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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHERRY WHITE,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

No. CV 16-76 AGR

MEMORANDUM OPINION AND ORDER

Plaintiff White filed this action on January 5, 2016. Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the magistrate judge. (Dkt. Nos. 11, 12.) On March 30, 2017, the parties filed a Joint Stipulation (“JS”) that addressed the disputed issue. The court has taken the matter under submission without oral argument.

Having reviewed the entire file, the court affirms the decision of the Commissioner.

1 I.

2 **PROCEDURAL BACKGROUND**

3 White filed applications for disability insurance benefits and supplemental security
4 income benefits on August 3, 2011. In both applications, she alleged an onset date of
5 January 22, 2010. Administrative Record (“AR”) 11. The applications were denied
6 initially and on reconsideration. AR 11, 124-25, 152-53. White requested a hearing
7 before an Administrative Law Judge (“ALJ”). On May 5, 2014, the ALJ conducted a
8 hearing at which White and a vocational expert (“VE”) testified. AR 28-51. On June 13,
9 2014, the ALJ issued a decision denying benefits. AR 8-22. On November 16, 2015,
10 the Appeals Council denied review. AR 1-3. This action followed.

11 II.

12 **STANDARD OF REVIEW**

13 Pursuant to 42 U.S.C. § 405(g), this court has authority to review the
14 Commissioner’s decision to deny benefits. The decision will be disturbed only if it is not
15 supported by substantial evidence, or if it is based upon the application of improper
16 legal standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995) (per curiam);
17 *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

18 “Substantial evidence” means “more than a mere scintilla but less than a
19 preponderance – it is such relevant evidence that a reasonable mind might accept as
20 adequate to support the conclusion.” *Moncada*, 60 F.3d at 523. In determining whether
21 substantial evidence exists to support the Commissioner’s decision, the court examines
22 the administrative record as a whole, considering adverse as well as supporting
23 evidence. *Drouin*, 966 F.2d at 1257. When the evidence is susceptible to more than
24 one rational interpretation, the court must defer to the Commissioner’s decision.
25 *Moncada*, 60 F.3d at 523.

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III.

DISCUSSION

A. Disability

A person qualifies as disabled, and thereby eligible for such benefits, “only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” *Barnhart v. Thomas*, 540 U.S. 20, 21-22 (2003) (citation and quotation marks omitted).

B. The ALJ’s Findings

The ALJ found that White met the insured status requirements through March 31, 2012. AR 13. Following the five-step sequential analysis applicable to disability determinations, *Lounsbury v. Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006),¹ the ALJ found that White had the severe impairments of cervical degenerative disc disease, obesity; diabetes mellitus; and right rotator cuff tear. AR 14. She had the residual functional capacity (“RFC”) to perform light work except that she can frequently perform postural activities; occasionally use ladders, ropes or scaffolds; and frequently perform overhead reaching with the right upper extremity. AR 18. White was capable of performing her past relevant work of day care worker and cafeteria attendant as generally performed. AR 21.

C. Examining Physician

An examining physician’s opinion constitutes substantial evidence when, as here, it is based on independent clinical findings. *Orn v. Astrue*, 495 F.3d 625, 632 (9th

¹ The five-step sequential analysis examines whether the claimant engaged in substantial gainful activity, whether the claimant’s impairment is severe, whether the impairment meets or equals a listed impairment, whether the claimant is able to do his or her past relevant work, and whether the claimant is able to do any other work. *Lounsbury*, 468 F.3d at 1114.

1 Cir. 2007). When an examining physician's opinion is contradicted, "it may be rejected
2 for 'specific and legitimate reasons that are supported by substantial evidence in the
3 record.'" *Carmickle v. Comm'r*, 533 F.3d 1155, 1164 (9th Cir. 2008) (citation omitted).
4 "The opinion of a nonexamining physician cannot by itself constitute substantial
5 evidence that justifies the rejection of the opinion of either an examining physician or a
6 treating physician." *Ryan v. Comm'r*, 528 F.3d 1194, 1202 (9th Cir. 2008) (citation
7 omitted) (emphasis omitted). However, a non-examining physician's opinion may serve
8 as substantial evidence when it is supported by other evidence in the record and is
9 consistent with it. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

10 Dr. Bagner performed a psychiatric evaluation of White on January 26, 2012. AR
11 398-401. Based on the mental status examination, Dr. Bagner observed that White was
12 alert, cooperative and anxious, with good eye contact. Her speech was slow but clear,
13 coherent and soft in volume. Her mood was depressed but there was no psychomotor
14 retardation. Her thought process and thought content did not show abnormality and she
15 denied any hallucinations. She was able to recall 3/3 objects immediately and 2/3 after
16 five minutes, and could perform serial three's. AR 400.

17 Dr. Bagner diagnosed major depressive disorder and assessed a Global
18 Assessment of Functioning (GAF) score of 65.² AR 401. He opined that White had no
19 limitation in her ability to follow simple instructions and only mild limitation in her ability
20 to follow detailed instructions. White was mildly limited in her ability to interact with the
21 public, coworkers and supervisors; and comply with job rules such as attendance. She
22 was moderately limited in her ability to respond to changes in a routine work
23 environment and to work pressure due to a low threshold for frustration. *Id.*

24
25 ² A GAF score of 61-70 indicates some mild symptoms "(e.g., depressed mood and
26 mild insomnia) or some difficulty in social, occupational, or school functioning (e.g.,
27 occasional truancy, or theft within the household), but generally functioning pretty well,
28 has some meaningful interpersonal relationships." Diagnostic and Statistical Manual of
Mental Disorders ("DSM-IV-TR") 34.

1 At step two of the sequential analysis, the ALJ found that White's mental
2 impairment did not cause more than minimal limitation in her ability to perform basic
3 mental work activities and was therefore non-severe. AR 15. White had mild limitations
4 in activities of daily living, social functioning, and concentration, persistence or pace.
5 The record contained no episodes of decompensation of extended duration. AR 16. At
6 step four of the sequential analysis, the ALJ noted that White made no complaint of
7 mental limitations at the hearing, and he found insufficient evidence of a supportable
8 limitation in her functional capacity due to a mental health impairment. AR 20. The ALJ
9 gave Dr. Bagner's opinion minimal weight based on White's failure to seek mental
10 health treatment and the ALJ's findings. AR 20-21.

11 White's argument that the ALJ erred at step two of the sequential analysis is
12 insufficient. Even assuming error at step two, any error was harmless because
13 prejudice could occur only in later steps. *See Lewis v. Astrue*, 498 F.3d 909, 911 (9th
14 Cir. 2007) (failure to address particular impairment at step two is harmless when ALJ
15 evaluates that impairment in later step); *see also Stout v. Comm'r*, 454 F.3d 1050, 1055
16 (9th Cir. 2006) (ALJ's error harmless when it is "inconsequential to the ultimate
17 nondisability determination"). White does not argue that the ALJ erred at step four of
18 the sequential analysis. There is no showing that Dr. Bagner's relatively benign
19 opinion, accepted at face value, would preclude White's past relevant work. The ALJ
20 found, based on the VE's testimony, that White could perform her past relevant work
21 even with the additional limitation that she was precluded from high production quota
22 jobs. AR 21.

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IV.

ORDER

IT IS HEREBY ORDERED that the decision of the Commissioner is affirmed.



DATED: March 31, 2017

ALICIA G. ROSENBERG
United States Magistrate Judge