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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 ANDREA M. FORBES,

7 Plaintiff,

8 v.

9 CAROLYN W. COLVIN, Acting
10 Commissioner of Social Security,

11 Defendant.

Case No. 3:14-cv-05780-KLS

ORDER AFFIRMING DEFENDANT'S
DECISION TO DENY BENEFITS

12 Plaintiff has brought this matter for judicial review of defendant's denial of her
13 applications for disability insurance and supplemental security income ("SSI") benefits. Pursuant
14 to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties
15 have consented to have this matter heard by the undersigned Magistrate Judge. After reviewing
16 the parties' briefs and the remaining record, the Court hereby finds that for the reasons set forth
17 below, defendant's decision to deny benefits should be affirmed.
18

19 FACTUAL AND PROCEDURAL HISTORY

20 On March 2, 2011, plaintiff filed an application for disability insurance benefits and
21 another one for SSI benefits, alleging in both applications that she became disabled beginning
22 January 1, 2009. *See* Dkt. 9, Administrative Record ("AR") 15. Both applications were denied
23 upon initial administrative review on August 2, 2011, and on reconsideration on November 29,
24 2011. *See id.* A hearing was held before an administrative law judge ("ALJ") on December 7,
25 2012, at which plaintiff, represented by counsel, appeared and testified, as did a vocational
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1 expert. *See* AR 38-81.

2 In a decision dated January 4, 2013, the ALJ determined plaintiff to be not disabled. *See*
3 AR 15-30. Plaintiff's request for review of the ALJ's decision was denied by the Appeals
4 Council on August 25, 2014, making that decision the final decision of the Commissioner of
5 Social Security (the "Commissioner"). *See* AR 1; 20 C.F.R. § 404.981, § 416.1481. On October
6 7, 2014, plaintiff filed a complaint in this Court seeking judicial review of the Commissioner's
7 final decision. *See* Dkt. 3. The administrative record was filed with the Court on December 23,
8 2014. *See* Dkt. 9. The parties have completed their briefing, and thus this matter is now ripe for
9 the Court's review.

11 Plaintiff argues defendant's decision to deny benefits should be reversed and remanded
12 for an award of benefits, or in the alternative for further administrative proceedings, because the
13 ALJ erred: (1) in rejecting the opinions of Brett Copeland, Psy.D., and David Lambert, LICSW;
14 (2) in discounting plaintiff's credibility; (3) in assessing plaintiff's residual functional capacity;
15 and (4) in finding plaintiff to be capable of performing other jobs existing in significant numbers
16 in the national economy. For the reasons set forth below, however, the undersigned disagrees
17 that the ALJ erred as alleged, and thus in determining plaintiff to be not disabled. Accordingly,
18 the Court finds defendant's decision to deny benefits should be affirmed.

20 DISCUSSION

21 The determination of the Commissioner that a claimant is not disabled must be upheld by
22 the Court, if the "proper legal standards" have been applied by the Commissioner, and the
23 "substantial evidence in the record as a whole supports" that determination. *Hoffman v. Heckler*,
24 785 F.2d 1423, 1425 (9th Cir. 1986); *see also Batson v. Commissioner of Social Security Admin.*,
25 359 F.3d 1190, 1193 (9th Cir. 2004); *Carr v. Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991)

1 (“A decision supported by substantial evidence will, nevertheless, be set aside if the proper legal
2 standards were not applied in weighing the evidence and making the decision.”) (citing *Browner*
3 *v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1987)).

4 Substantial evidence is “such relevant evidence as a reasonable mind might accept as
5 adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation
6 omitted); *see also Batson*, 359 F.3d at 1193 (“[T]he Commissioner’s findings are upheld if
7 supported by inferences reasonably drawn from the record.”). “The substantial evidence test
8 requires that the reviewing court determine” whether the Commissioner’s decision is “supported
9 by more than a scintilla of evidence, although less than a preponderance of the evidence is
10 required.” *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence
11 admits of more than one rational interpretation,” the Commissioner’s decision must be upheld.
12 *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984) (“Where there is conflicting evidence
13 sufficient to support either outcome, we must affirm the decision actually made.”) (quoting
14 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).¹

17 I. The ALJ’s Evaluation of Dr. Copeland’s Opinion

18 The ALJ is responsible for determining credibility and resolving ambiguities and
19 conflicts in the medical evidence. *See Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998).

20 Where the medical evidence in the record is not conclusive, “questions of credibility and
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22 ¹ As the Ninth Circuit has further explained:

23 . . . It is immaterial that the evidence in a case would permit a different conclusion than that
24 which the [Commissioner] reached. If the [Commissioner]’s findings are supported by
25 substantial evidence, the courts are required to accept them. It is the function of the
26 [Commissioner], and not the court’s to resolve conflicts in the evidence. While the court may
 not try the case de novo, neither may it abdicate its traditional function of review. It must
 scrutinize the record as a whole to determine whether the [Commissioner]’s conclusions are
 rational. If they are . . . they must be upheld.

Sorenson, 514 F.2dat 1119 n.10.

1 resolution of conflicts” are solely the functions of the ALJ. *Sample v. Schweiker*, 694 F.2d 639,
2 642 (9th Cir. 1982). In such cases, “the ALJ’s conclusion must be upheld.” *Morgan v.*
3 *Commissioner of the Social Security Admin.*, 169 F.3d 595, 601 (9th Cir. 1999). Determining
4 whether inconsistencies in the medical evidence “are material (or are in fact inconsistencies at
5 all) and whether certain factors are relevant to discount” the opinions of medical experts “falls
6 within this responsibility.” *Id.* at 603.

7
8 In resolving questions of credibility and conflicts in the evidence, an ALJ’s findings
9 “must be supported by specific, cogent reasons.” *Reddick*, 157 F.3d at 725. The ALJ can do this
10 “by setting out a detailed and thorough summary of the facts and conflicting clinical evidence,
11 stating his interpretation thereof, and making findings.” *Id.* The ALJ also may draw inferences
12 “logically flowing from the evidence.” *Sample*, 694 F.2d at 642. Further, the Court itself may
13 draw “specific and legitimate inferences from the ALJ’s opinion.” *Magallanes v. Bowen*, 881
14 F.2d 747, 755, (9th Cir. 1989).

15
16 The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted
17 opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
18 1996). Even when a treating or examining physician’s opinion is contradicted, that opinion “can
19 only be rejected for specific and legitimate reasons that are supported by substantial evidence in
20 the record.” *Id.* at 830-31. However, the ALJ “need not discuss *all* evidence presented” to him or
21 her. *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation
22 omitted) (emphasis in original). The ALJ must only explain why “significant probative evidence
23 has been rejected.” *Id.*; *see also Cotter v. Harris*, 642 F.2d 700, 706-07 (3rd Cir. 1981); *Garfield*
24 *v. Schweiker*, 732 F.2d 605, 610 (7th Cir. 1984).

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26 In general, more weight is given to a treating physician’s opinion than to the opinions of

1 those who do not treat the claimant. *See Lester*, 81 F.3d at 830. On the other hand, an ALJ need
2 not accept the opinion of a treating physician, “if that opinion is brief, conclusory, and
3 inadequately supported by clinical findings” or “by the record as a whole.” *Batson v.*
4 *Commissioner of Social Security Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004); *see also Thomas*
5 *v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th
6 Cir. 2001). An examining physician’s opinion is “entitled to greater weight than the opinion of a
7 nonexamining physician.” *Lester*, 81 F.3d at 830-31. A non-examining physician’s opinion may
8 constitute substantial evidence if “it is consistent with other independent evidence in the record.”
9 *Id.* at 830-31; *Tonapetyan*, 242 F.3d at 1149.

11 In regard to the opinion evidence from Dr. Copeland, the ALJ found as follows:

12 Brett Copeland, Psy.D., performed a psychological evaluation of the claimant
13 on March 10, 2011 (Exhibit 6F/3-9). Dr. Copeland observed that the claimant
14 was tearful during parts of the evaluation and would finger her tissue (Exhibit
15 6F/4). The claimant had average hygiene and maintained good eye contact and
16 also had average speech (Exhibit 6F/8). On the mental status exam, the
17 claimant demonstrated intact memory, fund of knowledge, abstract thought,
18 and judgment (Exhibit 6F/8). Dr. Copeland found that the claimant had no or
19 only mild impairment in grooming, cooking or shopping, cleaning,
20 transportation, and socialization but she was impaired in money management
21 as she would get help from her grandmother (Exhibit 6F/9). Dr. Copeland
22 found that the claimant had up to moderate limitations in cognitive and social
23 functioning, which was largely related to the claimant’s tearfulness during the
24 evaluation (Exhibit 6F/5-6). He opined that the claimant would not
25 “consistently be able to deal with typical stress” which would impair her
26 performance and social functioning (Exhibit 6F/6). Dr. Copeland believed that
with services in place, she would be ready for vocational rehabilitation in six
months (Exhibit 6F/6). Little weight is given because the claimant’s
presentation of tearfulness was not typical with other presentations in the
remainder of the record. Furthermore, his opinion that the claimant would be
unable to deal with typical work stress is inconsistent with the generally
moderate limitations that he found. In addition, in his opinion that the
claimant would be unable to deal with workplace stress he did not adequately
consider the claimant’s many activities such as volunteer work, caring for her
grandmother and son.

AR 27. Plaintiff argues the ALJ failed to provide sufficient reasons for rejecting Dr. Copeland’s

1 opinion here. The Court disagrees.

2 Plaintiff first takes issue with the ALJ's statement that her "presentation of tearfulness
3 was not typical" of other presentations in the record (*id.*), asserting "there are many counseling
4 treatment notes that reveal [her] abnormal presentation during appointments," including a very
5 anxious and depressed mood and affect (Dkt. 11, p. 6). But none of plaintiff's mental health
6 providers noted the presence of symptoms that are commensurate with the level of tearfulness
7 Dr. Copeland observed throughout his evaluation of her. *See* AR 330, 334-35, 352, 362, 384,
8 414, 438-40, 443, 445-48, 450, 453, 455, 458, 478, 480, 485, 508, 530, 581-82, 676, 853, 858,
9 940, 947-48. The Court thus finds this to be a valid basis for discounting Dr. Copeland's opinion.
10 *See Batson*, 359 F.3d at 1195 (ALJ need not accept physician's opinion if inadequately supported
11 "by the record as a whole"). Although plaintiff argues she "has never alleged she is consistently
12 incapacitated due to her mental health symptoms" (Dkt. 11, p. 7), the record clearly reveals that
13 the tearfulness she displayed during Dr. Copeland's evaluation was an isolated event.
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16 Plaintiff further argues the rejection of Dr. Copeland's opinion on this basis is not valid,
17 because it dismisses his expertise and presumes he "blindly accepts her presentation and
18 reports." *Id.* The problem for plaintiff, however, is that Dr. Copeland expressly linked her tearful
19 presentation during the course of the evaluation to the functional limitations he assessed. *See* AR
20 485 (observing "[e]motional instability" as evidenced by her being "[t]earful during many parts
21 of the evaluation," and opining that "[s]he may have problems dealing with typical work stress"),
22 486 ("Claimant appears to lack the emotional stability to consistently persist on job tasks."), 487
23 ("Claimant's regular tearfulness during the evaluation suggest [sic] that she will not consistently
24 be able to deal with typical work stress. This will likely impair her work performance and social
25 functioning."). Thus, by pointing out plaintiff did not exhibit such tearfulness during her many
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1 other encounters with treatment providers, the ALJ properly found the basis of Dr. Copeland's
2 opinion that her work performance would be impaired to be undermined.²

3 Next, plaintiff argues the ALJ improperly rejected Dr. Copeland's opinion on the basis
4 that "his limitations across the board were not consistent with one another in regard to their
5 severity level," because the "inability to handle typical work stress is a functional limitation that
6 is independent from other functional limitations." Dkt. 11, p. 7. Again, however, the problem for
7 plaintiff is that Dr. Copeland based all of the functional limitations he assessed on her emotional
8 instability as evidenced by her tearfulness during the evaluation, and therefore in that sense those
9 limitations are all linked. *See* AR 485-87. Further, Dr. Copeland himself indicated the specific
10 functional impact of plaintiff's problems dealing with typical work stress was only moderate in
11 severity. *See* AR 485. Plaintiff points out that on the evaluation form Dr. Copeland completed,
12 the term "moderate" is defined as *significant interference* with work-related activities. *See id.* On
13 that same form, though, a "severe" limitation is defined as the *inability* to perform work-related
14 activities (see *id.*), so one presumes Dr. Copeland would have used that term if he felt plaintiff
15 truly was unable to deal with typical work stress.
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18 The Court does agree with plaintiff that the ALJ erred in discounting the opinion of Dr.
19 Copeland on the basis that Dr. Copeland did not adequately consider her activities, as the ALJ
20 fails to show those activities were performed to an extent or at a frequency that necessarily
21 establishes plaintiff is unable to deal with *workplace* stress. *See* AR 48, 73-75, 278-84, 289, 296,
22 299, 486, 627, 635, 637, 639, 641, 653, 655, 657, 659, 747, 761, 763; *Morgan*, 169 F.3d at 601-
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25 ² Plaintiff also argues the validity of the ALJ's reasoning here is further negated by the fact that testing performed by
26 Dr. Copeland indicated a lack of malingering on her part. *See* AR 487. But the ALJ did not discount Dr. Copeland's
opinion on the basis that he relied on plaintiff's self-reporting. Rather, as discussed above, the ALJ properly found
the clinical basis for that opinion – i.e., her observed tearfulness – was not consistent with the weight of the medical
evidence in the record.

1 02 (upholding rejection of physician’s conclusion that claimant suffered from marked limitations
2 in part on basis that other evidence of claimant’s ability to function, including reported activities
3 of daily living, contradicted that conclusion). As discussed above, however, the ALJ provided
4 other valid reasons for rejecting Dr. Copeland’s opinion, and thus overall did not err in rejecting
5 it.

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7 II. The ALJ’s Evaluation of Mr. Lambert’s Opinion

8 Plaintiff challenges as well the ALJ’s following findings concerning the opinion evidence
9 from her mental health counselor:

10 The opinion of David Lambert, LICSW, a counselor at [Comprehensive
11 Mental Health], has been considered (Exhibit 22F). Mr. Lambert opined that
12 the claimant would be unable to complete a normal workday or workweek and
13 would generally have marked limitations in work functions (Exhibit 22F/1-2,
14 5). Little weight is given to Mr. Lambert because he placed too much reliance
15 on the claimant’s allegations which, as discussed above, are not entirely
16 credible. Furthermore, Mr. Lambert did not adequately consider the claimant’s
17 many activities which are inconsistent with the marked limitations that he
18 found such as caring for her son, mother and grandmother, performing
19 volunteer work, socializing with friends, going grocery shopping, and
20 attending church. In addition, Mr. Lambert’s opinion of marked limitations is
21 inconsistent with the opinion[s] of [state agency psychologists Cynthia
22 Collingwood, Ph.D., and Leslie Postovoit, Psy.D].

23 AR 28. As with Dr. Copeland’s opinion, plaintiff argues the ALJ failed to provide valid reasons
24 for rejecting the opinion of Mr. Lambert. Again, the Court disagrees.

25 Licensed social workers such as Mr. Lambert are “other sources,” and their opinions may
26 be given less weight than those of “acceptable medical sources.” *Gomez v. Chater*, 74 F.3d 967,
970-71 (9th Cir. 1996) (“acceptable medical sources” include, among others, licensed physicians
and licensed or certified psychologists); *see also* 20 C.F.R. § 404.1513(d), § 416.913(d). The
testimony of such “other sources” may be discounted if the ALJ “gives reasons germane to each
[source] for doing so.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (citations omitted).

1 Here, the ALJ provided reasons germane to Mr. Lambert.

2 Plaintiff asserts the ALJ erred in finding Mr. Lambert placed too much reliance on her
3 own allegations, because the ALJ's determination that those allegations are not credible itself is
4 unsound. But as discussed below, the ALJ properly discounted plaintiff's credibility concerning
5 her subjective complaints. Relying on the Ninth Circuit's decision in *Ferrando v. Commissioner*
6 *of Social Security Admin.*, 449 Fed. Appx. 610 (9th Cir. 2011), plaintiff goes on to assert that
7 "[m]ental health professionals frequently rely on the combination of their observations and the
8 patient's reports of symptoms," and that "[t]o allow an ALJ to discredit a mental health
9 professional's opinion solely because it is based to a significant degree on a patient's 'subjective
10 allegations' is to allow an end-run around our rules for evaluating medical opinions for the entire
11 category of psychological disorders." *Id.* at 612 n.2.

12
13 In this case, though, the narrative statement Mr. Lambert provided in support of the
14 functional limitations he assessed appears to be based almost exclusively on plaintiff's self-
15 reporting (*see* AR 1033), and Mr. Lambert's treatment notes are largely devoid of observations
16 or other objective findings that would support the level of severity of those limitations (*see* AR
17 627-28, 635-42, 653-60, 663-64, 678, 681, 686, 717-18, 741-48, 751-52, 761-66). Further, while
18 the Court does note the Ninth Circuit's concern about giving insufficient consideration to the fact
19 that mental health professionals frequently rely at least in part on what their patients tell them
20 concerning their symptoms, the applicability of *Ferrando* here is suspect. This is because in that
21 case the ALJ's determination that the claimant's treating psychiatrist's report was based on his
22 subjective complaints was "unsupported by the record," and the ALJ "gave no [credible] reason
23 to discredit" the claimant's subjective complaints. 449 Fed. Appx. at 612.

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26 Plaintiff also finds fault with the ALJ's discounting of Mr. Lambert's opinion because of

1 its inconsistency with the opinions of Dr. Collingwood and Dr. Postovoit, asserting this is in and
2 of itself is not a valid basis for rejecting a treating physician’s opinion. However, Mr. Lambert is
3 not a treating *physician*, but an “other source” whose opinion may be given less weight than the
4 opinions of “acceptable medical sources” such as Drs. Collingwood and Postovoit. Plaintiff does
5 correctly note that neither psychologist had the opportunity to review the bulk of Mr. Lambert’s
6 treatment notes. As discussed above, however, those notes fail to provide objective support for
7 the functional limitations Mr. Lambert assessed, and therefore plaintiff has not shown how the
8 failure to review the notes discredits their opinions. Accordingly, even though the Court agrees
9 with plaintiff that the ALJ improperly relied on her activities to reject Mr. Lambert’s opinion –
10 for much the same reasons the ALJ erred in relying thereon to reject the opinion of Dr. Copeland
11 – the ALJ still gave germane reasons for rejecting it.

13 III. The ALJ’s Assessment of Plaintiff’s Credibility

14 Questions of credibility are solely within the control of the ALJ. *See Sample*, 694 F.2d at
15 642. The Court should not “second-guess” this credibility determination. *Allen*, 749 F.2d at 580.
16 In addition, the Court may not reverse a credibility determination where that determination is
17 based on contradictory or ambiguous evidence. *See id.* at 579. That some of the reasons for
18 discrediting a claimant’s testimony should properly be discounted does not render the ALJ’s
19 determination invalid, as long as that determination is supported by substantial evidence.
20 *Tonapetyan* , 242 F.3d at 1148.

21 To reject a claimant’s subjective complaints, the ALJ must provide “specific, cogent
22 reasons for the disbelief.” *Lester*, 81 F.3d at 834 (citation omitted). The ALJ “must identify what
23 testimony is not credible and what evidence undermines the claimant’s complaints.” *Id.*; *see also*
24 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993). Unless affirmative evidence shows the
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1 claimant is malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear
2 and convincing." *Lester*, 81 F.2d at 834. The evidence as a whole must support a finding of
3 malingering. *See O'Donnell v. Barnhart*, 318 F.3d 811, 818 (8th Cir. 2003).

4 In determining a claimant's credibility, the ALJ may consider "ordinary techniques of
5 credibility evaluation," such as reputation for lying, prior inconsistent statements concerning
6 symptoms, and other testimony that "appears less than candid." *Smolen v. Chater*, 80 F.3d 1273,
7 1284 (9th Cir. 1996). The ALJ also may consider a claimant's work record and observations of
8 physicians and other third parties regarding the nature, onset, duration, and frequency of
9 symptoms. *See id.*

11 The ALJ discounted plaintiff's credibility in part because she "was able to work full-time
12 after her alleged onset date" of disability, even though she ultimately "did not continue with
13 those occupations." AR 22. Plaintiff argues this is not a valid basis for finding her to be less than
14 fully credible, because the ALJ found her attempt to work was not successful. But the ALJ never
15 actually made such a determination, finding instead that since her alleged onset date of January
16 1, 2009, plaintiff "worked administratively for Paragon Services until September of 2009 and
17 appeared to earn well over substantial gainful activities [sic] levels . . . with earnings over
18 \$20,000." AR 17. While plaintiff cites her testimony to argue she "was ultimately terminated
19 because the supervisor found her in the basement crying" (Dkt. 11, p. 16), plaintiff actually was
20 referring to a different job she had at an animal hospital in 2010 (*see* AR 49-50). As such, this
21 was a proper basis for discounting her credibility.

24 The ALJ also properly discounted plaintiff's credibility on the basis that her mental
25 health symptoms improved with treatment. *See* AR 23-25; *Morgan*, 169 F.3d at 599; *Tidwell v.*
26 *Apfel*, 161 F.3d 599, 601 (9th Cir. 1998). Plaintiff argues this is not a valid basis for discounting

1 her credibility, because the severity of her symptoms fluctuates, and thus it would not be unlikely
2 that she would have periods of improvement. Mental health treatment notes, however, overall do
3 support the ALJ's determination that plaintiff's symptoms tended to improve. *See* AR 323, 341,
4 352, 439, 446, 478, 480, 508, 581, 641, 655, 657, 659, 663, 678, 717, 727, 730, 741, 745, 747,
5 751, 763, 765. Plaintiff also points to the several areas of marked functional limitation assessed
6 by Mr. Lambert as evidence that she has not significantly improved, but as discussed above the
7 ALJ properly rejected that assessment.
8

9 The ALJ further discounted plaintiff's credibility because while she "testified to having
10 difficulty with people," the record showed that she "was still able to interact appropriately with
11 others," and that "her work history tend[ed] to show that she had people oriented jobs and she
12 was able to get a veterinary assistant certification during the relevant period." AR 25-26. While it
13 is not entirely clear the extent to which plaintiff had to interact with others in order to obtain her
14 certification – and thus the Court finds this is not a sufficient basis for discounting her credibility
15 – the substantial evidence, including plaintiff's reports to treatment providers, supports the ALJ's
16 other stated reasons for discounting plaintiff's testimony. For example, plaintiff reported going to
17 social events and going on dates, as well as being able to talk with store clerks. *See* AR 627, 635,
18 637, 641, 655.
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20 The Court agrees with plaintiff that the hearing transcript fails to support the ALJ's claim
21 that her initial testimony that she had never been convicted of a crime or spent time in jail but
22 then testified that she had spent six days in jail for a forgery conviction, shows a "lack of candor"
23 concerning her criminal history. AR 26. A more reasonable reading of that testimony, however,
24 indicates plaintiff was not intentionally trying to deceive the ALJ, but rather attempted to explain
25 a fairly complicated situation where she was convicted and did receive six days of jail time, but
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1 was told if she successfully completed probation she “would be adjudicated not guilty” and the
2 conviction would be removed from her record, and as far as she understands it that is what has
3 happened. *See* AR 44-45. The Court also agrees with plaintiff that since her conviction occurred
4 some 13 years before her alleged onset date – and 15 years prior to the hearing – and there is no
5 evidence of further criminal activity that would bear adversely on her reputation for honesty, the
6 fact that her conviction involved a crime of dishonesty is at best a questionable basis for finding
7 her to be less than fully credible in this case.³

8
9 Nevertheless, while the ALJ did err in relying on plaintiff’s criminal history to discount
10 her credibility, and while the Court agrees as well with plaintiff that the evidence of her activities
11 in the record does not clearly show she engaged in chores or other tasks at a frequency or to an
12 extent that necessarily are transferrable to a work setting or otherwise contradicts her testimony
13 (*see Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007); *Smolen*, 80 F.3d at 1284 and n.7), the fact
14 that one or more of the reasons for discounting plaintiff’s credibility were improper does not
15 render the overall credibility determination invalid, given that the ALJ provided other legitimate
16 reasons for finding plaintiff less than fully credible. *See Tonapetyan*, 242 F.3d at 1148. *Bray v.*
17 *Commissioner of Social Security Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009) (while ALJ relied
18 on improper reason for discounting claimant’s credibility, he presented other valid, independent
19 bases for doing so, each with “ample support in the record”). Accordingly, the Court declines to
20 find any reversible error here.

21 22 23 IV. The ALJ’s Assessment of Plaintiff’s Residual Functional Capacity

24 Defendant employs a five-step “sequential evaluation process” to determine whether a
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26 ³ It should also be noted that the reason plaintiff gave for committing the crime was that she was pregnant and not working at the time, was about to be evicted and have her car repossessed, and therefore was “desperate” and “just made a really stupid mistake.” AR 45.

1 claimant is disabled. *See* 20 C.F.R. § 404.1520; 20 C.F.R. § 416.920. If the claimant is found
2 disabled or not disabled at any particular step thereof, the disability determination is made at that
3 step, and the sequential evaluation process ends. *See id.* If a disability determination “cannot be
4 made on the basis of medical factors alone at step three of that process,” the ALJ must identify
5 the claimant’s “functional limitations and restrictions” and assess his or her “remaining
6 capacities for work-related activities.” Social Security Ruling (“SSR”) 96-8p, 1996 WL 374184
7
8 *2. A claimant’s residual functional capacity (“RFC”) assessment is used at step four to
9 determine whether he or she can do his or her past relevant work, and at step five to determine
10 whether he or she can do other work. *See id.*

11 Residual functional capacity thus is what the claimant “can still do despite his or her
12 limitations.” *Id.* It is the maximum amount of work the claimant is able to perform based on all
13 of the relevant evidence in the record. *See id.* However, an inability to work must result from the
14 claimant’s “physical or mental impairment(s).” *Id.* Thus, the ALJ must consider only those
15 limitations and restrictions “attributable to medically determinable impairments.” *Id.* In assessing
16 a claimant’s RFC, the ALJ also is required to discuss why the claimant’s “symptom-related
17 functional limitations and restrictions can or cannot reasonably be accepted as consistent with the
18 medical or other evidence.” *Id.* at *7.

19
20 The ALJ in this case found plaintiff had the residual functional capacity:

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22 **... to perform light work ... She can occasionally crawl but can never**
23 **climb ladders, ropes, or scaffolds. She can frequently reach overhead.**
24 **The claimant is limited to unskilled work with simple repetitive tasks. She**
can have occasional superficial interaction with coworkers, supervisors,
and the general public. She would be off-task up to 10% of the workday.

25 AR 20 (emphasis in original). Plaintiff argues this RFC assessment is not supported by the
26 substantial evidence in the record. But because as discussed above the ALJ did not err in

1 evaluating the opinion evidence in the record or in discounting plaintiff's credibility concerning
2 her subjective complaints, the Court finds that assessment to be without error.

3 V. The ALJ's Step Five Determination

4 If a claimant cannot perform his or her past relevant work, at step five of the disability
5 evaluation process the ALJ must show there are a significant number of jobs in the national
6 economy the claimant is able to do. *See Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999);
7 20 C.F.R. § 404.1520(d), (e), § 416.920(d), (e). The ALJ can do this through the testimony of a
8 vocational expert or by reference to defendant's Medical-Vocational Guidelines (the "Grids").
9 *Osenbrock v. Apfel*, 240 F.3d 1157, 1162 (9th Cir. 2000); *Tackett*, 180 F.3d at 1100-1101.

10 An ALJ's findings will be upheld if the weight of the medical evidence supports the
11 hypothetical posed by the ALJ. *See Martinez v. Heckler*, 807 F.2d 771, 774 (9th Cir. 1987);
12 *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984). The vocational expert's testimony
13 therefore must be reliable in light of the medical evidence to qualify as substantial evidence. *See*
14 *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988). Accordingly, the ALJ's description of the
15 claimant's disability "must be accurate, detailed, and supported by the medical record." *Id.*
16 (citations omitted). The ALJ, however, may omit from that description those limitations he or
17 she finds do not exist. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

18 At the hearing, the ALJ posed hypothetical questions to the vocational expert containing
19 substantially the same limitations as were included in the ALJ's assessment of plaintiff's residual
20 functional capacity. *See AR 78-79*. In response to that question, the vocational expert testified
21 that an individual with those limitations – and with the same age, education and work experience
22 as plaintiff – would be able to perform other jobs. *See id.* Based on the vocational expert's
23 testimony, the ALJ found plaintiff would be capable of performing other jobs existing in
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1 significant numbers in the national economy. *See* AR 29-30. Again, while plaintiff argues the
2 ALJ's step five determination cannot be upheld in light of the above alleged errors, as discussed
3 previously plaintiff has failed to establish any such error. Accordingly, the Court also declines to
4 find error at this step as well.

5
6 CONCLUSION

7 Based on the foregoing discussion, the Court hereby finds the ALJ properly concluded
8 plaintiff was not disabled. Accordingly, defendant's decision to deny benefits is AFFIRMED.

9 DATED this 15th day of June, 2015.

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13 Karen L. Strombom
14 United States Magistrate Judge