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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DANIEL CARL PRYOR,)	NO. CV 15-9528-E
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION
)	
COMMISSIONER OF SOCIAL SECURITY,)	
)	
Defendant.)	

PROCEEDINGS

Plaintiff filed a complaint on December 10, 2015, seeking review of the Commissioner's denial of benefits. The parties consented to proceed before a United States Magistrate Judge on January 12, 2016. Plaintiff filed a motion for summary judgment on May 19, 2016. Defendant filed a motion for summary judgment on June 20, 2016. The Court has taken the motions under submission without oral argument. See L.R. 7-15; "Order," filed December 14, 2015.

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1 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
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3 From 1978 through at least the end of 2009, Plaintiff performed
4 work as a bricklayer, which required heavy exertion throughout the
5 work day (Administrative Record ("A.R.") 32-34, 46, 67, 181-88, 216).
6 According to Plaintiff, on the first day of 2010, he became physically
7 disabled from performing any work whatsoever (A.R. 31, 167, 174). The
8 claimed disappearance of Plaintiff's ability to perform any work
9 allegedly resulted not from any sudden illness or trauma, but from a
10 "gradually" worsening back problem (A.R. 34-36, 82). This "gradually"
11 worsening problem reportedly began when Plaintiff was 15 years of age
12 (A.R. 35, 82). Plaintiff also claimed to be disabled as a result of
13 chronic obstructive pulmonary disease ("COPD") and alleged problems
14 with his right wrist and left knee (A.R. 81).
15

16 An Administrative Law Judge ("ALJ") examined the medical record
17 and heard testimony from Plaintiff and a vocational expert (A.R. 10-
18 257, 259-380). The ALJ found Plaintiff has severe disc disease of the
19 lumbar spine and COPD, but retains the residual functional capacity to
20 perform a limited range of medium work (A.R. 15-20). In reliance on
21 the testimony of the vocational expert, the ALJ determined that a
22 person having this residual functional capacity could not work as a
23 bricklayer, but could perform several identified jobs existing in
24 significant numbers in the national economy (A.R. 20-22, 47-49).
25

26 In finding Plaintiff not disabled, the ALJ deemed Plaintiff's
27 statements concerning the alleged severity of his subjective
28 symptomatology "not entirely credible" (A.R. 18). The ALJ also

1 rejected the opinions of Dr. Matthew Root and Dr. Seong Kang, who are
2 alleged to have been two of Plaintiff's treating physicians (A.R. 19-
3 20).

4
5 The Appeals Council considered additional evidence, but denied
6 review (A.R. 1-5, 258, 381-82).

7
8 **SUMMARY OF PLAINTIFF'S CONTENTIONS**

9
10 Plaintiff contends:

- 11
- 12 1. The administrative decision is not supported by substantial
13 evidence;
 - 14
 - 15 2. The ALJ failed to state sufficient reasons for rejecting the
16 opinions of Dr. Root;
 - 17
 - 18 3. The ALJ failed to state sufficient reasons for rejecting the
19 opinions of Dr. Kang; and
 - 20
 - 21 4. The ALJ should have developed the record more fully.
 - 22

23 **STANDARD OF REVIEW**

24
25 Under 42 U.S.C. section 405(g), this Court reviews the
26 Administration's decision to determine if: (1) the Administration's
27 findings are supported by substantial evidence; and (2) the
28 Administration used correct legal standards. See Carmickle v.

1 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
2 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner,
3 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such
4 relevant evidence as a reasonable mind might accept as adequate to
5 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401
6 (1971) (citation and quotations omitted); see also Widmark v.
7 Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

8
9 If the evidence can support either outcome, the court may
10 not substitute its judgment for that of the ALJ. But the
11 Commissioner's decision cannot be affirmed simply by
12 isolating a specific quantum of supporting evidence.
13 Rather, a court must consider the record as a whole,
14 weighing both evidence that supports and evidence that
15 detracts from the [administrative] conclusion.

16
17 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and
18 quotations omitted).

19
20 Where, as here, the Appeals Council considered additional
21 evidence but denied review, the additional evidence becomes part of
22 the record for purposes of the Court's analysis. See Brewes v.
23 Commissioner, 682 F.3d at 1163 ("[W]hen the Appeals Council considers
24 new evidence in deciding whether to review a decision of the ALJ, that
25 evidence becomes part of the administrative record, which the district
26 court must consider when reviewing the Commissioner's final decision
27 for substantial evidence"; expressly adopting Ramirez v. Shalala, 8
28 F.3d 1449, 1452 (9th Cir. 1993)); Taylor v. Commissioner, 659 F.3d

1 1228, 1231 (2011) (courts may consider evidence presented for the
2 first time to the Appeals Council "to determine whether, in light of
3 the record as a whole, the ALJ's decision was supported by substantial
4 evidence and was free of legal error"); Penny v. Sullivan, 2 F.3d 953,
5 957 n.7 (9th Cir. 1993) ("the Appeals Council considered this
6 information and it became part of the record we are required to review
7 as a whole"); see generally 20 C.F.R. §§ 404.970(b), 416.1470(b).

8 9 DISCUSSION

10
11 After consideration of the record as a whole, Defendant's motion
12 is granted and Plaintiff's motion is denied. The Administration's
13 findings are supported by substantial evidence and are free from
14 material¹ legal error. Plaintiff's contrary arguments are unavailing.

15 16 I. Substantial Evidence Supports the Conclusion that Plaintiff Can 17 Work.

18
19 Substantial evidence supports the conclusion Plaintiff is not
20 disabled. Medical testing regarding Plaintiff's alleged orthopedic
21 and respiratory problems mostly yielded findings of mild or moderate
22 impairment. A February 27, 2012 lumbosacral spine study showed
23 "moderate degenerative spondylosis off the endplates," but was
24 otherwise "unremarkable" (A.R. 299, 323). A limited July 18, 2012 MRI

25
26
27 ¹ The harmless error rule applies to the review of
28 administrative decisions regarding disability. See Garcia v.
Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v.
Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011).

1 of the lumbar spine showed, inter alia, suspected stenosis "due to a
2 combination of dorsal spondylosis and an associated bulging disc"
3 (A.R. 320-22, 376-78). A 2013 EMG reportedly revealed chronic
4 radiculopathy (A.R. 371). A November 8, 2013 radiology report
5 regarding Plaintiff's left knee showed no fracture or dislocation,
6 minimal degenerative change and mild osteoarthritis (A.R. 331). A
7 March 13, 2012 pulmonary function test showed reduced lung capacity
8 but no overt obstructive lung disease (A.R. 300-324). A November,
9 2013 examination found "no wheeze/rhonchi/rales" (A.R. 368).

10
11 From January of 2010 through at least March of 2013, Plaintiff
12 made periodic visits to Conejo Valley Clinic (A.R. 259-69, 271-83,
13 285-87, 314-17, 374-75). The records from these visits reflect
14 ratings of the alleged severity of Plaintiff's pain on a scale of zero
15 to ten. Most of these ratings fall in the middle of the range,
16 although a few are at zero and a few are at ten (id.).

17
18 Dr. Soheila Benrazavi, an internist, examined Plaintiff and
19 rendered a consultative report on July 10, 2012 (A.R. 308-11). Dr.
20 Benrazavi's examination revealed mostly normal results (id.).
21 Plaintiff's gait, strength and range of motion were all normal (A.R.
22 308-10). Atrophy was absent (A.R. 309). Dr. Benrazavi opined that
23 Plaintiff retains a residual functional capacity even greater than the
24 capacity the ALJ found to exist (A.R. 311). Dr. Benrazavi's
25 examination and opinions provide substantial evidence to support the
26 Administration's decision. See Orn v. Astrue, 495 F.3d 625, 631-32
27 (9th Cir. 2007) (where an examining physician provides "independent
28 clinical findings that differ from findings of the treating physician,

1 such findings are 'substantial evidence'") (citations and internal
2 quotations omitted).

3
4 State agency physicians reviewed the records and opined that
5 Plaintiff can perform medium work (A.R. 59-78, 87-90, 97-100). These
6 opinions also support the Administration's decision. See Andrews v.
7 Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (where the opinions of
8 non-examining physicians do not contradict "all other evidence in the
9 record" an ALJ properly may rely on these opinions); Curry v.
10 Sullivan, 925 F.2d 1127, 1130 n.2 (9th Cir. 1991).

11
12 The vocational expert testified that a person with the residual
13 functional capacity the ALJ found to exist could perform certain jobs
14 existing in significant numbers in the national economy (A.R. 47-49).
15 The ALJ properly relied on this testimony in denying disability
16 benefits. See Barker v. Secretary of Health and Human Services, 882
17 F.2d 1474, 1478-80 (9th Cir. 1989); Martinez v. Heckler, 807 F.2d 771,
18 774-75 (9th Cir. 1986).

19
20 To the extent any of the medical evidence is in conflict, it is
21 the prerogative of the ALJ to resolve such conflicts. See Lewis v.
22 Apfel, 236 F.3d 503, 509 (9th Cir. 2001). When evidence "is
23 susceptible to more than one rational interpretation," the Court must
24 uphold the administrative decision. See Andrews v. Shalala, 53 F.3d
25 at 1039-40; accord Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir.
26 2002); Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997). The
27 Court will uphold the ALJ's rational interpretation of the evidence in
28 the present case notwithstanding any conflicts in the record.

1 **II. Plaintiff's Other Arguments are Unavailing.**

2
3 Plaintiff argues that the ALJ erred in rejecting the opinions of
4 Drs. Root and Kang and in failing to develop the record more fully.
5 No material error occurred.
6

7 Both Dr. Root and Dr. Kang signed "check-the-box" forms claiming
8 Plaintiff could not even perform light or sedentary work (A.R. 325-28,
9 379-80). Dr. Root opined Plaintiff could not lift ten pounds or stand
10 or sit for two hours in an 8-hour day (A.R. 379). Where the form
11 asked, "What medical findings support the limitations described
12 above?," Dr. Root left the answering space entirely blank (A.R. 379).
13 Dr. Root claimed that the "symptoms and limitations" described on the
14 form began in 2007 and 2008, even though Plaintiff did not see Dr.
15 Root until many years later and even though, as previously indicated,
16 Plaintiff performed heavy work through the end of 2009 (A.R. 32-34,
17 36-37, 46, 67, 181-88, 380). Dr. Kang diagnosed "lumbago, knee
18 pain/arthritis" and opined Plaintiff could neither sit, stand nor walk
19 for more than one hour in an 8-hour day (A.R. 325). Dr. Kang opined
20 Plaintiff could not carry more than five pounds (A.R. 326).

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1 While the opinion of a treating physician² is entitled to special
2 weight, "[t]he ALJ may disregard it whether or not that opinion is
3 contradicted." Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir.
4 1989). Where, as here, the treating physicians' opinions are
5 contradicted, the ALJ need only set forth "specific, legitimate
6 reasons" for rejecting the opinions. Lester v. Chater, 81 F.3d 821,
7 830-31 (9th Cir. 1995); Winans v. Bowen, 853 F.2d 643, 647 (9th Cir.
8 1987).³

9
10 In rejecting the opinions of Dr. Root, the ALJ stated:

11
12 The undersigned has given low weight to the opinion of Dr.
13 Root because Dr. Root did not provide any significant
14 rationale for the limitations he asserted. Moreover, the
15 assessed limitations are not consistent with the objective
16 medical findings which have generally been mild to moderate.

17

18 ² The Court assumes arguendo that both Dr. Root and Dr.
19 Kang qualify as "treating physicians," even though Dr. Root
20 reportedly saw Plaintiff only twice over an apparently brief
21 period of time (A.R. 36-37). See Lee v. Astrue, 529 F.3d 1200,
22 1201-02 (9th Cir. 2008) (test for qualifying as a "treating
23 physician" is vague and fact-specific; test depends on the
24 duration of the relationship and the frequency and nature of the
25 contact).

26 ³ Rejection of an uncontradicted opinion of a treating
27 physician requires a statement of "clear and convincing" reasons.
28 See Lester v. Chater, 81 F.3d at 830-31. Plaintiff's Motion
invokes the "clear and convincing" standard notwithstanding the
contradiction of the treating physicians' opinions by other
medical opinion of record. The determination of which standard
to apply is ultimately academic in the present case, however. As
demonstrated infra, the ALJ stated "clear and convincing"
reasons, as well as "specific, legitimate" reasons, for rejecting
the opinions of Drs. Root and Kang.

1 In addition, the claimant had not been seen by Dr. Root, or
2 any other doctor, since November of 2013, yet the opinion
3 was assessed in April of 2014 and without any corresponding
4 physical examination or diagnostic testing. . . .

5
6 (A.R. 20).

7
8 The stated reasons suffice under the applicable case law. An ALJ
9 properly may discount a treating physician's opinions that are in
10 conflict with treatment records or are unsupported by objective
11 clinical findings. See Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th
12 Cir. 2005) (conflict between treating physician's assessment and
13 clinical notes justifies rejection of assessment); Batson v.
14 Commissioner, 359 F.3d 1190, 1195 (9th Cir. 2004) ("an ALJ may
15 discredit treating physicians' opinions that are conclusory, brief,
16 and unsupported by the record as a whole . . . or by objective medical
17 findings"); Connett v. Barnhart, 340 F.3d 871, 875 (9th Cir. 2003)
18 (treating physician's opinion properly rejected where physician's
19 records "provide no basis for the functional restrictions he opined
20 should be imposed on [the claimant]"); see also Rollins v. Massanari,
21 261 F.3d 853, 856 (9th Cir. 2001) (ALJ properly may reject treating
22 physician's opinions that "were so extreme as to be implausible and
23 were not supported by any findings made by any doctor . . ."). The
24 Administrative Record contains no treatment records from Dr. Root and,
25 as previously indicated, Dr. Root's "check-the-box" form fails to
26 suggest any supporting findings. The ALJ did not err by rejecting Dr.
27 Root's extreme, unsupported opinions. See id.; see also Crane v.
28 Shalala, 76 F.3d 251, 253 (9th Cir. 1996) (ALJ permissibly could

1 reject evaluations "because they were check-off reports that did not
2 contain any explanation of the bases of their conclusions").⁴

3
4 With regard to the opinions of Dr. Kang, the ALJ stated:

5
6 The undersigned has given minimal weight to the opinion of
7 Dr. Kang because this opinion is not supported by medically
8 acceptable diagnostic findings and is not bolstered by other
9 medical evidence of record. Positive findings and the
10 progress notes from Dr. Kang do not support restrictions as
11 limiting as he assessed. The course of treatment pursued by
12 the doctor also has not been consistent with what one would
13 expect if the claimant were truly as limited as the doctor
14 has reported. The opinion appears to rely heavily on the
15 subjective report of symptoms and limitations provided by
16 the claimant, and the totality of the evidence does not
17 support the opinion.

18
19 (A.R. 20).

20
21 These stated reasons also suffice under the applicable case law.
22 Again, the ALJ properly may discount a treating physician's opinions

23
24 ⁴ Plaintiff complains that the ALJ did not mention Dr.
25 Root's alleged speciality. Dr. Root's "check-the-box" form does
26 not mention any specialty either (A.R. 379-80). Plaintiff
27 appeared to testify that Dr. Root is a "spinal doctor" (A.R. 37).
28 The ALJ stated he considered "all the evidence" and also
specifically stated he considered the opinion evidence "in
accordance with the requirements of 20 C.F.R. 404.1527 and
416.927 and SSRs 96-2p, 96-5p and 96-6p and 06-3p" (A.R. 13, 17).
No material error occurred.

1 that are in conflict with treatment records or are unsupported by
2 objective clinical findings. Dr. Kang's treatment records reflect
3 little more than intermittent visits by Plaintiff for medication (A.R.
4 329-30, 332-34, 337-38, 342-43, 365-73). The treatment records
5 reflect a normal gait and contain no mention of any outward
6 manifestation of impairment consistent with the profound functional
7 restrictions claimed in Dr. Kang's opinions (id.). Cf. Connett v.
8 Barnhart, 340 F.3d at 875 ("Nowhere do the [physician's] notes
9 indicate reasons why Connett would be limited to standing for only ten
10 minutes or lifting only ten pounds, nor do they indicate that [the
11 physician] ever recommended such limitations to Connett."). The
12 records sometimes list Plaintiff's "Chief Complaint" as "X ray results
13 and disability form for Social Security" (A.R. 329, 365). Dr. Kang's
14 "check-the-box" form cites only claimed symptoms of pain in the back
15 and knee as the alleged bases for Dr. Kang's opinions regarding
16 assertedly extreme functional limitation (A.R. 325). The ALJ
17 reasonably concluded from this form, and from Dr. Kang's largely
18 unremarkable treatment notes, that Dr. Kang relied heavily on
19 Plaintiff's subjective report of symptoms. An ALJ properly may
20 discount a treating physician's opinions that are predicated on the
21 properly discounted statements of the claimant. See Tonapetyan v.
22 Halter, 242 F.3d 1144, 1149 (9th Cir. 2001); accord Mattox v.
23 Commissioner, 371 Fed. App'x 740, 742 (9th Cir. 2010); Fair v. Bowen,
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1 885 F.2d 597, 605 (9th Cir. 1989).⁵ In the present case, the ALJ
2 properly discounted Plaintiff's statements regarding his subjective
3 symptomatology (A.R. 17-18).⁶
4

5 Finally, Plaintiff argues that the ALJ should not have denied
6 Plaintiff's disability claim without first having "re-contacted
7 [Plaintiff's] treating sources, requested another consultative
8 examination, sent the entire file back to the State Agency for review,
9 or obtained testimony from a medical expert. See SSR 12-2p. . . ."
10 (Plaintiff's Motion at 14). The SSR cited by Plaintiff relates
11 exclusively to the evaluation of fibromyalgia, a condition nowhere
12 suggested in this record. It is true that the ALJ "has a special duty
13 to fully and fairly develop the record and to assure the claimant's
14 interests are considered." Brown v. Heckler, 713 F.2d 441, 443 (9th
15 Cir. 1983). "Full" development of an administrative record always
16 involves a matter of degree, however. One conceivably may argue in
17 virtually every case that additional investigation or inquiry might
18 have been useful. Under the circumstances of the present case,
19

20 ⁵ In Ghanim v. Colvin, 763 F.3d 1154, 1162-63 (9th Cir.
21 2014), the Ninth Circuit appeared to hold that "when a [treating
22 physician's] opinion is not more heavily based on a patient's
23 self-reports than on clinical observations," an ALJ may not
24 discount the treating physician's opinion based on the patient's
25 lack of credibility. See also Ryan v. Commissioner, 528 F.3d
26 1194, 1200 (9th Cir. 2008) (containing similar language). This
apparent holding has no application to the present case. As
discussed above, Dr. Kang's opinions were unsupported by, and
indeed appear to be somewhat in conflict with, Dr. Kang's
"clinical observations."

27 ⁶ Plaintiff's motion does not challenge the validity of
28 this credibility determination. Any such challenge would be
futile on this record.

