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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

DIANA L. DAUENHAUER,	)	No. ED CV 12-00375-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 record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

Plaintiff raises the following issues:

1. Whether the Administrative Law Judge ("ALJ") erred in

1 rejecting the opinions of treating rehabilitation specialist  
2 Goodlow and examining psychologist Berg; and

- 3 2. Whether substantial evidence supports the ALJ's finding that  
4 Plaintiff's subjective testimony is not credible. (JS at 7.)  
5

6 This Memorandum Opinion will constitute the Court's findings of  
7 fact and conclusions of law. After reviewing the matter, the Court  
8 concludes that the decision of the Commissioner must be affirmed.  
9

10 I

11 **THE ALJ CORRECTLY ASSESSED THE OPINIONS OF DRS. GOODLOW AND BERG**

12 In her first issue, Plaintiff contends that the ALJ erred in  
13 assessing the opinions of Dr. Goodlow, a rehabilitation specialist,  
14 and Dr. Berg, an examining psychologist ("CE"). The Court will  
15 address these in turn.

16 The ALJ determined that Plaintiff has the following severe  
17 impairments: kidney stones with chronic abdominal pain; a somatoform  
18 disorder; depressive disorder not otherwise specified ("NOS");  
19 personality disorder with schizoid, avoidant, histrionic, and  
20 borderline traits. (AR 22.)

21 Based on evaluation of the entire record, the ALJ determined that  
22 Plaintiff's residual functional capacity ("RFC") allows her to perform  
23 less than a full range of medium work, but allows Plaintiff to lift  
24 and/or carry 50 pounds occasionally and 25 pounds frequently; push and  
25 pull within the same weight limits; stand and/or walk for six hours  
26 out of an eight-hour workday with regular breaks; sit for six hours  
27 out of an eight-hour workday with regular breaks; and frequently climb  
28

1 stairs, stoop, kneel, and crouch.<sup>1</sup>

2 The ALJ noted that Plaintiff has a history of kidney stones with  
3 abdominal pain, diverticulosis, and irritable bowel syndrome. (AR 26.)  
4 Examining physicians Drs. Kestenbaum and Atchison found no clear cause  
5 for Plaintiff's pain in her gastrointestinal system. (AR 277-280.)  
6 Plaintiff continually complained of abdominal pain, and was prescribed  
7 medication and exercise. In August 2009, medical imaging showed an  
8 unremarkable colon. (AR 736-737.)

9 After not seeing a physician between June and October 2008,  
10 Plaintiff saw Dr. Goodlow on October 8, 2008. (AR 402-403.) Plaintiff  
11 exhibited some tenderness during the examination, but otherwise there  
12 were overall normal results. (Id.) Dr. Goodlow prescribed that  
13 Plaintiff should receive medication and a back brace and return for a  
14 followup in four weeks. (Id.)

15 Plaintiff received imaging of her kidney, ureter, and bladder in  
16 November 2008 which yielded unremarkable results. (AT 434-435.) She  
17 still complained of abdominal pain through August 2009 but again, the  
18 examination findings and the treatment that was prescribed did not  
19 change. (AR 406.)

20 In November 2009, at her own request, a physician cleared  
21 Plaintiff to return to work at full capacity. She had no complaints  
22 of pain at that time. (AR 664, 711.) In January 2010, Plaintiff was  
23 seen by Dr. Anderson as to her complaints of pain, but the examination  
24 was overall normal. (AR 737-738.)

25 In May 2010, a urologist, Dr. Prusa, examined Plaintiff in  
26 connection with her kidney stone issue and reported an overall normal

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27  
28 <sup>1</sup> The non-exertional portion of Plaintiff's RFC will be discussed infra.

1 examination. Plaintiff told Dr. Prusa that she passes kidney stones,  
2 but admitted she never actually saw any. (AR 726.) A recent test had  
3 shown one to two millimeter renal stones but they were in a non-  
4 obstructing position which could not cause pain. Based on this, the  
5 ALJ determined that Plaintiff's symptoms and her complaints were  
6 adequately addressed by conservative treatment.

7 On May 30, 2009, Dr. Idos performed an internal medicine CE. (AR  
8 632-639.) Plaintiff complained that she had abdominal pain, reported  
9 that she took medication, acupuncture and physical therapy, and that  
10 she had some medication side effects of constipation. (Id.) On  
11 examination, however, Plaintiff did not appear to be in any acute  
12 distress and had only slight tenderness to palpitation in the abdomen.  
13 She had normal range of motion in her back and in her upper and lower  
14 extremities. Neurologically, she retained good muscle control and  
15 full motor strength, intact sensation, normal reflexes and normal  
16 gait. (AR 634-635.) Based on these findings, Dr. Idos rendered the  
17 opinion that Plaintiff could lift or carry 50 pounds occasionally and  
18 25 pounds frequently; and other than some limitation in pushing and  
19 pulling, bending, stooping, crouching and climbing, could perform the  
20 functions required in a full time workday. (AR 637.)

21 Similarly, two State Agency reviewing physicians opined that  
22 Plaintiff could perform medium work with occasional postural  
23 limitations. (AR 651-655, 656-657, 659-660.)

24 Based on this evidence, the ALJ rejected the conclusion of Dr.  
25 Goodlow that Plaintiff was disabled. After the ALJ rendered his  
26 Decision, Dr. Goodlow submitted a Multiple Impairment Questionnaire  
27 dated March 9, 2011, which opined that Plaintiff was effectively  
28 disabled based on an ability to sit, stand and walk for only one hour,

1 occasionally lift and carry ten pounds, and would miss more than three  
2 days of work a month due to her impairments over a twelve-month or  
3 more period. (AR 777-785.) The ALJ did not review this form, but it  
4 was reviewed by the Appeals Council, which found no reason to overturn  
5 the ALJ's Decision. (AR 1-6.)

6 The ALJ found Dr. Goodlow's opinion to be unsupported by and  
7 inconsistent with the overall clinical medical evidence in the record.  
8 (AR 28.) It is fundamental that the ALJ must perform the function of  
9 evaluating all medical evidence in the record. As summarized above,  
10 there is ample medical evidence in the record to rebut Dr. Goodlow's  
11 conclusion that Plaintiff is disabled. Moreover, the March 2011  
12 questionnaire, even if it had been considered by the ALJ (and it was  
13 considered by the Appeals Council), contains several internally  
14 inconsistent conclusions. In that questionnaire Dr. Goodlow indicated  
15 that Plaintiff had back spasms, loss of lumbar curvature, and back  
16 pain, and that she was limited in her manipulative activities. (AR  
17 778-779, 782.) Yet, there are no medical records in Plaintiff's very  
18 extensive file which indicate any complaints as to back pain or  
19 limitations due to this issue, or problems with her hands in terms of  
20 an ability to perform manipulative activities. (See AR 635, Report of  
21 Dr. Idos showing "No muscle spasm" in the back, "straight leg raising  
22 test is negative," and normal range of motion in the back.) The  
23 treatment records indicate no evidence of such reported problems by  
24 Dr. Goodlow. Further, as the Commissioner notes, Dr. Goodlow  
25 indicated in the questionnaire that he based his diagnosis on a colon  
26 barium enema. (AR 779.) The actual results of that test revealed  
27 unremarkable results. (AR 700.)

28 It was not incumbent upon the ALJ to simply accept the opinion of

1 Dr. Goodlow. Rather, he was obliged to examine all the evidence in  
2 the record, a substantial amount of which was contradictory to Dr.  
3 Goodlow's conclusions, as the Court has noted. All in all, the ALJ's  
4 rejection of Dr. Goodlow's opinion is supported by the medical  
5 evidence.

6 Plaintiff also contends that the ALJ improperly rejected the  
7 opinion of Dr. Berg as to Plaintiff's mental residual functional  
8 capacity ("MRFC").

9 The ALJ limited Plaintiff to non-public, simple, repetitive tasks  
10 and limited her to non-intense interaction with co-workers and  
11 supervisors. She was precluded from fast-paced work and tasks that  
12 require hypervigilance. (AR 23.)

13 The foregoing MRFC is supported by substantial evidence in the  
14 record, which the Court will briefly summarize. First, Plaintiff  
15 received no apparent psychiatric care from November 2007 to January  
16 2010. While Plaintiff's counsel asserts that the Court cannot rely  
17 upon this lack of treatment, especially in the mental health context,  
18 the Court disagrees that this conclusion is mandated in this case.  
19 Plaintiff very actively sought treatment from Kaiser Permanente for  
20 all sorts of other ailments during the relevant period of time, and,  
21 as the ALJ noted, Plaintiff realized that she was depressed because of  
22 her physical limitations. (AR 24.) It is untenable to assert that  
23 Plaintiff actively sought treatment for her physical conditions, but  
24 not for any mental depression or other condition. Considering the  
25 disability statement of Dr. Berg, who examined Plaintiff on May 20,  
26 2010 and completed a Psychiatric/Psychological Impairment  
27 Questionnaire form on May 27, 2010 (AR 29, 717-724), it was the ALJ's  
28 conclusion that Dr. Berg's examination findings were "largely benign,"

1 and he noted that Plaintiff reported to Dr. Berg that she could do  
2 daily activities including preparing breakfast, unloading the  
3 dishwasher and quilting. Dr. Berg indicated his opinion that  
4 Plaintiff is unable to work a full time job, rating her limitations as  
5 marked in her ability to get along with coworkers and moderately  
6 limited in most other areas. It was Dr. Berg's conclusion that  
7 Plaintiff would miss more than three workdays per month. (Id.) The  
8 ALJ indicated that Dr. Berg's limitations were inconsistent with his  
9 own findings and not supported by other medical source opinions  
10 discussed in the Decision. The ALJ gave greatest weight to the  
11 opinion of the medical expert ("ME"), Dr. Glassmire, who is board  
12 certified in forensic psychology. Some weight was given to the  
13 opinion of the consultative psychiatric examiner ("CE"), Dr. Andia.  
14 (Id.)

15 With regard to the mental health evidence in the record, a mental  
16 status exam performed at Kaiser Permanente in October 2007 indicated  
17 that despite Plaintiff's complaints of anxiety, depression, fatigue,  
18 and poor concentration, she was treated with medication and had, upon  
19 examination, appropriate mood, normal speech, vocabulary, cooperative  
20 behavior, was alert and oriented, could abstract and generalize at the  
21 average level, had intact memory both recent and remote, and no  
22 homicidal or suicidal ideation.

23 The aforementioned psychiatric CE with Dr. Andia was also relied  
24 upon by the ALJ, who noted that Dr. Andia took a mental health history  
25 from Plaintiff, reported on mental status examination that she had a  
26 mildly depressed and anxious mood, but otherwise there were  
27 unremarkable findings. (AR 27, 626-628.) Plaintiff reported to Dr.  
28 Andia that she could do normal activities of taking care of herself.

1 (Id.) She could drive a car, had various hobbies, could handle  
2 finances, was able to go out alone, had reasonably good relationships  
3 with friends and family, and had no difficulty with focusing  
4 attention, completing household tasks, or making decisions. (Id.)  
5 Based on all this, Dr. Andia rendered the opinion that Plaintiff was  
6 able to understand, remember and carry out simple and detailed  
7 instructions; relate and interact with coworkers and the public; could  
8 maintain concentration and attention; and was able to perform day-to-  
9 day work activities and accept instructions from a supervisor. (AR  
10 629.) The ALJ actually assessed greater mental limitations than did  
11 Dr. Andia based on treatment records and Plaintiff's own testimony.  
12 (AR 30.) Essentially, the ALJ rejected Dr. Berg's diagnostic  
13 conclusions, because they were inconsistent with his overall benign  
14 examination findings. (AR 29.) Further, the ALJ gave greatest weight  
15 to the opinion of the testifying ME who had reviewed the file. Dr.  
16 Glassmire testified that Plaintiff had only mild limitations in her  
17 activities of daily living and in concentration, persistence or pace;  
18 moderate difficulties in social functioning; and no episodes of  
19 decompensation. (AR 41.) Dr. Glassmire relied on the examinations of  
20 Drs. Berg and Andia in reaching his conclusions.

21 The resolution of any conflicts in the evidence was a matter for  
22 the ALJ's determination, and here, the Court concludes that  
23 substantial evidence supports the ALJ's conclusions which rejected Dr.  
24 Berg's disability findings.

## 25 26 II

### 27 THE ALJ PROPERLY DETERMINED PLAINTIFF'S CREDIBILITY

28 The ALJ partially depreciated Plaintiff's credibility as to her



1 subjective symptoms, and explained the reasons in the Decision. (AR  
2 23-25.) Plaintiff contends that the ALJ's reasoning is inadequate and  
3 legally insufficient. The question for the Court is whether the ALJ's  
4 specific credibility findings are entitled to deference. See Fair v.  
5 Bowen, 885 F.2d 597, 603 (9<sup>th</sup> Cir. 1989); Social Security Ruling  
6 ("SSR") 96-7p. Here, the ALJ cited at least five credibility factors  
7 in his Decision. First, he concluded that the objective evidence did  
8 not fully support her complaints. It is of course the case that a  
9 contradiction between subjective pain complaints and objective medical  
10 evidence is not permissible as the sole basis for depreciating  
11 credibility, but it is one factor which can be considered. The Court  
12 has already summarized the medical evidence, and will not do so again.  
13 Suffice it to say that there is a rational basis to find a disconnect  
14 or at least contradiction between Plaintiff's severe disabling pain  
15 complaints and the objective medical evidence in the record. Further,  
16 as the Court has already noted, in November 2009, at her own request,  
17 Plaintiff was cleared to return to work at full capacity.

18 The ALJ also properly relied upon the fact that Plaintiff took  
19 prescribed medication and utilized other conservative measures to  
20 treat what she claimed were very severe physical and emotional  
21 symptoms. Use of conservative treatment can undermine a claim of  
22 disabling pain symptoms.

23 Further, the ALJ determined that Plaintiff's complaints that she  
24 had restrictive side effects from medication were not fully credible.  
25 Here, there is not evidence of objective documentation in the record  
26 of such complaints, and the lack of objective evidence is a factor  
27 upon which an ALJ can rely.

28 The ALJ also relied upon Plaintiff's level of daily activities to

