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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TAMMY LEE PHILLIPPI,)	Case No. ED CV 09-1742-PJW
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
MICHAEL J. ASTRUE,)	
COMMISSIONER OF THE)	
SOCIAL SECURITY ADMINISTRATION,)	
)	
Defendant.)	
)	

I.

INTRODUCTION

Before the Court is an appeal by Plaintiff Tammy Lee Phillippi of a decision by the Social Security Administration (hereinafter the "Agency"), denying her application for Disability Insurance benefits ("DIB"). Plaintiff claims that the Administrative Law Judge ("ALJ") erred when he concluded that she did not meet the Listing requirements for her depressive disorder, rejected the opinion of various doctors, and found that she was not credible. For the following reasons the Agency's decision is affirmed and the case is dismissed with prejudice.

1 II.

2 SUMMARY OF FACTS AND PROCEEDINGS

3 In July 2006, Plaintiff applied for DIB, alleging that she had
4 been disabled since October 2005, due to chronic fatigue syndrome and
5 depression. The Agency denied the application initially and on
6 reconsideration. Plaintiff then requested and was granted an
7 administrative hearing before an ALJ. On September 19, 2008, she
8 appeared with counsel at the hearing and testified. (Administrative
9 Record ("AR") at 27-55.) On January 20, 2009, the ALJ issued a
10 decision, denying her claim for benefits. (AR 14-21.) This appeal
11 followed.

12 III.

13 ANALYSIS

14 A. The ALJ's Findings Regarding the Medical Evidence

15 In her first claim of error, Plaintiff contends that the ALJ
16 erred when he concluded that Plaintiff's depression did not meet the
17 requirements of Listing 12.04, Affective Disorders. (Plaintiff's
18 Summary Judgment Motion (hereinafter "Motion") at 6-11.) In
19 Plaintiff's view, the ALJ improperly ignored the opinions of the
20 doctors to do so. For the reasons explained below, the Court
21 concludes that the ALJ did not err when he found that Plaintiff did
22 not meet the requirements of Listing 12.04.

23 Listing 12.04, dealing with affective disorders, reads as
24 follows:

25 Characterized by a disturbance of mood, accompanied by a full or
26 partial manic or depressive syndrome. Mood refers to a prolonged
27 emotion that colors the whole psychic life; it generally involves
28 either depression or elation.

1 The required level of severity for these disorders is met when
2 the requirements in both A and B are satisfied, or when the
3 requirements in C are satisfied.

4 A. Medically documented persistence, either continuous or
5 intermittent, of one of the following:

6 1. Depressive syndrome characterized by at least four
7 of the following:

8 a. Anhedonia or pervasive loss of interest in
9 almost all activities; or

10 b. Appetite disturbance with change in weight;
11 or

12 c. Sleep disturbance; or

13 d. Psychomotor agitation or retardation; or

14 e. Decreased energy; or

15 f. Feelings of guilt or worthlessness; or

16 g. Difficulty concentrating or thinking; or

17 h. Thoughts of suicide; or

18 i. Hallucinations, delusions or paranoid
19 thinking; or

20 2. Manic syndrome characterized by at least three of
21 the following:

22 a. Hyperactivity; or

23 b. Pressure of speech; or

24 c. Flight of ideas; or

25 d. Inflated self-esteem; or

26 e. Decreased need for sleep; or

27 f. Easy distractibility; or
28

1 g. Involvement in activities that have a high
2 probability of painful consequences which are
3 not recognized; or

4 h. Hallucinations, delusions or paranoid
5 thinking;

6 Or

7 3. Bipolar syndrome with a history of episodic
8 periods manifested by the full symptomatic picture
9 of both manic and depressive syndromes (and
10 currently characterized by either or both
11 syndromes);

12 And

13 B. Resulting in at least two of the following:

14 1. Marked restriction of activities of daily living;
15 or

16 2. Marked difficulties in maintaining social
17 functioning; or

18 3. Marked difficulties in maintaining concentration,
19 persistence, or pace; or

20 4. Repeated episodes of decompensation, each of
21 extended duration;

22 Or

23 C. Medically documented history of a chronic affective disorder
24 of at least 2 years' duration that has caused more than a
25 minimal limitation of ability to do basic work activities,
26 with symptoms or signs currently attenuated by medication or
27 psychosocial support, and one of the following:
28

- 1 1. Repeated episodes of decompensation, each of
2 extended duration; or
- 3 2. A residual disease process that has resulted in
4 such marginal adjustment that even a minimal
5 increase in mental demands or change in the
6 environment would be predicted to cause the
7 individual to decompensate; or
- 8 3. Current history of 1 or more years' inability to
9 function outside a highly supportive living
10 arrangement, with an indication of continued need
11 for such an arrangement.

12 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.04.

13 In her brief, Plaintiff goes through various criteria for § 12.04
14 and explains why she believes that she meets them.¹ (Motion at 6-12.)
15 As explained below, the Court does not find Plaintiff's arguments
16 persuasive.²

17 Plaintiff's attempt to establish that she fits within the
18 requirements of Listing 12.04 is wanting. She points out, for
19

20 ¹ Plaintiff was represented by counsel when she filed this
21 action over a year ago. Thereafter, Plaintiff's counsel moved to
22 withdraw from the case, signaling to the Court at the hearing, it
23 seems, that he was unable to find any issues on which he could argue
in good faith that the ALJ had erred. Thereafter, Plaintiff filed a
brief on her own behalf.

24 ² The Agency did not address Plaintiff's claim that she meets
25 the Listing requirements. It has, instead, addressed the ALJ's
26 decision to discount some of the doctors' findings which would have
27 supported Plaintiff's argument that she met the Listing. As a result,
the Court is compelled to address Plaintiff's arguments without the
benefit of the Agency's position. In the future, the Court would be
grateful to the Agency if it would address the plaintiffs' arguments
28 in its briefs.

1 example, that she suffers from anhedonia and a lack of interest in
2 activities (§12.04(A)(1)(a)) and cites as proof statements that she
3 and her husband made during the course of these proceedings. (Joint
4 Stip. at 7.) But the ALJ discounted her credibility, an issue the
5 Court will address infra, and, thus, her subjective claims are not
6 enough to establish that she meets the requirements of the Listing.
7 As to her husband's input--a letter he submitted after the ALJ denied
8 her claim (AR 22)--the Court cannot fault the ALJ for not having
9 considered it.

10 Plaintiff complains that she suffers from sleep apnea and points
11 out that this is another factor to be considered. See
12 §12.04(A)(1)(c). But, as the ALJ pointed out, Plaintiff testified
13 that her sleep apnea is controlled with a CPAP machine. (AR 19.)

14 Plaintiff's real issue with the ALJ's decision is that he failed
15 to accept the opinions of the doctors who found her most limited, in
16 particular, consulting doctor Inderpal Randhawa. (Motion at 10-11.)
17 Plaintiff notes that Dr. Randhawa concluded that Plaintiff was "not
18 able to perform any sort of exertional or non-exertional activity in
19 any meaningful status." (AR 169.) Had the ALJ accepted this finding,
20 she argues, he would have concluded that she was disabled. Again, the
21 Court does not find error, here.

22 The ALJ discounted Dr. Randhawa's opinion because it amounted to
23 an opinion of disability, which he concluded was not binding on him.
24 (AR 19.) He also noted that Dr. Randhawa's opinion was based
25 primarily on Plaintiff's statements to him, which the ALJ did not find
26 believable. (AR 19.) He pointed out further that Dr. Randhawa's
27 opinion was not supported by the results of his examination of
28 Plaintiff and was inconsistent with Plaintiff's claimed daily

1 activities. (AR 19.) These are all legitimate reasons under the law
2 to discount a doctor's opinion. *Tonapetyan v. Halter*, 242 F.3d 1144,
3 1148 (9th Cir. 2001) (noting doctor's opinion that claimant is
4 disabled is not binding on ALJ); *Bray v. Comm'r of Soc. Sec.*, 554 F.3d
5 1219, 1228 (9th Cir. 2009) (upholding ALJ's rejection of doctor's
6 opinion based on claimant's statements where ALJ concluded that
7 claimant was not credible); *Bayliss v. Barnhart*, 427 F.3d 1211, 1216
8 (9th Cir. 2005) (holding discrepancy between doctor's treatment notes
9 and doctor's opinion is clear and convincing reason to reject doctor's
10 opinion). And, further, they are supported by the record. (AR 165-
11 69.) Though Dr. Randhawa did conclude that Plaintiff could not
12 perform any activities, he concluded in the same sentence that
13 Plaintiff had no functional limitations. (AR 169.) His opinion that
14 she could not perform any activities was not based on anything he
15 uncovered in his examination of Plaintiff. Rather, it was based on
16 Plaintiff's report to him that she spent three days out of each week
17 in bed. (AR 165-66.) As such, the ALJ properly rejected Dr.
18 Randhawa's opinion that Plaintiff could not perform any activities
19 because it was based on her self-serving statements which the ALJ
20 rejected and it was not supported by the doctor's own findings.

21 B. The Credibility Findings

22 Plaintiff contends that the ALJ erred when he found that she was
23 not credible. She argues that, "[i]t is not plausible for a neutral
24 jurist to completely discount Plaintiff's testimony" (Motion
25 at 13.) Again, the Court disagrees.

26 Credibility determinations are the province of the ALJ. See *Fair*
27 *v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989). In order for an ALJ to
28 reject a claimant's credibility, he need only provide specific, clear,

1 and convincing reasons for doing so. See *Smolen v. Chater*, 80 F.3d
2 1273, 1284 (9th Cir. 1996). In making this determination, the ALJ may
3 take into account, among other things, ordinary credibility evaluation
4 techniques. *Id.*

5 The ALJ cited numerous reasons for rejecting Plaintiff's
6 testimony, including:

- 7 1. The objective medical evidence did not support her claimed
8 limitations.
- 9 2. An MRI brain scan was normal, despite Plaintiff's claims of
10 chronic headaches.
- 11 3. Plaintiff's course of treatment had been fairly conservative
12 considering the extent of her claimed ailments.
- 13 4. Plaintiff had not required any hospitalization or emergency
14 care for periods when her condition was exacerbated.
- 15 5. Plaintiff had not needed any special accommodations to
16 relieve her pain and other symptoms.
- 17 6. Plaintiff did not exhibit muscle atrophy or loss of
18 strength, despite her claims of disabling pain and weakness.
- 19 7. Plaintiff's medications proved effective in controlling her
20 symptoms and had not caused any side effects.
- 21 8. Plaintiff had not suffered any weight loss due to her
22 depression and anhedonia.
- 23 9. Plaintiff had not experienced any sleep loss and her apnea
24 had been controlled with a CPAP machine.
- 25 10. Plaintiff had not experienced any cognitive decline despite
26 her depression and, in fact, had tested above average in
27 mental acuity tests.

1 11. Plaintiff's daily activities were inconsistent with her
2 claims of debilitation.

3 12. None of Plaintiff's physicians had opined that she was
4 disabled.

5 (AR 18-19.)

6 For the most part, these are legitimate reasons for discounting a
7 claimant's claim of debilitating symptoms. *See, e.g., Parra v.*
8 *Astrue*, 481 F.3d 742, 751 (9th Cir. 2007) ("[E]vidence of
9 'conservative treatment' is sufficient to discount a claimant's
10 testimony...."); *Smolen*, 80 F.3d at 1284 (holding ALJ can consider
11 effectiveness of medication in controlling symptoms in evaluating
12 claimant's pain testimony); *Maounis v. Heckler*, 738 F.2d 1032, 1034
13 (9th Cir. 1984) ("The ALJ can disregard a claimant's self-serving
14 statements if they are unsupported by objective findings."). And, for
15 the most part, they are supported by the record. (AR 14-15, 46 (no
16 side effects from medication), 49 (sleeps through the night), 169 (no
17 physical limitations found by examining doctor), 178 (only slightly
18 limited in mental function), 207-378 (no finding by any of her doctors
19 that she is disabled).) As such, the ALJ's decision that Plaintiff
20 was not credible is affirmed.³

21 C. The Vocational Expert's Finding

22 Finally, Plaintiff takes exception to the vocational expert's
23 finding that Plaintiff could work even though she might miss work

24
25 ³ The Court is unsure as to the basis for the ALJ's finding that
26 Plaintiff's claim that she suffers from chronic headaches was
27 undermined by the fact that an MRI performed on her brain did not
28 disclose any abnormalities. The ALJ did not explain and the Court is
not aware of any evidence that suggests that an absence of
abnormalities in an MRI proves that a patient is not suffering from
headaches.

1 sometimes and, on the days she's there, might have to lay down for an
2 hour each day during her lunch break. (Motion at 3.) She contends,
3 "It is not plausible for a neutral jurist to . . . believe there are
4 jobs in this nation, during these times, that will tolerate missing 2
5 days per month, and provide for facilities for one to lay down to rest
6 during lunch." (Motion at 13.) There is no merit to this claim.

7 The vocational expert testified that, under the Dictionary of
8 Occupational Titles ("DOT"), jobs existed in the national economy
9 where Plaintiff could work even if she had to lay down during lunch
10 and even if she had to miss work up to two times a month. (AR 52-54.)
11 The ALJ is entitled to rely on the vocational expert's testimony to
12 that effect. See, e.g., *Johnson v. Shalala*, 60 F.3d 1428, 1435 (9th
13 Cir. 1995) (holding that vocational expert testimony "may properly be
14 used to show that the particular jobs . . . may be ones that a
15 particular claimant can perform.") Plaintiff's argument that the ALJ
16 erred is really a visceral one; she cannot believe that a vocational
17 expert could reach this conclusion and, further, that in an economy as
18 fragile as the one we are now facing an employer would hire her with
19 her special needs. Though the Court empathizes with Plaintiff, the
20 test is not whether Plaintiff would be the best candidate for a job,
21 but, rather, whether she meets the qualifications for the job as set
22 forth in the DOT. She does. And the vocational expert's testimony to
23 that effect is controlling. For this reason, Plaintiff's claim is
24 denied.

25 IV.

26 CONCLUSION

27 For the reasons set forth above, the Court concludes that the ALJ
28 did not err when he concluded that Plaintiff was not entitled to DIB.

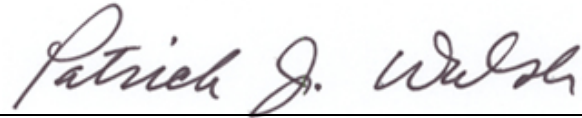
1 The Agency's decision, therefore, is affirmed and the case is
2 dismissed with prejudice.

3 IT IS SO ORDERED.

4 DATED: November 19, 2010.

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PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE

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