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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

YVETT LILLY,	)	Case No. EDCV 12-00381-MLG
	)	
Plaintiff,	)	MEMORANDUM OPINION AND ORDER
	)	
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of the	)	
Social Security	)	
Administration,	)	
	)	
Defendant.	)	
_____	)	

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Plaintiff Yvett Lilly seeks judicial review of the Commissioner’s final decision denying her applications for Social Security Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) benefits under Title XVI of the Social Security Act. 42 U.S.C. § 1381 et seq. For the reasons set forth below, the decision of the Commissioner is affirmed and the matter is dismissed with prejudice.

**I. Background**

Plaintiff was born on November 8, 1966. (Administrative Record (“AR”) at 125.) She has an eleventh grade education and has relevant work experience as a truck driver. (AR at 150, 153.) Plaintiff filed her applications on November 5, 2008, alleging disability since September 7,

1 2006, due to right shoulder surgery, osteoarthritis and carpal tunnel  
2 syndrome. (AR at 52, 125.)

3 Plaintiff's applications were denied initially on February 17,  
4 2009, and upon reconsideration on December 3, 2009. (AR at 56-60, 63-  
5 67.) An administrative hearing was held on December 7, 2010, before  
6 Administrative Law Judge ("ALJ") William K. Mueller. Plaintiff,  
7 represented by counsel, testified, as did a Vocational Expert ("VE").  
8 (AR at 27-50.)

9 On January 12, 2011, ALJ Mueller issued an unfavorable decision.  
10 (AR at 10-20.) The ALJ found that the Plaintiff had not engaged in  
11 substantial gainful activity since the alleged onset date. (AR at 12.)  
12 The ALJ further found that the medical evidence established that  
13 Plaintiff suffered from the following severe impairments: right shoulder  
14 AC joint degenerative disc disease and possible carpal tunnel syndrome.  
15 (Id.) However, the ALJ concluded that Plaintiff's impairments did not  
16 meet, or were not medically equal to, one of the listed impairments in  
17 20 C.F.R., Part 404, Subpart P, Appendix 1. (AR at 13.)

18 The ALJ found that Plaintiff retained the residual functional  
19 capacity ("RFC") to perform light work with the following limitations:  
20 the claimant is limited to lifting and/or carrying 20 pounds  
21 occasionally and 10 pounds frequently; she can stand for 6  
22 hours out of an 8-hour workday and has no sitting  
23 restrictions; she is precluded from walking on uneven terrain;  
24 she cannot perform overhead work with the right arm; she is  
25 limited to occasional above shoulder work with the right arm;  
26 she can handle and finger on a frequent basis bilaterally; and  
27 the claimant must avoid exposure to extreme cold, extreme  
28 vibrations, and hazardous heights and machinery.

1 (AR at 13-14.)

2 The ALJ concluded that Plaintiff's impairments prevented her from  
3 performing her past relevant work. (AR at 18.) However, based on the  
4 VE's testimony, the ALJ found that there were jobs that existed in  
5 significant numbers in the national economy that Plaintiff could  
6 perform. (AR at 19-20.) The ALJ concluded that Plaintiff was not  
7 disabled within the meaning of the Social Security Act. See 20 C.F.R.  
8 § 416.920(f). (AR at 20.)

9 On February 7, 2012, the Appeals Council denied review (AR at 1-3).  
10 Plaintiff then timely commenced this action for judicial review. On  
11 September 17, 2012, the parties filed a Joint Stipulation ("Joint  
12 Stip.") of disputed facts and issues. Plaintiff contends that the ALJ  
13 erred by: (1) improperly concluding at step three of the sequential  
14 process that Plaintiff's impairments did not medically meet or equal a  
15 listed impairment and (2) failing to properly consider the treating  
16 physician's opinion. (Joint Stip. at 2.) Plaintiff seeks reversal of the  
17 Commissioner's denial of her applications and payment of benefits or,  
18 in the alternative, remand for a new administrative hearing. (Joint  
19 Stip. at 20.) The Commissioner requests that the ALJ's decision be  
20 affirmed. (Joint Stip. at 20-21.)

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## 22 **II. Standard of Review**

23 Under 42 U.S.C. § 405(g), a district court may review the  
24 Commissioner's decision to deny benefits. The Commissioner's or ALJ's  
25 decision must be upheld unless "the ALJ's findings are based on legal  
26 error or are not supported by substantial evidence in the record as a  
27 whole." *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1990); *Parra*  
28 *v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence means

1 such evidence as a reasonable person might accept as adequate to support  
2 a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Widmark*  
3 *v. Barnhart*, 454 F.3d 1063, 1066 (9th Cir. 2006). It is more than a  
4 scintilla, but less than a preponderance. *Robbins v. Soc. Sec. Admin.*,  
5 466 F.3d 880, 882 (9th Cir. 2006). To determine whether substantial  
6 evidence supports a finding, the reviewing court "must review the  
7 administrative record as a whole, weighing both the evidence that  
8 supports and the evidence that detracts from the Commissioner's  
9 conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996). "If  
10 the evidence can support either affirming or reversing the ALJ's  
11 conclusion," the reviewing court "may not substitute its judgment for  
12 that of the ALJ." *Robbins*, 466 F.3d at 882.

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14 **III. Discussion**

15 **A. The ALJ Properly Determined That Plaintiff's Impairments Do**  
16 **Not Meet or Equal a Listed Impairment**

17 Plaintiff contends that the ALJ erred by summarily concluding that  
18 her combined impairments did not meet or equal one of the impairments  
19 listed in 20 C.F.R. § 404, Subpt. P, App. 1. Plaintiff also claims that  
20 the ALJ should have found that her combined impairments medically equal  
21 to Listing 1.02A, because the ALJ's determination that Plaintiff was  
22 precluded from walking on uneven surfaces means that Plaintiff has an  
23 "inability to ambulate effectively," as defined in Listing 1.00B2b.  
24 (Joint Stip. at 3-9.) These contentions lack merit.

25 Plaintiff first contends that the ALJ erred by summarily  
26 determining, at step three of the sequential process, that Plaintiff's  
27 impairments did not meet or equal a listed impairment. (Joint Stip. at  
28 4.) At step three of the sequential evaluation process, an ALJ considers

1 whether an applicant has an impairment or combination of impairments  
2 that meet or medically equal an impairment included in the federal  
3 regulations' listing of disabling impairments. If the claimant's  
4 impairment matches or is "equal" to one of the listed impairments, she  
5 qualifies for benefits without further inquiry. 20 C.F.R. § 416.920(d),  
6 *Sullivan v. Zebley*, 493 U.S. 521, 525 (1990).

7 Plaintiff argues that the ALJ erred by not citing or discussing any  
8 specific section of the listings and by failing to explain how the  
9 medical evidence in the record supported his finding at step three.  
10 (Joint Stip. at 3.) Rather, the ALJ merely noted that the medical record  
11 lacked any evidence of impairments that would meet or equal a listed  
12 impairment. (AR at 13.)

13 An ALJ is required to adequately explain the basis for his or her  
14 determination that an applicant's impairments do not equal a listing.  
15 *Marcia v. Sullivan*, 900 F.2d 172, 176 (9th Cir. 1990). However, an ALJ  
16 is not required to "state why a claimant failed to satisfy every  
17 different section of the listing impairments." *Gonzalez v. Sullivan*, 914  
18 F.2d 1197, 1201 (9th Cir. 1990). Accordingly, a well-developed  
19 discussion of the factual basis of a claimant's impairments elsewhere  
20 in a hearing decision may, under certain circumstances, support an  
21 unexplained finding of no medical equivalence at step three. *Id.* at 1201  
22 (finding an ALJ's four-page summary of the record an adequate basis for  
23 unexplained statement that the applicant's impairments did not meet or  
24 equal any listing). Here, the ALJ reviewed Plaintiff's medical history  
25 in detail, including Plaintiff's shoulder impairment, obesity and claims  
26 of pain in her hands, arms, low back, knee and thigh. (AR at 16-18.) The

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1 ALJ also reviewed Plaintiff's hearing testimony<sup>1</sup> and the opinions of the  
2 reviewing physicians in determining that Plaintiff was not disabled. (AR  
3 at 15, 18.) This review of the evidence supports the ALJ's step three  
4 finding under *Gonzalez*. The ALJ did not err in failing to explain his  
5 finding that Plaintiff's impairments were not medically equivalent to  
6 any listed impairments. *See Howard ex. rel. Wolff v. Barnhart*, 341 F.3d  
7 1006, 1012 (9th Cir. 2003) (finding that an ALJ is not required to  
8 discuss every piece of evidence in the record in reaching a disability  
9 determination). The ALJ provided ample specific and legitimate reasons,  
10 supported by substantial evidence in the record, for finding that  
11 Plaintiff was not disabled.

12 Plaintiff further contends that the combined impairments of her  
13 hips, ankles and knee medically equal Listing 1.02A. Section 1.01, *et*  
14 *s.*, of the disability listings cover impairments of the musculoskeletal  
15 system. Listing 1.02, entitled: "Major dysfunction of a joint(s) (due  
16 to any cause)" provides as follows:

17 Characterized by gross anatomical deformity (e.g.,  
18 subluxation, contracture, bony or fibrous ankylosis, instability)  
19 and chronic joint pain and stiffness with signs of limitation of  
20 motion or other abnormal motion of the affected joint(s), and  
21 findings on appropriate medically acceptable imaging of joint  
22 space narrowing, bony destruction, or ankylosis of the affected  
23 joint(s). With:

24 A. Involvement of one major peripheral weight-bearing  
25 joint (i.e., hip, knee, or ankle) resulting in  
26 inability to ambulate effectively, as defined in

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27 <sup>1</sup> The ALJ found Plaintiff's hearing testimony not fully credible,  
28 a conclusion which Plaintiff does not challenge here.

1 1.00B2b; or

2 B. Involvement of one major peripheral joint in each  
3 upper extremity (i.e., shoulder, elbow, or wrist-  
4 hand), resulting in inability to perform fine and  
5 gross movements effectively, as defined in 1.00B2c.

6 20 C.F.R. Pt. 404, Subpt. P., App. 1, § 1.02.

7 Plaintiff contends that impairments of her left hip, ankles, and  
8 right knee medically equal Listing 1.02A. (Joint Stip. at 7.) But  
9 Plaintiff has failed to show that her combined impairments are medically  
10 equivalent to a listed impairment. The mere diagnosis of a listed  
11 impairment is not sufficient to sustain a finding of disability. 20  
12 C.F.R. § 404.1525(d); *Key v. Heckler*, 754 F.2d 1545, 1549 (9th Cir.  
13 1985). Indeed, “[i]t is not enough for an applicant to show he has a  
14 severe impairment that is one of the listed impairments to find him per  
15 se disabled.” *Young v. Sullivan*, 911 F.2d 180, 181 (9th Cir. 1990). To  
16 “meet” a listed impairment, a claimant must present medical findings  
17 establishing that he meets each characteristic of the listed impairment.  
18 20 C.F.R. § 404.1525(d); *Tackett v. Apfel*, 180 F.3d 1094, 1099 (9th Cir.  
19 1999). To “equal” a listed impairment, “a claimant must establish  
20 symptoms, signs and laboratory findings ‘at least equal in severity and  
21 duration’ to the characteristics of a relevant listed impairment, or,  
22 if a claimant’s impairment is not listed, then to the listed impairment  
23 ‘most like’ the claimant’s impairment.” *Tackett*, 180 F.3d at 1099  
24 (quoting 20 C.F.R. § 404.1526).

25 In this case, Plaintiff has failed to show how the medical evidence  
26 satisfies the criteria of Listing 1.02A. Plaintiff makes the conclusory  
27 statement that her combined impairments meet the disability listing and  
28 occasionally cites to her medical records without establishing how these

1 medical reports demonstrate that she has met the requirements of Listing  
2 1.02A. The medical records to which Plaintiff refers in support of her  
3 argument only provide diagnoses and results; they do not state any  
4 limitations.

5       Furthermore, no physician has used or interpreted Plaintiff's  
6 medical records to find that Plaintiff has an impairment or combined  
7 impairments which meet or medically equal Listing 1.02A. Rather,  
8 Plaintiff's treating physicians, Dr. Michael Einbund, M.D. and Dr. Raja  
9 Dhalla, M.D., treated Plaintiff in the context of her worker's  
10 compensation claim. Although Dr. Einbund opined that Plaintiff was  
11 temporarily totally disabled under California worker's compensation  
12 rules through Plaintiff's last insured date, that conclusion is not  
13 determinative of an entitlement to benefits under social security law.  
14 *See Booth v. Barnhart*, 181 F.Supp.2d 1099, 1104-05 (C.D. Cal. 2002)  
15 (citing *Macri v. Chater*, 93 F.3d 540, 544 (9th Cir. 1996)) and  
16 *Desrosiers v. Secretary of Health & Human Services*, 846 F.2d 573, 576  
17 (9th Cir. 1988)); 20 C.F.R. § 404.1504. The determination that Plaintiff  
18 was temporarily totally disabled under state worker's compensation rules  
19 indicated that she could not return to her previous job as a truck  
20 driver, not that she was precluded from all substantial gainful  
21 activity. Aside from the conclusion that Plaintiff could not return to  
22 her previous work, Dr. Einbund did not provide specific functional  
23 limitations caused by Plaintiff's impairments that would preclude work.

24       In addition, Plaintiff argues that she meets or equals section  
25 1.03's requirement of an "inability to ambulate effectively" because the  
26 ALJ determined that Plaintiff's RFC precluded her from walking on uneven  
27 surfaces. (Joint Stip. at 8-9.) Although the ALJ's finding that  
28 Plaintiff cannot walk on uneven surfaces may indicate that Plaintiff is



1 unable "to walk a block at a reasonable pace on rough or uneven  
2 surfaces," which could impact her ability to ambulate effectively, (see  
3 20 C.F.R., Pt. 404, Subpt. P, App. 1, § 1.00B2b), the inability to  
4 ambulate effectively *in and of itself* is not sufficient to establish  
5 that Plaintiff's impairment equals Section 1.02. See, e.g., *Reese v.*  
6 *Astrue*, 2012 WL 137567, \*4 (C.D.Cal. 2012). As discussed in detail  
7 above, Plaintiff has failed to show that her impairment meets or equals  
8 each of the characteristics of Section 1.02.

9       When considering the record as a whole, it is clear that Plaintiff  
10 has not met her burden of demonstrating that her symptoms met or equaled  
11 the criteria of Listing 1.02A. See, e.g., *Bowen v. Yuckert*, 482 U.S.  
12 137, 145-152 (1987) (placing burden on claimant to produce evidence that  
13 impairment meets listing). The ALJ correctly found, at step three of the  
14 sequential analysis, that Plaintiff's impairments do not meet one of the  
15 listed impairments. Accordingly, Plaintiff is not entitled to relief on  
16 this claim.

17       **B. The ALJ Accorded Appropriate Weight to the Opinion of**  
18       **Plaintiff's Treating Physician**

19       Plaintiff contends that the ALJ erred in failing to give  
20 controlling weight to the opinion of Plaintiff's treating physician, Dr.  
21 Einbund. (Joint Stip. at 12.) On January 7, 2010, Dr. Einbund completed  
22 an assessment which diagnosed Plaintiff with cervical spine strain,  
23 status post-op right shoulder with restricted motion, bilateral carpal  
24 tunnel syndrome, lumbar spine strain, right knee sprain and bilateral  
25 ankle sprain. (AR at 313.) In addition, Dr. Einbund opined that  
26 Plaintiff was unable to work and was temporarily totally disabled. (Id.)

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28       An ALJ should generally accord greater probative weight to a

1 treating physician's opinion than to opinions from non-treating sources.  
2 See 20 C.F.R. § 404.1527(d)(2). The ALJ must give specific and  
3 legitimate reasons for rejecting a treating physician's opinion in favor  
4 of a non-treating physician's contradictory opinion. *Orn v. Astrue*, 495  
5 F.3d 625 (9th Cir. 2007); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
6 1996). However, the ALJ need not accept the opinion of any medical  
7 source, including a treating medical source, "if that opinion is brief,  
8 conclusory, and inadequately supported by clinical findings." *Thomas v.*  
9 *Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002); accord *Tonapetyan v.*  
10 *Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001). The factors to be  
11 considered by the adjudicator in determining the weight to give a  
12 medical opinion include: "[l]ength of the treatment relationship and the  
13 frequency of examination" by the treating physician; and the "nature and  
14 extent of the treatment relationship" between the patient and the  
15 treating physician. *Orn*, 495 F.3d at 631-33; 20 C.F.R. §§  
16 404.1527(d)(2)(i)-(ii), 416.927(d)(2)(i)-(ii).

17 The ALJ provided legitimate reasons for refusing to give Dr.  
18 Einbund's opinion controlling weight, which were supported by  
19 substantial evidence in the record. The ALJ reviewed and summarized  
20 Plaintiff's relevant medical records from March 2008 to October 2010.  
21 (AR at 16-18.) After discussing these records in detail, the ALJ found  
22 that Dr. Einbund's ongoing assessment that Plaintiff was temporarily  
23 totally disabled was not fully credible because there were no treatment  
24 records or diagnostic findings to support the extreme limitations found  
25 by Dr. Einbund. (AR at 17, citing AR at 231, 247-248). In addition, Dr.  
26 Einbund's own treatment records, which generally found that Plaintiff  
27 had some pain and tenderness, contradicted his finding of extreme  
28 limitations. (See, e.g., AR at 217-18, 221, 226, 277, 280, 284, 287-90,

1 294, 300, 321-24.) Moreover, to the extent that Dr. Einbund's opinion  
2 that Plaintiff was disabled was based upon Plaintiff's own subjective  
3 complaints of pain, the ALJ determined that Plaintiff was not fully  
4 credible, a conclusion which Plaintiff does not challenge. See  
5 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) ("An ALJ may  
6 reject a treating physician's opinion if it is based 'to a large extent'  
7 on a claimant's self-reports that have been properly discounted as  
8 incredible.") (citing *Fair v. Bowen*, 885 F.2d 597, 605 (9th Cir. 1989)).  
9 A review of Dr. Einbund's records reveals that "they largely reflect  
10 [Plaintiff's] reports of pain, with little independent analysis or  
11 diagnosis." *Tommasetti*, 533 F.3d at 1041.

12 Accordingly, the ALJ properly gave the greatest weight to the  
13 opinions of the reviewing state agency physicians, Drs. D. Rose, M.D.  
14 and M. Mazury, M.D., who found Plaintiff capable of performing light  
15 work. (AR at 18, 251-259, 301-310). The opinions of non-examining  
16 physicians may serve as substantial evidence when the opinions are  
17 consistent with independent clinical findings or other evidence in the  
18 record. See *Thomas*, 278 F.3d at 957.

19 Finally, Plaintiff's contention that the ALJ should have re-  
20 contacted Dr. Einbund for clarification or additional evidence is not  
21 persuasive. An ALJ has a duty to re-contact a treating source only where  
22 the record is ambiguous or inadequate. See 20 C.F.R. § 404.1513(b)(6);  
23 *Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001) (explaining  
24 that the ALJ's duty to develop the record is triggered if the record is  
25 ambiguous or undeveloped). However, this is not a case where the  
26 evidence was inadequate to assess Dr. Einbund's opinion or make a  
27 disability determination. As noted above, neither the overall record nor  
28 Dr. Einbund's own treatment notes support his conclusion that Plaintiff

1 could not work. The fact that the medical records do not support Dr.  
2 Einbund's opinion does not render the records ambiguous such that the  
3 ALJ's duty to supplement the record was triggered. Instead, Dr.  
4 Einbund's opinion on the ultimate issue of disability was simply not  
5 supported by the record. Accordingly, the ALJ did not err in rejecting  
6 Dr. Einbund's opinion without re-contacting him for clarification.

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8 **IV. CONCLUSION**

9 For the reasons stated above, it is **ORDERED** that the decision of  
10 the Commissioner be affirmed and this case be dismissed with prejudice.

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12 DATED: September 24, 2012

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17 Marc L. Goldman  
18 United States Magistrate Judge  
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