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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

YOLANDA VALLE,)	Case no. EDCV 09-0735-RC
)	
Plaintiff,)	
)	OPINION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

Plaintiff Yolanda Valle filed a complaint on April 16, 2009, seeking review of the Commissioner's decision denying her application for disability benefits. On October 2, 2009, the Commissioner answered the complaint, and the parties filed a joint stipulation on November 23, 2009.

BACKGROUND

On July 6, 2006,¹ plaintiff, who was born on April 8, 1951, applied for disability benefits under Title II of the Social Security Act ("Act"), 42 U.S.C. § 423, and the Supplemental Security Income program ("SSI") of Title XVI of the Act, claiming an inability to work

¹ On April 22, 2002, plaintiff previously applied for disability benefits, and on June 6, 2003, after an administrative hearing, plaintiff was found not to be disabled. Certified Administrative Record ("A.R.") 38-46.

1 since June 7, 2003,² due to right arm and right foot injuries. A.R.
2 91-102, 110. The plaintiff's applications were initially denied on
3 October 10, 2006, and were denied again on February 28, 2007,
4 following reconsideration. A.R. 52-56, 60-64. The plaintiff then
5 requested an administrative hearing, which was held before
6 Administrative Law Judge Thomas P. Tielens ("the ALJ") on June 9,
7 2008. A.R. 21-37, 65. On September 16, 2008, the ALJ issued a
8 decision finding plaintiff is not disabled. A.R. 10-20. The
9 plaintiff appealed this decision to the Appeals Council, which denied
10 review on February 11, 2009. A.R. 1-9.

11 12 DISCUSSION

13 I

14 The Court, pursuant to 42 U.S.C. § 405(g), has the authority to
15 review the decision denying plaintiff disability benefits to determine
16 if his findings are supported by substantial evidence and whether the
17 Commissioner used the proper legal standards in reaching his decision.
18 Vasquez v. Astrue, 572 F.3d 586, 591 (9th Cir. 2009); Vernoff v.
19 Astrue, 568 F.3d 1102, 1105 (9th Cir. 2009). "In determining whether
20 the Commissioner's findings are supported by substantial evidence,
21 [this Court] must review the administrative record as a whole,
22 weighing both the evidence that supports and the evidence that
23 detracts from the Commissioner's conclusion." Reddick v. Chater, 157
24 F.3d 715, 720 (9th Cir. 1998); Holohan v. Massanari, 246 F.3d 1195,
25 1201 (9th Cir. 2001). "Where the evidence can reasonably support

26
27 ² Plaintiff initially claimed an onset date of October 24,
28 2001, A.R. 91, 98, but later amended her onset date to June 7,
2003. A.R. 28.

1 either affirming or reversing the decision, [this Court] may not
2 substitute [its] judgment for that of the Commissioner." Parra v.
3 Astrue, 481 F.3d 742, 746 (9th Cir. 2007), cert. denied, 552 U.S. 1141
4 (2008); Vasquez, 572 F.3d at 591.

5
6 The claimant is "disabled" for the purpose of receiving benefits
7 under the Act if she is unable to engage in any substantial gainful
8 activity due to an impairment which has lasted, or is expected to
9 last, for a continuous period of at least twelve months. 42 U.S.C.
10 §§ 423(d)(1)(A), 1382c(a)(3)(A); 20 C.F.R. §§ 404.1505(a), 416.905(a).
11 "The claimant bears the burden of establishing a prima facie case of
12 disability." Roberts v. Shalala, 66 F.3d 179, 182 (9th Cir. 1995),
13 cert. denied, 517 U.S. 1122 (1996); Smolen v. Chater, 80 F.3d 1273,
14 1289 (9th Cir. 1996).

15
16 The Commissioner has promulgated regulations establishing a five-
17 step sequential evaluation process for the ALJ to follow in a
18 disability case. 20 C.F.R. §§ 404.1520, 416.920. In the **First Step**,
19 the ALJ must determine whether the claimant is currently engaged in
20 substantial gainful activity. 20 C.F.R. §§ 404.1520(b), 416.920(b).
21 If not, in the **Second Step**, the ALJ must determine whether the
22 claimant has a severe impairment or combination of impairments
23 significantly limiting her from performing basic work activities. 20
24 C.F.R. §§ 404.1520(c), 416.920(c). If so, in the **Third Step**, the ALJ
25 must determine whether the claimant has an impairment or combination
26 of impairments that meets or equals the requirements of the Listing of
27 Impairments ("Listing"), 20 C.F.R. § 404, Subpart P, App. 1. 20
28 C.F.R. §§ 404.1520(d), 416.920(d). If not, in the **Fourth Step**, the

1 ALJ must determine whether the claimant has sufficient residual
2 functional capacity despite the impairment or various limitations to
3 perform her past work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If not,
4 in **Step Five**, the burden shifts to the Commissioner to show the
5 claimant can perform other work that exists in significant numbers in
6 the national economy. 20 C.F.R. §§ 404.1520(g), 416.920(g).

7
8 Applying the five-step sequential evaluation process, the ALJ
9 found plaintiff has not engaged in substantial gainful activity since
10 her alleged onset date. (Step One). The ALJ then found plaintiff has
11 the following severe impairments: "a history of upper extremity
12 injury in 1999, status post elbow surgery in 2000; and a history of
13 right ankle injury in 2000, status post ankle surgery in 2002"³ (Step
14 Two); however, she does not have an impairment or combination of
15 impairments that meets or equals a Listing. (Step Three). Finally,
16 the ALJ determined plaintiff is able to perform her past relevant work
17 as a teacher's aide and general office clerk; therefore, she is not
18 disabled. (Step Four).

19
20 **II**

21 A claimant's residual functional capacity ("RFC") is what she can
22 still do despite her physical, mental, nonexertional, and other
23 limitations. Mayes v. Massanari, 276 F.3d 453, 460 (9th Cir. 2001);

24
25 _____
26 ³ "As noted in the June 16, [sic] 2003 hearing decision,
27 the [plaintiff] injured her right elbow while working as a
28 teacher's aide in 1999 and underwent elbow surgery in 2000. The
[plaintiff] injured her right ankle in a fall while working as a
teacher's aide in 2000 and underwent ankle surgery in 2002."

1 see also Valentine v. Comm'r, Soc. Sec. Admin., 574 F.3d 685, 689 (9th
2 Cir. 2009) (RFC is "a summary of what the claimant is capable of doing
3 (for example, how much weight he can lift)"). Here, the ALJ found
4 plaintiff has the RFC to perform light work or, alternately, a limited
5 range of light work,⁴ as follows:

6
7 she is limited to occasional climbing, bending, stooping,
8 kneeling, crouching, and crawling; she is unable to climb
9 ladders, ropes, and scaffolds; she is limited to frequent
10 (not constant) gripping and fine manipulations with the
11 right (dominant) upper extremity; and she must avoid
12 concentrated exposure to heat, cold, and hazards such as
13 heights and moving machinery.

14
15 A.R. 17. However, plaintiff contends the RFC is not supported by
16 substantial evidence because the ALJ erroneously determined she was
17 not a credible witness and improperly failed to consider the type,
18 dosage, and side effects of her medications.

19 //

20
21 ⁴ Under Social Security regulations, "[l]ight work involves
22 lifting no more than 20 pounds at a time with frequent lifting or
23 carrying of objects weighing up to 10 pounds. Even though the
24 weight lifted may be very little, a job is in this category when
25 it requires a good deal of walking or standing, or when it
26 involves sitting most of the time with some pushing and pulling
27 of arm or leg controls. To be considered capable of performing a
28 full or wide range of light work, [the claimant] must have the
ability to do substantially all of these activities." 20 C.F.R.
§§ 404.1567(b), 416.967(b). "[T]he full range of light work
requires standing or walking for up to two-thirds of the
workday." Gallant v. Heckler, 753 F.2d 1450, 1454 n.1 (9th Cir.
1984); SSR 83-10, 1983 WL 31251, *6.

1 **A. Credibility:**

2 At the administrative hearing, plaintiff testified she is unable
3 to work due to pain in her hips and knees, right arm, elbow, hand and
4 fingers, and right leg and foot. A.R. 28-29. She also stated it is
5 difficult for her to lift books, move desks and tables, and write for
6 long periods of time. A.R. 28, 31. The plaintiff stated she can
7 stand for only two to three minutes and slowly walk for five to ten
8 minutes before having to sit down. A.R. 30. She also testified she
9 cannot lift a gallon of milk, she can only lift a half gallon of milk
10 with her left arm, and she uses her non-dominant left hand to brush
11 her teeth because the toothbrush hurts her right hand. A.R. 32-33.

12
13 Once a claimant has presented objective evidence that she suffers
14 from an impairment that could cause pain or other nonexertional
15 limitations,⁵ the ALJ may not discredit the claimant's testimony
16 "solely because the degree of pain alleged by the claimant is not
17 supported by objective medical evidence." Bunnell v. Sullivan, 947
18 F.2d 341, 347 (9th Cir. 1991) (en banc); Moisa v. Barnhart, 367 F.3d
19 882, 885 (9th Cir. 2004). Thus, if the ALJ finds the claimant's
20 subjective complaints are not credible, he "must provide specific,
21 cogent reasons for the disbelief.'" Greger v. Barnhart, 464 F.3d 968,
22 972 (9th Cir. 2006) (citations omitted); Orn v. Astrue, 495 F.3d 625,
23 635 (9th Cir. 2007). "Factors that an ALJ may consider in weighing a
24 claimant's credibility include reputation for truthfulness,

25 _____
26 ⁵ "While most cases discuss excess pain testimony rather
27 than excess symptom testimony, rules developed to assure proper
28 consideration of excess pain apply equally to other medically
related symptoms." Swenson v. Sullivan, 876 F.2d 683, 687-88
(9th Cir. 1989).

1 inconsistencies in testimony or between testimony and conduct, daily
2 activities, and 'unexplained, or inadequately explained, failure to
3 seek treatment or follow a prescribed course of treatment.'" Orn, 495
4 F.3d at 636 (citations omitted); Thomas v. Barnhart, 278 F.3d 947,
5 958-59 (9th Cir. 2002). Furthermore, if there is medical evidence
6 establishing an objective basis for some degree of pain and related
7 symptoms, and no evidence affirmatively suggesting that the claimant
8 is malingering, the ALJ's reasons for rejecting the claimant's
9 testimony must be "clear and convincing." Morgan v. Comm'r of the
10 Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999); Vasquez, 572 F.3d
11 at 591.

12
13 Here, the ALJ found plaintiff was not credible for several
14 reasons supported by the record.⁶ First, the ALJ found plaintiff's
15 complaints of disabling pain were contradicted by the medical record,
16 which demonstrates plaintiff's condition is no worse now than it was
17 in 2003, when the Commissioner previously determined plaintiff was
18 capable of performing light work and was not disabled -- both findings
19 plaintiff does not challenge here. A.R. 16-18, 42-46. "Contradiction
20 with the medical record is a sufficient basis for rejecting the
21 claimant's subjective testimony[," Carmickle v. Comm'r, Soc. Sec.
22 Admin., 533 F.3d 1155, 1161 (9th Cir. 2008); see also Stubbs-Danielson

23
24 ⁶ Although the Court affirms the ALJ's adverse credibility
25 determination, the ALJ also gave several reasons for this
26 credibility determination that are **not** supported by substantial
27 evidence in the record, including the findings that plaintiff
28 "has been consistently advised that she is able to return to her
past work" and plaintiff's complaints are not credible because
she "is able to attend classes and perform typical daily
activities." A.R. 18.

1 v. Astrue, 539 F.3d 1169, 1175 (9th Cir. 2008) (ALJ properly rejected
2 claimant's testimony, in part, because her "allegations as to the
3 intensity, persistence and limiting effects of her symptoms are
4 disproportionate and not supported by the objective medical findings
5 nor any other corroborating evidence."), and this finding is supported
6 by substantial evidence in the record.

7
8 Second, the ALJ found that plaintiff did not receive any medical
9 treatment for her right ankle for two years -- from May 2003 to May
10 2005 -- and plaintiff did not receive any medical treatment for her
11 right elbow after February 2004, A.R. 16, 18, and plaintiff does not
12 dispute these findings. See Jt. Stip. at 2:20-23, 3:14-6:2, 10:16-24.
13 "The ALJ is permitted to consider lack of treatment in his credibility
14 determination[,]" Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir.
15 2005); Meanel v. Apfel, 172 F.3d 1111, 1114 (9th Cir. 1999); see also
16 Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989) ("[A]n unexplained,
17 or inadequately explained, failure to seek treatment or follow a
18 prescribed course of treatment . . . can cast doubt on the sincerity
19 of the claimant's . . . testimony."); thus, these findings also
20 support the ALJ's adverse credibility determination.

21
22 Finally, the ALJ found that plaintiff "has never been advised to
23 take any pain medication other than ibuprofen." A.R. 18. Since
24 "evidence of 'conservative treatment' is sufficient to discount a
25 claimant's testimony regarding severity of an impairment[,]" Parra v.
26 Astrue, 481 F.3d 742, 751 (9th Cir. 2007), cert. denied, 552 U.S. 1141
27 (2008); see also Meanel, 172 F.3d at 1114 (Claimant's "claim that she
28 experienced pain approaching the highest level imaginable was

1 inconsistent with the 'minimal, conservative treatment' that she
2 received."); Johnson v. Shalala, 60 F.3d 1428, 1434 (9th Cir. 1995)
3 (ALJ properly concluded claimant's excess pain testimony was not
4 credible because, among other reasons, claimant's treating physician
5 prescribed only conservative treatment, "suggesting a lower level of
6 both pain and functional limitation"), this finding also supports the
7 ALJ's adverse credibility determination. All of these findings
8 "provide[] 'clear and convincing' reasons for rejecting [plaintiff's]
9 testimony as not credible." Tommasetti v. Astrue, 533 F.3d 1035, 1037
10 (9th Cir. 2008).

11
12 **B. Medication Side Effects:**

13 "[S]ide effects [of medication] can be a 'highly idiosyncratic
14 phenomenon' and a claimant's testimony as to their limiting effects
15 should not be trivialized." Varney v. Sec'y of Health & Human Servs.,
16 846 F.2d 581, 585 (9th Cir. 1988). Thus, in determining a claimant's
17 limitations, the ALJ must consider all factors that might have a
18 significant impact on a claimant's ability to work, including the side
19 effects of medication, Erickson v. Shalala, 9 F.3d 813, 817-18 (9th
20 Cir. 1993, and the ALJ may disregard a claimant's testimony about such
21 side effects only if he "support[s] that decision with specific
22 findings similar to those required for excess pain testimony, as long
23 as the side effects are in fact associated with the claimant's
24 medication(s)." Varney, 846 F.2d at 585.

25
26 Here, plaintiff noted in a questionnaire that she takes Ibuprofen
27 600 mg., which makes her tired, drowsy, confused, slow, and
28 constipated, and gives her stomach cramps, A.R. 133; however, she did

1 **not** testify about these side effects at the administrative hearing,
2 and she points to nothing in the medical record showing she ever told
3 any treating or examining physician about these side effects. Thus,
4 the ALJ was not required to further consider any purported medication
5 side effects. See Greger v. Barnhart, 464 F.3d 968, 973 (9th Cir.
6 2006) (ALJ did not err when claimant did not report alleged side
7 effect of medication to any physician during relevant period); Thomas,
8 278 F.3d at 960 (ALJ properly rejected claimant's alleged side effects
9 when claimant "offer[ed] no objective evidence that her medications
10 . . . caused" these side effects, and ALJ found claimant lacked
11 credibility); Morillas v. Astrue, __ Fed. Appx. __, 2010 WL 1141520,
12 *3 (9th Cir. 2010) ("The ALJ . . . reasonably discounted [claimant's]
13 testimony about the side-effects of her medications [when] [n]othing
14 in the medical records reflected any complaint to her health providers
15 that her medications made her drowsy, and there was no evidence of any
16 assessed functional limitation from her medications."). Thus, there
17 is no merit to this claim by petitioner.

18 19 **III**

20 The ALJ determined in Step Four that plaintiff is able to perform
21 her past relevant work as a general office clerk and teacher's aide,
22 based on plaintiff's RFC, and the testimony of vocational expert
23 Steven Davis. However, plaintiff contends this finding is not
24 supported by substantial evidence because the ALJ posed an incomplete
25 hypothetical question to the vocational expert. There is no merit to
26 this claim.

27
28 It is indisputable that hypothetical questions to a vocational

1 expert must consider all of the claimant's limitations, Valentine, 574
2 F.3d at 690; Thomas, 278 F.3d at 956, and "[t]he ALJ's depiction of
3 the claimant's disability must be accurate, detailed, and supported by
4 the medical record." Tackett v. Apfel, 180 F.3d 1094, 1101 (9th Cir.
5 1999). "If a vocational expert's hypothetical does not reflect all
6 the claimant's limitations, then the 'expert's testimony has no
7 evidentiary value to support a finding that the claimant can perform
8 jobs in the national economy.'" Matthews v. Shalala, 10 F.3d 678, 681
9 (9th Cir. 1995) (quoting Delorme v. Sullivan, 924 F.2d 841, 850 (9th
10 Cir. 1991)); Lewis v. Apfel, 236 F.3d 503, 517 (9th Cir. 2001).

11
12 Here, the ALJ asked the vocational expert the following
13 hypothetical question:

14
15 [W]ith an individual the same age as our Claimant, who has
16 the same educational background and past work experience.
17 . . . I'd ask you to consider that this person could work
18 in the light range, occasionally climbing, balancing,
19 stooping, kneeling, crouching [and] crawling. Should not be
20 asked to use ladders, ropes, or scaffolds. Would need to
21 avoid concentrated exposure to heat, cold[], and hazards,
22 such as . . . unprotected heights and moving machinery, and
23 would have limits to the right upper extremity, which is the
24 dominant extremity, limiting this hypothetical person to
25 frequent gripping and fine manipulation with that upper
26 extremity, not constant, but frequently. Could this
27 hypothetical person perform any of our Claimant's past work?

28 //

1 A.R. 35. The vocational expert responded that such a person could
2 work as a general office clerk or teacher's aide. A.R. 35-36.

3
4 The plaintiff complains that the ALJ's hypothetical question to
5 the vocational expert did not include the purported side effects of
6 plaintiff's medication. However, since this Court has determined that
7 nothing in the record supports plaintiff's complaint of side effects,
8 and further determined that plaintiff's credibility was properly
9 discredited, these purported side effects are not a limitation on
10 plaintiff, and the ALJ was not required to include them in the
11 hypothetical question to the expert. See Greger, 464 F.3d at 973 (9th
12 Cir. 2006) ("The ALJ . . . 'is free to accept or reject restrictions
13 in a hypothetical question that are not supported by substantial
14 evidence.'" (quoting Osenbrock v. Apfel, 240 F.3d 1157, 1164-65 (9th
15 Cir. 2001)); Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001)
16 ("[T]he ALJ did not err in omitting the other limitations that
17 claimant had claimed, but had failed to prove."). The vocational
18 expert's testimony, thus, constitutes substantial evidence to support
19 the ALJ's Step Four determination that plaintiff can perform her past
20 relevant work. Roberts, 66 F.3d at 184; Tylitzki v. Shalala, 999 F.2d
21 1411, 1415 (9th Cir. 1993).

22
23 **ORDER**

24 IT IS ORDERED that: (1) plaintiff's request for relief is denied;
25 and (2) the Commissioner's decision is affirmed, and Judgment shall be
26 entered in favor of defendant.

27 DATE: June 7, 2010

/S/ ROSALYN M. CHAPMAN
ROSALYN M. CHAPMAN
UNITED STATES MAGISTRATE JUDGE