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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ELISA R. CASTANEDA,)	Case No. CV 08-6219-JEM
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	AFFIRMING DECISION OF
v.)	COMMISSIONER
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

PROCEEDINGS

On September 25, 2008, Elisa R. Castaneda (“Plaintiff” or “Claimant”), filed a complaint seeking review of the decision by the Commissioner of Social Security (“Commissioner”) denying Plaintiff’s application for both Social Security disability insurance benefits and Supplemental Social Security income. The Commissioner filed an Answer on February 2, 2009. On July 31, 2009, the parties filed a Joint Stipulation (“JS”).

Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before the Magistrate Judge. The matter is now ready for decision. After reviewing the pleadings, transcripts, and administrative record (“AR”), the Court concludes that the Commissioner’s decision should be affirmed.

1 **BACKGROUND**

2 Plaintiff is a 50 year old female who was determined to suffer from the severe
3 impairment of lumbar spine impairment. (AR 13.) Plaintiff must establish an onset date of
4 December 31, 2006. (AR 8.) She has not engaged in substantial gainful activity since
5 December 31, 2006. (AR 13.)

6 Plaintiffs' claims were denied initially by the Social Security Administration ("SSA").
7 (AR 34-38.) On March 10, 2008, Plaintiff appeared and testified at a hearing before an
8 Administrative Law Judge ("ALJ"). (AR 15-24.)

9 The ALJ issued an unfavorable decision on April 24, 2008, denying Plaintiff's claim
10 for benefits. (AR 5-14.) The ALJ concluded that Plaintiff has severe lumbar spine
11 impairment but that she has residual functional capacity ("RFC") to do medium or light work
12 and can perform past relevant or alternative work. (AR 13.) The ALJ determined that
13 Claimant has not been under a disability within the meaning of the Social Security Act at any
14 time through the date of the decision. (AR 12, 13.)

15 Plaintiff filed a timely request for review of the ALJ's decision, which was denied by
16 the Appeals Council on August 26, 2008. (AR 1-3.)

17 Of note is that the ALJ previously issued a decision on July 11, 2006, denying a prior
18 application for benefits from Plaintiff. (AR 9.) The ALJ determined in that decision that
19 Plaintiff had the residual capacity to perform light work and engage in substantial gainful
20 activity in jobs and occupations specified by the vocational expert. (Id.) The ALJ found no
21 new or material evidence to reopen the prior decision. (Id.)

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23 **DISPUTED ISSUES**

24 As reflected in the Joint Stipulation, there is but one disputed issue: whether the ALJ
25 properly considered the testimony of Elisa Castaneda.

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1 **STANDARD OF REVIEW**

2 Under 42 U.S.C. § 405(g), this Court reviews the ALJ’s decision to determine
3 whether the ALJ’s findings are supported by substantial evidence and whether the proper
4 legal standards were applied. DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991).
5 Substantial evidence means “more than a mere scintilla’ but less than a preponderance.”
6 Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v. Perales, 402
7 U.S. 389, 401 (1971)).

8 Substantial evidence is “such relevant evidence as a reasonable mind might accept
9 as adequate to support a conclusion.” Richardson, 402 U.S. at 401 (internal quotations and
10 citations omitted). This Court must review the record as a whole and consider adverse as
11 well as supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir.
12 2006). Where evidence is susceptible to more than one rational interpretation, the ALJ’s
13 decision must be upheld. Morgan v. Comm’r, 169 F.3d 595, 599 (9th Cir. 1999). “However,
14 a reviewing court must consider the entire record as a whole and may not affirm simply by
15 isolating a ‘specific quantum of supporting evidence.’” Robbins, 466 F.3d at 882 (quoting
16 Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495 F.3d
17 625, 630 (9th Cir. 2007).

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19 **DISCUSSION**

20 The Court concludes that the ALJ’s determination that Plaintiff is not disabled within
21 the meaning of the Social Security Act is supported by substantial evidence.

22 **A. The Sequential Evaluation**

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

3 The first step is to determine “whether the claimant is presently engaging in
4 substantially gainful activity.” Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the
5 claimant is engaging in substantially gainful activity, disability benefits will be denied.
6 Bowen v. Yuckert, 482 U.S. 137, 140 (1987). Second, the ALJ must determine whether the
7 claimant has a severe impairment or combination of impairments. Parra, 481 F.3d at 746.
8 An impairment is not severe if it does not significantly limit the claimant’s ability to work.
9 Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir. 1996). The ALJ, however, must consider
10 the combined effect of all the claimant’s impairments on his or her ability to function,
11 regardless of whether each alone is sufficiently severe. Id. Also, the ALJ must consider the
12 claimant’s subjective symptoms in determining severity. Id.

13 Third, the ALJ must determine whether the impairment is listed, or equivalent to an
14 impairment listed, in Appendix I of the regulations. Parra, 481 F.3d at 746. If the
15 impediment meets or equals one of the listed impairments, the claimant is presumptively
16 disabled. Bowen, 482 U.S. at 141.

17 Fourth, the ALJ must determine whether the impairment prevents the claimant from
18 doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir. 2001). If the
19 claimant cannot perform his or her past relevant work, the ALJ proceeds to the fifth step and
20 must determine whether the impairment prevents the claimant from performing any other
21 substantial gainful activity. Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000).

22 The claimant bears the burden of proving steps one through four, consistent with the
23 general rule that, at all times, the burden is on the claimant to establish his or her
24 entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established
25 by the claimant, the burden shifts to the Commissioner to show that the claimant may
26 perform other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006).

1 **B. Substantial Evidence Supports The ALJ’s Decision**

2 The ALJ determined that Plaintiff has not engaged in substantial gainful activity since
3 December 31, 2006. (AR 13.) The ALJ also determined that Plaintiff had the severe
4 impairment of lumbar spine impairment. (Id.) Plaintiff’s case, however, faltered at steps
5 four and five of the sequential evaluation. The ALJ concluded that Plaintiff had the RFC to
6 do medium or light work and to engage in substantial gainful activity in her past relevant
7 work or in alternative jobs. (Id.) The ALJ’s conclusions were supported by the testimony of
8 vocational expert Lynn Tracey. (Id. at 24-31.)

9 Plaintiff did not present an RFC analysis from any treating or consulting physician.
10 Essentially, Plaintiff challenges the basis for the moderate restrictions posed by the ALJ to
11 the vocational expert, contending that the ALJ improperly assessed her subjective symptom
12 testimony in determining her limitations. (JS 4.)

13 Plaintiff asserts that the ALJ rejected her testimony because: (1) the objective
14 medical evidence did not support the restrictions that she claims, and (2) she was able to
15 perform some daily activities. (JS 6-7.) Plaintiff mischaracterizes the ALJ’s decision. The
16 ALJ did not reject Ms. Castaneda’s subjective symptom testimony solely for lack of objective
17 medical evidence but properly considered the medical evidence together with all other
18 evidence. In particular, the ALJ relied heavily on the RFC analysis conducted by the
19 consulting examiner Dr. Siciarz-Lambert (“Lambert”). Plaintiff does not address or even
20 mention Dr. Lambert’s report.

21 Additionally, the ALJ mentioned Plaintiff’s daily activities as but one element of the
22 credibility analysis. The ALJ did not give much weight to that factor. Again, the ALJ gave
23 primary weight to the medical evidence and Dr. Lambert’s report on both Plaintiff’s
24 limitations and her credibility.

25 Upon consideration of the entire record, the ALJ’s decision that Plaintiff is not
26 disabled is supported by substantial evidence and free of legal error.

1 **1. The Medical Evidence Was Not Improperly Considered**

2 The test for deciding whether to accept a claimant’s subjective symptom testimony
3 turns on whether the claimant produces medical evidence of an impairment that reasonably
4 could be expected to produce the pain or other symptoms alleged. Bunnell v. Sullivan, 947
5 F.2d 341, 346 (9th Cir. 1991); Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998); Smolen
6 v. Chater, 80 F.3d 1273, 1281-82, esp. fn. 2 (9th Cir. 1995); Cotton v. Bowen, 799 F.2d
7 1403, 1407 (9th Cir. 1986). The Commissioner may not discredit a claimant’s testimony on
8 the severity of symptoms merely because they are unsupported by objective medical
9 evidence. Reddick, 157 F.3d at 722; Bunnell, 947 F.2d at 343, 345. Unless there is
10 evidence of malingering, the ALJ can reject the claimant’s testimony about the severity of
11 her symptoms only by offering “specific, clear and convincing reasons for doing so.”
12 Reddick, 157 F.3d at 722; Smolen, 80 F.3d at 1283-84. The ALJ must identify what
13 testimony is not credible and what evidence discredits the testimony. Reddick, 157 F.3d at
14 722; Smolen, 80 F.3d at 1284.

15 Plaintiff appears to contend that lack of objective medical evidence is irrelevant and
16 as a matter of law cannot be considered at all in assessing the severity of a claimant’s
17 symptoms. To the contrary, the governing legal principle in the Ninth Circuit is that an ALJ
18 cannot reject subjective symptom testimony based solely on lack of objective medical
19 evidence. Bunnell, 947 F.2d at 345 (“once the claimant produces objective evidence of an
20 underlying impairment, an adjudicator may not reject a claimant’s subjective complaints
21 based solely on a lack of objective medical evidence”) (emphasis added); Rollins v.
22 Massanari, 261 F.3d 853, 857 (9th Cir. 2001) (subjective testimony cannot be rejected on
23 “sole” ground that objective medical evidence is lacking). Even though not determinative of
24 the severity of pain in itself, medical evidence is nonetheless relevant to the ALJ’s decision
25 on severity. Id. (“the medical evidence is still a relevant factor in determining the severity of
26 the claimant’s pain and its disabling effects”); Smolen, 80 F.3d at 1285 (SSR 88-13 requires
27 the adjudicator to give “full consideration to all of the available evidence, medical and other”)
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1 (SSR 88-13 is now SSR 96-7p and also included in 20 C.F.R. § 404.1529(c)(3) and §
2 416.929(c)(3).)

3 In this case, the ALJ did not rely solely on the lack of medical evidence in rejecting
4 Plaintiff's subjective pain testimony. The ALJ properly considered the medical evidence
5 together with all other factors and evidence, including and particularly the report of
6 Dr. Lambert in regard to Plaintiff's RFC and credibility.

7 The ALJ observed that the medical and diagnostic evidence was weak and
8 unimpressive as it relates to the severity of Plaintiff's symptoms and to her functioning. (AR
9 11.) There is substantial evidence in the record and cited in the decision to support the
10 ALJ's assessment of the medical evidence. Plaintiff does not dispute the ALJ's assessment
11 or contend that the medical evidence supports a finding of disability.

12 Her treating physicians at All for Health offered only generalized pain diagnoses such
13 as arthralgia, myalgia, and myositis but never assessed work function. (AR 11.) She was
14 prescribed only mild pain agents like Motrin and Flexeril. (AR 10.) There was never any
15 aggressive treatment or recommendation for same. (Id.)

16 Examinations repeatedly noted as to the spine "no kyphosis or scoliosis." (AR 11,
17 189, 190, 234.) Lumbar spine X-rays by Dr. Lambert showed only mild degenerative lumbar
18 spondylosis and no significant degenerative arthritis. (AR 11, 251.) Musculoskeletal
19 examinations reported normal musculature and no skeletal tenderness or joint deformity.
20 (AR 11, 189, 190, 234.) Extremities on examination appeared normal with no edema or
21 cyanosis. (AR 11, 189, 190, 234.) There was full range of motion in both elbows (AR 11,
22 235), no joint swelling (AR 11, 229) and no acute or apparent distress (AR 11, 229.)¹

24 ¹ The ALJ's decision notes "[T]here is little, if any, medical data correlating with
25 headaches or blurred vision - and the claimant did not mention either at the hearing. She
26 did testify to right arm pain and swelling but, as stated above, the ALJ does not find that she
27 has established a limitation in the use of the upper extremities." (AR 10.) The ALJ noted
28 that Claimant attaches severity only to lumbar disc disease and, although Dr. Lambert found
mild tendinitis in the right arm, it was not found to limit work functions. (AR 9.) Plaintiff does
not take issue in the JS that the only severe impairment is the lumbar spine condition.

1 The ALJ decision nowhere indicates sole reliance on this medical evidence in
2 assessing the severity of Claimant's symptoms. The decision describes and evaluates the
3 medical evidence to determine whether it establishes disability and to indicate that it is not
4 contrary to Dr. Lambert's functional assessment. There was no legal error in the ALJ's
5 consideration of the medical evidence together with all other evidence bearing on severity
6 and functioning.

7 **2. Plaintiff Has The Residual Functional Capacity To Engage In**
8 **Substantial Gainful Activity**

9 The ALJ's determination of Plaintiff's limitations relies heavily but not entirely on
10 Dr. Lambert's RFC assessment and the vocational expert's testimony. Dr. Lambert's RFC
11 assessment is "the only function-by-function assessment by an examining source." (AR 11.)
12 Plaintiff does not address or even mention this important evidence.

13 Dr. Lambert's report was summarized by the ALJ:

14 As discussed above, Dr. Siciarz-Lambert reported discrepancies
15 between the claimant's responses on formal examination (and her
16 allegations) and her observed movements. In further regard to the right
17 upper extremity, she reported normal range of motion and no evidence of
18 swelling (in any joint). She reported that the claimant 30 pound grip
19 strength with the right hand (60 pounds with the left hand). She did
20 report slight prominence of the muscle/tendon in the right wrist-and slight
21 difference between it and the left wrist, but no tenderness to palpation or
22 warmth. As previously discussed, Dr. Siciarz-lambert described a major
23 contrast between the results of formal examination of the lumbar spine
24 and the claimant's functioning when being discreetly observed. The
25 examination also related normal motor strength, reflexes, sensation,
26 coordination and gait and station.

27 Dr. Siciarz-Lambert concluded that the claimant may have a mild
28 case of right wrist tendinitis. She assessed that the claimant is limited to

1 lifting, carrying, pushing and pulling 50 pounds occasionally and 25
2 pounds frequently, but is otherwise not restricted, included for sitting,
3 standing, walking, postural maneuvers and gross and fine manipulation.
4 (Ex. 2F). Her assessment, which effectively captures both the medical
5 and lay evidence, comports with a capacity for a full range of medium
6 work (20 CFR 404.1567, 416.927).

7 (AR 11, 213-19.) Dr. Lambert's report presents medical and diagnostic evidence, a
8 functional assessment and relevant information on Claimant's credibility. (AR 10-11.)

9 Based on the moderate limitations reported by Dr. Lambert, the ALJ posed
10 hypothetical questions to vocational expert Lynn Tracy to determine Claimant's ability to
11 work. (AR 24-30.) Ms. Tracy testified that Plaintiff had the residual functional capacity to do
12 medium or light work and could perform her past relevant work or alternative jobs. (AR 12.)

13 An RFC is not a medical determination but an administrative finding or legal decision
14 reserved to the Commissioner based on consideration of all the relevant evidence, including
15 medical evidence, lay witnesses and subjective symptoms. See SSR 96-5p; 20 C.F.R.
16 § 1527(e)(2). There was no legal error in this case or other reason to disturb the ALJ's RFC
17 determination, which properly was based on all relevant evidence, medical and other.

18 **3. The ALJ Did Not Improperly Consider Plaintiff's Daily Activities**

19 Plaintiff devotes five pages to the ALJ's reference to daily activities, arguing that
20 sporadic and unrestrained activities do not relate to the ability to perform gainful work. (JS
21 7-11.) Plaintiff overstates the ALJ's reliance on Plaintiff's daily activities. The ALJ makes
22 only this limited observation on the subject:

23 While the claimant asserts in SSA documents that she has
24 problems with some aspects of personal hygiene and carrying out
25 activities, she also reports driving and leaving her residence daily. Given
26 the claimant's credibility problems, as well as the weak medical data, the
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1 ALJ does not believe that the claimant's functional difficulties are as
2 limited as she reports.

3 (AR 11.)

4 The ALJ's reference to daily activities was descriptive, undisputed and a minor
5 aspect of the ALJ's decision. The ALJ's RFC is not based solely or even primarily on
6 Claimant's daily activities. The ALJ based the RFC conclusion primarily on the medical
7 evidence, Dr. Lambert's RFC, the vocational expert's testimony and Plaintiff's credibility or
8 lack thereof.

9 **4. The ALJ Did Not Improperly Consider Ms. Castaneda's Subjective**
10 **Symptom Testimony In Assessing Functional Capacity**

11 The ALJ determined that Plaintiff has a medical impairment, i.e., lumber spine
12 impairment, that can reasonably cause her pain symptoms in her back and upper
13 extremities. (AR 10.) The ALJ did not make a finding that Plaintiff is a malingerer or even
14 mention malingering. Thus, the ALJ must come forward with specific, clear and convincing
15 reasons based on substantial evidence to sustain the finding that Claimant's allegations lack
16 credibility concerning her work capacity. (AR 10, 11, 13.)

17 The ALJ has met that burden in this case:

18 The ALJ finds that the claimant's overall credibility and reliability,
19 including as to the degree of her functional limitations, is seriously
20 compromised by her poor efforts on presentation to consultative
21 physician Dr. Siciarz-lambert's February 2007, as well as by her
22 demonstrated functioning on observation (Ex. B-2F). Dr. Siciarz-Lambert
23 reported that whereas the claimant's *forward flexion* of the lumbar spine
24 was limited to 20 degrees on formal examination, with discreet
25 observation, she was noted to bend forward and attempt to pull out a
26 stool from under the examining table, then stopping when bending to
27 about 45 degrees and looking at the examiner. Dr. Siciarz-Lambert
28 further related that the claimant extended minimal efforts on *straight leg*
raising and *other maneuvers*. In further reflecting on the claimant actual

1 capacities, Dr. Siciarz-Lambert noted that the claimant moved normally,
2 sat comfortably without shifting in the chair and stood up from the sitting
3 position and sat up from the supine position without difficulty.

4 Additionally, although the claimant complained [of] pain in the dominant
5 right arm, Dr. Siciarz-Lambert observed that she did not limit use of the
6 right hand. She added that when climbing on examining table, the
7 claimant put full pressure on the right hand and used it to stabilize
8 herself.

9 (AR 10.) These conclusions are also supported by Dr. Lambert's RFC discussed in Section
10 2 above and by the lack of objective medical evidence.²

11 The ALJ properly relied on Dr. Lambert's RFC which incorporated an assessment of
12 Plaintiff's credibility, the weak medical data and Plaintiff's daily activities in discounting her
13 credibility.

14 **5. Summary**

15 The ALJ properly concluded that Plaintiff has not been under a disability within the
16 meaning of the Social Security Act at any time through the date of the ALJ's decision.

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27 ² The ALJ concluded that Dr. Lambert's report undermined an observation by a
28 SSA employee that Plaintiff had difficulty walking and writing (AR 10, 81). A subsequent
Disability Report found no problems of that sort. (AR 140.)

ORDER

IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the
Commissioner of Social Security.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: December 15, 2009

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

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