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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SANDRA ROCHA,)	No. ED CV 12-00264-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 Administrative Record ("AR") before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified AR.

Plaintiff raises the following issues:

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

1 considered the opinions of treating physicians Dr. Goldman,
2 Dr. Steiger and Dr. Tremazi;

- 3 2. Whether the ALJ provided a complete and accurate assessment
4 of Plaintiff's residual functional capacity;
- 5 3. Whether the ALJ poses complete hypothetical questions to the
6 vocational expert; and
- 7 4. Whether the ALJ's credibility determination is supported by
8 clear and convincing evidence.

9 (JS at 2-3.)

10
11 This Memorandum Opinion will constitute the Court's findings of
12 fact and conclusions of law. After reviewing the matter, the Court
13 concludes that for the reasons set forth, the decision of the
14 Commissioner must be reversed and the matter remanded.

15
16 I

17 **THE ALJ DID NOT PROPERLY CONSIDER THE OPINIONS OF**
18 **TREATING PHYSICIANS DRs. GOLDMAN, STEIGER AND TREMAZI**

19 The ALJ determined that Plaintiff has severe musculoskeletal
20 impairments consisting of carpal tunnel syndrome, cervical spine
21 degenerative disc disease and impingement syndrome of the right
22 shoulder. (AR 12.) He assessed a Residual Functional Capacity ("RFC")
23 to perform light work with postural limitations (climbing ramps/
24 stairs, balancing, stooping, kneeling, crouching and crawling) on an
25 occasional basis; an inability to climb ladders, rugs or scaffolds;
26 and limitation of handling and fingering to "frequently but not
27 continuously." (AR 13.)

28 As a result of an industrial accident, Plaintiff received

1 treatment and was also examined in the Workers Compensation context.

2 On March 19, 2007, Plaintiff's primary treating physician, Scott
3 Goldman, M.D., a board certified orthopedic surgeon, reported that
4 Plaintiff has normal range of motion of the right wrist and digits of
5 the right hand, decreased sensation in the index and middle finger,
6 and has "impairment with regard to grasping and tactile
7 discrimination." It was indicated that she reached her maximum
8 medical improvement as of March 19, 2007. (AR 204.) Dr. Goldman
9 assessed that in a work context she can do no fingering or gripping,
10 and cannot lift greater than ten pounds with the right upper
11 extremity. Dr. Goldman prepared his report as a Qualified Medical
12 Examiner ("QME"); thus, the report was written in the Workers
13 Compensation context.

14 Dr. Ralph Steiger, a Diplomate of the American Board of
15 Orthopedic Surgery, prepared a report on December 2, 2007. (AR 267-
16 272.) He diagnosed numerous musculoskeletal impairments. (AR 267-
17 270.) He assessed restrictions of no "repetitive" pushing, pulling,
18 reaching or lifting as well as no "repetitive" work at or above
19 shoulder level. Further, Plaintiff should avoid any "repetitive"
20 gripping, grasping or pinching and no keyboarding more than 50% of the
21 workday. Due to her cervical spine injury, he opined that she should
22 avoid any "repetitive" neck movement or "prolonged" fixed gaze in a
23 flexed or extended position, or any heavy lifting. Finally, as a
24 result of her lumbar spine injury, Dr. Steiger assessed that Plaintiff
25 is precluded from heavy lifting or "repeated" bending and stooping.
26 (AR 270.)

27 Plaintiff was treated by Dr. Tremazi, whose specialty appears to
28 be internal medicine and rheumatology (AR 350), between October 2,

1 2008 and March 11, 2009. Based on his examinations, Dr. Tremazi
2 completed a form in which he assessed that Plaintiff could only
3 occasionally twist, stoop, crouch, climb stairs, and could never climb
4 ladders. The following physical functions were affected by her
5 impairment: reaching, including overhead; handling (gross
6 manipulation); fingering (fine manipulation); feeling; and pushing/
7 pulling. (AR 409.)

8 The ALJ discussed the opinions of these physicians, but his
9 reasons for discrediting them are the reason that this matter will be
10 remanded. Thus, he indicated he did not give "great weight" to Dr.
11 Goldman's opinion that Plaintiff could not finger, grip or lift
12 greater than ten pounds with her right upper extremity. He stated,

13 "First, this opinion was given in connection with her
14 workers' compensation case. A decision or determination by
15 any other agency about whether an individual is disabled is
16 based on its rules. The Social Security Administration must
17 make a disability determination based on Social Security
18 law; therefore, an opinion or determination made by another
19 agency that an individual is disabled is not binding on the
20 undersigned (20 C.F.R. § 404.1504)."

21 (AR 16.)

22
23 The Commissioner, in his portion of the JS, reiterates this
24 rationale, but it is misplaced. The actual language in 20 C.F.R. §
25 404.1504 references "a decision" by any other agency about whether
26 someone is "disabled." That is certainly correct, and case law is in
27 line with that language. See Booth v. Barnhart, 181 F.Supp.2d 1099,
28 1105-1106 (C.D. Cal. 2002); Desrosiers v. Sec'y Health & Human Servs.,

1 846 F.2d 573, 576 (9th Cir. 1988). But here, it is not an opinion as
2 to disability which is relevant, but rather, the opinions of examining
3 and treating physicians regarding specific functional limitations.
4 Simply rejecting these opinions because they were rendered in the
5 Workers Compensation context falls short of the legal standard. If
6 there are terms of art which are utilized in medical evaluations, such
7 as "repetitive," "prolonged," or similar terms, it is the job of the
8 ALJ to translate the meaning of such terms into the Social Security
9 context. But here, Dr. Goldman rendered a specific opinion that
10 Plaintiff was not capable of fingering or gripping with her right
11 upper extremity. This would not appear to be something that depends
12 on workers compensation terminology, but is simply a medical opinion.

13 The ALJ also indicated that he would give lesser weight to these
14 physicians, who provided opinions in the workers compensation context
15 because the opinions, rendered in 2007, do not reflect Plaintiff's
16 condition in the intervening years or at the present time. As
17 evidence of this, the ALJ cited a rheumatology consultative
18 examination ("CE") performed on October 2, 2008 which indicated that
19 Plaintiff had full range of motion in her hands, wrists, elbows,
20 shoulders, cervical spine, hips, knees and ankles. (AR 16, citing
21 evidence from Chaparral Medical Group, at AR 368.) But this misses
22 the point, because it is not range of motion that is of primary
23 concern here, but, rather, fingering and dexterity. Similarly, the
24 ALJ's citation to a March 11, 2009 examination in which he relied upon
25 a medical notation of "no neurological deficits in the upper
26 extremities" simply cites some "check-the-box" forms under the term
27 "Neurological." The Court finds this to be wholly insufficient to
28 depreciate the opinions rendered by Plaintiff's treating and examining

1 physicians, whether or not they were rendered in the workers
2 compensation context.

3 Assuming, as the Commissioner does for purposes of argument, that
4 the functional assessments contained in a "Medical Opinion re: Ability
5 to do Work-Related Activities (Physical)" were completed by Dr.
6 Tremazi or another recognized medical professional (see JS at 16, and
7 AR at 408-410), the ALJ concluded that this form would be depreciated
8 in value because there was no laboratory or clinical evidence in
9 support of these findings. (AR 17.) This conclusion will have to be
10 reexamined on remand. If the form was, as Plaintiff claims, prepared
11 by Dr. Tremazi, then it was something that was supported by Dr.
12 Tremazi's own independent evaluations and examinations, which are
13 contained in the AR. Since the form was apparently obtained by the
14 same law office as presently represents Plaintiff (see AR at 408), on
15 remand, the question of who prepared this form should be easily
16 determined. Moreover, since Plaintiff was represented at the hearing
17 before the ALJ by counsel (see AR at 24), this issue could have been
18 easily clarified either on the record at the hearing, or by
19 development of the record through counsel's inquiry, as directed by
20 the ALJ. This did not occur, and the onus falls on the ALJ for
21 failing to do so.

22 The Court's determination that error was committed regarding the
23 first issue is of necessity dispositive as to the second issue, which
24 is whether the ALJ provided a complete and accurate assessment of
25 Plaintiff's RFC. This was based upon the ALJ's depreciation of the
26 opinions of the physicians discussed in Issue No. 1, a matter which
27 will be revisited de novo on remand. Similarly, as to the third
28 issue, which concerns whether the ALJ posed complete hypothetical

