psychologist
11 David Widlan, Ph.D. Dkt. 7. An ALJ may only reject the uncontradicted opinion of an
12 examining doctor by giving “clear and convincing” reasons. *Revels v. Berryhill*, 874 F.3d 648,
13 654 (9th Cir. 2017). Even if an examining doctor’s opinion is contradicted by another doctor’s
14 opinion, an ALJ may only reject it by stating “specific and legitimate” reasons. *Id.* The ALJ can
15 meet this standard by providing “a detailed and thorough summary of the facts and conflicting
16 clinical evidence, stating his interpretation thereof, and making findings.” *Id.* (citation omitted).
17 “The ALJ must do more than offer his conclusions. He must set forth his own interpretations
18 and explain why they, rather than the doctors’, are correct.” *Reddick*, 157 F.3d at 725.

19 After examining plaintiff in April 2014 and April 2016, Dr. Widlan opined that she had
20 severe limitation in the ability to complete a normal work day and work week without
21 interruptions from psychologically based symptoms, and marked limitations in the abilities to
22 follow detailed instructions, maintain punctual attendance, learn new tasks, adapt to changes and
23 make simple decisions at work, be cautious of normal hazards, and communicate and perform

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1 effectively at work. AR 369, 791.

2 The ALJ gave Dr. Widlan's opinions "minimal weight" because plaintiff's presentation
3 to him differed markedly from what her care providers described, and because Dr. Widlan's
4 opinions were based less on objective evidence than on plaintiff's unreliable self-reports. AR
5 17-18, 19.

6 **A. Contradiction with Treatment Records**

7 Plaintiff argues in her reply brief that the ALJ cited plaintiff's differing presentations to
8 discount only her own testimony, not Dr. Widlan's opinions. Dkt. 9 at 2. That is incorrect. In
9 the paragraph addressing Dr. Widlan's opinions, the ALJ stated: "As already discussed, the
10 claimant's abnormal examination findings during Dr. Widlan's state agency evaluations are
11 inconsistent with her presentation with treatment providers." AR 19.

12 An ALJ may discount a medical opinion that is contradicted by other evidence in the
13 medical record. *See Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004).
14 Substantial evidence supports the ALJ's finding that plaintiff presented differently to Dr. Widlan
15 than to treatment providers. Plaintiff reported "no history of" substance abuse to Dr. Widlan, but
16 in December 2014 she told a medical provider that she had abused cocaine in 2010 and misused
17 muscle relaxers "in the past." AR 368, 790, 751. Plaintiff told Dr. Widlan that she had manic
18 symptoms including racing thoughts, but in October 2013 denied to a care provider that she had
19 manic symptoms, specifically including racing thoughts. AR 368, 789, 472. The ALJ
20 reasonably inferred that statements to treatment providers were more likely to be accurate, and
21 thus concluded that Dr. Widlan's evaluation relied on inaccurate information. *See* AR 19;
22 *Batson*, 359 F.3d at 1193 ("[T]he Commissioner's findings are upheld if supported by inferences
23 reasonably drawn from the record."). This was a specific and legitimate reason to discount Dr.

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1 Widlan’s opinions, because Dr. Widlan clearly relied on plaintiff’s self-reports of racing
2 thoughts for his diagnosis of bipolar disorder and symptoms of mania including “racing
3 thoughts.” AR 372, 790; *see Chaudhry v. Astrue*, 688 F.3d 661, 671 (9th Cir. 2012) (that doctor
4 was “undoubtedly influenced” by incorrect information was a specific and legitimate reason to
5 discount opinion).

6 **B. Reliance on Plaintiff’s Reports**

7 Plaintiff argues that Dr. Widlan did not rely more heavily on her reports than his own
8 objective testing. If an examining doctor’s “opinions are based ‘to a large extent’ on an
9 applicant’s self-reports and not on clinical evidence, and the ALJ finds the applicant not credible,
10 the ALJ may discount the treating provider’s opinion.” *Ghanim v. Colvin*, 763 F.3d 1154, 1162
11 (9th Cir. 2014) (quoting *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008)). The ALJ
12 found plaintiff not credible, and plaintiff does not challenge that finding. AR 18. “However,
13 when an opinion is not more heavily based on a patient’s self-reports than on clinical
14 observations, there is no evidentiary basis for rejecting the opinion.” *Ghanim*, 763 F.3d at 1162.
15 “[T]he rule allowing an ALJ to reject opinions based on self-reports does not apply in the same
16 manner to opinions regarding mental illness.” *Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir.
17 2017). Clinical interviews and mental status evaluations “are objective measures and cannot be
18 discounted as a ‘self-report.’” *Id.* However, Dr. Widlan’s findings in the mental status exam
19 differed significantly from treatment providers’ findings. In an April 2014 psychological
20 evaluation, plaintiff’s provider found entirely normal results except for anxious mood. AR 824.
21 In contrast, in April 2014, Dr. Widlan found anxious and depressed mood, restricted affect, and
22 abnormal thought content and process. AR 370. The only measures that were based entirely on

23 Dr. Widlan’s own observation—appearance, speech pattern, and attitude and behavior—were all
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1 normal. AR 370. “When presented with conflicting medical opinions, the ALJ must determine
2 credibility and resolve the conflict.” *Batson*, 359 F.3d at 1195. The ALJ’s conclusion that
3 treating provider findings were more likely to be accurate is rational and must be upheld. *See*
4 *Burch*, 400 F.3d at 680-81. Reliance on plaintiff’s discredited self-reports was another specific
5 and legitimate reason to discount Dr. Widlan’s opinions.

6 The Court concludes the ALJ did not err by discounting Dr. Widlan’s opinions.

7 **CONCLUSION**

8 For the foregoing reasons, the Commissioner’s final decision is **AFFIRMED** and this
9 case is **DISMISSED** with prejudice.

10 DATED this 4th day of December, 2018.

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12 MARSHA J. PECHMAN
13 United States District Judge

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