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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ISABEL M. HERNANDEZ,)	No. ED CV 13-00415-VBK
)	
Plaintiff,)	MEMORANDUM OPINION
)	AND ORDER
v.)	
)	(Social Security Case)
CAROLYN W. COLVIN, Acting)	
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 relevant medical evidence of record,
2 including the opinions of the treating physician;

- 3 2. Whether the ALJ's conclusions at Step Four of the sequential
4 evaluation process are supported by substantial evidence;
5 and
6 3. Whether the ALJ properly considered Plaintiff subjective
7 complaints and properly assessed Plaintiff's credibility.

8 (JS at 3.)
9

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

15 I

16 **THE ALJ FAILED TO EVALUATE RELEVANT OPINIONS**
17 **OF EXAMINING PHYSICIANS, AND DID NOT EVALUATE**
18 **THE OPINION OF TREATING PHYSICIAN DR. HAI**

19 In Plaintiff's first issue, she asserts that the ALJ failed to
20 properly consider the medical evidence, including the opinions of her
21 treating physician, Dr. Hai.

22 On June 3, 2006, Plaintiff suffered a work-related injury in
23 which she fell and injured her head and lower back. (AR 404.) In
24 connection with her Workers Compensation ("WC") case, she submitted to
25 an Agreed Medical Examination ("AME") on January 23, 2007 by Dr. Kent,
26 a neurologist. (AR 255-279.) Dr. Kent found "diffuse cervical and
27 shoulder girdle tenderness, as well as tenderness to percussion of the
28 lumbar spine and palpation of the lumbar paraspinous musculature." (AR

1 272.) He objectively found "considerably diminished range of motion
2 ... at the neck, waist, and bilateral shoulders." (Id.) He found that
3 Plaintiff's visual acuity with a corrective lens is diminished,
4 particularly on the left. (Id.)

5 Based on subjective complaints and also his objective
6 examination, Dr. Kent precluded Plaintiff from "very heavy work with
7 regard to the lumbar spine and from protracted flexion and extension
8 with regard to the cervical spine." (AR 277.)

9 As Plaintiff acknowledges, Dr. Kent utilized WC terminology.
10 This does not mean, however, that Dr. Kent's opinion could be simply
11 ignored, as it was by the ALJ in this case.

12 As noted by Judge Wistrich in his opinion in Booth v. Barnhart,
13 181 F.Supp.2d 1099 (C.D. Cal. 2002):

14 "Workers' compensation disability ratings are not
15 controlling in disability cases decided under the Social
16 Security Act, and the terms of art used in the California
17 workers' compensation guidelines are not equivalent to
18 Social Security disability terminology. See Macri v.
19 Chater, 93 F.3d 540, 544 (9th Cir. 1996); Desrosiers v.
20 Secretary of Health and Human Services, 846 F.2d 573, 576
21 (9th Cir. 1988); see also Coria v. Heckler, 750 F.2d 245, 247
22 (3rd Cir. 1984)('The ALJ correctly noted that there are
23 different statutory tests for disability under workers'
24 compensation statutes and under the Social Security Act.');

25 20 C.F.R. §§404.1504, 416.904."

26 (Id. at 1104.)

27
28 Consequently, because Dr. Kent's opinion constituted relevant

1 evidence of Plaintiff's condition after her industrial accident, the
2 failure to the ALJ to address it at all constitutes significant error.
3 Dr. Kent imposed certain lifting restrictions which required
4 translation into the Social Security context, along with certain
5 manipulative limitations, which required the same treatment.

6 Plaintiff began treating with Dr. Edward Hai on April 13, 2010.
7 (AR 439.) Dr. Hai completed a document entitled "Medical Opinion Re:
8 Ability to Do Work-related Activities (Physical)." (AR 460-462.) Dr.
9 Hai imposed physical functional limitations which are not accounted
10 for in the ALJ's determination of Plaintiff's residual functional
11 capacity ("RFC"), which assesses Plaintiff as having the ability to
12 perform less than the full range of medium work due to an inability to
13 climb ladders, etc. (AR 14.) While the ALJ acknowledged Dr. Hai's
14 conclusions, he accorded them "little weight" because they are "not
15 supported by clinical or diagnostic evidence." (AR 17.) But the fact
16 is that Dr. Hai was Plaintiff's treating physician, and did perform
17 physical examinations on Plaintiff from April 2010 through at least
18 February 2011. (AR 439, 440, 443, 444, 449, 450, 451, 453.) The ALJ
19 failed to acknowledge these diagnostic examinations, and indeed, if
20 the ALJ believed that Dr. Hai's functional assessment was not
21 supported by diagnostic evidence, he should have re-contacted Dr. Hai
22 to obtain clarification.

23 The ALJ also rejected Dr. Hai's opinion because, he stated, it
24 was "not consistent with the remainder of the medical evidence." Such
25 an overly general assessment does not lend itself to judicial review,
26 and the Court finds it insufficient as a basis to sustain the
27 rejection of Dr. Hai's opinion.

28 The ALJ also failed to address the opinions rendered by

1 Plaintiff's chiropractor, Dr. Trimble. Regulations provide that a
2 chiropractor is not an acceptable medical source. See 20 C.F.R. §
3 404.1513. The regulations also indicate that while a chiropractor is
4 not an acceptable medical source, it is an "other source" to be
5 considered. See 20 C.F.R. § 404.1513(d)(1).

6 Finally, the ALJ failed to assess the opinion of Dr. Cooper,
7 O.D., who rendered an opinion regarding Plaintiff's visual
8 impairments. (AR 434-436.) The limitations assessed may well have an
9 impact on the determination of Plaintiff's RFC, and in particular,
10 whether Plaintiff is capable of performing her past relevant work.

11 For the foregoing reasons, the matter must be remanded for a new
12 hearing so that a full evaluation can be made of all relevant medical
13 sources.

14 With regard to Plaintiff's second issue concerning the ALJ's
15 determination at Step Four, since the medical evidence must be
16 reevaluated, this will potentially affect the determination of
17 Plaintiff's RFC, and therefore, the Step Four determination.

18 As to the third issue, concerning Plaintiff's credibility, since
19 the matter will be remanded for a de novo hearing, Plaintiff's
20 credibility must be determined without reliance on the past
21 credibility determination performed by this ALJ. Again, because the
22 objective medical evidence will need to be reevaluated pursuant to
23 this Memorandum Opinion, determination of Plaintiff's credibility
24 regarding subjective complaints will also be similarly reevaluated.
25 The Court will note, however, that any credibility determination must
26 be more specific than the one utilized by the ALJ in this case, which
27 basically set forth a generic comparison of the objective medical
28 evidence, without identifying it, and Plaintiff's subjective

1 complaints. That is an insufficient basis to perform a credibility
2 assessment.

3 For the foregoing reasons, this matter will be remanded for
4 further hearing consistent with this Memorandum Opinion.

5 **IT IS SO ORDERED.**

6
7 DATED: December 20, 2013

_____/s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE

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