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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Haifa Mahdi,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin,

13 Defendant.

No. CV-14-02265-PHX-JAT

ORDER

14
15 Plaintiff Haifa Mahdi appeals the Commissioner of Social Security's (the
16 "Commissioner") denial of disability benefits. The Court now rules on her appeal. (Doc.
17 13).

18 **I. Background**

19 **A. Procedural Background**

20 On June 10, 2011, Plaintiff filed an application for supplemental security income
21 under Title XVI of the Social Security Act, alleging a disability onset date of January 1,
22 2009. (R. 155). The Commissioner denied benefits on September 21, 2011, (R. 58), and
23 Plaintiff requested reconsideration, (R. 94). Plaintiff was again denied on April 6, 2012,
24 (R. 73, 89), and she appealed.

25 On April 4, 2013, Administrative Law Judge ("ALJ") Patricia A. Bucci held a
26 hearing on Plaintiff's claim. (R 31-57). At the hearing, Plaintiff amended her disability
27 onset date to June 10, 2011. (R. 14, 182). Following the ALJ's unfavorable decision, (R.
28 14-26), Plaintiff appealed to the Appeals Council. After the Appeals Council denied

1 Plaintiff's request for review, (R. 1), Plaintiff filed an appeal with this Court. (Docs. 1,
2 13). Plaintiff argues that (1) the ALJ improperly rejected the opinions of examining
3 physicians and (2) the ALJ failed to properly apply the Medical-Vocational Guidelines in
4 finding Plaintiff to be not disabled. (Doc. 13 at 4).

5 **B. Medical Background**

6 The Court will briefly summarize Plaintiff's medical history, which is recounted in
7 the administrative record. Plaintiff's medical history is not extensive, and begins in 2009,
8 when an x-ray of her lumbar spine revealed first-degree degenerative spondylolisthesis
9 and a narrowed L5-S1 disc space. (R. 241). Beginning in May 2011, Plaintiff was treated
10 by 21st Century Family Medicine until February 2012. (R. 328-36). These treatment
11 notes, which are largely illegible, appear to document lower-back pain, insomnia, and
12 blurring vision. (*Id.*) In May 2011, a radiologic exam of Plaintiff's spine revealed mild
13 thoracic spondylitic disease, L4-L5 degenerative spondylolisthesis, and a transitional segment
14 with partial sacralization of L5. (R. 245). Dr. Araghi, one of Plaintiff's treating
15 physicians, diagnosed Plaintiff with grade I spondylolisthesis of L4 on L5 with a partially
16 sacralized L5-S1 and "[l]ow back pain with bilateral lower extremity radicular
17 symptoms." (R. 289, 302).

18 Plaintiff briefly treated with STI Physical Therapy & Rehabilitation, where she
19 was prescribed treatment including stretching and icing. (R. 257). Plaintiff never returned
20 for treatment. Plaintiff also treated for one appointment with Dr. Hennenhoefer, at which
21 time Plaintiff reported 10/10 pain and taking tramadol and Vicodin to help with the pain.
22 (R. 337). Plaintiff's most recent treatment notes reflect that Plaintiff decided against local
23 spinal injections in favor of pain medications, (R. 342), and is experiencing lower back
24 and hip pain, (R. 344, 346, 348). Imaging of Plaintiff's left hip revealed no fracture or
25 degenerative change. (R. 354). Plaintiff has been diagnosed with hypertension,
26 hyperlipidemia, diabetes, atherosclerosis, COPD, and backache. (R. 342).

1 **II. Disability**

2 **A. Definition of Disability**

3 To qualify for disability benefits under the Social Security Act, a claimant must
4 show, among other things, that she is “under a disability.” 42 U.S.C. § 423(a)(1)(E). The
5 Act defines “disability” as the “inability to engage in any substantial gainful activity by
6 reason of any medically determinable physical or mental impairment which can be
7 expected to result in death or which has lasted or can be expected to last for a continuous
8 period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). A person is:

9 under a disability only if his physical or mental impairment or
10 impairments are of such severity that he is not only unable to
11 do his previous work but cannot, considering his age,
12 education, and work experience, engage in any other kind of
 substantial gainful work which exists in the national
 economy.

13 42 U.S.C. § 423(d)(2)(A).

14 **B. Five-Step Evaluation Process**

15 The Social Security regulations set forth a five-step sequential process for
16 evaluating disability claims. 20 C.F.R. § 404.1520(a)(4); *see also Reddick v. Chater*, 157
17 F.3d 715, 721 (9th Cir. 1998). A finding of “not disabled” at any step in the sequential
18 process will end the inquiry. 20 C.F.R. § 404.1520(a)(4). The claimant bears the burden
19 of proof at the first four steps, but the burden shifts to the Commissioner at the final step.
20 *Reddick*, 157 F.3d at 721. The five steps are as follows:

21 1. First, the ALJ determines whether the claimant is “doing substantial gainful
22 activity.” 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not disabled.

23 2. If the claimant is not gainfully employed, the ALJ next determines whether
24 the claimant has a “severe medically determinable physical or mental impairment.” 20
25 C.F.R. § 404.1520(a)(4)(ii). To be considered severe, the impairment must “significantly
26 limit[] [the claimant's] physical or mental ability to do basic work activities.” 20 C.F.R. §
27 404.1520(c). Basic work activities are the “abilities and aptitudes to do most jobs,” such
28 as lifting, carrying, reaching, understanding, carrying out and remembering simple

1 instructions, responding appropriately to co-workers, and dealing with changes in routine.
2 20 C.F.R. § 404.1521(b). Further, the impairment must either have lasted for “a
3 continuous period of at least twelve months,” be expected to last for such a period, or be
4 expected “to result in death.” 20 C.F.R. § 404.1509 (incorporated by reference in 20
5 C.F.R. § 404.1520(a)(4)(ii)). The “step-two inquiry is a de minimis screening device to
6 dispose of groundless claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). If
7 the claimant does not have a severe impairment, then the claimant is not disabled.

8 3. Having found a severe impairment, the ALJ next determines whether the
9 impairment “meets or equals” one of the impairments listed in the regulations. 20 C.F.R.
10 § 404.1520(a)(4)(iii). If so, the claimant is found disabled without further inquiry. If not,
11 before proceeding to the next step, the ALJ will make a finding regarding the claimant's
12 “residual functional capacity based on all the relevant medical and other evidence in [the]
13 case record.” 20 C.F.R. § 404.1520(e). A claimant's “residual functional capacity” is the
14 most she can still do despite all her impairments, including those that are not severe, and
15 any related symptoms. 20 C.F.R. § 404.1545(a)(1).

16 4. At step four, the ALJ determines whether, despite the impairments, the
17 claimant can still perform “past relevant work.” 20 C.F.R. § 404.1520(a)(4)(iv). To make
18 this determination, the ALJ compares its “residual functional capacity assessment . . .
19 with the physical and mental demands of [the claimant's] past relevant work.” 20 C.F.R.
20 § 404.1520(f). If the claimant can still perform the kind of work she previously did, the
21 claimant is not disabled. Otherwise, the ALJ proceeds to the final step.

22 5. At the final step, the ALJ determines whether the claimant “can make an
23 adjustment to other work” that exists in the national economy. 20 C.F.R. §
24 404.1520(a)(4)(v). In making this determination, the ALJ considers the claimant's
25 “residual functional capacity” and her “age, education, and work experience.” 20 C.F.R.
26 § 404.1520(g)(1). If the claimant can perform other work, she is not disabled. If the
27 claimant cannot perform other work, she will be found disabled. As previously noted, the
28 Commissioner has the burden of proving that the claimant can perform other work.

1 *Reddick*, 157 F.3d at 721.

2 In evaluating the claimant's disability under this five-step process, the ALJ must
3 consider all evidence in the case record. 20 C.F.R. § 404.1520(a)(3); 20 C.F.R. §
4 404.1520b. This includes medical opinions, records, self-reported symptoms, and third-
5 party reporting. 20 C.F.R. § 404.1527; 20 C.F.R. § 404.1529; SSR 06-3p.

6 **C. The ALJ's Evaluation Under the Five-Step Process**

7 The ALJ applied the five-step sequential evaluation process using Plaintiff's
8 amended alleged onset date of June 10, 2011. (R. 14). The ALJ found in step one of the
9 sequential evaluation process that Plaintiff has not engaged in substantial gainful activity
10 since her amended alleged onset date of June 10, 2011. (R. 16). The ALJ then found
11 Plaintiff to have the following severe impairments: lumbar degenerative disc disease and
12 obesity. (R. 16). Under step three, the ALJ noted that none of these impairments met or
13 medically equaled one of the listed impairments that would result in a finding of
14 disability. (R. 19). The ALJ then determined that Plaintiff's residual functional capacity
15 ("RFC") was the ability to "perform medium work as defined in 20 CFR 416.967(c)
16 except the claimant is able to frequently balance, stoop, crouch, kneel, crawl, and climb
17 ramps and stairs. The claimant should never be required to climb ladders, ropes or
18 scaffolds. The claimant should also avoid concentrated exposure to non-weather related
19 extreme cold, wet conditions, excessive vibration, dangerous with moving mechanical
20 parts, and unprotected that are high, exposed." (R. 20) (errors in original). Under step
21 four, the ALJ determined that Plaintiff has no past relevant work. (R. 24). Under step
22 five, the ALJ then considered Plaintiff's age, education, work experience, and residual
23 functional capacity to determine that Plaintiff could perform a number of jobs in the
24 national economy. (R. 24). The ALJ concluded that Plaintiff was not disabled. (R. 25).

25 **D. Standard of Review**

26 A district court:

27 may set aside a denial of disability benefits only if it is not
28 supported by substantial evidence or if it is based on legal
error. Substantial evidence means more than a mere scintilla
but less than a preponderance. Substantial evidence is

1 relevant evidence, which considering the record as a whole, a
2 reasonable person might accept as adequate to support a
3 conclusion. Where the evidence is susceptible to more than
4 one rational interpretation, one of which supports the ALJ's
5 decision, the ALJ's decision must be upheld.

6 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (internal citation and
7 quotation marks omitted). This is because “[t]he trier of fact and not the reviewing court
8 must resolve conflicts in the evidence, and if the evidence can support either outcome, the
9 court may not substitute its judgment for that of the ALJ.” *Matney v. Sullivan*, 981 F.2d
10 1016, 1019 (9th Cir. 1992). Under this standard, the Court will uphold the ALJ's findings
11 if supported by inferences reasonably drawn from the record. *Batson v. Comm’r of the*
12 *Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). However, the Court must consider
13 the entire record as a whole and cannot affirm simply by isolating a “specific quantum of
14 supporting evidence.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (internal
15 quotation omitted).

16 **III. The Opinions of Examining Physicians**

17 **A. Legal Standard**

18 “The ALJ is responsible for resolving conflicts in the medical record.” *Carmickle*
19 *v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008). Such conflicts may
20 arise between an examining physician’s medical opinion and other evidence in the
21 claimant’s record. An examining physician’s opinion is entitled to greater weight than the
22 opinion of a nonexamining physician. 20 C.F.R. § 404.1527(c)(1); *see also Lester v.*
23 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995). The ALJ may reject the opinion of an
24 examining physician, “if contradicted by another [physician],” only “for specific and
25 legitimate reasons that are supported by substantial evidence in the record.” *Lester*, 81
26 F.3d at 830-31; *see also Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th
27 Cir. 2002). Substantial evidence that contradicts an examining physician’s opinion may
28 be either (1) an examining physician’s opinion or (2) a nonexamining physician’s opinion
combined with other evidence. *Id.*

1 **B. Discussion**

2 Plaintiff argues the ALJ erred in rejecting the opinions of examining state agency
3 physicians Dr. Monte Jones and Dr. Jeffrey Levison in favor of the opinion of
4 nonexamining state agency physicians Dr. Jean Goerss and Dr. Mikhail Bargan. (Doc. 13
5 at 4-5).

6 Dr. Jones was a state agency physician who examined Plaintiff on September 8,
7 2011. (R. 266). Dr. Jones recorded Plaintiff’s primary complaints as left wrist pain and
8 pain on the bottom of her feet. (R. 266). Dr. Jones noted back pain and diabetes among
9 Plaintiff’s additional complaints. (R. 266). Plaintiff denied using tobacco to Dr. Jones. (R.
10 266). Dr. Jones also recorded that Plaintiff had lost all vision in her left eye. (R. 267). At
11 the examination, Plaintiff had a normal gait, normal posture, shook hands with “normal
12 tension, “made positional changes without difficulty between sitting and standing,” sat in
13 a chair, “was able to get up from an armless chair without difficulty,” “got up and down
14 from the exam table without human assistance,” and “was able to lie down in the supine
15 position on the exam table and recover without human assistance.” (R. 267). Plaintiff was
16 also able to tandem walk, walk on her heels and toes, to squat and recover without
17 assistance, and to kneel and recover without assistance. (R. 267). Plaintiff’s only mobility
18 limitation was her fear to “try to hop on both feet.” (R. 267).

19 Dr. Jones noted that Plaintiff’s range of motion was within normal limits for her
20 cervical spine, thoracic spine, lumbar spine, and pelvis. (R. 268). Plaintiff had full range
21 of motion for her shoulder, elbow, wrist, hips, knees, and ankles with 5/5 muscle strength
22 in all areas. (R. 268). Although Plaintiff complained of back pain, Dr. Jones noted no
23 objective physical problems with her joints and normal reflexes. (R. 268). Yet, despite
24 these findings, Dr. Jones rested his functional capacity assessment of Plaintiff on his
25 diagnosis of degenerative disc disease in her lumbar spine and mild spondylitic disease in
26 the thoracic spine. (R. 269-70). Dr. Jones apparently did so based on Plaintiff’s subjective
27 reports of whole body pain. (R. 269). Dr. Jones assessed Plaintiff as only being able to
28 perform light work. (R. 269-71).

1 Dr. Jones' functional capacity assessment is inconsistent with his own findings,
2 including his findings showing a complete absence of objective limitations. The ALJ did
3 not err in discounting Dr. Jones' functional capacity assessment because although Dr.
4 Jones' objective findings are consistent with the record, his assessment that Plaintiff is
5 capable of only light work is inconsistent with the balance of Plaintiff's record evidence.
6 The ALJ gave specific and legitimate reasons for discounting his opinion. For example,
7 the ALJ noted that Plaintiff's reports of pain are inconsistent with her diagnosis of only
8 grade 1 spondylolisthesis and her engaging in only conservative treatment. (R. 21, 257).

9 Plaintiff also twice failed to complete a course of physical therapy, attending only
10 one appointment at STI Physical Therapy & Rehabilitation. (R. 21, 256). Plaintiff
11 switched to the Core Institute, but after six therapy sessions Plaintiff stopped attending
12 and was unreachable by the Core Institute staff. (R. 21, 304). Plaintiff also saw Dr.
13 Hennenhoefer for a single visit, at which she complained of 10/10 pain but found
14 physical therapy unhelpful and she stated she had not undergone injections. (R. 22, 337).
15 Instead, Plaintiff took tramadol and Vicodin. (R. 337). Plaintiff admitted tobacco use to
16 Dr. Hennenhoefer, which contradicts her denial to Dr. Jones and undermines Plaintiff's
17 credibility. (R. 339). Dr. Hennenhoefer found Plaintiff slow to rise from a chair, and
18 noted mild to moderate restrictions in Plaintiff's range of motion. (R. 339). Plaintiff never
19 followed up with Dr. Hennenhoefer. (R. 22).

20 In addition to Plaintiff's inconsistent statements regarding her tobacco use, the
21 ALJ found Plaintiff's credibility further compromised in that she complained of only
22 being able to sit for twenty minutes at a time but sat through the forty-five minute ALJ
23 hearing. (R. 22-23). More significantly, the ALJ noted that although Plaintiff had told Dr.
24 Jones that she had lost her vision in her left eye, her left eye was tested at 20/15 vision by
25 Dr. Levison. (R. 316). In fact, Dr. Levison reported that Plaintiff had told another doctor
26 that she could not see out of her *right* eye. (R. 316). Thus, to the extent this evidence
27 severely compromises Plaintiff's credibility, the ALJ appropriately relied on it to
28 discount Dr. Jones' functional capacity assessment because that assessment was based on

1 Plaintiff's subjective reports.

2 The ALJ also found Dr. Levison's findings to be inconsistent with his functional
3 capacity assessment of Plaintiff. Dr. Levison examined Plaintiff on March 28, 2012, and
4 also reviewed her past medical records. (R. 315). Dr. Levison noted from Plaintiff's
5 records that she appeared to have age-appropriate narrowing of the central canal in her
6 spine, as well as grade 1 spondylolisthesis. (R. 315). Dr. Levison noted that Plaintiff was
7 "a very histrionic claimant" who displayed extremely poor effort during the exam,
8 sighing frequently and making minimal effort. (R. 316). Dr. Levison found numerous
9 Waddell's signs (indicating a psychological component to chronic low back pain), and a
10 "stark contrast" between direct and indirect observational findings. (R. 316).

11 Dr. Levison found Plaintiff's gait, station, and coordination to be normal. (R. 316).
12 Plaintiff refused during the exam to hop, squat, heel-toe stand, or use a tandem gait. (R.
13 316). Dr. Levison noted during palpation of Plaintiff's spine that Plaintiff's tenderness
14 was out of proportion to the actual intensity of palpation. (R. 316). Plaintiff also had a
15 full range of motion of her cervical and thoracic spine and could sit on the examination
16 table without difficulty, although Plaintiff would not bend forward "even 1 degree on
17 formal testing." (R. 316). Plaintiff had "about 0-1 strength" in her upper and lower
18 extremities during formal testing, which Dr. Levison believed to be consistent with
19 deception because Plaintiff was able to walk and maneuver. (R. 317). Dr. Levison also
20 noted "give-way weakness," which he believed was a further sign of deception. Overall,
21 Dr. Levison concluded that he believed "there is marked malingering and deception on
22 the claimant's behalf." (R. 317). Nevertheless, Dr. Levison assessed Plaintiff's functional
23 capacity as only light lifting. (R. 318).

24 The ALJ specifically discounted Dr. Levison's functional capacity assessment as
25 inconsistent with Dr. Levison's own findings as well as other substantial record evidence.
26 (R. 23-24). For the reasons already discussed with respect to Dr. Jones, the ALJ pointed
27 to specific evidence in the record that undermined Plaintiff's credibility and objectively
28 contradicted Dr. Levison's capacity assessment.

1 Finally, the ALJ also pointed to the opinions of nonexamining physicians Dr.
2 Goerss and Dr. Bargan as evidence contradicting Dr. Levison's and Dr. Jones' functional
3 capacity assessments. (R. 23). Dr. Goerss reviewed Plaintiff's records and found Plaintiff
4 to be not credible because her reported symptoms were inconsistent with the objective
5 findings. (R. 84). Similarly, Dr. Bargan found Plaintiff's normal range of motion and
6 strength in her extremities supported a functional capacity assessment of medium work.
7 (R. 66-67).

8 In sum, the ALJ offered specific and legitimate reasons for discounting the
9 functional capacity assessments of Drs. Jones and Levison. The ALJ pointed out that
10 these capacity assessments were inconsistent with those doctors' own treatment notes, the
11 objective evidence in the record, and the findings of the nonexamining physicians. The
12 ALJ also stated that Plaintiff's impaired credibility negatively impacted the reliability of
13 Dr. Jones and Dr. Levison's capacity assessments because those assessments were based
14 on Plaintiff's subjective symptoms. These were specific and legitimate reasons for
15 discounting these capacity assessments, and the ALJ did not err in doing so.¹

16 **IV. Medical-Vocational Guidelines**

17 Plaintiff's second argument is that the ALJ did not properly consider "20 CFR
18 404.1599 Subpart P, Appendix II at 202.09" in failing to find Plaintiff to be disabled.
19 (Doc. 13 at 4). The Court presumes, as Defendant points out, that Plaintiff intended to
20 cite to the Medical-Vocational Guidelines, 20 C.F.R. 404, Subpart P, Appendix 2. (Doc.
21 16 at 10 n.1). Plaintiff argued in her opening brief that under the Medical-Vocational
22 Guidelines, a person over 50 years of age who has an inability to communicate in English
23 and has no skills is considered disabled. (Doc. 13 at 4).

24 In applying the Medical-Vocational Guidelines, the ALJ noted that "[i]f the
25 claimant had the residual functional capacity to perform the full range of medium work, a

26
27 ¹ Plaintiff argues the ALJ erred in discounting the capacity assessments of Dr.
28 Jones and Dr. Levison because, according to Plaintiff, even a healthy 60-year-old woman
would have difficulty lifting fifty pounds occasionally. (Doc. 13 at 5). But a functional
capacity assessment does not consider age, education, or work experience. *See Bowen v.*
Yuckert, 482 U.S. 137, 148 (1987).

1 finding of ‘not disabled’ would be directed by Medical-Vocational Rule (“Rule”) 203.14.
2 However, the claimant’s ability to perform all or substantially all of the requirements of
3 this level of work has been impeded by additional limitations.” (R. 25). At the ALJ
4 hearing, a vocational expert testified that given Plaintiff’s age, education, and limited
5 English skills, there were jobs available in the national economy that required medium
6 exertion and only the lowest level of language skills. (R. 25). The ALJ concluded that
7 based on this testimony, Plaintiff was capable of making a “successful adjustment to
8 other work that exists in significant numbers in the national economy” and was thus not
9 disabled. (R. 25). Plaintiff does not challenge the vocational expert’s testimony on
10 appeal.

11 Plaintiff’s argument fails because Medical-Vocational Rule 202.09, to which
12 Plaintiff cites, applies only to claimants with a residual functional capacity for light work.
13 The ALJ found Plaintiff to be capable of medium work. However, Plaintiff argues in her
14 reply brief that because she is now over 60 years of age, Medical-Vocational Rules
15 203.01 and 203.02 require a finding of disability even if Plaintiff is capable of medium
16 work. (Doc. 17 at 2). Rules 203.01 and 203.02 apply when a claimant is over 60 years old
17 and has a “limited” or “marginal” education. 20 C.F.R. pt. 404, subpt. P, app. 2. The ALJ
18 found that Plaintiff has at least a high school education and is able to communicate in
19 English. (R. 24); *see also* 20 C.F.R. § 414.964(b)(4). Accordingly, the applicable
20 Medical-Vocational Rule is 203.06, which applies when the claimant is over 60, is a high
21 school graduate, and has no previous work experience. Rule 203.06 directs a conclusion
22 of “not disabled.” The ALJ did not err in applying the Medical-Vocational Guidelines

23 **V. Conclusion**

24 The ALJ did not err in finding Plaintiff to be not disabled.

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For the foregoing reasons,

IT IS ORDERED that the decision of the Administrative Law Judge is affirmed.

IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment accordingly. The judgment will serve as the mandate of this Court.

Dated this 22nd day of September, 2015.



James A. Teilborg
Senior United States District Judge