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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LAWRENCE WAYNE DEMERS,	)	Case No. EDCV 12-01239-JEM
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
v.	)	AFFIRMING DECISION OF THE
	)	COMMISSIONER OF SOCIAL SECURITY
CAROLYN W. COLVIN,	)	
Acting Commissioner of Social Security,	)	
	)	
Defendant.	)	
_____	)	

**PROCEEDINGS**

On August 4, 2012, Lawrence Wayne Demers (“Plaintiff” or “Claimant”) filed a complaint seeking review of the decision by the Commissioner of Social Security (“Commissioner”) denying Plaintiff’s applications for Social Security Disability Insurance benefits and Supplemental Security Income benefits. The Commissioner filed an Answer on November 8, 2012. On January 31, 2013, the parties filed a Joint Stipulation (“JS”). The matter is now ready for decision.

Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before this Magistrate Judge. After reviewing the pleadings, transcripts, and administrative record (“AR”), the Court concludes that the Commissioner’s decision must be affirmed and this case dismissed with prejudice.

## BACKGROUND

1  
2 Plaintiff is a 42 year old male who applied for Social Security Disability Insurance  
3 benefits on January 16, 2009, and Supplemental Security Income benefits on January 12,  
4 2009. (AR 10.) The ALJ determined that Plaintiff has not engaged in substantial gainful activity  
5 since January 17, 2008, the alleged onset date of his disability. (AR 12.)

6 Plaintiff's claims were denied initially on April 2, 2009, and on reconsideration on August  
7 5, 2009. (AR 10.) Plaintiff filed a timely request for hearing, which was held before  
8 Administrative Law Judge ("ALJ") Jay E. Levine on October 6, 2010, in San Bernardino,  
9 California. (AR 10.) Claimant appeared and testified at the hearing and was represented by  
10 counsel. (AR. 10.) Vocational expert ("VE") Corinne J. Porter also appeared and testified at  
11 the hearing. (AR 10.)

12 The ALJ issued an unfavorable decision on December 8, 2010. (AR 10-22.) The  
13 Appeals Council denied review on June 19, 2012. (AR 1-6.)

## DISPUTED ISSUES

14  
15 As reflected in the Joint Stipulation, Plaintiff only raises the following disputed issue as  
16 the ground for reversal and remand:

- 17 1. Whether the ALJ properly considered the opinion of Adrienne Cristina Beck, M.D.

## STANDARD OF REVIEW

18  
19 Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether  
20 the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v.  
21 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846  
22 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and  
23 based on the proper legal standards).

24 Substantial evidence means "more than a mere scintilla,' but less than a  
25 preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v.  
26 Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is "such relevant evidence as a  
27 reasonable mind might accept as adequate to support a conclusion." Richardson, 402 U.S. at  
28 401 (internal quotation marks and citation omitted).

1 This Court must review the record as a whole and consider adverse as well as  
2 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). Where  
3 evidence is susceptible to more than one rational interpretation, the ALJ's decision must be  
4 upheld. Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).  
5 "However, a reviewing court must consider the entire record as a whole and may not affirm  
6 simply by isolating a 'specific quantum of supporting evidence.'" Robbins, 466 F.3d at 882  
7 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495  
8 F.3d 625, 630 (9th Cir. 2007).

### 9 THE SEQUENTIAL EVALUATION

10 The Social Security Act defines disability as the "inability to engage in any substantial  
11 gainful activity by reason of any medically determinable physical or mental impairment which  
12 can be expected to result in death or . . . can be expected to last for a continuous period of not  
13 less than 12 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner has  
14 established a five-step sequential process to determine whether a claimant is disabled. 20  
15 C.F.R. §§ 404.1520, 416.920.

16 The first step is to determine whether the claimant is presently engaging in substantial  
17 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging  
18 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,  
19 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or  
20 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not  
21 significantly limit the claimant's ability to work. Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir.  
22 1996). Third, the ALJ must determine whether the impairment is listed, or equivalent to an  
23 impairment listed, in 20 C.F.R. Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d  
24 at 746. If the impairment meets or equals one of the listed impairments, the claimant is  
25 presumptively disabled. Bowen v. Yuckert, 482 U.S. at 141. Fourth, the ALJ must determine  
26 whether the impairment prevents the claimant from doing past relevant work. Pinto v.  
27 Massanari, 249 F.3d 840, 844-45 (9th Cir. 2001).

1 Before making the step four determination, the ALJ first must determine the claimant's  
2 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). Residual functional capacity  
3 ("RFC") is "the most [one] can still do despite [his or her] limitations" and represents an  
4 assessment "based on all the relevant evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).  
5 The RFC must consider all of the claimant's impairments, including those that are not severe.  
6 20 C.F.R. §§ 416.920(e), 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

7 If the claimant cannot perform his or her past relevant work or has no past relevant work,  
8 the ALJ proceeds to the fifth step and must determine whether the impairment prevents the  
9 claimant from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864,  
10 869 (9th Cir. 2000). The claimant bears the burden of proving steps one through four,  
11 consistent with the general rule that at all times the burden is on the claimant to establish his or  
12 her entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established  
13 by the claimant, the burden shifts to the Commissioner to show that the claimant may perform  
14 other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support  
15 a finding that a claimant is not disabled at step five, the Commissioner must provide evidence  
16 demonstrating that other work exists in significant numbers in the national economy that the  
17 claimant can do, given his or her RFC, age, education, and work experience. 20 C.F.R.  
18 § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is disabled and  
19 entitled to benefits. Id.

## 20 THE ALJ DECISION

21 In this case, the ALJ determined at step one of the sequential process that Plaintiff has  
22 not engaged in substantial gainful activity since January 17, 2008, the alleged onset date. (AR  
23 12.)

24 At step two, the ALJ determined that Plaintiff has the following combination of medically  
25 determinable severe impairments: degenerative disk disease, degenerative joint disease, drop  
26 foot on left, and obesity. (AR 12.)

1 At step three, the ALJ determined that Plaintiff does not have an impairment or  
2 combination of impairments that meets or medically equals one of the listed impairments. (AR  
3 14.)

4 The ALJ then found that Plaintiff has the RFC to perform a range of sedentary work, as  
5 defined in 20 CFR §§ 404.1567(a), 416.967(a) and SSR 83-10, with the following limitations:

6 Claimant can lift and/or carry 10 pounds occasionally and less than 10  
7 pounds frequently; stand and/or walk, in 15-minute intervals, for two hours  
8 out of an eight-hour workday; sit for six hours out of an eight hour workday  
9 with regular breaks; occasionally lift overhead within the above-specified  
10 weight limits; and occasionally climb stairs, stoop, kneel, and crouch. The  
11 Claimant must use a cane for walking more than 50 feet. The Claimant is  
12 precluded from balancing, crawling, climbing ladders; working at unprotected  
13 heights; working around dangerous moving machinery; and using his left leg  
14 for pushing and pulling.

15 (AR 14-20.) In determining this RFC, the ALJ made an adverse credibility determination which  
16 is not challenged here. (AR 17.)

17 At step four, the ALJ found that Plaintiff is able to perform his past relevant work as a  
18 patient scheduler. (AR 20.) Alternatively, the ALJ found that there are also jobs that exist in  
19 significant numbers in the national economy that Claimant can perform, including charge  
20 account clerk, order clerk, and paramutual ticket checker. (AR 20-21.)

21 Consequently, the ALJ found Claimant not disabled within the meaning of the Social  
22 Security Act at any time from the alleged onset date through the date of the ALJ's decision.  
23 (AR 21.)

## 24 **DISCUSSION**

25 The ALJ decision must be affirmed. The ALJ rejected Dr. Beck's opinion for specific,  
26 legitimate reasons supported by substantial evidence. The ALJ's RFC is supported by  
27 substantial evidence. The ALJ's non-disability determination is supported by substantial  
28 evidence and free of legal error.

1           **A.     Relevant Federal Law**

2           In evaluating medical opinions, the case law and regulations distinguish among the  
3 opinions of three types of physicians: (1) those who treat the claimant (treating physicians); (2)  
4 those who examine but do not treat the claimant (examining physicians); and (3) those who  
5 neither examine nor treat the claimant (non-examining, or consulting, physicians). See 20  
6 C.F.R. §§ 404.1527, 416.927; see also Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). In  
7 general, an ALJ must accord special weight to a treating physician’s opinion because a treating  
8 physician “is employed to cure and has a greater opportunity to know and observe the patient  
9 as an individual.” Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989) (citation omitted). If  
10 a treating source’s opinion on the issues of the nature and severity of a claimant’s impairments  
11 is well-supported by medically acceptable clinical and laboratory diagnostic techniques, and is  
12 not inconsistent with other substantial evidence in the case record, the ALJ must give it  
13 “controlling weight.” 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2).

14           Where a treating doctor’s opinion is not contradicted by another doctor, it may be  
15 rejected only for “clear and convincing” reasons. Lester, 81 F.3d at 830. However, if the  
16 treating physician’s opinion is contradicted by another doctor, such as an examining physician,  
17 the ALJ may reject the treating physician’s opinion by providing specific, legitimate reasons,  
18 supported by substantial evidence in the record. Lester, 81 F.3d at 830-31; see also Orn, 495  
19 F.3d at 632; Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002). Where a treating  
20 physician's opinion is contradicted by an examining professional’s opinion, the Commissioner  
21 may resolve the conflict by relying on the examining physician’s opinion if the examining  
22 physician’s opinion is supported by different, independent clinical findings. See Andrews v.  
23 Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995); Orn, 495 F.3d at 632. Similarly, to reject an  
24 uncontradicted opinion of an examining physician, an ALJ must provide clear and convincing  
25 reasons. Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005). If an examining physician’s  
26 opinion is contradicted by another physician’s opinion, an ALJ must provide specific and  
27 legitimate reasons to reject it. Id. However, “[t]he opinion of a non-examining physician cannot  
28 by itself constitute substantial evidence that justifies the rejection of the opinion of either an

1 examining physician or a treating physician”; such an opinion may serve as substantial  
2 evidence only when it is consistent with and supported by other independent evidence in the  
3 record. Lester, 81 F.3d at 830-31; Morgan, 169 F.3d at 600.

#### 4 **B. Analysis**

5 The ALJ assessed Plaintiff with a RFC for a range of sedentary work (AR 14) and found  
6 that Plaintiff could perform both his past relevant work and, alternatively, other work in the  
7 national economy. (AR 20-21.) The ALJ presented a thorough analysis of the medical  
8 evidence supporting his RFC and also made an adverse credibility determination that Plaintiff  
9 consciously attempted to portray limitations not actually present in order to obtain benefits. (AR  
10 17.) Significantly, Plaintiff does not challenge the ALJ’s adverse credibility determination. In  
11 fact, Plaintiff’s only contention is that the ALJ failed to give specific, legitimate reasons for  
12 rejecting the opinion of treating physician Dr. Adrienne Beck or to recontact her to clarify the  
13 basis of her opinion. Plaintiff’s contentions have no merit. The ALJ rejected Dr. Beck’s opinion  
14 for specific, legitimate reasons supported by substantial evidence.

15 Dr. Beck provided a Work Status Report dated September 8, 2010, that states, “Pt is  
16 permanently disabled.” (AR 19, 298.) There is no explanation for this opinion and no reference  
17 to the medical evidence of record. Not surprisingly, the ALJ rejected Dr. Beck’s opinion by  
18 stating, “The opinion expressed is quite conclusory, providing no explanation of the evidence  
19 relied on in forming that opinion.” (AR 298.) Ninth Circuit law unequivocally supports the ALJ’s  
20 rejection of Dr. Beck’s opinion. See Thomas, 278 F.3d at 957 (“The ALJ need not accept the  
21 opinion of any physician, including a treating physician, if that opinion is brief, conclusory, and  
22 inadequately supported by clinical findings.”); Batson v. Comm’r, 359 F.3d 1190, 1196 (9th Cir.  
23 2004) (an ALJ may discredit a treating physician’s opinion that is conclusory, brief and  
24 unsupported by the record as a whole, or by objective medical findings).

25 Plaintiff confuses the issue by attacking the ALJ’s statement that Dr. Beck was  
26 expressing an ultimate opinion on disability, an issue reserved to the Commissioner. (AR 19.)  
27 Although Plaintiff correctly notes that an ALJ may not ignore a medical opinion because it  
28 addresses the ultimate issue of disability, see Sexton v. Astrue, 2010 WL 1854055, at \*2 (C.D.

1 Cal. May 5, 2010), the ALJ here did not do so. The ALJ rejected Dr. Beck’s opinion for specific,  
2 legitimate reasons – namely, that her opinion was conclusory and without evidence to support  
3 it.

4 Nor did the ALJ have any duty to recontact Dr. Beck to obtain a clarification of her  
5 opinion. An ALJ is required to recontact a doctor only if the doctor’s opinion is ambiguous or  
6 insufficient for the ALJ to make a determination of disability. Bayliss v. Barnhart, 427 F.3d  
7 1211, 1217 (9th Cir. 2005) (citing 20 C.F.R. § 404.1562(e)). Where other evidence in the  
8 record is adequate to determine disability, there is no duty to recontact other doctors. Id. The  
9 ALJ here thoroughly reviewed the evidence and had an adequate basis for the RFC assessed,  
10 including an adverse credibility determination Claimant does not challenge.

11 Plaintiff acknowledges 20 C.F.R. § 404.1512(e) cited by Bayliss, but claims the that the  
12 recontact provision in SSR 96-5p, 1996 WL 374183, at \*6, is different from the recontact  
13 provision of 20 C.F.R. § 404.1512(e), in that SSR 96-5p requires recontact whenever the bases  
14 for a treating source opinion are not clear. Plaintiff cites no case authority for this assertion,  
15 and the Ninth Circuit has relied on 20 C.F.R. § 404.1512(e), not SSR 96-5p, in determining  
16 when recontact is required. The Court agrees with the Commissioner that SSR 96-5p refers to  
17 treating source opinions that are ambiguous, not wholly conclusory opinions utterly without  
18 evidentiary support or explanation. As to the latter, Bayliss applies. Were it otherwise, the least  
19 supported and cursory opinions would require recontact or reversal even when other medical  
20 evidence is adequate to reach a disability determination. The Court does not believe that the  
21 Ninth Circuit would sanction such an anomalous and inefficient result.

22 The ALJ rejected Dr. Beck’s opinion for specific, legitimate reasons supported by  
23 substantial evidence. There was no duty to recontact because other medical evidence of  
24 record was adequate for the ALJ to reach a determination of disability. The ALJ’s RFC is  
25 supported by substantial evidence. The ALJ’s non-disability determination is supported by  
26 substantial evidence and free of legal error.



**ORDER**

IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the Commissioner of Social Security and dismissing this case with prejudice.

DATED: March 6, 2013

/s/ John E. McDermott  
JOHN E. MCDERMOTT  
UNITED STATES MAGISTRATE JUDGE

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