

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

| | | |
|-------------------------------|---|-------------------------------|
| Theresa Moran, |) | No. CV 15-09407-SJO(AS) |
| |) | |
| Plaintiff, |) | MEMORANDUM OPINION AND |
| v. |) | ORDER OF REMAND |
| |) | |
| CAROLYN W. COLVIN, |) | |
| Acting Commissioner of Social |) | |
| Security, |) | |
| |) | |
| Defendant. |) | |
| |) | |

Pursuant to Sentence 4 of 42 U.S.C. § 405(g), IT IS HEREBY ORDERED that this matter is remanded for further administrative action consistent with this Opinion.

I. PROCEEDINGS

On December 4, 2015, Plaintiff filed a Complaint seeking review of the Commissioner’s denial of Plaintiff’s application for a period of disability and disability insurance benefits. (Docket Entry No

1) 1). On April 15, 2016, Defendant filed an Answer to the Complaint,
2 and the Certified Administrative Record ("A.R.") (Docket Entry Nos.
3 12-13). The parties have consented to proceed before a United
4 States Magistrate Judge. (Docket Entry Nos. 9-10). The parties
5 filed a Joint Stipulation ("Joint Stip.") on July 27, 2016, setting
6 forth their respective positions on Plaintiff's claims. (Docket
7 Entry No. 16).

8
9 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

10
11 Plaintiff, formerly employed as a clerk in a Wonder and Weber's
12 Bread bakery outlet (A.R. 56), asserts disability beginning March 1,
13 2009, based on the alleged physical impairments of degenerative disc
14 disease, osteoporosis, fibromyalgia, and carpel tunnel syndrome
15 ("CTS"). (A.R. 53-55; Joint Stip. 5). On March 19, 2014,
16 Administrative Law Judge ("ALJ"), Sally Reason, examined the record
17 and heard testimony from Plaintiff and vocational expert ("VE"),
18 Kelly Bartlett. (A.R. 56-78). On May 19, 2014, the ALJ denied
19 Plaintiff benefits in a written decision. (A.R. 18-31).

20
21 The ALJ applied the five-step process in evaluating Plaintiff's
22 case. (A.R. at 18-27). At step one, the ALJ determined that
23 Plaintiff had not engaged in substantial gainful activity after the
24 alleged onset date of March 1, 2009 and that Plaintiff's date last
25 insured (DLI) was December 31, 2009. (A.R. 21-22). At step two,
26 the ALJ found that Plaintiff has the severe impairments of
27 degenerative disc disease of the lumbar spine, osteoporosis, and

1 "possibly fibromyalgia." (A.R. 23). The ALJ also found that
2 Plaintiff did not have any upper extremity limitations prior to
3 Plaintiff's DLI. (A.R. 22-23). In making this determination, the
4 ALJ found no "objective confirmation evidence of any related
5 function limitations" of Plaintiff's upper extremities. (A.R. 23).
6 The ALJ noted that although there is evidence of an
7 electrodiagnostic study in 2009, suggesting bilateral CTS, Plaintiff
8 also had negative Tinel's and Phalen's tests bilaterally conducted
9 around the same time and did not allege CTS as a disabling
10 condition. (A.R. 23). At step three, the ALJ found that
11 Plaintiff's impairments did not meet or equal a listing found in 20
12 C.F.R. Part 404, Subpart P, Appendix 1. (A.R. 23).

13
14 Before proceeding to step four, the ALJ found that Plaintiff
15 had the residual functional capacity ("RFC")¹ to perform light work
16 in that she can lift and carry 20 pounds occasionally and 10 pounds
17 frequently; sit for 6 hours in an 8-hour workday; and stand and walk
18 6 hours total in an 8-hour workday. (A.R. 24, 28).

19
20 In making this finding, The ALJ rejected favorable opinion
21 evidence from Plaintiff's treating physician, Dr. Yoon, which
22 addressed Plaintiff's upper extremity limitations. (A.R. 25-26). A
23 RFC questionnaire that Dr. Yoon filled out in March 2012 asserts
24 that Plaintiff is limited to lifting 5 pounds with marked
25 limitations in manipulation or use of the upper extremities. (A.R.

26 ¹ A Residual Functional Capacity is what a claimant can still
27 do despite existing exertional and nonexertional limitations. See
28 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

1 438-39). The ALJ rejected Dr. Yoon's March 2012 questionnaire and
2 April 2013 opinion letter, which stated similar findings, to the
3 extent it assessed Plaintiff's disabled status through December 31,
4 2009, finding that because Dr. Yoon had not examined Plaintiff until
5 November 23, 2009, "neither this examination nor his or other source
6 evidence surrounding the period ending December 31, 2009, is
7 particularly impressive."² (A.R. 26).

8
9 At step four, the ALJ determined that Plaintiff was not able
10 to perform her past relevant work because she was limited to light
11 work. (A.R. 26). At step five, the ALJ found Plaintiff was able
12 to perform jobs consistent with her age, education, and medical
13 limitations existing in significant numbers in the national economy.
14 (A.R. 26-27). In particular, Plaintiff could perform the
15 requirements of retail cashier (Dictionary of Occupational Titles
16 ("DOT") No. 211.462-014) and telephone solicitor (DOT 299.357.014),
17 with transferrable skills in customer service, giving information,
18 and retail sales. (A.R. 27, 233). Accordingly, the ALJ found that
19 Plaintiff was not disabled.

20
21 Plaintiff requested that the Appeals Council review the ALJ's
22 decision. (A.R. 1). The request was denied on May 19, 2014. (A.R.
23 1-5). The ALJ's decision then became the final decision of the

24
25 ² The "source evidence" the ALJ referred to is likely the
26 Tinel's and Phalen's tests and electrodiagnostic tests conducted by
27 Plaintiff's previous physician, Dr. Huang, on August 31 and
28 September 14, 2009, respectively. (A.R. 1192, 1205-07).

1 Commissioner, allowing this Court to review the decision. See 42
2 U.S.C. §§ 405(g), 1383(c).

3
4 **III. STANDARD OF REVIEW**

5
6 This court reviews the Administration's decision to determine
7 if the decision is free of legal error and supported by substantial
8 evidence. See Brewes v. Commissioner of Social Sec. Admin., 682
9 F.3d 1157, 1161 (9th Cir. 2012). "Substantial evidence" is more
10 than a mere scintilla, but less than a preponderance. Garrison v.
11 Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). To determine whether
12 substantial evidence supports a finding, "a court must consider the
13 record as a whole, weighing both evidence that supports and evidence
14 that detracts from the [Commissioner's] conclusion." Aukland v.
15 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001). As a result, "[i]f
16 the evidence can reasonably support either affirming or reversing
17 the ALJ's conclusion, [a court] may not substitute [its] judgment
18 for that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d 880,
19 882 (9th Cir. 2006).

20
21 **IV. PLAINTIFF'S CONTENTION**

22
23 Plaintiff alleges that, in assessing her residual functional
24 capacity, the ALJ failed to properly consider the medical evidence
25 contained in the opinions of her treating physician and the
26 objective findings of other treating sources. (Joint Stip. 4-17,
27 12-13).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. DISCUSSION

After reviewing the record, the Court finds that the ALJ failed to make an RFC determination that accounted for the combined effects of all of Plaintiff's impairments when the ALJ rejected Dr. Yoon's opinion on Plaintiff's upper extremity functional limitations. The Court therefore remands for further consideration.

A. The ALJ Erred in Assessing the Opinion of Plaintiff's treating Physician.

Although a treating physician's opinion is generally afforded the greatest weight in disability cases, it is not binding on an ALJ with respect to the existence of an impairment or the ultimate determination of disability. Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004); Magallanes v. Bowen, 812 F.2d 747, 751 (9th Cir. 1989). The weight given to a treating physician's opinion depends on whether it is supported by sufficient medical data and is consistent with other evidence in the record. 20 C.F.R. § 416.927(b)-(d). Controlling weight must be given to medical opinions of treating physicians where the opinion is well-supported and not inconsistent with the other substantial evidence in the record. Palomares v. Astrue, 887 F. Supp. 2d 906, 914 (N.D. Cal. 2012); Social Security Ruling ("SSR") 96-2p. To reject the uncontradicted opinion of a treating physician, the ALJ must give "clear and convincing reasons that are supported by substantial evidence." Ghanim v. Colvin, 763 F.3d 1154, 1160-61 (9th Cir. 2014)

1 citing Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir.2005);
2 Thomas v. Barnhart, 278 F.3d 947 (9th Cir. 2002). If the treating
3 doctor's opinion is contradicted by another doctor, the ALJ must
4 provide "specific and legitimate reasons" for rejecting the treating
5 physician's opinion. Orn v. Astrue, 495 F.3d 625, 632 (9th Cir.
6 2007); Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998).

7
8 Plaintiff asserts that the ALJ did not provide clear and
9 convincing reasons for rejecting the opinion of Dr. Yoon,
10 Plaintiff's treating physician. (Joint Stip. 5-7, 12-13).
11 Plaintiff contends that Dr. Yoon had a "solid basis" for diagnosing
12 Plaintiff with CTS during their first visit. (A.R. 6). Dr. Yoon
13 had the opportunity to examine Plaintiff on November 23, 2009, and
14 in making his diagnosis, relied on objective evidence – the positive
15 electrodiagnostic test conducted by Dr. Huang in September 2009.
16 (Joint Stip. 13). In response to the ALJ's assertion that Dr. Yoon
17 did not have a "longitudinal picture" of Plaintiff's functional
18 limitations by November 2009, Plaintiff claims that Dr. Yoon had
19 "personal knowledge" of Plaintiff's conditions during her November
20 2009 visit, which was sufficient time to form a medical opinion
21 regarding Plaintiff's upper extremity limitations. (Joint stip. 7).

22
23 Defendant contends that the ALJ properly rejected Dr. Yoon's
24 opinion because (1) Dr. Yoon's notes provide little in the way of
25 significant findings or a "detailed longitudinal picture of
26 Plaintiff's condition prior to her DLI;" (2) Dr. Yoon referred to
27 many conditions, including some that were in remission,
28

1 demonstrating a lack of knowledge of Plaintiff's actual health; (3)
2 Dr. Yoon's apparent diagnosis was not the result of objective
3 findings because it was listed in the chief complaint (i.e. "C.C.")
4 section of his notes, which indicates that Plaintiff self-reported
5 the condition as opposed to it being the result of an examination;
6 (4) Dr. Yoon's diagnosis further lacks objective support because it
7 conflicts with the negative Tinel's and Phalen's tests and lacks
8 objective confirmation evidence of any related functional
9 limitations; and (5) the only objective evidence of upper extremity
10 limitations occurred after the DLI. (Joint Stip. 8-12).

11
12 The ALJ's assertion that "Dr. Yoon did not examine the claimant
13 until November 2009" and that his examination was "not particularly
14 impressive" is not a clear and convincing reason to reject Dr.
15 Yoon's opinion, especially when viewed in the context of Dr. Huang's
16 earlier CTS diagnosis and treatment. (A.R. 26). While limited
17 observation of a claimant is a good reason to give less weight to a
18 physician's opinion, it is not a reason to discredit the opinion
19 altogether. See Lester v. Chater, 81 F.3d 821, 832 (9th Cir. 1995),
20 as amended (Apr. 9, 1996). Dr. Yoon examined Plaintiff for CTS
21 during her November 2009 visit and concluded in his March 2012
22 assessment and April 2013 letter, that Plaintiff had upper extremity
23 limitations "probably from the time I first started to see her on
24 11/23/09" and was thereby precluded from lifting and carrying up to
25 five pounds, carrying five to ten pounds, and "grasping, turning,
26 and twisting objects, using her hands for fine manipulations, and
27 using her arms for reaching." (A.R. 438-441, 736, 865).

28

1 Additionally, Dr. Yoon's opinion is consistent with the
2 diagnosis and treatment carried out by Dr. Huang, Plaintiff's
3 previous treating physician. The ALJ ignores Dr. Huang's diagnosis,
4 despite its probative value. Godbey v. Apfel, 238 F.3d 803 (7th
5 Cir. 2000) (evidence that does not support the decision may not be
6 ignored, especially when the evidence is probative). Dr. Huang
7 diagnosed Plaintiff with bilateral CTS on September 14, 2009, after
8 completing the aforementioned electrodiagnostic test. (A.R. 1205).
9 Prior to the diagnosis, Dr. Huang did conduct a negative Phalen's
10 and Tinel's test on August 31, 2009, (A.R. 1192), but still
11 diagnosed Plaintiff with bilateral CTS based on objective test
12 results, which constitute substantial evidence. Roberts v. Shalala,
13 66 F.3d 179, 184 (9th Cir. 1995), as amended (Oct. 23,
14 1995)(objective testing in support of diagnosis meets substantial
15 evidence standard). Plaintiff suffered from hand numbness and pain,
16 giving a 5 out of 10 pain-score. (A.R. 1205, 1208). Dr. Huang
17 prescribed Plaintiff Vicodin to manage the pain, issued bilateral
18 wrist splints, and conducted a follow-up visit for the CTS on
19 October 14, 2009. (A.R. 1208, 1213, 1231). In light of this
20 evidence, the ALJ improperly relied on the negative Phalen's and
21 Tinel's tests to reject Dr. Yoon's opinion regarding Plaintiff's
22 upper extremity limitations.

23
24 Defendant claims that Dr. Yoon's diagnosis is not credible
25 because the CTS diagnosis was listed in the chief complaint section
26 of his Doctor's notes, which may indicate that Plaintiff self-
27 reported this diagnosis during the first visit, thus, limiting its
28

1 objective weight. (Joint Stip. 11). Yet, Plaintiff asserts that
2 Dr. Yoon based the CTS diagnosis on the September 2009
3 electrodiagnostic test and examination. (Joint Stip. 12-13). The
4 record is unclear on this matter in part because Dr. Yoon's records
5 failed to include the method of examination and the source of the
6 CTS diagnosis.³ (See A.R. 865). Greater clarification may be
7 useful to determine whether Dr. Yoon's opinions were informed by
8 objective evidence during the November 2009 visit. Even if Dr.
9 Yoon's diagnosis was based on subjective factors, the ALJ was
10 required to give his opinion some weight. Lester, 81 F.3d at 832-33
11 ("Commissioner is required to give weight not only to the treating
12 physician's clinical findings and interpretation of test results,
13 but also to his subjective judgments.").

14
15 Moreover, the ALJ's finding that "other source evidence"
16 regarding upper extremity limitations was "not particularly
17 impressive" is not supported by substantial evidence. As discussed,
18 Dr. Huang made a final diagnosis based on objective evidence and
19 carried out a treatment plan. (A.R. 11921, 1205, 1208-1213). The
20 ALJ failed to provide any justification for rejecting this or
21 explaining why Dr. Huang's diagnosis did not support Dr. Yoon's
22 opinions. (A.R. 26). Lester, 81 F.3d at 832. (A similarity of
23 conclusions between doctors provides reason to *credit* the opinions
24 of both doctors as opposed to reject).

25
26
27 ³ Dr. Yoon's handwriting is mostly illegible regarding the
28 CTS examination itself. (See A.R. 865).

1 The ALJ also eludes that because there is no objective evidence
2 of Plaintiff's related functional limitations, Dr. Yoon's opinion
3 should not be considered in the RFC assessment. (A.R. 23, 26).
4 However, there is evidence that Dr. Huang prescribed bilateral
5 splints and pain medications, which demonstrates some objective
6 limitations regarding Plaintiff's ability to use her hands. (A.R.
7 1205-1213). Furthermore, while CTS alone may not have severely
8 limited Plaintiff's upper extremity functions, "when considered with
9 limitations or restrictions due to other impairments," such as
10 degenerative disc disease and possible fibromyalgia, a CTS diagnosis
11 may "be critical to the outcome of a claim." Carmickle v. Comm'r,
12 Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008). Dr. Yoon
13 opined that Plaintiff's pain in her joints and fatigue preclude
14 Plaintiff from using her upper extremities. (A.R. 736). The ALJ
15 erred in not considering this this limitation in her assessment of
16 Plaintiff's RFC.

17
18 The ALJ also noted that the CTS diagnosis should not be
19 considered in the RFC assessment because Plaintiff did not allege
20 the condition in her application or on appeal. (A.R. 23). It is
21 unreasonable to infer solely from Plaintiff's failure to mention a
22 CTS diagnosis in her benefits application that the condition did not
23 hinder Plaintiff's ability to use her upper extremities. See
24 Widmark v. Barnhart, 454 F.3d 1063, 1068 (9th Cir. 2006) (ALJ erred
25 in not considering the functional limitations an injured thumb
26 imposed on claimant solely because claimant failed to list the
27 injury in his benefits application).

28

1 **B. Remand Is Warranted**

2

3 The decision whether to remand for further proceedings or order
4 an immediate award of benefits is within the district court's
5 discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir.
6 2000). Where no useful purpose would be served by further
7 administrative proceedings, or where the record has been fully
8 developed, it is appropriate to exercise this discretion to direct
9 an immediate award of benefits. Id. at 1179 ("[T]he decision of
10 whether to remand for further proceedings turns upon the likely
11 utility of such proceedings."). However, where the circumstances of
12 the case suggest that further administrative review could remedy the
13 Commissioner's errors, remand is appropriate. McLeod v. Astrue, 640
14 F.3d 881, 888 (9th Cir. 2011); Harman, 211 F.3d at 1179-81.

15

16 Here, the Court remands because the ALJ's analysis did not
17 properly address Dr. Huang and Dr. Yoon's concurring diagnoses
18 regarding plaintiff's upper extremity limitations and their effect
19 on Plaintiff's functional limitations prior to the DLI. The record
20 does not establish that the ALJ would necessarily be required to
21 find Plaintiff disabled if (1) Plaintiff's upper extremity
22 limitations were considered in the RFC assessment; (2) Dr. Yoon's
23 CTS diagnosis was given some weight; and (3) Dr. Huang's concurring
24 diagnosis was addressed. Remand is therefore appropriate.

25

26 The Court has not reached issues not discussed supra except to
27 determine that reversal with a directive for the immediate payment

1 of benefits would be inappropriate at this time.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VI. CONCLUSION

For the foregoing reasons, the decision of the Administrative Law Judge is VACATED, and the matter is REMANDED, without benefits, for further proceedings pursuant to Sentence 4 of 42 U.S.C. § 405(g).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: October 3, 2016

_____/s/_____
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE