



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

VARTOUHI DANIELIAN NAMAGERDI,	)	Case No. CV 12-00591-MLG
	)	
Plaintiff,	)	MEMORANDUM OPINION AND ORDER
	)	
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of the	)	
Social Security	)	
Administration,	)	
	)	
Defendant.	)	
	)	

Plaintiff Vartouhi Danielian Namagerdi ("Plaintiff") seeks judicial review of the Commissioner's final decision denying her application for supplemental security income ("SSI") pursuant to Title XVI of the Social Security Act. For the reasons stated below, the Commissioner's decision is reversed and the matter is remanded for further proceedings.

**I. Factual and Procedural Background**

Plaintiff was born on September 23, 1946. (Administrative Record ("AR") at 64). She is unable to speak English and has work experience as a hairdresser. (AR at 75, 99).

1 On November 6, 2008, Plaintiff filed an application for SSI,  
2 alleging that she has been disabled since January 1, 2008, due to joint  
3 pain, back pain, leg pain, insomnia, nervousness, anxiety, weakness,  
4 poor memory, arthritis, osteoporosis, and thyroid and stomach problems.  
5 (AR at 64-67, 76). The Social Security Administration denied Plaintiff's  
6 application. (AR at 27-31).

7 An administrative hearing was held before Administrative Law Judge  
8 Joel B. Martinez ("the ALJ") on May 5, 2010. (AR at 20-22). Plaintiff's  
9 attorney appeared at the hearing, but Plaintiff voluntarily waived her  
10 right to appear and testify. (AR at 10, 99). In a written decision dated  
11 June 23, 2010, the ALJ found that Plaintiff had not engaged in  
12 substantial gainful activity since the date she filed her application  
13 for SSI, November 6, 2008 (step one). (AR at 12). Next, the ALJ found  
14 that Plaintiff's medically determinable impairments of degenerative disc  
15 disease of the lumbar spine and dysthymia were not severe, as they did  
16 not significantly limit Plaintiff's ability to perform basic work-  
17 related activities for 12 consecutive months (step two). (AR at 12, 14);  
18 see 20 C.F.R. at 416.921(a). Accordingly, the ALJ determined that  
19 Plaintiff was not under a disability from the date her application was  
20 filed through the date of the decision. (AR at 16).

21 On November 18, 2011, the Appeals Council denied review, and the  
22 ALJ's decision became the final decision of the Commissioner. (AR at 1-  
23 3).

24 Plaintiff commenced this action for judicial review on February 1,  
25 2012. The parties filed a Joint Stipulation on August 16, 2012.  
26 Plaintiff contends that substantial evidence did not support the ALJ's  
27  
28

1 step two finding that Plaintiff's lumbar spine impairment is not severe.<sup>1</sup>  
2 (Joint Stipulation at 3-5, 18-19). Plaintiff seeks a remand for payment  
3 of benefits or, in the alternative, for further proceedings. (Joint  
4 Stipulation at 19). The Commissioner requests that the ALJ's decision be  
5 affirmed. (Joint Stipulation at 19).

6  
7 **II. Standard of Review**

8 Under 42 U.S.C. § 405(g), a district court may review the  
9 Commissioner's decision to deny benefits. The Commissioner's or ALJ's  
10 findings and decision should be upheld if they are free from legal error  
11 and are supported by substantial evidence based on the record as a  
12 whole. 42 U.S.C. § 405(g); *Richardson v. Perales*, 402 U.S. 389, 401  
13 (1971); *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007). Substantial  
14 evidence means such evidence as a reasonable person might accept as  
15 adequate to support a conclusion. *Richardson*, 402 U.S. at 401;  
16 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more  
17 than a scintilla, but less than a preponderance. *Lingenfelter*, 504 F.3d  
18 at 1035 (citing *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir.  
19 2006)). To determine whether substantial evidence supports a finding,  
20 the reviewing court "must review the administrative record as a whole,  
21 weighing both the evidence that supports and the evidence that detracts  
22 from the Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715,  
23 720 (9th Cir. 1996). "If the evidence can reasonably support either  
24 affirming or reversing," the reviewing court "may not substitute its  
25 judgment" for that of the Commissioner. *Id.* at 720-721.

26  
27  
28 

---

<sup>1</sup> Plaintiff does not dispute the ALJ's step two determination with respect to her other impairments. (Joint Stipulation at 18).

1 **III. Discussion**

2 Plaintiff contends that the ALJ erred in finding her lumbar back  
3 impairment to be not severe at step two of the sequential evaluation  
4 process. (Joint Stipulation at 3-5, 18-19). Specifically, Plaintiff  
5 contends that the ALJ failed to consider the clinical findings of her  
6 treating physician. (Joint Stipulation at 4). Plaintiff also asserts  
7 that the ALJ employed an improper standard for determining severity at  
8 step two. (Joint Stipulation at 4-5). The Court agrees with Plaintiff.

9 Records from Plaintiff's treating physician, Noobar Janoian, M.D.,  
10 consistently identified Plaintiff's back impairment as one of  
11 Plaintiff's chronic problems. Dr. Janoian, who frequently saw Plaintiff  
12 for check-ups, medication refills, and treatment of her various medical  
13 conditions, first diagnosed Plaintiff with "backache NOS," in February  
14 2007. (AR at 158). Plaintiff's diagnosis went unchanged until August  
15 2008, when Plaintiff underwent a CT scan of her lumbar spine. (AR at  
16 194). The scan showed that Plaintiff had a 4 to 5 mm right paracentral  
17 disc bulge at L5-S1, narrowing of the right lateral recess exacerbated  
18 by facet moderate hypertrophy, and moderate spondylosis deformans at L3-  
19 L4 and L4-L5. (AR at 194). After the CT scan, Dr. Janoian modified  
20 Plaintiff's diagnosis to "lumbar disc displacement." (AR at 195-96, 201,  
21 203, 205, 207, 210, 213, 215, 218). Although Dr. Janoian did not  
22 describe Plaintiff's back condition in any great detail, his physical  
23 examinations of Plaintiff revealed Plaintiff experienced mild to  
24 moderate pain with movement that sometimes radiated down Plaintiff's  
25 leg. (AR at 119, 122, 195, 201, 216). Dr. Janoian's records suggested  
26 that Plaintiff's medically documented lumbar spine impairment had more  
27 than a minimal effect on her ability to work and was therefore, severe.  
28 *See Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005) ("An impairment

1 or combination of impairments may be found 'not severe only if the  
2 evidence establishes a slight abnormality that has no more than a  
3 minimal effect on an individual's ability to work.'" (quoting *Smolen v.*  
4 *Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996)).

5 The ALJ summarily dismissed Dr. Janoian's opinion. (AR at 14). The  
6 ALJ stated that Dr. Janoian's notes reflected "no more than routine,  
7 first-line management of her symptoms." (AR at 14). This finding did not  
8 reach the level of specificity required to reject the opinion of a  
9 treating physician. See *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir.  
10 1998) ("The ALJ must do more than offer his conclusions[;] [h]e must set  
11 forth his own interpretations and explain why they, rather than the  
12 doctors,' are correct."); *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th  
13 Cir. 1988) ("To say that medical opinions are not supported by  
14 sufficient objective findings . . . does not achieve the level of  
15 specificity our prior cases have required . . ."). The ALJ had an  
16 obligation to set forth his own interpretations of the medical evidence  
17 and explain why they, rather than Dr. Janoian's findings were correct.  
18 *Embrey*, 849 F.2d at 421-23. Although an ALJ may reject a treating  
19 physician's opinion that is conclusory and unsupported by clinical  
20 findings, see *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002),  
21 such is not the case here. As noted above, Plaintiff's CT scan and Dr.  
22 Janoian's findings on examination provided some objective evidence of  
23 Plaintiff's lumbar spine impairment. (AR at 194).

24 In making the step two determination, the ALJ adopted the residual  
25 functional capacity assessment made by the consultative internist,  
26 Michael S. Wallack, M.D., who found that Plaintiff had no functional  
27 limitations. (AR at 14). Based primarily on Dr. Wallack's opinion, the  
28 ALJ concluded, "[t]he objective evidence fails to establish that the

1 [Plaintiff] is unable to perform all work activity as she alleged." (AR  
2 at 14). The ALJ also stated, "the objective medical evidence and overall  
3 treatment history are consistent with the residual functional capacity  
4 and inconsistent with the claimant's allegations that she is unable to  
5 perform any work activity." (AR at 13). It appears the ALJ applied an  
6 incorrect standard in determining the severity of Plaintiff's  
7 impairments. At step two, there is no requirement that all work activity  
8 be precluded. Rather, the step two evaluation is a de minimis test  
9 intended to weed out the most minor of impairments. *Smolen*, 80 F.3d at  
10 1290; *Bowen v. Yuckert*, 482 U.S. 137, 153-54 (1987). An impairment is  
11 not severe only if the evidence establishes "a slight abnormality that  
12 has no more than a minimal effect on an individual['s] ability to work."  
13 *Smolen*, 80 F.3d at 1290 (internal quotations marks omitted). That  
14 Plaintiff's back impairment may not have precluded Plaintiff from  
15 performing all work activity does not justify the ALJ's step two  
16 severity determination. (AR at 14); *Smolen*, 80 F.3d at 1290. Further,  
17 consideration of a claimant's residual functional capacity does not  
18 occur until after the step two determination has been made, and there  
19 has been a finding of severity. See SSR 96-8p, \*2 (if disability  
20 determination cannot be made on the basis of medical factors alone at  
21 step three of the sequential disability evaluation process, ALJ then  
22 must identify claimant's functional limitations and restrictions and  
23 assess his or her remaining capacities for work-related activities).

24 In sum, because the ALJ failed to give proper consideration to the  
25 opinion of Plaintiff's treating physician, the step two determination is  
26 not supported by substantial evidence. See *Smolen*, 80 F.3d at 1290;  
27 *Webb*, 433 F.3d at 687.

28 //

1 **IV. Conclusion and Order**

2 This case is reversed and remanded so that the ALJ may further  
3 evaluate the treating physician evidence and make appropriate findings.  
4 See *Bunnell v. Barnhart*, 336 F.3d 1112, 1115-16 (9th Cir. 2003) (where  
5 there are outstanding issues that must be resolved before a  
6 determination of disability can be made, and it is not clear from the  
7 record that the ALJ would be required to find the claimant disabled if  
8 all the evidence were properly evaluated, remand is appropriate).

9  
10 DATED: September 12, 2012

11  
12 MARC L. GOLDMAN  
13 MARC L. GOLDMAN  
14 United States Magistrate Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28