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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

OLIVIA HUERTA,)	Case No. EDCV 10-1095-MLG
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of the)	
Social Security)	
Administration,)	
)	
Defendant.)	
_____)	

Plaintiff Olivia Huerta ("Plaintiff") seeks judicial review of the Commissioner's final decision denying her application for disability insurance benefits ("DIB") pursuant to Title II of the Social Security Act. For the reasons stated below, the Commissioner's decision is reversed, and this action is remanded for further proceedings.

I. Factual and Procedural Background

Plaintiff was born on November 19, 1966. (Administrative Record ("AR") at 45). She has relevant work experience as a food server, bakery supervisor, checker, and office helper. (AR at 10).

1 Plaintiff protectively filed an application for DIB on June 23,
2 2006, alleging that she has been disabled since July 18, 2005, due to
3 multiple cervical discopathies, multiple disc protrusions in the lumbar
4 spine, depression, shoulder pain, knee pain, and anxiety. (AR at 10,
5 187). The Social Security Administration denied Plaintiff's application
6 initially and on reconsideration. (AR at 76-79, 81-85).

7 An administrative hearing was held before Administrative Law Judge
8 Lowell Fortune ("the ALJ") on August 6, 2008, and was continued on
9 October 31, 2008, and January 30, 2009. (AR at 18-72). Plaintiff, who
10 was represented by counsel, testified at the hearings. (AR at 21-38, 45-
11 53, 57-61). A vocational expert also testified at the hearings. (AR at
12 38-41, 65-70). The ALJ issued a decision on June 26, 2009, denying
13 Plaintiff's application. (AR at 10-17). The ALJ found that Plaintiff:
14 (1) has not engaged in substantial gainful activity since her alleged
15 onset date (step 1); (2) suffers from severe impairments including
16 disorder of the cervical, thoracic and lumbar spine, left shoulder
17 disorder, bilateral knee disorder, depressive disorder and adjustment
18 disorder (step 2); (3) does not have any impairments that meet or equal
19 the criteria of a listed impairment (step 3); (4) has a residual
20 functional capacity ("RFC") to perform a limited range of medium work;¹
21 and (5) is able to perform her past relevant work as a food server,
22

23 ¹ Specifically, the ALJ found that Plaintiff is able to lift and
24 carry 25 pounds frequently and 35 pounds occasionally, sit for six hours
25 in an eight-hour workday, and stand and/or walk for six hours in an
26 eight-hour workday. (AR at 16). The ALJ further found that Plaintiff is
27 limited to low stress work and is precluded from engaging in the
28 following: climbing scaffolds, ropes and ladders; repetitive head/neck
motion; reaching with the left upper extremity; repetitive reaching at
or above shoulder level with the dominant right hand; and work involving
concentrated exposure to vibration, dangerous or fast machinery and
unprotected heights. (AR at 14-15, 17).

1 checker, and office helper (step 4). (AR at 14-17). The Appeals Council
2 denied review on May 26, 2010. (AR at 1-3).

3 Plaintiff commenced this action for judicial review on July 27,
4 2010. The parties filed a Joint Stipulation identifying the disputed
5 facts and legal issues on February 10, 2011. Plaintiff contends that the
6 ALJ failed to give proper consideration to the medical evidence and her
7 subjective symptom testimony. Plaintiff seeks remand for further
8 administrative proceedings. (Joint Stipulation at 19-20). The
9 Commissioner requests that the ALJ's decision be affirmed. (Joint
10 Stipulation at 20). The Joint Stipulation has been taken under
11 submission without oral argument.

12 **II. Standard of Review**

13 Under 42 U.S.C. § 405(g), a district court may review the
14 Commissioner's decision to deny benefits. The Commissioner's or ALJ's
15 findings and decision should be upheld if they are free from legal error
16 and are supported by substantial evidence based on the record as a
17 whole. 42 U.S.C. § 405(g); *Richardson v. Perales*, 402 U.S. 389, 401
18 (1971); *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
19 evidence means such evidence as a reasonable person might accept as
20 adequate to support a conclusion. *Richardson*, 402 U.S. at 401;
21 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more
22 than a scintilla, but less than a preponderance. *Lingenfelter*, 504 F.3d
23 at 1035 (citing *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir.
24 2006)). To determine whether substantial evidence supports a finding,
25 the reviewing court "must review the administrative record as a whole,
26 weighing both the evidence that supports and the evidence that detracts
27 from the Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715,
28 720 (9th Cir. 1996). "If the evidence can reasonably support either

1 affirming or reversing," the reviewing court "may not substitute its
2 judgment" for that of the Commissioner. *Id.* at 720-721.

3
4 **III. DISCUSSION**

5 **A. Examining Physician's Opinion**

6 Plaintiff contends that the ALJ improperly rejected the work-
7 related limitations identified by orthopedic surgeon Thomas W. Jackson,
8 M.D. (AR at 504-22).

9 While working at a grocery store, Plaintiff suffered injuries to
10 her left shoulder, low back, mid-back, and neck. (AR at 505). In
11 February 2007, Dr. Jackson was retained in Plaintiff's workers'
12 compensation case as an Agreed Medical Examiner. (AR at 504-22). Dr.
13 Jackson diagnosed Plaintiff with disc bulges in the cervical spine, left
14 shoulder rotator cuff tendinitis, disc protrusion in the thoracic spine,
15 degenerative disc disease of the lumbar spine, facet spondylosis
16 associated with bilateral lower extremity radiculitis, and mild to
17 moderate exogenous obesity. (AR at 516). Based on these conditions, Dr.
18 Jackson identified a number of work restrictions. (AR at 518). With
19 respect to the use of the left arm at or above shoulder level, Dr.
20 Jackson found that Plaintiff was precluded from engaging in "repetitive
21 movements," "heavy lifting," "heavy pushing," and "heavy pulling." (AR
22 at 518). Dr. Jackson also found that Plaintiff was precluded from "heavy
23 work" and "prolonged sitting and prolonged working in a stationary
24 standing position," due to her thoracic and lumbar spine impairments.
25 (AR at 518).

26 The ALJ interpreted Dr. Jackson's restrictions to be consistent
27 with a limited range of medium work, including the ability to lift and
28 carry 25 pounds frequently and 35 pounds occasionally, sit for six hours

1 in an eight-hour workday, and stand and/or walk for six hours in an
2 eight-hour workday. (AR at 17). However, as noted above, Dr. Jackson
3 precluded Plaintiff from engaging in "heavy work" and "heavy lifting"
4 with the left arm at or above shoulder level. (AR at 518). The
5 California Guidelines for Work Capacity indicate that a disability
6 precluding "heavy lifting" "contemplates that the individual has lost
7 approximately half of his pre-injury capacity for lifting." See *Glass v.*
8 *Workers' Comp. Appeals Board*, 105 Cal.App.3d 297, 302, n.1 (1980).
9 Plaintiff performed her prior work at the medium level, which required
10 lifting up to 50 pounds at a time. (AR at 66, 195); 20 C.F.R. §
11 404.1567(c). Given Dr. Jackson's preclusion against heavy work and heavy
12 lifting, Plaintiff's lifting ability would have been reduced by one
13 half, resulting in a maximum lifting ability of 25 pounds occasionally.
14 *Glass*, 105 Cal.App.3d at 302, n.1. Thus, the ALJ's conclusion that
15 Plaintiff was capable of lifting 25 pounds frequently and 35 pounds
16 occasionally was clearly in conflict with Dr. Jackson's opinion.

17 Plaintiff asserts that the ALJ erred by disregarding Dr. Jackson's
18 opinion on work limitations. (Joint Stipulation at 4; AR at 518). The
19 Commissioner responds that the ALJ was not required to address every
20 piece of evidence, and was not obligated to accept all of Dr. Jackson's
21 findings. (See Joint Stipulation at 8). The Commissioner further notes
22 that a residual functional capacity assessment for medium work was
23 consistent with the opinions of one of the examining physicians, Jeff
24 Altman, M.D., and two state agency reviewing physicians. (Joint
25 Stipulation at 9; AR at 280, 283-87, 298-99).

26 It is well settled that an ALJ must provide specific and legitimate
27 reasons supported by substantial evidence in the record before rejecting
28 a controverted examining physician's opinion. *Lester v. Chater*, 81 F.3d

1 821, 830-31 (9th Cir. 1996). The opinions of non-examining physicians
2 cannot by themselves constitute substantial evidence that justifies the
3 rejection of the opinion of either an examining physician. *Id.* at 831.
4 Here, in assessing Plaintiff's residual functional capacity, the ALJ
5 claimed to give Dr. Jackson's medical opinion the "most weight." (AR at
6 15). The ALJ did not reject Dr. Jackson's opinion in favor of the other
7 examining and non-examining physicians's opinions. (AR at 12). Because
8 the ALJ did not provide any reasons for rejecting Dr. Jackson's opinion,
9 the decision to deny benefits is not supported by substantial evidence.
10 *Lester*, 81 F.3d at 830-31.²

11 12 **IV. Conclusion**

13 In sum, the ALJ failed to give proper consideration to Dr.
14 Jackson's opinion. As the record needs further development with respect
15 to this opinion as well Plaintiff's true exertional ability, remand for
16 further proceedings is warranted. *See Harman v. Apfel*, 211 F.3d 1172,
17 1179-80 (9th Cir. 2000).³

18
19 ² The court further notes that although Plaintiff's prior work as
20 a checker (Dictionary of Occupational Titles "DOT" 369.687-014), office
21 worker (DOT 239.567-010), and food server (DOT 311.477-030) may be
22 performed at the light level, those jobs all require frequent reaching,
which is inconsistent with Plaintiff's residual functional capacity. (AR
at 15, 17, 196-97).

23 ³ Because the record is not sufficiently developed to support a
24 determination of disability without further proceedings, the Court will
25 not decide whether the remaining issue raised by Plaintiff would
26 independently require reversal. *See Bunnell v. Barnhart*, 336 F.3d 1112,
27 1115-16 (9th Cir. 2003) (where there are outstanding issues that must be
28 resolved before a determination of disability can be made, and it is not
clear from the record that the ALJ would be required to find the
claimant disabled if all the evidence were properly evaluated, remand is
appropriate). The Court recommends, however, that the ALJ consider all
of Plaintiff's arguments when determining the merits of her case on
remand.

