

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**

VALANTIN BETASHOUR,
Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

Case No. CV 17-02928-RAO

**MEMORANDUM OPINION AND
ORDER**

Plaintiff Valantin Betashour (“Plaintiff”) challenges the Commissioner’s denial of her application for supplemental security income (“DIB”). The parties have filed a Joint Submission. After reviewing the matter, the Court concludes that the decision of the Commissioner should be REVERSED.

I. INTRODUCTION

Plaintiff filed an application for supplemental security income on February 8, 2014. (Administrative Record (“AR”) 208.) The Social Security Administration denied the application both initially and on reconsideration, and Plaintiff then proceeded to an administrative hearing. After the hearing, the Administrative Law Judge (ALJ) determined that Plaintiff was not disabled. The Appeals Council

1 denied review (AR 1-3), making the decision of the ALJ the decision of the
2 Commissioner.

3 At step two of the five-step sequential evaluation process, the ALJ found that
4 Plaintiff “does not have an impairment or combination of impairments that has
5 significantly limited (or is expected to significantly limit) the ability to perform
6 basic work-related activities for 12 consecutive months; therefore, [Plaintiff] does
7 not have a severe impairment or combination of impairments.” (AR 21.) The ALJ
8 ended the sequential evaluation process and found Plaintiff not disabled.

9 On appeal, Plaintiff challenges the ALJ’s non-severity findings at step two.
10 (Joint Submission (“JS”) at 3.) Plaintiff also challenges the residual functional
11 capacity assessment and failure to apply the medical vocational guidelines. (*Id.*)
12 The Court agrees with the Commissioner, that because the ALJ concluded the
13 evaluation at step two and did not reach the next steps in the five-step sequential
14 evaluation process, the Court does not need to address Plaintiff’s second and third
15 claims.

16 **II. DISCUSSION**

17 *A. Pertinent Legal Standard*

18 At the second step of the five-step sequential evaluation process used in
19 social security cases, *see* 20 CFR § 404.1520, the ALJ must determine whether the
20 claimant has a “severe” impairment. If a claimant does not have a severe
21 impairment, then he or she is not eligible for disability payments. 20 CFR
22 § 404.1520(c).

23 The existence of a severe impairment is satisfied when the evidence shows
24 that an impairment has more than a minimal effect on an individual’s ability to
25 perform basic work activities. 20 CFR § 404.1520(c); *Smolen v. Chater*, 80 F.3d
26 1273, 1290 (9th Cir. 1996). At step two, the ALJ identifies a claimant’s severe
27 impairments, *i.e.*, impairments that significantly limit his or her ability to do basic
28

1 work activities.¹ 20 C.F.R. § 404.1522; *Smolen*, 80 F.3d at 1290. A determination
2 that an impairment is not severe requires evaluation of medical findings describing
3 the impairment, and an informed judgment as to its limiting effects on a claimant’s
4 ability to do basic work activities. Social Security Ruling (“SSR”) 85–28, 1985
5 WL 56856, at *4 (Jan. 1, 1985).²

6 The ALJ must take into account subjective symptoms in assessing severity,
7 *Smolen*, 80 F.3d at 1290, but “medical evidence alone is evaluated ... to assess the
8 effects of the impairment(s) on ability to do basic work activities.” SSR 85-28 at
9 *4. An impairment or combination thereof may properly be found not severe if the
10 clearly established objective medical evidence shows only slight abnormalities that
11 minimally affect a claimant’s ability to do basic work activities. *Webb v. Barnhart*,
12 433 F.3d 683, 687 (9th Cir. 2005); *Smolen*, 80 F.3d at 1290. Finally, a diagnosis
13 does not establish a severe impairment. *Febach v. Colvin*, 580 F. App’x 530, 531
14 (9th Cir. 2014).

15 The step two inquiry is meant to be “a *de minimis* screening device to dispose
16 of groundless claims.” *Smolen*, 80 F.3d at 1290 (citing *Bowen v. Yuckert*, 482 U.S.
17 137, 153–54, 107 S. Ct. 2287, 96 L. Ed. 2d 119 (1987)).

18 *B. ALJ’s Decision*

19 The ALJ identified Plaintiff as having the following medically determinable
20 impairments: diabetes, hyperlipidemia, hyperthyroidism, asthma, degenerative disc
21 disease, obesity, hammertoe, osteoarthritis, degenerative joint disease, and
22 cataracts. (AR 21.) In finding Plaintiff’s impairments not severe, the ALJ noted
23 that the “available medical record is minimal and does not provide sufficient
24 objective support” for Plaintiff’s allegations of pain and limited mobility. (*Id.* at
25 22.)

26 ¹ Basic work activities are “the abilities and aptitudes necessary to do most jobs.”
27 20 C.F.R. § 404.1522(b).

28 ² SSRs do not have the force of law, but a reviewing court generally accords them
some deference. *Holohan v. Massanari*, 246 F.3d 1195, 1202 n.1 (9th Cir. 2001).

1 The ALJ further noted that “the record reflects numerous inconsistencies that
2 suggest [Plaintiff’s] reasons for filing for Social Security Disability are less than
3 credible.” (AR 22.) As examples of this, the ALJ noted that, while Plaintiff
4 alleged disability since January 2013, the record did not contain any evidence until
5 December 2013. (*Id.*) Despite Plaintiff’s complaints related to her various medical
6 impairments, the medical findings indicated no abnormalities. (*Id.*) Additionally,
7 the ALJ noted that Plaintiff reported different medications to different physicians,
8 one inconsistency, and reported on her Function Report that she took only calcium,
9 another inconsistency. (*Id.*)

10 The ALJ’s decision also discussed the July 2014 internal medicine
11 consultative examination performed by Dr. Helen Rostamloo at the
12 Commissioner’s request.³ The ALJ observed that, while Dr. Rostamloo’s report
13 noted that Plaintiff alleged a history of diabetes, hyperlipidemia, hyperthyroidism,
14 low back pain, asthma, and bilateral visual deficits, the only area of pain pointed to
15 was the back, “which was inconsistent with [Plaintiff’s] disability application.” (*Id.*
16 at 23.) Further, Dr. Rostamloo’s report stated that Plaintiff exhibited “normal gait
17 and balance and did not require the use of an assistive device for ambulation.” (*Id.*)
18 The report indicated that Plaintiff’s neck examination was normal. (*Id.*) The back
19 showed normal spine curvature with tenderness to percussion of the lumbar spine.
20 (*Id.*) Normal muscle bulk and tone without atrophy were noted. (*Id.*) Strength was
21 5/5 throughout without focal motor deficits. (*Id.*) The ALJ’s decision recited Dr.
22 Rostamloo’s opinion regarding Plaintiff’s functional limitations: Dr. Rostamloo
23 “opined [that Plaintiff] was able to perform medium work with no limitations in
24 sitting, standing, walking, pushing, or pulling; frequent climbing, balancing,
25 kneeling, crawling, walking on uneven terrain, and working at heights; and
26 avoidance of pulmonary irritants, fumes, dust and extreme temperatures.” (*Id.*)

27 Plaintiff also underwent a psychiatric consultative examination. *Id.* The

28 ³ The ALJ erroneously referred to Dr. Rostamloo as Dr. Resnick.

1 psychiatric consultative examiner concluded that Plaintiff had no limitations from a
2 psychiatric standpoint. (*Id.* at 24.)

3 Plaintiff was also referred to a physician for foot pain. (*Id.* at 25.) Plaintiff
4 was “given range of motion exercises and arthritis cream, and told to ice her joints.”
5 *Id.* Plaintiff did not return to seek podiatric treatment until nearly a year later in
6 mid-2015. (*Id.*)

7 The ALJ’s decision also discussed the residual functional capacity
8 assessment by Plaintiff’s treating physician, Dr. Charchian. Dr. Charchian
9 indicated in October 2014 that Plaintiff suffered from uncontrolled diabetes
10 mellitus, chronic arthritic foot pain, and anxiety. (*Id.* at 25.) Dr. Charchian
11 assessed limitations on Plaintiff, specifically that Plaintiff “could lift/carry only 5-
12 10 pound in an 8 hour period and less than 5 pounds regularly; walk 3 to 4 blocks;
13 rarely reach above shoulders or towards the floor[] frequently; or frequently reach
14 down to the waist or carefully handle objects ... could not stand or sit for more than
15 20 to 30 minutes due to anxiety, weakness, and dizziness.” (*Id.*) The ALJ gave
16 little weight to Dr. Charchian’s opinion because it “was self-contradictory and not
17 adequately supported by clinical evidence.” (*Id.*) The ALJ stated that he “was
18 vague in his responses and failed to provide specific test results or data in support
19 of his claims.” The ALJ also stated that Dr. Charchian failed to acknowledge
20 Plaintiff’s noncompliant behavior with her diabetes treatment. (*Id.*)

21 Finally, the ALJ stated that Plaintiff “has never worked and she has [n[ever
22 attempted to work. Her treatment record is sporadic and minimal. Existing
23 examinations note mild findings and, in fact, suggest [that Plaintiff] is less than
24 credible. It appears [Plaintiff’s] reasons for filing for Social Security disability may
25 be purely financial.” (AR at 26.)

26 C. Analysis

27 Plaintiff contends that the ALJ’s finding that Plaintiff’s physical impairments
28 were not severe was erroneous because Dr. Rostamloo, the state agency

1 consultative examiner, found that Plaintiff was limited to performing medium work
2 with postural and environmental limitations, a finding which shows that Plaintiff's
3 impairments would have more than a minimal effect on her ability to perform basic
4 work activities. JS at 3, 5. Plaintiff acknowledges that the ALJ was not required to
5 accept Dr. Rostamloo's entire opinion, but argues that the ALJ was required to
6 provide specific and legitimate reasons for rejecting a portion of her opinion, but
7 failed to provide any reasons, much less specific and legitimate reasons. *Id.* at 6.
8 In opposition, the Commissioner contends that Dr. Rostamloo's report constituted
9 substantial evidence on which the ALJ could, and did, rely and is sufficient to
10 support the ALJ's findings in the present judicial review. *Id.* at 8-9. The
11 Commissioner contends that Dr. Rostamloo's report and its included opinion
12 support the ALJ's finding of non-severe impairment because it demonstrates that
13 Plaintiff can meet the requirements of most physical jobs. *Id.* at 9.

14 The Social Security Regulations define "medium work" as work that
15 "involves lifting no more than 50 pounds at a time with frequent lifting or carrying
16 of objects weighing up to 25 pounds." 20 CFR § 416.967(c). "When a claimant's
17 impairments limit her to medium work activity, such impairments are by definition
18 'severe' since they have more than a minimal impact on the claimant's ability to
19 lift, which is a basic work activity." *Padilla v. Astrue*, 541 F. Supp. 2d 1102 (C.D.
20 Cal. 2008).

21 Dr. Rostamloo found Plaintiff limited to medium work with postural and
22 environmental limitations. In her decision, the ALJ appeared to give weight to Dr.
23 Rostamloo's opinion, but did not offer any reasons for rejecting the portion of her
24 opinion regarding the above-described physical limitations. The Court agrees with
25 Plaintiff that Dr. Rostamloo's opinion regarding Plaintiff's limitations would be
26 inconsistent with a finding that Plaintiff's physical impairments are not severe.
27 Because the ALJ did not offer any reasons, much less specific and legitimate
28 reasons, for rejecting this portion of Dr. Rostamloo's opinion, the ALJ's findings

1 lack substantial evidence. *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995)
2 (ALJ is required to give “specific and legitimate reasons based on substantial
3 evidence” for rejecting the contradicted opinion of examining physician). The
4 Court does not dispute the Commissioner’s contention that, as a consultative
5 examiner, Dr. Rostamloo’s report and opinion can qualify as substantial evidence
6 for the ALJ’s findings. However, the Commissioner fails to address the central
7 issue presented here, which is that Dr. Rostamloo’s report and opinion, absent some
8 explanation from the ALJ rejecting the opined limitations, appears to support a
9 finding that Plaintiff’s physical impairments are “severe.”

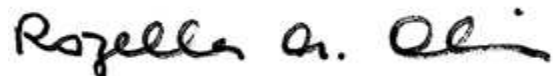
10 The error here was not harmless because the ALJ ended the five-step
11 sequential evaluation process upon making a finding of no severe impairment(s),
12 and thus the record does not indicate what a further sequential evaluation would
13 yield. Accordingly, the matter is remanded to the Commissioner for completion of
14 the sequential evaluation and any further development of the record as is necessary
15 to facilitate that evaluation.

16 **III. CONCLUSION**

17 IT IS ORDERED that Judgment shall be entered REVERSING the decision
18 of the Commissioner denying benefits and REMANDING for administrative action
19 consistent with this order.

20 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
21 Order and the Judgment on counsel for both parties.

22
23 DATED: December 28, 2017



24 _____
25 ROZELLA A. OLIVER
26 UNITED STATES MAGISTRATE JUDGE

27 **NOTICE**

28 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,
LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**