

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LEONOR RAMIREZ,

Plaintiff,

v.

CAROLYN W. COLVIN,  
Acting Commissioner of Social Security  
Administration,

Defendant.

Case No. CV 12-5333-SP

MEMORANDUM OPINION AND  
ORDER

**I.**

**INTRODUCTION**

On June 27, 2012, plaintiff Leonor Ramirez filed a complaint against the Commissioner of the Social Security Administration (“Commissioner”), seeking a review of a denial of a period of disability, disability insurance benefits (“DIB”), and supplemental security income (“SSI”). Both plaintiff and defendant have consented to proceed for all purposes before the assigned Magistrate Judge pursuant to 28 U.S.C. § 636(c). The court deems the matter suitable for adjudication without oral argument.

1 Plaintiff presents one issue for decision: whether the Administrative Law  
2 Judge (“ALJ”) properly considered the opinion of the consultative examiner.  
3 Plaintiff’s Memorandum in Support of Complaint (“P. Mem.”) at 5-8; Defendant’s  
4 Memorandum in Support of Defendant’s Answer (“D. Mem.”) at 2-6.

5 Having carefully studied, inter alia, the parties’s moving papers, the  
6 Administrative Record (“AR”), and the decision of the ALJ, the court concludes  
7 that, as detailed herein, the ALJ failed to provide a clear and convincing reason  
8 why he rejected part of the consultative examiner’s opinion. The court therefore  
9 remands this matter to the Commissioner in accordance with the principles and  
10 instructions enunciated in this Memorandum Opinion and Order.

## 11 II.

### 12 FACTUAL AND PROCEDURAL BACKGROUND

13 Plaintiff, who was fifty-one years old on the date of her February 10, 2011  
14 administrative hearing, has a tenth grade education. AR at 39, 44, 97. Plaintiff  
15 has past relevant work as a hand packager. *Id.* at 50.

16 On May 26, 2009, plaintiff protectively filed an application for a period of  
17 disability and DIB. *Id.* at 97. On June 24, 2009, plaintiff filed an application for  
18 SSI. *Id.* at 25. The Commissioner denied plaintiff’s application initially, after  
19 which she filed a request for a hearing. *Id.* at 55-60.

20 On February 10, 2011, plaintiff, appearing without counsel, testified at a  
21 hearing before the ALJ. *Id.* at 39-52. The ALJ also heard testimony from Gregory  
22 Jones, a vocational expert. *Id.* at 50-51. On February 17, 2011, the ALJ denied  
23 plaintiff’s claim for benefits. *Id.* at 25-35.

24 Applying the well-known five-step sequential evaluation process, the ALJ  
25 found, at step one, that plaintiff had not engaged in substantial gainful activity  
26 since February 7, 2005, the alleged onset date. *Id.* at 27.

27 At step two, the ALJ found that plaintiff suffered from the following severe  
28

1 impairments: degenerative disc disease of the lumbar spine; diabetes mellitus;  
2 bilateral carpal tunnel syndrome; degenerative joint disease of the bilateral knees;  
3 and obesity. *Id.* at 28.

4 At step three, the ALJ found that plaintiff's impairments, whether  
5 individually or in combination, did not meet or medically equal one of the listed  
6 impairments set forth in 20 C.F.R. part 404, Subpart P, Appendix 1 (the  
7 "Listings"). *Id.*

8 The ALJ then assessed plaintiff's residual functional capacity ("RFC"),<sup>1</sup> and  
9 determined that she had the RFC to perform light work with the following  
10 limitations: lift up to twenty pounds occasionally and ten pounds frequently;  
11 stand/walk/sit up to six hours in an eight-hour workday; only frequently climb  
12 stairs and ramps, stoop, and crouch; no climbing of ladders, ropes, or scaffolds;  
13 avoid exposure to hazards; frequently but not constantly handle and finger  
14 bilaterally; and avoid concentrated extreme exposure to heat and cold. *Id.* at 29.

15 The ALJ found, at step four, that plaintiff could not perform her past  
16 relevant work. *Id.* at 33-34.

17 At step five, the ALJ found that there were jobs that existed in significant  
18 numbers in the national economy that plaintiff could perform, including general  
19 cashier and housekeeping cleaner. *Id.* at 34-35. Consequently, the ALJ concluded  
20 that plaintiff did not suffer from a disability as defined by the Social Security Act.  
21 *Id.* at 35.

---

22  
23  
24 <sup>1</sup> Residual functional capacity is what a claimant can do despite existing  
25 exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152,  
26 1155-56 n.5-7 (9th Cir. 1989). "Between steps three and four of the five-step  
27 evaluation, the ALJ must proceed to an intermediate step in which the ALJ  
28 assesses the claimant's residual functional capacity." *Massachi v. Astrue*, 486  
F.3d 1149, 1151 n.2 (9th Cir. 2007).

1 Plaintiff filed a timely request for review of the ALJ's decision, which was  
2 denied by the Appeals Council. *Id.* at 1-4. The ALJ's decision stands as the final  
3 decision of the Commissioner.

4 **III.**

5 **STANDARD OF REVIEW**

6 This court is empowered to review decisions by the Commissioner to deny  
7 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security  
8 Administration must be upheld if they are free of legal error and supported by  
9 substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001)  
10 (as amended). But if the court determines that the ALJ's findings are based on  
11 legal error or are not supported by substantial evidence in the record, the court  
12 may reject the findings and set aside the decision to deny benefits. *Aukland v.*  
13 *Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); *Tonapetyan v. Halter*, 242 F.3d  
14 1144, 1147 (9th Cir. 2001).

15 "Substantial evidence is more than a mere scintilla, but less than a  
16 preponderance." *Aukland*, 257 F.3d at 1035. Substantial evidence is such  
17 "relevant evidence which a reasonable person might accept as adequate to support  
18 a conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276  
19 F.3d at 459. To determine whether substantial evidence supports the ALJ's  
20 finding, the reviewing court must review the administrative record as a whole,  
21 "weighing both the evidence that supports and the evidence that detracts from the  
22 ALJ's conclusion." *Mayes*, 276 F.3d at 459. The ALJ's decision "cannot be  
23 affirmed simply by isolating a specific quantum of supporting evidence."  
24 *Aukland*, 257 F.3d at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th  
25 Cir. 1998)). If the evidence can reasonably support either affirming or reversing  
26 the ALJ's decision, the reviewing court "may not substitute its judgment for that  
27  
28

1 of the ALJ.”” *Id.* (quoting *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir.  
2 1992)).

#### 3 IV.

#### 4 DISCUSSION

5 Plaintiff argues that the ALJ erred because he failed to provide a clear and  
6 convincing reason for rejecting the opinion of consultative examiner, Dr. Lakshmi  
7 Sadasivam, that plaintiff required frequent breaks when standing and walking. P.  
8 Mem. at 5-8. The court agrees.

9 In determining whether a claimant has a medically determinable  
10 impairment, among the evidence the ALJ considers is medical evidence. 20  
11 C.F.R. §§ 404.1527(b), 416.927(b). In evaluating medical opinions, the  
12 regulations distinguish among three types of physicians: (1) treating physicians;  
13 (2) examining physicians; and (3) non-examining physicians. 20 C.F.R.  
14 §§ 404.1527(c),(e), 416.927(c), (e); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
15 1995) (as amended). “Generally, a treating physician’s opinion carries more  
16 weight than an examining physician’s, and an examining physician’s opinion  
17 carries more weight than a reviewing physician’s.” *Holohan v. Massanari*, 246  
18 F.3d 1195, 1202 (9th Cir. 2001); 20 C.F.R. §§ 404.1527(c)(1)-(2), 416.927(c)(1)-  
19 (2). The opinion of the treating physician is generally given the greatest weight  
20 because the treating physician is employed to cure and has a greater opportunity to  
21 understand and observe a claimant. *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th  
22 Cir. 1996); *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).

23 Nevertheless, the ALJ is not bound by the opinion of the treating physician.  
24 *Smolen*, 80 F.3d at 1285. If a treating physician’s opinion is uncontradicted, the  
25 ALJ must provide clear and convincing reasons for giving it less weight. *Lester*,  
26 81 F.3d at 830. If the treating physician’s opinion is contradicted by other  
27 opinions, the ALJ must provide specific and legitimate reasons supported by  
28

1 substantial evidence for rejecting it. *Id.* at 830. Likewise, the ALJ must provide  
2 specific and legitimate reasons supported by substantial evidence in rejecting the  
3 contradicted opinions of examining physicians. *Id.* at 830-31. The opinion of a  
4 non-examining physician, standing alone, cannot constitute substantial evidence.  
5 *Widmark v. Barnhart*, 454 F.3d 1063, 1067 n.2 (9th Cir. 2006); *Morgan v.*  
6 *Comm'r*, 169 F.3d 595, 602 (9th Cir. 1999); *see also Erickson v. Shalala*, 9 F.3d  
7 813, 818 n.7 (9th Cir. 1993).

8 On December 19, 2009, Dr. Sadasivam, an internist, examined plaintiff. AR  
9 at 341-46. Plaintiff's medical records were unavailable for Dr. Sadasivam's  
10 review. *Id.* at 342. Dr. Sadasivam observed, among other things, that plaintiff had  
11 normal range of motion in her back, a negative straight leg raising test, and a  
12 normal gait. *Id.* at 344-45. Dr. Sadasivam diagnosed plaintiff with uncontrolled  
13 diabetes mellitus, lumbar disc degenerative disease status post surgery in August  
14 2009, and carpal tunnel syndrome involving both hands. *Id.* at 345. Dr.  
15 Sadasivam opined that plaintiff could: lift/carry twenty pounds occasionally and  
16 ten pounds frequently; stand/walk six hours in an eight-hour workday with  
17 frequent breaks; sit for six hours in an eight-hour workday; climb, stoop, and  
18 crouch frequently; and do gross and fine manipulation with both hands frequently.  
19 *Id.* Dr. Sadasivam further opined that plaintiff should be limited from working in  
20 a hazardous environment and avoid working in cold and extremes of temperature.  
21 *Id.*

22 The ALJ explicitly gave considerable weight to the opinion of Dr.  
23 Sadasivam, noting that she was an internal medicine specialist, she had knowledge  
24 of the disability program, she personally examined plaintiff, and her opinion was  
25 consistent with other evidence.<sup>2</sup> *Id.* at 33. Despite giving Dr. Sadasivam

---

27 <sup>2</sup> The ALJ incorrectly stated that Dr. Sadasivam had the opportunity to review  
28 the medical records. *See* AR at 33. On the contrary, Dr. Sadasivam reported that

1 considerable weight, the ALJ failed to adopt Dr. Sadasivam’s opinion that plaintiff  
2 required frequent breaks while standing and/or walking. *Compare id.* at 29, 345.

3 Defendant does not dispute that the ALJ failed to give a reason for rejecting  
4 Dr. Sadasivam’s opined limitation. D. Mem. at 3. Nevertheless, defendant  
5 contends that the ALJ did not err because the court may reasonably assume that  
6 the ALJ rejected the limitation because it was inconsistent with the record as a  
7 whole. *Id.* The court disagrees. Although the court may draw inferences from an  
8 ALJ’s decision, particularly when an ALJ provides a detailed account of the  
9 medical evidence that supports his conclusion, the court declines to draw such an  
10 inference here, for the reasons that follow. *See Magallanes v. Bowen*, 881 F.2d  
11 747, 755 (9th Cir. 1989).

12 First, the ALJ discussed plaintiff’s medical history in detail, which  
13 discussion arguably may be interpreted as inconsistent with Dr. Sadasivam’s  
14 opinion that plaintiff required frequent breaks. *See AR* at 30-33. But the ALJ also  
15 stated that Dr. Sadasivam’s “opinion [was] consistent with the other evidence of  
16 record.” *Id.* at 33. This statement runs directly counter to defendant’s argument  
17 that the ALJ found Dr. Sadasivam’s opined limitation was inconsistent with the  
18 record.

19 Second, even if the ALJ’s decision somehow could be interpreted as stating  
20 only the adopted limitations were consistent with the other evidence on record and  
21 the unadopted limitation was inconsistent, the ALJ erred in his account of the  
22 medical evidence. The ALJ’s decision appeared to be premised, in large part, on  
23 the type of treatment plaintiff received for her back pain. The ALJ openly  
24 questioned the veracity of plaintiff’s claim that she had lumbar surgery in 2009,  
25 given the absence of any record documenting the surgery, and characterized her

26 \_\_\_\_\_  
27 there were no medical records for her to review and her opinion was based on the  
28 physical examination and her observations. *Id.* 342, 345.





1 regarding plaintiff's standing and walking limitations. On remand, the ALJ shall  
2 reconsider Dr. Sadavsivam's opinion that plaintiff required frequent breaks when  
3 standing and/or walking and either credit her opinion or provide clear and  
4 convincing reasons supported by substantial evidence for rejecting it. The ALJ  
5 shall then proceed through steps four and five to determine what work, if any,  
6 plaintiff is or was capable of performing.

7 **VI.**

8 **CONCLUSION**

9 IT IS THEREFORE ORDERED that Judgment shall be entered  
10 REVERSING the decision of the Commissioner denying benefits, and  
11 REMANDING the matter to the Commissioner for further administrative action  
12 consistent with this decision.

13  
14 DATED: May 14, 2013



15  
16 SHERI PYM  
United States Magistrate Judge