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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

MARIA MALDONADO,	)	Case No. CV 09-7703-MLG
	)	
Plaintiff,	)	MEMORANDUM OPINION AND ORDER
	)	
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of the Social	)	
Security Administration,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Maria Maldonado seeks judicial review of the Social Security Commissioner's denial of her application for Social Security Disability Insurance ("SSDI") benefits pursuant to Title II of the Social Security Act. For the reasons stated below, the decision of the Commissioner is affirmed.

**I. Facts and Procedural Background**

Plaintiff was born on November 24, 1956. She completed the ninth grade in Mexico and has worked as an assembler and janitor. (Administrative Record ("AR") at 52, 79, 99.) Plaintiff filed an

1 application for SSDI benefits<sup>1</sup> on March 19, 2007, alleging  
2 disability as of August 1, 1999, due to shoulder, lower back, arm,  
3 and knee impairments arising from a work-related injuries in 1995  
4 and 1997.<sup>2</sup> (AR at 79.) Her application was denied initially and  
5 upon reconsideration. (AR at 67, 98.) An administrative hearing was  
6 held on July 7, 2008, before Administrative Law Judge ("ALJ")  
7 Robert J. Grossman. (AR at 47-65.) Plaintiff was represented by  
8 counsel and testified on her own behalf with the aid of an  
9 interpreter. A vocational expert ("VE"), Barbara Miksic, also  
10 testified at the hearing. (*Id.*)

11 ALJ Grossman issued an unfavorable decision on February 20,  
12 2009. (AR at 21-28.) The ALJ found that Plaintiff had not engaged  
13 in substantial gainful activity since her alleged onset date of  
14 August 1, 1999, to December 31, 2002, the date she was last  
15 insured. Plaintiff's severe impairments were found to include  
16 internal derangement of the knees and degenerative disc disease of  
17 the lumbar spine, but these impairments, alone or in combination,  
18 did not meet the requirements of a listed impairment found in 20  
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21 <sup>1</sup> Plaintiff states that she also applied for Supplemental  
22 Security Income benefits ("SSI") under Title XVI of the Social  
23 Security Act. (Joint Stip. at 2.) However, the record contains only  
24 a Title II SSDI application, and the ALJ issued an unfavorable  
25 decision solely on the issue of whether Plaintiff was disabled  
26 during the SSDI period. Although there is one reference to a  
27 pending SSI application in the record, (AR at 83), the remainder of  
the record reflects the existence of a standalone SSDI claim. (AR  
at 66-67, 72, 93-94, 109, 116, 196.) The Commissioner only reached  
a final decision as to Plaintiff's eligibility for SSDI benefits,  
and this Court's judicial review is limited to that decision. 42  
U.S.C. § 405(g).

28 <sup>2</sup> Plaintiff received worker's compensation benefits in  
connection with these injuries from 1999 through early 2007.

1 C.F.R. Part 404, Subpart P, Appendix 1. (AR at 23-24.) The ALJ  
2 concluded that Plaintiff retained the residual functional capacity  
3 ("RFC") to perform light work.<sup>3</sup> (AR at 24-27.) This RFC precluded  
4 Plaintiff from returning to her past relevant work. (AR at 27.)  
5 Nonetheless, the ALJ concluded that there existed work in the  
6 economy that Plaintiff could perform and that she was not disabled  
7 based upon Medical-Vocational Rule 202.16. See 20 C.F.R. Part 404,  
8 Subpart P, Appendix 2.

9 The Appeals Council denied review on August 25, 2009, (AR at  
10 9), and Plaintiff commenced this action on October 23, 2009.  
11 Plaintiff contends that the ALJ erred by (1) finding that Plaintiff  
12 could perform light work; and (2) failing to properly evaluate  
13 Plaintiff's subjective testimony. (Joint Stip. at 7, 17.)

## 14 15 **II. Standard of Review**

16 Under 42 U.S.C. § 405(g), a district court may review the  
17 Commissioner's decision to deny benefits. The Commissioner's  
18 decision must be upheld unless "the ALJ's findings are based on  
19 legal error or are not supported by substantial evidence in the  
20 record as a whole." *Tackett v. Apfel*, 180 F.3d 1094 (9th Cir.  
21 1999); *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).  
22 Substantial evidence means more than a scintilla, but less than a  
23 preponderance; it is evidence that a reasonable person might accept

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25 <sup>3</sup> Light work "involves lifting no more than 20 pounds at a  
26 time with frequent lifting or carrying of objects up to 10  
27 pounds...[A] job is in this category when it requires a good deal  
28 of walking or standing, or when it involves sitting most of the  
time with some pushing and pulling of arm or leg controls." 20  
C.F.R. § 416.967(b).

1 as adequate to support a conclusion. *Lingenfelter v. Astrue*, 504  
2 F.3d 1028, 1035 (9th Cir. 2007)(citing *Robbins v. Soc. Sec. Admin.*,  
3 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether  
4 substantial evidence supports a finding, the reviewing court "must  
5 review the administrative record as a whole, weighing both the  
6 evidence that supports and the evidence that detracts from the  
7 Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715, 720  
8 (9th Cir. 1996). "If the evidence can support either affirming  
9 or reversing the ALJ's conclusion," the reviewing court "may not  
10 substitute its judgment for that of the ALJ." *Robbins*, 466 F.3d at  
11 882.

### 12 13 **III. Discussion**

#### 14 **A. The ALJ Properly Determined Plaintiff's RFC**

15 Plaintiff claims that the ALJ erred in concluding that she  
16 retains the residual functional capacity to perform a full range of  
17 light work. Specifically, Plaintiff argues that the ALJ failed to  
18 "base his RFC determination on the entire record including  
19 [Plaintiff's] testimony and reports stemming from chiropractic  
20 treatment," and "failed to consider whether [Plaintiff] would be  
21 able to sustain work activity." (Joint Stip. at 11.) In support of  
22 this argument, Plaintiff chronicles the medical evidence from  
23 November, 2001, through the end of 2007, and argues that it  
24 "supports" a finding that she would not be able to sustain work  
25 activity. (*Id.*)

26 Plaintiff's insured status expired on December 31, 2002, and  
27 she bore the burden of establishing that she was disabled prior to  
28 that date. *Parra*, 481 F.3d at 746 (citing *Tidwell v. Apfel*, 161

1 F.3d 599, 601 (9th th Cir. 1998)); *Roberts v. Shalala*, 66 F.3d 179,  
2 182 (9th Cir. 1995). "The mere existence of an impairment is  
3 insufficient proof of a disability." *Matthews v. Shalala*, 10 F.3d  
4 678, 680 (9th Cir. 1993). Instead, Plaintiff was required to  
5 demonstrate that her impairments resulted in functional limitations  
6 severe enough to prevent her from engaging in any substantial  
7 gainful activity. *Id.* For the reasons stated below, the ALJ's  
8 determination that Plaintiff had not met this burden was supported  
9 by substantial evidence in the record.

10 The ALJ noted both at the hearing and in his written decision  
11 that the majority of Plaintiff's medical records are dated after  
12 December 31, 2002, the date she was last insured. (AR at 25, 58-  
13 64.) The ALJ provided Plaintiff with 60 days after the hearing to  
14 supplement the record to remedy the deficiency. (AR at 64.)  
15 Although Plaintiff did submit additional records, the earliest of  
16 those medical records is dated October 30, 2001, more than two  
17 years after her alleged onset date. In his unfavorable decision,  
18 the ALJ surveyed the available medical records for the time period  
19 during and up to six months after Plaintiff's insurance status  
20 expired, including records from two orthopaedists, Drs. Missirian  
21 and Angerman, and her chiropractor, Steve Settlege. (AR at 25.)  
22 Each of these medical sources treated or examined Plaintiff in  
23 connection with her worker's compensation claim.

24 Between October 2001 and October 2003 Dr. Missirian evaluated  
25 Plaintiff for lumbar spine and knee injuries at the request of her  
26 treating chiropractor. (AR at 440-507.) Dr. Missirian noted a  
27 history of right and left arthroscopic knee surgeries and  
28 diagnosed internal knee derangement, ligament tears in both knees,

1 and lumbar spine musculoligamentous injury with disc protrusion.  
2 (See AR at 483, 497-98, 505.) He performed arthroscopic surgery on  
3 Plaintiff's left knee and epidural steroid injections to the lumbar  
4 spine. Plaintiff was undergoing concurrent physical therapy  
5 throughout this period with her chiropractor and taking medication  
6 to alleviate pain. During the relevant time period, Plaintiff  
7 reported slight to moderate pain in her knees and back, which were  
8 aggravated by bending, stooping, squatting, prolonged walking, and  
9 cold weather. She reported that her symptoms were alleviated with  
10 pain medication. (AR at 468-507.) During Plaintiff's first visit on  
11 October 30, 2001, Dr. Missirian concluded that Plaintiff's "work  
12 status" was temporarily totally disabled under California's  
13 worker's compensation standards. In the remainder of the  
14 evaluations during the period of disability, Dr. Missirian deferred  
15 to chiropractor Steve Settlage's work status evaluation. (*Id.*)

16 Steve Settlage, D.C., began treating Plaintiff in connection  
17 with the worker's compensation claim on September 14, 2001. (AR at  
18 439.) Although he opined that Plaintiff was temporarily totally  
19 disabled under California worker's compensation rules through  
20 Plaintiff's last insured date, (AR at 371), that conclusion is not  
21 determinative of an entitlement to benefits under social security  
22 law. See *Booth v. Barnhart*, 181 F.Supp.2d 1099, 1104-05 (C.D. Cal.  
23 2002) (citing *Macri v. Chater*, 93 F.3d 540, 544 (9th Cir. 1996))  
24 and *Desrosiers v. Secretary of Health & Human Services*, 846 F.2d  
25 573, 576 (9th Cir. 1988)); 20 C.F.R. § 404.1504. The determination  
26 that Plaintiff was temporarily totally disabled under state  
27 worker's compensation rules indicated that she could not return to  
28 her previous job as an assembler, not that she was precluded from

1 all substantial gainful activity. Aside from the conclusion that  
2 Plaintiff should not return to her previous job as an assembler,  
3 Settlege did not provide specific functional limitations caused by  
4 Plaintiff's impairments that would preclude work.<sup>4</sup>

5 Dr. Angerman examined and evaluated Plaintiff several times  
6 as a neutral "Orthopaedic Agreed Medical Examiner" in her worker's  
7 compensation case. (See AR at 166-67, 360-66.) Dr. Angerman first  
8 examined Plaintiff in 2001. On March 3, 2003, he performed a full  
9 orthopaedic examination and took x-rays of Plaintiff's knees and  
10 spine. On June 26, 2003, after receiving copies of Plaintiff's  
11 medical records to supplement his own examination, Dr. Angerman  
12 concluded that Plaintiff's physical impairments limited her to  
13 light work. (AR at 122-37, 166-67.) Dr. Angerman's conclusion  
14 conflicted with Dr. Missirian's March 4, 2003, opinion that  
15 Plaintiff was restricted to sedentary work. (AR at 474.) Because  
16 both of these opinions were based on independent clinical testing  
17 and examination, it was solely the province of the ALJ to resolve  
18 the conflict between Drs. Missirian and Angerman. *Andrews v.*  
19 *Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995) (citing *Magallanes v.*  
20 *Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)). The ALJ resolved the  
21 conflict in favor of Dr. Angerman's opinion because he was a  
22 neutral agreed upon medical examiner. (AR at 25-26.) This was not  
23 error.

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26 <sup>4</sup> The Court also notes in passing that the opinions of  
27 chiropractors are entitled to less weight than a physician's  
28 because they are not an "acceptable medical source" under the  
regulations. 20 C.F.R. § 404.1513(a), *Helmke v. Astrue*, 2010 WL  
997105, \*1 (9th Cir. 2010).

1           **B. The ALJ Properly Evaluated Plaintiff's Credibility**

2           Plaintiff claims that the ALJ failed to properly evaluate her  
3 subjective complaints. (Joint Stip. at 17.) At the hearing,  
4 Plaintiff testified that her injuries prevent her from bending, and  
5 that she cannot stand or sit for more than five to ten minutes at  
6 a time. She testified that she lies down approximately 20 times per  
7 day. (AR at 54-55.)

8           The determination of credibility and the resolution of  
9 conflicts in the testimony are functions of the ALJ acting on  
10 behalf of the Commissioner. *Morgan v. Commissioner of Social*  
11 *Security*, 169 F.3d 595, 599(9th Cir. 1999). In general, an ALJ's  
12 assessment of credibility should be given great weight. *Nyman v.*  
13 *Heckler*, 779 F.2d 528, 531 (9th Cir. 1985). However, once a  
14 claimant has presented medical evidence of an underlying  
15 impairment, the ALJ may not discredit the claimant's testimony  
16 regarding subjective pain and other symptoms merely because the  
17 symptoms, as opposed to the impairments, are unsupported by  
18 objective medical evidence. *Lingenfelter*, 504 F.3d at 1035-36;  
19 *Reddick*, 157 F.3d at 722; *Light v. Soc. Sec. Admin.*, 119 F.3d 789,  
20 792 (9th Cir. 1997). "[T]he ALJ can reject the claimant's  
21 testimony about the severity of her symptoms only by offering  
22 specific, clear and convincing reasons for doing so."  
23 *Lingenfelter*, 504 F.3d at 1036 (quoting *Smolen v. Chater*, 80 F.3d  
24 1273, 1281 (9th Cir. 1996)).

25           Here, the ALJ concluded that Plaintiff's medical impairments  
26 could be expected to produce some of the alleged symptoms, but that  
27 her testimony that she was completely disabled was not credible  
28 because it was not supported by the medical record. (AR at 25.) The



1 ALJ placed "great weight" on Dr. Angerman's opinion that Plaintiff  
2 could perform light work despite her impairments, an opinion that  
3 was offered after a full examination of Plaintiff and a review of  
4 Plaintiff's reporting of symptoms. (AR at 26-27.) In essence, the  
5 ALJ found that the symptoms reported by Plaintiff at the hearing  
6 were inconsistent with the symptoms contained in the medical  
7 records prior to the date she was last insured. This finding is  
8 supported by substantial evidence in the record.

9 Dr. Missirian's treatment notes during the relevant time  
10 period detail her subjective complaints. (AR at 478-507.) It is  
11 worth noting that the pain she described at the hearing related to  
12 current symptoms, while the medical records detail her subjective  
13 complaints of pain specific to the period of time prior to the  
14 expiration of her insured status. On October 30, 2001, Plaintiff  
15 complained of constant slight to moderate lower back pain that was  
16 aggravated by stooping and bending. She also complained of slight  
17 to moderate pain in her right knee and intermittent aching pain in  
18 her left knee, both of which were aggravated by cold weather and  
19 alleviated by medication. (AR at 500-01.) Plaintiff's reporting of  
20 symptoms to her physicians did not change significantly through  
21 December 31, 2002, the date she was last insured. (AR at 479, 483-  
22 84, 487-88.) Plaintiff's recitation at the hearing was not  
23 supported by the contemporaneous records detailing her symptoms  
24 during the relevant time period, and the ALJ did not err in  
25 rejecting her testimony on that basis. *Morgan*, 169 F.3d at 599-600  
26 (affirming adverse credibility finding based on conflict between  
27 symptom testimony and evidence of symptoms in the medical record).  
28 Moreover, Plaintiff's testimony about her symptoms conflicted with

1 the record of conservative care during the relevant time period.  
2 See *Parra*, 481 F.3d at 751; *Tommasetti v. Astrue*, 533 F.3d 1035,  
3 1039-40 (9th Cir. 2008). For these reasons, the ALJ's credibility  
4 determination was not based on legal error and was supported by  
5 substantial evidence in the record.

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7 **IV. Conclusion**

8 For the foregoing reasons, the decision of the Commissioner is  
9 affirmed.

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11 Dated: June 17, 2010

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14 **MARC L. GOLDMAN**

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Marc L. Goldman  
16 United States Magistrate Judge  
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