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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

LISA L. MORRIS,	)	No. CV 12-03345-VBK
	)	
Plaintiff,	)	MEMORANDUM OPINION
	)	AND ORDER
v.	)	
	)	(Social Security Case)
MICHAEL J. ASTRUE,	)	
Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

Plaintiff raises the following issue:

1. Whether the Administrative Law Judge ("ALJ") properly

1 considered the medical evidence as contained in the treating  
2 opinion of Elise Orzeck, DPM.

3 (JS at p. 5)

4  
5 This Memorandum Opinion will constitute the Court's findings of  
6 fact and conclusions of law. After reviewing the matter, the Court  
7 concludes that the decision of the Commissioner must be affirmed.

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10 **THE ALJ PROPERLY CONSIDERED THE EVIDENCE**

11 **FROM TREATING DPM, DR. ORZECK**

12 On January 16, 2006, Plaintiff fell from a ladder, severely  
13 injuring her ankle. She went to physical therapy, and also began  
14 seeing podiatrist Felice Orzeck.<sup>1</sup>

15 After her applications for disability insurance benefits and  
16 Social Security Insurance ("SSI") were administratively denied,  
17 Plaintiff<sup>2</sup> proceeded to a hearing before the ALJ (AR 23-61), following  
18 which an unfavorable decision was issued. (AR 10-19.) Plaintiff takes  
19 issue with the ALJ's evaluation of the opinion of her treating  
20 podiatrist, Dr. Orzeck.

21 After reviewing the evidence, the ALJ determined that Plaintiff's  
22 Residual Functional Capacity ("RFC") enables her to lift 20 pounds  
23 occasionally and 10 pounds frequently; she can stand and walk, with

24 \_\_\_\_\_  
25 <sup>1</sup> Plaintiff's testimony was that she believed she began seeing  
26 Dr. Orzeck in 2006 (AR 35). Dr. Orzeck indicated her first patient  
contact with Plaintiff was in 2007. (AR 319.)

27 <sup>2</sup> Plaintiff is known as Lisa Morris, although at the  
28 administrative hearing, the ALJ referred to her as Lisa Morris Flores.  
(AR 25.)

1 normal breaks, for a total of two hours in an eight-hour workday, and  
2 she can sit, with normal breaks, for a total of six hours in an eight-  
3 hour workday. She has some exertional limitations. (AR 14.)

4 In arriving at the RFC, the ALJ considered Dr. Orzeck's opinion,  
5 along with the opinions of other examining and non-examining sources.  
6 This analysis is reflected in the Decision at AR 14-16. Among the  
7 opinions considered by the ALJ was that of Dr. Tom, who performed an  
8 orthopedic consultative examination ("CE") on September 4, 2009 at the  
9 request of the Department of Social Services. (AR 213-219.) Following  
10 Dr. Tom's examination, which included what appears to be complete  
11 objective testing (see, AR 214-218), he assessed that Plaintiff can  
12 lift and carry 20 pounds occasionally and less than 10 pounds  
13 frequently; can stand and walk six hours in an eight-hour day with the  
14 appropriate breaks and orthopedic braces for the right foot; can sit  
15 six hours out of an eight-hour day with appropriate breaks; and, that  
16 there are no upper extremity or left leg, neck, or lumbar spine  
17 fractures that would affect her functional ability to a significant  
18 extent. (AR 218.) Dr. Tom's report was summarized by the ALJ (AR 14-  
19 15), who concluded that Plaintiff's examination was "essentially  
20 normal and with only limited range of motion of [Plaintiff's] right  
21 foot." (AR 14.) Plaintiff does not dispute the ALJ's summary of Dr.  
22 Tom's examination, nor does she argue that Dr. Tom's examination was  
23 faulty, or that his conclusions were incorrect.

24 Plaintiff also had extensive physical therapy, and, again, the  
25 ALJ made substantial reference to that in his Decision. (AR 15-16.)  
26 Summarizing the physical therapy treatment notes, the ALJ concluded  
27 that they indicate that Plaintiff had good balance, and she had  
28 "improved gait activity, increased push off, decreased pain symptoms

1 [and] tolerated exercise well." (AR 14-16, 199, 204, 218.)

2 The ALJ also relied upon, and in fact agreed with the physical  
3 RFC assessment of the State Agency physician, Dr. Bayer. (AR 14, 221-  
4 226.)

5 In contrast to the conclusions of these examining and non-  
6 examining sources, Plaintiff highlights the "Physical Residual  
7 Functional Capacity Questionnaire" ("Questionnaire") completed by  
8 podiatrist Dr. Orzeck on August 5, 2010. (AR 319-322.) The ALJ  
9 depreciated Dr. Orzeck's conclusions, giving them "less weight"  
10 because he found that they were not well supported by medically  
11 acceptable clinical and laboratory diagnostic techniques, and were  
12 otherwise not consistent with other substantial evidence in the  
13 record. (AR 15.) In addition to that, the ALJ concluded that Dr.  
14 Orzeck's own treatment records did not support the functional capacity  
15 restrictions set forth in the Questionnaire. (Id.) As noted, this is  
16 Plaintiff's area of dispute with the ALJ's assessment.

17 Plaintiff contends that because Dr. Tom and Dr. Orzeck relied  
18 upon the same evidence, but reached different conclusions, the ALJ's  
19 rejection of Dr. Orzeck's opinion must be supported by specific and  
20 legitimate reasons supported by substantial evidence in the record.  
21 (See Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir. 1995); Social  
22 Security Rulings ("SSR") 96-2p and 96-8p.) But the Court's review of  
23 the ALJ's Decision indicates that specific and legitimate reasons  
24 were, indeed, provided in the Decision. First, the ALJ pointed to  
25 reports of x-rays and CT scans in 2006 and 2007 which indicated  
26 progressive and substantial healing of the injured areas. (AR 15, 232,  
27 234, 263.)

28 The ALJ also pointed to Dr. Orzeck's own treatment notes. For

1 example, in August 2009, Dr. Orzeck noted that Plaintiff had tried  
2 various drugs, and 12 sessions of physical therapy, but had not had  
3 any injections to her injured foot/ankle area. Dr. Orzeck recommended  
4 a heel cup and follow up with her original surgeon. (AR 16, 212.)  
5 Similarly, the ALJ noted that in August 2010, Dr. Orzeck remarked that  
6 Plaintiff reported that she was exercising in bed, doing pushups, leg  
7 kicks, and crunches. Dr. Orzeck prescribed Aspercreme for her foot  
8 pain and indicated that Plaintiff should return in four months. (AR  
9 16, 327.)

10 The ALJ was mostly concerned with the fact that the extreme  
11 limitations assessed by Dr. Orzeck in the Questionnaire were not  
12 supported by or reflective of Dr. Orzeck's own observations and her  
13 extensive treatment notes. Plaintiff objects to this characterization  
14 because she believes that treatment notes of a medical provider need  
15 not reflect exertional limitations which may be assessed by that  
16 source. (JS at 7-8.) The Court disagrees with this analysis. One  
17 would naturally expect that treatment notes would be consistent with  
18 conclusions contained in a summary questionnaire, especially where the  
19 latter assesses quite extreme physical limitations. It is fair to  
20 allow an adjudicator to compare treatment notes, especially over an  
21 extensive period of time, as is the case here, with later conclusions  
22 rendered by the same source in a questionnaire.

23 In addition to these reasons, and as the Court has already noted,  
24 the ALJ also relied upon reports of the physical therapist, which  
25 showed substantial improvement during the course of treatment and,  
26 moreover, reflect conclusions which are inconsistent with those  
27 reported by Dr. Orzeck in the Questionnaire.

28 Finally, the ALJ was entitled to rely upon the conclusions of the

1 State Agency physician, which were consistent with those of Dr. Tom.  
2 See Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002).

3 While Plaintiff complains that the ALJ should not have relied  
4 upon the State Agency physician's opinion because it predated Dr.  
5 Orzeck's opinion by about 11 months, in this case, that argument is  
6 unpersuasive because there is no evidence of deterioration of  
7 Plaintiff's condition in the intervening time period.

8 Thus, the Court concludes that the ALJ relied upon substantial  
9 evidence, and correctly evaluated the evidence in the record in  
10 determining that Plaintiff was not disabled. The Court does find that  
11 the ALJ articulated a legally sufficient rationale to reject Dr.  
12 Orzeck's opinion.

13 The decision of the ALJ will be affirmed. The Complaint will be  
14 dismissed with prejudice.

15 **IT IS SO ORDERED.**

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17 DATED: March 28, 2013

17 /s/  
18 VICTOR B. KENTON  
19 UNITED STATES MAGISTRATE JUDGE  
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