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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

| | | |
|---------------------------------|---|-------------------------|
| LOWANDA S. YOUNG, |) | CASE NO. CV 09-09003 RZ |
| |) | |
| Plaintiff, |) | |
| |) | MEMORANDUM OPINION |
| vs. |) | AND ORDER |
| |) | |
| MICHAEL J. ASTRUE, Commissioner |) | |
| of Social Security, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

Plaintiff Lowanda Young has a bad back. Since pain associated with disk problems is common, the question not infrequently arises as to how much the pain compromises a claimant’s ability to work. In this Court, Plaintiff asserts that the Administrative Law Judge did not comply with the applicable legal standards when he found Plaintiff not to be fully credible. The Court agrees.

The Administrative Law Judge stated:

The [Administrative Law Judge] does not fully credit the claimant’s subjective complaints. The claimant alleges chronic pain and significant functional limitation.

1 [AR 18] The Administrative Law Judge went on to conclude that the Plaintiff has
2 exaggerated the extent of her pain, because she gave what he considered inconsistent
3 responses to two doctors whom she saw only a few months apart. [*Id.*] Elsewhere the
4 Administrative Law Judge also noted that, although Plaintiff had complained of significant
5 back and neck pain, treatment had been minimal and conservative, and further surgery had
6 not been recommended. [AR 17]

7 On this record, it is unclear whether the residual functional capacity the
8 Administrative Law Judge found can be sustained, because the record is not clear as to
9 Plaintiff's credibility. Conservative treatment is a factor that an Administrative Law Judge
10 can reference in questioning a claimant's credibility, for example, *see Johnson v. Shalala*,
11 60 F.3d 1428, 1433 (9th Cir. 1995), and so is a claimant's exaggeration of her symptoms.
12 *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. March 19, 2001). But the predicate
13 for such a determination is missing here: an administrative law judge must identify the
14 testimony that he finds suspect. *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996); *Dodrill*
15 *v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993); *Varney v. Secretary of Health and Human*
16 *Services*, 846 F.2d 581, 584 (9th Cir. 1988). Without that beginning, it is hard to tell, in
17 this case, whether the Administrative Law Judge was justified in his conclusion.

18 Thus, the example that the Administrative Law Judge gave, of the
19 inconsistency in Plaintiff's reporting to the two doctors, may or may not have an impact,
20 depending on what testimony it relates to. The Administrative Law Judge emphasized, by
21 use of italics, that Plaintiff "told the consultative examiner that she could perform a full
22 range of activities of daily living, *including light exercise*" [AR 18, italics in original]; this
23 he contrasted with Plaintiff's statements to the consultative internist, that "she alleged
24 significant physical debilitation." [*Id.*] In this Court, Plaintiff rightly points out that the
25 ability to perform light exercise may not translate to the ability to work a full week,
26 *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001), and that the report of the
27 consultative examiner does not, in fact, show an ability to perform a full range of activities
28 of daily living. [AR 397]

