

1 WO
2
3
4
5

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

9 Margarita Leon De Nunez,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-17-1411-PHX-DKD

ORDER

15
16 Plaintiff Margarita Leon De Nunez appeals from the denial of her application for
17 benefits. (Doc. 1) This Court has jurisdiction pursuant to 42 U.S.C. § 405(g) and, with
18 the parties' consent to Magistrate Judge jurisdiction, pursuant to 28 U.S.C. § 636(c).
19 (Doc. 14) As detailed below, the Court concludes that the ALJ's decision contains
20 harmful errors and the Court will remand for further proceedings.

21 **Standard of Review**

22 This court must affirm the ALJ's findings if they are supported by substantial
23 evidence and are free from reversible error. *Marcia v. Sullivan*, 900 F.2d 172, 174 (9th
24 Cir. 1990). Substantial evidence is more than a mere scintilla, but less than a
25 preponderance; it is "such relevant evidence as a reasonable mind might accept as
26 adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). In
27 determining whether substantial evidence supports the ALJ's decision, the court
28 considers the record as a whole, weighing both the evidence that supports and that which

1 detracts from the ALJ's conclusions. *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir.
2 1988). The ALJ is responsible for resolving conflicts, ambiguity, and determining
3 credibility. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995); *Magallanes v.*
4 *Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). If there is sufficient evidence to support the
5 ALJ's determination, the Court cannot substitute its own determination. *See Young v.*
6 *Sullivan*, 911 F.2d 180, 184 (9th Cir. 1990).

7 Thus, the Court must affirm the ALJ's decision where the evidence considered in
8 its entirety substantially supports it and the decision is free from reversible error. 42
9 U.S.C. § 405(g); *Hammock v. Bowen*, 879 F.2d 498, 501 (9th Cir. 1989). The Court must
10 do more than merely rubber stamp the ALJ's decision. *Winans v. Bowen*, 853 F.2d 643,
11 645 (9th Cir. 1988). However, where the evidence is susceptible to more than one rational
12 interpretation, the ALJ's decision must be upheld. *Magallanes*, 881 F.2d at 750.

13 **Background**

14 Leon¹ was 40 years old on her alleged disability onset date. She has an 11th grade
15 education and past relevant work as a packager and machine operator. (Tr. 32)

16 After a hearing where Leon and a vocational expert testified, the ALJ issued an
17 opinion that followed the requisite five step process. The ALJ found that her severe
18 impairment was degenerative disc disease, status post spinal fusion but that its severity
19 did not meet or equal a listed impairment. (Tr. 25-27) The ALJ further found that Leon
20 had the residual functional capacity ("RFC") to perform light work subject to some
21 additional functional limitations. (Tr. 27-32) Based on Leon's past work, RFC, and
22 testimony from the vocational expert, the ALJ concluded that Leon could perform jobs
23 that exist in significant numbers in the national economy and, thus, was not disabled.
24 (Tr. 33-34)

25
26
27
28 _____
¹ Based on the information she provided, the Court concludes that Leon is the most appropriate way to refer to Plaintiff. (Doc. 2 at 1)

1 **Analysis**

2 *Background.* Leon’s primary care provider, Jason Cheng, M.D., completed a
3 check-box form and the ALJ discounted the form’s conclusions because there was “little
4 to no explanation for such limitations.” (Tr. 30) Specifically, the ALJ noted that Dr.
5 Cheng described Leon with bilateral limitations even though she had “only alleged
6 limitations in the use of the left arm and hand.” (*Id.*) The ALJ also noted that, on the one
7 hand, Dr. Cheng had limited Leon to sitting 10-15 minutes at a time and would need a 15
8 minute break every 15 minutes but, on the other hand, Leon’s medical records had noted
9 “no acute distress” and that she had been able to travel 53 minutes to the hearing and
10 participate in the 45 minute hearing. (*Id.*) The ALJ did not provide any additional details
11 before concluding that, because Dr. Cheng’s opinion was “unsupported by the medical
12 record and [Leon’s] demonstrated abilities,” his assessments were entitled to only “little
13 weight.” (Tr. 30)

14 *Standard of Review.* As the Ninth Circuit recently articulated,

15 The medical opinion of a claimant’s treating physician is given “controlling
16 weight” so long as it “is well-supported by medically acceptable clinical
17 and laboratory diagnostic techniques and is not inconsistent with the other
18 substantial evidence in [the claimant’s] case record.” 20 C.F.R. §
19 404.1527(c)(2). When a treating physician’s opinion is not controlling, it is
20 weighted according to factors such as the length of the treatment
21 relationship and the frequency of examination, the nature and extent of the
22 treatment relationship, supportability, consistency with the record, and
23 specialization of the physician. *Id.* § 404.1527(c)(2)–(6).

24 *Trevizo v. Berryhill*, 871 F.3d 664, 675 (9th Cir. 2017). When a treating physician’s
25 opinion is contradicted, “it may be rejected for specific and legitimate reasons that are
26 supported by substantial evidence in the record.” *Carmickle v. Comm’r, Social Sec.*
27 *Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008) (internal quotation omitted).

28 *Analysis.* Leon argues that the ALJ’s RFC was insufficient because it did not
“properly assess [her primary care provider’s] opinion under the treating physician rule.”
(Doc. 19 at 18) The Court agrees.

Leon first argues that the ALJ did not provide a sufficient explanation and that her
medical records, viewed as a whole, support Dr. Cheng’s limitations. The Court agrees.

1 “In making any determination with respect to whether an individual is under a disability
2 or continues to be under a disability, the Commissioner of Social Security shall consider
3 all evidence available in such individual’s case record.” 42 U.S.C. § 423(d)(5)(B). The
4 ALJ should have considered these records and the failure to do so constitutes legal error.
5 *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993) (citing 20 C.F.R. § 404.1513(e)(2)).

6 Finally, Leon argues that the ALJ cannot contradict Dr. Cheng’s limitations by
7 relying on observations of her at the hearing without a prior finding of malingering.
8 (Doc. 19 at 19-22) Again, the Court agrees that “the ALJ improperly rejected the opinion
9 of [Leon’s] doctor regarding the severity of the impairment based upon his observations
10 of [her] behavior at the hearing.” *Coats v. Heckler*, 733 F.2d 1338, 1340 (9th Cir. 1984).

11 **Conclusion**

12 As described above, the ALJ did not properly account for the opinion of Leon’s
13 treating physician when determining her RFC. Because the Court concludes that the ALJ
14 opinion cannot stand, Leon’s other arguments will not be addressed. Although Leon
15 seeks a remand for benefits, the Court concludes that the best course is to remand for
16 further proceedings so that the agency can weigh, in the first instance, the conflicting
17 evidence and Leon’s primary care provider’s opinion. *Vasquez v. Astrue*, 572 F.3d 586,
18 596 (9th Cir. 2009).

19 **IT IS THEREFORE ORDERED** that the final decision of the Commissioner is
20 vacated and this matter is remanded to the Commissioner for further proceedings
21 consistent with this Order. The Clerk of the Court shall enter judgment accordingly.

22 Dated this 8th day of January, 2018.

23
24 

25 _____
26 David K. Duncan
27 United States Magistrate Judge
28