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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON

8 JANINE CHERYL JORNLIN,

NO. C17-5732-JPD

9 Plaintiff,

10 v.

ORDER

11 NANCY A. BERRYHILL, Acting  
12 Commissioner of Social Security,

13 Defendant.

14 Plaintiff Janine Cheryl Jornlin appeals the final decision of the Commissioner of the  
15 Social Security Administration (“Commissioner”) that denied her application for Disability  
16 Insurance Benefits (“DIB”) under Title II of the Social Security Act, 42 U.S.C. §§ 401-33,  
17 after a hearing before an administrative law judge (“ALJ”). For the reasons set forth below,  
18 the Court AFFIRMS the Commissioner’s decision.

19 I. FACTS AND PROCEDURAL HISTORY

20 Plaintiff is a 59-year-old woman with a college degree. Administrative Record (“AR”)  
21 at 371. Her past work experience includes employment as an insurance claims associate,  
22 customer service associate, business operations analysis, assistant management technician,  
23 receptionist, project coordinator, and housing specialist. AR at 191. Plaintiff was last  
24 gainfully employed in March 2014. *Id.*

1 On March 31, 2014, Plaintiff filed an application for DIB, alleging an onset date of  
2 March 28, 2014.<sup>1</sup> AR at 175-76. Plaintiff asserts that she is disabled due to anxiety, gambling  
3 addiction, neck issues, headaches and hand tremors. AR at 40, 45-47.

4 The Commissioner denied Plaintiff's claim initially and on reconsideration. AR at 118-  
5 20, 124-28. Plaintiff requested a hearing, which took place on March 14, 2016. AR at 38-89.  
6 On July 21, 2016, the ALJ issued a decision finding Plaintiff not disabled and denied benefits  
7 based on his finding that Plaintiff could perform her past work. AR at 20-33. Plaintiff's  
8 administrative appeal of the ALJ's decision was denied by the Appeals Council, AR at 1-6,  
9 making the ALJ's ruling the "final decision" of the Commissioner as that term is defined by 42  
10 U.S.C. § 405(g). On September 12, 2017, Plaintiff timely filed the present action challenging  
11 the Commissioner's decision. Dkt. 1.

## 12 II. JURISDICTION

13 Jurisdiction to review the Commissioner's decision exists pursuant to 42 U.S.C. §§  
14 405(g) and 1383(c)(3).

## 15 III. STANDARD OF REVIEW

16 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of  
17 social security benefits when the ALJ's findings are based on legal error or not supported by  
18 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th  
19 Cir. 2005). "Substantial evidence" is more than a scintilla, less than a preponderance, and is  
20 such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.  
21 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750  
22 (9th Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in  
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24 <sup>1</sup> At the hearing, Plaintiff amended her alleged onset to July 1, 2014. AR at 83.

1 medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*,  
2 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a  
3 whole, it may neither reweigh the evidence nor substitute its judgment for that of the  
4 Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is  
5 susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that  
6 must be upheld. *Id.*

#### 7 IV. EVALUATING DISABILITY

8 As the claimant, Ms. Jornlin bears the burden of proving that she is disabled within the  
9 meaning of the Social Security Act (the “Act”). *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th  
10 Cir. 1999) (internal citations omitted). The Act defines disability as the “inability to engage in  
11 any substantial gainful activity” due to a physical or mental impairment which has lasted, or is  
12 expected to last, for a continuous period of not less than twelve months. 42 U.S.C. §§  
13 423(d)(1)(A), 1382c(a)(3)(A). A claimant is disabled under the Act only if her impairments  
14 are of such severity that she is unable to do her previous work, and cannot, considering her age,  
15 education, and work experience, engage in any other substantial gainful activity existing in the  
16 national economy. 42 U.S.C. §§ 423(d)(2)(A); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098-  
17 99 (9th Cir. 1999).

18 The Commissioner has established a five step sequential evaluation process for  
19 determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R. §§  
20 404.1520, 416.920. The claimant bears the burden of proof during steps one through four. At  
21 step five, the burden shifts to the Commissioner. *Id.* If a claimant is found to be disabled at  
22 any step in the sequence, the inquiry ends without the need to consider subsequent steps. Step  
23 one asks whether the claimant is presently engaged in “substantial gainful activity.” 20 C.F.R.

1 §§ 404.1520(b), 416.920(b).<sup>2</sup> If she is, disability benefits are denied. If she is not, the  
2 Commissioner proceeds to step two. At step two, the claimant must establish that she has one  
3 or more medically severe impairments, or combination of impairments, that limit her physical  
4 or mental ability to do basic work activities. If the claimant does not have such impairments,  
5 she is not disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does have a severe  
6 impairment, the Commissioner moves to step three to determine whether the impairment meets  
7 or equals any of the listed impairments described in the regulations. 20 C.F.R. §§ 404.1520(d),  
8 416.920(d). A claimant whose impairment meets or equals one of the listings for the required  
9 twelve-month duration requirement is disabled. *Id.*

10 When the claimant's impairment neither meets nor equals one of the impairments listed  
11 in the regulations, the Commissioner must proceed to step four and evaluate the claimant's  
12 residual functional capacity ("RFC"). 20 C.F.R. §§ 404.1520(e), 416.920(e). Here, the  
13 Commissioner evaluates the physical and mental demands of the claimant's past relevant work  
14 to determine whether she can still perform that work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If  
15 the claimant is able to perform her past relevant work, she is not disabled; if the opposite is  
16 true, then the burden shifts to the Commissioner at step five to show that the claimant can  
17 perform other work that exists in significant numbers in the national economy, taking into  
18 consideration the claimant's RFC, age, education, and work experience. 20 C.F.R. §§  
19 404.1520(g), 416.920(g); *Tackett*, 180 F.3d at 1099, 1100. If the Commissioner finds the  
20 claimant is unable to perform other work, then the claimant is found disabled and benefits may  
21 be awarded.

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23 <sup>2</sup> Substantial gainful activity is work activity that is both substantial, i.e., involves  
24 significant physical and/or mental activities, and gainful, i.e., performed for profit. 20 C.F.R. §  
404.1572.

1 V. DECISION BELOW

2 On July 21, 2016, the ALJ issued a decision finding the following:

- 3 1. The claimant meets the insured status requirements of the Social  
4 Security Act through June 30, 2018.
- 5 2. The claimant has not engaged in substantial gainful activity since July  
6 1, 2014, the alleged amended onset date.
- 7 3. The claimant has the following severe impairments: cervical arthritis,  
8 depressive disorder, and gambling disorder.
- 9 4. The claimant does not have an impairment or combination of  
10 impairments that meets or medically equals the severity of one of the  
11 listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.
- 12 5. After careful consideration of the entire record, the undersigned finds  
13 that the claimant has the residual functional capacity to perform  
14 simple, routine or detailed light and sedentary work as defined in 20  
15 CFR 404.1567(b). She should not climb tall ladders, work at heights,  
16 or handle cash or negotiable instruments. She is limited to low stress  
17 work. She works independently. She should have work goals, not  
18 quotas. She should have no direct access to drugs or alcohol. She  
19 would be off-task 6 percent of the workday. She requires extra  
20 restroom breaks two or three days a week. She is limited to brief,  
21 superficial contact with the public. She cannot frequently turn her  
22 head. She can occasionally gaze upward. She needs to stand and  
23 stretch for one to three minutes every hour. She needs to work in quiet  
24 area with no foot traffic.
6. The claimant is capable of performing past relevant work as a claims  
clerk II. This work does not require the performance of work-related  
activities precluded by the claimant's residual functional capacity.
7. The claimant has not been under a disability, as defined in the Social  
Security Act, from July 1, 2014, through the date of this decision.

AR at 22-32.

VI. ISSUE ON APPEAL

The principal issue on appeal is whether the ALJ erred in discounting an opinion  
written by examining physician Shirley Deem, M.D. Dkt. 8 at 1.

1 VII. DISCUSSION

2 Dr. Deem examined Plaintiff in August 2014, and had the opportunity to review a  
3 treatment note from March 2014 related to Plaintiff’s headaches and hand tremor. AR at 276-  
4 79. Dr. Deem’s physical examination yielded normal results. AR at 277-78. Dr. Deem  
5 diagnosed Plaintiff as mildly overweight, with tension headaches with intermittent cervical  
6 spine strain and history of mood disorder. AR at 278. Dr. Deem indicated that Plaintiff was  
7 limited to occasional reaching, handling, fingering, and feeling “because of the neck  
8 discomfort and occasional tingling down her right arm.” AR at 279. Dr. Deem also indicated  
9 that “[b]ecause of [Plaintiff’s] anxiety” she should not work at heights or “under any  
10 environmental stressing activities.” *Id.*

11 The ALJ gave some weight to Dr. Deem’s opinion, but found that the manipulative and  
12 heights/environmental restrictions were inconsistent with the “essentially unremarkable  
13 physical examination” and relied heavily on Plaintiff’s subjective report, which the ALJ  
14 discounted for reasons not challenged here by Plaintiff. AR at 30. Plaintiff argues that these  
15 reasons are not legally sufficient.

16 If an ALJ rejects the opinion of a treating or examining physician, the ALJ must give  
17 clear and convincing reasons for doing so if the opinion is not contradicted by other evidence,  
18 and specific and legitimate reasons if it is. *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir.  
19 1988). “This can be done by setting out a detailed and thorough summary of the facts and  
20 conflicting clinical evidence, stating his interpretation thereof, and making findings.” *Id.*  
21 (citing *Magallanes*, 881 F.2d at 751). The ALJ must do more than merely state his/her  
22 conclusions. “He must set forth his own interpretations and explain why they, rather than the  
23 doctors’, are correct.” *Id.* (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)).  
24 Such conclusions must at all times be supported by substantial evidence. *Reddick*, 157 F.3d at

1 725.

2 Plaintiff argues that the ALJ erred in discounting Dr. Deem's opinion regarding  
3 manipulative limitations as inconsistent with the physical examination findings, because Dr.  
4 Deem did not cite objective physical findings as the basis for the opinion. Dkt. 8 at 3. Instead,  
5 Dr. Deem stated that the manipulative limitations stemmed from Plaintiff's "neck discomfort  
6 and occasional tingling down her right arm." AR at 279.

7 That may be true, but in asserting that Plaintiff's limitations are not based on objective  
8 findings, Plaintiff essentially concedes the ALJ's point: that Dr. Deem's opinion was based on  
9 Plaintiff's *self-reported* neck discomfort and occasional tingling down her right arm. Neither  
10 of these symptoms was measured objectively; Dr. Deem did not record discomfort with any of  
11 the examination procedures, and noted that Plaintiff did not experience any numbness during  
12 the examination and had intact light touch and pinprick sensation throughout her arms. AR at  
13 278.

14 Thus, the ALJ reasonably found that Dr. Deem's opinion regarding the impact of  
15 Plaintiff's alleged neck discomfort and arm tingling was based on her self-report of these  
16 symptoms. Because the ALJ discounted Plaintiff's self-report for reasons not challenged by  
17 Plaintiff, the ALJ was entitled to discount Dr. Deem's opinion to the extent it was based on  
18 Plaintiff's self-report. *See Bray v. Comm'r of Social Sec. Admin.*, 554 F.3d 1219, 1228 (9th  
19 Cir. 2009) ("As the district court noted, however, the treating physician's prescribed work  
20 restrictions were based on Bray's subjective characterization of her symptoms. As the ALJ  
21 determined that Bray's description of her limitations was not entirely credible, it is reasonable  
22 to discount a physician's prescription that was based on those less than credible statements.").

23 Because, as argued by Plaintiff, Dr. Deem's opinion regarding manipulative limitations  
24 was not based on objective findings, but instead credited Plaintiff's self-reported symptoms,


1 the ALJ reasonably discounted that opinion in light of the ALJ's unchallenged findings related  
2 to the unreliability of Plaintiff's self-report.

3 VIII. CONCLUSION

4 The role of this Court is limited. As noted above, the ALJ is responsible for  
5 determining credibility, resolving conflicts in medical testimony, and resolving any other  
6 ambiguities that might exist. *Andrews*, 53 F.3d at 1039. When the evidence is susceptible to  
7 more than one rational interpretation, it is the Commissioner's conclusion that must be upheld.  
8 *Thomas*, 278 F.3d at 954. While it may be possible to evaluate the evidence as Plaintiff  
9 suggests, it is not possible to conclude that Plaintiff's interpretation is the only rational  
10 interpretation.

11 For the reasons explained above, the Court AFFIRMS the ALJ's decision.

12 DATED this 15th day of February, 2018.

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15 JAMES P. DONOHUE  
16 Chief United States Magistrate Judge  
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