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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

TRACIE MEYERS,)	Case No. CV 17-03457-AS
)	
Plaintiff,)	MEMORANDUM OPINION
)	
v.)	
)	
NANCY A. BERRYHILL, ¹)	
Acting Commissioner of the)	
Social Security Administration,)	
)	
Defendant.)	
_____)	

PROCEEDINGS

On May 8, 2017, Plaintiff filed a Complaint seeking review of the denial of her application for Disability Insurance Benefits. (Docket Entry No. 1). The parties have consented to proceed before the undersigned United States Magistrate Judge. (Docket Entry Nos. 14, 19). On September 26, 2017, Defendant filed an Answer along with the Administrative Record ("AR"). (Docket Entry Nos. 16-17). The parties

¹ Nancy A. Berryhill is now the Acting Commissioner of the Social Security Administration and is substituted in for Acting Commissioner Caroyln W. Colvin in this case. See 42 U.S.C. § 205(g).

1 filed a Joint Stipulation ("Joint Stip.") on December 18, 2017, setting
2 forth their respective positions regarding Plaintiff's claims. (Docket
3 Entry No. 18).

4
5 The Court has taken this matter under submission without oral
6 argument. See C.D. Cal. L.R. 7-15.

7
8 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
9

10 On February 9, 2011, Plaintiff, formerly employed as a
11 customer service person for telecommunications and
12 recreational vehicle sales companies and as a service writer
13 for an automobile mechanic (see AR 51-52, 72, 336), filed an
14 application for Disability Insurance Benefits, alleging an
15 inability to work because of a disabling condition since
16 October 22, 2010. (See AR 290-92). The Commissioner denied
17 Plaintiff's application initially on June 28, 2012 and on
18 reconsideration on July 10, 2012 (AR 107-112, 159-64).

19
20 On June 3, 2013, the Administrative Law Judge ("ALJ"),
21 Dale A. Garwal, heard testimony from Plaintiff, who was
22 represented by counsel, and vocational expert ("VE") Kristin
23 Cicero. (See AR 49-67). On June 21, 2013, the ALJ issued a
24 decision denying Plaintiff's application. (See AR 135-43).
25 After determining that Plaintiff had severe impairments --
26 "generalized anxiety disorder, and degenerative disc disease
27
28

1 of the cervical and lumbar spine" (AR 138)² -- but did not
2 have an impairment or combination of impairments that met or
3 medically equaled the severity of one of the listed
4 impairments (AR 138-39), the ALJ found that Plaintiff had the
5 residual functional capacity ("RFC")³ to perform sedentary
6 work⁴ with the following limitations: lifting/carrying 5
7 pounds frequently and 10 pounds occasionally; standing/walking
8 for 2 hours and sitting for 6 hours in an 8-hour workday;
9 bending/stooping occasionally; pushing/pulling with the
10 nondominant left upper extremity occasionally; and limited to
11 simple routine tasks with occasional public and co-worker
12 contact. (AR 139-41). The ALJ then determined that Plaintiff
13 was not able to perform any past relevant work (AR 141), but
14 could perform jobs existing in significant numbers in the
15 national economy, and was therefore not disabled within the
16 meaning of the Social Security Act. (AR 142-43).

17
18 Plaintiff requested that the Appeals Council review the
19 ALJ's decision. (See AR 203). On November 24, 2014, the
20 Appeals Council vacated the ALJ's decision and remanded the

21
22 ² The ALJ found that Plaintiff's other impairments -- Hepatitis
23 C, obesity and knee discomfort -- were nonsevere. (AR 138).

24 ³ A Residual Functional Capacity is what a claimant can still do
25 despite existing exertional and nonexertional limitations. See 20
26 C.F.R. § 404.1545(a)(1).

27 ⁴ "Sedentary work involves lifting no more than 10 pounds at a
28 time and occasionally lifting or carrying articles like docket files,
ledgers, and small tools. Although a sedentary job is defined as one
which involves sitting, a certain amount of walking and standing is
often necessary in carrying out job duties. Jobs are sedentary if
walking and standing are required occasionally and other sedentary
criteria are met." 20 C.F.R. § 404.1567(a).

1 matter in order for the Administrative Law Judge to do the
2 following:

3
4 (1) "Update the record" to "include, as available,
5 records from the claimant's treating and examining
6 sources, medical opinions about what the claimant
7 could still do despite her impairments, singly and in
8 combination"; (2) "Give consideration to the third
9 party statement of Karen Lopez"; (3) "Give further
10 consideration to the claimant's maximum residual
11 functional capacity during the entire period at issue
12 and provide rationale with specific references to
13 evidence of record in support of assessed
14 limitations"; and (4) "If warranted by the expanded
15 record, obtain supplemental evidence from a
16 vocational expert to clarify the effect of the
17 assessed limitations on the claimant's occupational
18 base[.]" (See AR 148-50).

19
20 On April 6, 2016, the ALJ heard testimony from Plaintiff,
21 who was represented by counsel, and VE Sharon Spaventa. (See
22 AR 70-79). On June 8, 2016, the ALJ issued a decision denying
23 Plaintiff's application. (See AR 24-34). Applying the five-
24 step sequential process, the ALJ found at step one that
25 Plaintiff had not engaged in substantial gainful activity
26 since October 22, 2010, the alleged onset date. (AR 27). At
27 step two, the ALJ determined that Plaintiff had the following
28 severe impairments: "lumbar and cervical degenerative disc

1 disease, and generalized anxiety disorder" (AR 27).⁵ At step
2 three, the ALJ determined that Plaintiff does not have an
3 impairment or combination of impairments that meet or
4 medically equal the severity of any of the listings enumerated
5 in the regulations (AR 27-28). The ALJ found that Plaintiff
6 had the RFC to perform sedentary work with the following
7 limitations:

8 lifting 5 pounds frequently and 10 pounds
9 occasionally; standing for 2 hours and sitting for 6
10 hours in an 8-hour workday; bending and stooping
11 occasionally; "occasional use of the nondominant left
12 upper extremity for pushing/pulling"; occasional
13 public and co-worker contact; and limited to simple
14 routine tasks. (AR 28-33).

15
16 At step four, the ALJ determined that Plaintiff was not able
17 to perform any past relevant work (AR 33). At step five, the
18 ALJ found, based on the testimony of VE Cicero at the June 3,
19 2013 hearing, that Plaintiff could perform jobs existing in
20 significant numbers in the national economy, namely, inspector
21 (Dictionary of Occupational Titles ("DOT") 669.687-014) and
22 sorter (DOT 521.687-086) (AR 34). As a result of these
23 findings, the ALJ concluded that Plaintiff was not disabled
24 within the meaning of the Social Security Act. (Id.).

25
26
27 ⁵ The ALJ found that Plaintiff's other impairments -- Hepatitis
28 C, obesity, headaches and knee discomfort -- were nonsevere, and that
Plaintiff's migraines did not meet the durational requirements. (AR
27).

1 The Appeals Council denied Plaintiff's request for review
2 of the ALJ's Decision on March 20, 2017. (See AR 1-3, 19).
3 Plaintiff now seeks judicial review of the ALJ's decision,
4 which stands as the final decision of the Commissioner. 42
5 U.S.C. §§ 405(g), 1383(c).

6 7 STANDARD OF REVIEW

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

24 25 PLAINTIFF'S CONTENTIONS

26
27 Plaintiff alleges that the ALJ failed to properly assess:
28 (1) the opinion of consultative examiner, Dr. Moore; and (2)

1 the opinion of consultative examiner, Dr. Moore, to the
2 extent that the ALJ discredited Plaintiff's testimony
3 regarding handling and fingering limitations.⁶ (See Joint
4 Stip. at 3-6, 10-13, 17).

5
6 **DISCUSSION**
7

8 After consideration of the record as a whole, the Court
9 finds that
10 the Commissioner's findings are supported by substantial
11 evidence and
12 are free from material legal error.
13

14 **A. The ALJ's Error in Assessing the Opinion of Examining**
15 **Physician, Robert Moore, M.D., was Harmless**
16

17 Plaintiff asserts that the ALJ erred in failing to
18 address the opinion of examining physician, Dr. Moore, about
19 Plaintiff's left upper extremity limitations, and that such
20 error was not harmless. (See Joint Stip. at 3-6, 10-11).
21 Defendant concedes that the ALJ erred in failing to address
22 Dr. Moore's opinion about Plaintiff's upper left extremity
23

24 ⁶ Although Plaintiff characterizes her second claim as a challenge
25 to the ALJ's adverse credibility determination, Plaintiff is only
26 contesting the ALJ's rejection of her testimony regarding symptoms
27 causing handling and fingering limitations as a basis for failing to
28 properly assess Dr. Moore's opinion regarding those limitations. (See
Joint Stip. at 17). However, the record does not support Plaintiff's
claim. The ALJ did not fail to assess Dr. Moore's limitations based on
an adverse credibility determination regarding Plaintiff's testimony.
Therefore, Plaintiff's second claim appears to be a reassertion of her
first claim and will not be separately addressed. (See Joint Stip. at
12-13, 17).

1 limitations, but asserts that the error was harmless. (See
2 Joint Stip. at 6-10). The Court agrees.

3
4 An ALJ must take into account all medical opinions of
5 record. 20 C.F.R. § 404.1527(b). "Generally, a treating
6 physician's opinion carries more weight than an examining
7 physician's, and an examining physician's opinion carries
8 more weight than a reviewing physician's." Holohan v.
9 Massanari, 246 F.3d 1195, 1202 (9th Cir. 2001); see also
10 Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995).

11
12 If a treating or examining doctor's opinion is not
13 contradicted by another doctor, the ALJ can reject the
14 opinion only for "clear and convincing reasons." Carmickle
15 v. Comm'r of Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir.
16 2008); Lester v. Chater, 81 F.3d at 830-31. If the treating
17 or examining doctor's opinion is contradicted by another
18 doctor, the ALJ must provide "specific and legitimate
19 reasons" for rejecting the opinion. Orn v. Astrue, 495 F.3d
20 625, 632 (9th Cir. 2007); Lester v. Chater, supra.

21
22 On June 25, 2012, Robert A. Moore, M.D., prepared a
23 report following a complete neurological evaluation of
24 Plaintiff. (See AR 505-09). Based on Plaintiff's
25 complaints/statements (see AR 505), a review of Plaintiff's
26 medical records and Plaintiff's medical, family and social
27 history (see AR 506), the results of a physical examination
28 (see AR 506-07), and the results of a neurological

1 examination (see AR 507-08, Dr. Moore diagnosed Plaintiff
2 with "[m]ild cervical spondylosis with possible associated
3 left C5 radiculopathy," "[b]iomechanical low back pain" and
4 "[m]uscle contraction headaches." (See AR 508). Dr. Moore
5 opined that Plaintiff had the following limitations: with
6 respect to Plaintiff's left arm, she "can occasionally but
7 not frequently or continuously push and pull" and "she would
8 have slight difficulty operating hand controls and moderate
9 difficulty using tools"; with respect to Plaintiff's left
10 hand and fingers, "[s]he can perform frequent simple gripping
11 and distal fine coordinated movements"; Plaintiff has
12 unrestricted use of the right upper extremity; Plaintiff can
13 stand and walk for 6 hours out of an 8-hour workday, in 2-
14 hour intervals; Plaintiff can sit on an unrestricted basis;
15 Plaintiff can bend and stoop frequently; Plaintiff can
16 operate foot controls; Plaintiff is cognitively intact; and
17 Plaintiff "would have difficulty lifting and carrying more
18 than 25 pounds on an occasional basis and 10 to 10 pounds on
19 a more frequent basis." (See AR 508).

20
21 The ALJ summarized Dr. Moore's report, including Dr.
22 Moore's opinion. (See AR 30). After summarizing most of the
23 medical evidence and Plaintiff's testimony, and after stating
24 that "[t]he established residual functional capacity
25 addresses the claimant's left upper extremity limitation as
26 credibly evaluated by consultative examiner Dr. Moore,
27 indicating occasional overhead reaching with the nondominant
28 left upper extremity" (see AR 31-32), the ALJ stated: "The

1 medical opinion of consultative examiner Dr. Moore is fully
2 credible and given great weight based upon supportability
3 with medical signs and laboratory findings, and consistency
4 with the record (Exhibit 6F) including the minimal findings
5 of Drs. Musaffer (Exhibit 21F) and Dr. Ellie Rogers (Exhibit
6 15F) of the claimant's treating facility who declined to
7 prescribe medications sought by the claimant." (AR 32).

8
9 As Defendant concedes (see Joint. Stip. at 6), the ALJ
10 erred by failing to address Dr. Moore's opinions that
11 Plaintiff can perform frequent simple gripping and distal
12 fine coordinated movements with her left hand and fingers and
13 that Plaintiff would have slight difficulty operating hand
14 controls and moderate difficulty using tools with her left
15 arm in the determination of whether Plaintiff could perform
16 other jobs.

17
18 The issue, as both Defendant and Plaintiff acknowledge
19 (see Joint Stip. at 5-11) is whether the ALJ's error was
20 harmless. An ALJ's error is harmless "when it is clear from
21 the record . . . that it was 'inconsequential to the ultimate
22 nondisability determination.'" Tommasetti v. Astrue, 533 F.3d
23 1035, 1038 (9th Cir. 2008)(citation omitted); see also
24 Carmickle v. Commissioner, 533 F.3d 1155, 1162 (9th Cir.
25 2008)("[T]he relevant inquiry in this context is not whether
26 the ALJ would have made a different decision absent any
27 error, . . ., it is whether the ALJ's decision remains
28 legally valid, despite such error."); Burch v. Barnhart, 400

1 F.3d 676, 679 (9th Cir. 2005) ("A decision of the ALJ will not
2 be reversed for errors that are harmless.").

3
4 Plaintiff concedes that the ALJ's failure to address Dr.
5 Moore's opinion that Plaintiff can perform "distal fine
6 coordinated movements with [her] left hand and fingers" is
7 harmless error, because Plaintiff likely can still meet the
8 requirements of the jobs that the ALJ found Plaintiff could
9 do (inspector, Dictionary of Occupational Titles ["DOT"]
10 669.687-014 [requires occasional fingering]; sorter, DOT
11 521.687-086 [requires frequent fingering])(see AR 34). (See
12 Joint Stip. at 5). Consequently, this aspect of Dr. Moore's
13 opinion is not at issue. However, Plaintiff contends that
14 Dr. Moore's opinion that Plaintiff "can perform frequent
15 simple gripping" with "the left hand and fingers" renders
16 Plaintiff unable to perform these jobs because they require
17 "frequent handling," which is more than "simple gripping."
18 (Joint Stip. at 5).

19
20 Respondent asserts that the ALJ's error was harmless,
21 because (1) the record as a whole, i.e., Dr. Moore's physical
22 and neurological examinations of Plaintiff, a Sierra Vista
23 Family Medical Clinic progress note dated November 29, 2012,
24 a Clinicas note dated July 25, 2014, physical examinations of
25 Plaintiff on August 14, 2013, September 4, 2013, December 4,
26 2013, January 13, 2015, January 27, 2015, and July 25, 2014,
27 and an x-ray of Plaintiff's left shoulder dated June 15, 2011
28 fails to support Dr. Moore's opinions about Plaintiff's

1 limitations with her left upper extremity in gripping,
2 operating hand controls and using tools (see Joint Stip. at
3 6-7, citing AR 482, 506-08, 559-60, 567, 571, 596, 604, 620,
4 635, 690); (2) Doctor Moore's opinion that Plaintiff is
5 limited to "frequent simple gripping" with her left hand is
6 not inconsistent with the requirement of both jobs the ALJ
7 found that Plaintiff could do (inspector, DOT 669.687-014;
8 sorter, DOT 521.687-086) (see AR 34), and alternatively,
9 Plaintiff is able to perform the frequent handling
10 requirements of both jobs based on the unrestricted use of
11 her right upper extremity; and (3) Doctor Moore's opinion
12 that Plaintiff "would have slight difficulty operating hand
13 controls and moderate difficulty using tools" with her left
14 arm is not inconsistent with the requirement of both jobs the
15 ALJ found Plaintiff could do, and alternatively, Plaintiff is
16 able to perform these functions based on the unrestricted use
17 of her right upper extremity (see Joint Stip. at 8-9).

18 Although Defendant cites evidence to support her
19 contention that the record did not support Dr. Moore's
20 opinion about Plaintiff's left upper extremity limitations as
21 to gripping, operating hand controls and using tools, there
22 is no indication that the ALJ considered Dr. Moore's opinion
23 about Plaintiff's limitations in these areas, and the ALJ did
24 not cite to or assess the evidence on which Respondent
25 relies. Therefore, it not clear from the record that the
26 ALJ's failure to consider Dr. Moore's opinion regarding
27 Plaintiff's limitations in these areas was inconsequential to

28

1 the ALJ's ultimate determination that Plaintiff was not
2 disabled. See Tommasetti, 533 F.3d at 1038.

3
4 Nevertheless, the Court finds that the ALJ's error in
5 failing to include Dr. Moore's opinion about Plaintiff's left
6 upper extremity limitations as to gripping, operating hand
7 controls and using tools, was harmless because, even with
8 those limitations, Plaintiff can perform the jobs of
9 inspector and sorter.

10
11 According to DOT 669.687-014, the job of dowel inspector
12 involves "inspect[ing] dowel pins for flaws, such as square
13 ends, knots, or splits, and discard[ing] defective dowels[,]"
14 and requires fingering occasionally and handling frequently,
15 and does not involve moving mechanical parts. 1991 WL
16 686074.

17
18 According to DOT 521.687-086, the job of nut sorter
19 involves "remov[ing] defective nuts and foreign matter from
20 bulk nut meat; [o]bserv[ing] nut meats on conveyor belt, and
21 pick[ing] out broken, shriveled and wormy nuts and foreign
22 matters, such as leaves and rocks" and "[p]lacing defective
23 nuts and foreign matter into containers, requires fingering
24 and handling frequently, and does not involve moving
25 mechanical moving parts. 1991 WL 674226.

26
27 Plaintiff has failed to cite, and the Court has been
28 unable to locate, any authority supporting Plaintiff's

1 assertion that the "frequent simple gripping" limitation
2 found by Dr. Moore (with respect to Plaintiff's left hand and
3 fingers) is more restrictive than the
4 frequent handling" requirement of the inspector and sorter
5 jobs.⁷ It does not appear as if Plaintiff's limitation to
6 "frequent simple gripping" with her left hand and fingers is
7 inconsistent with the "frequent handling" requirement of the
8 inspector and sorter jobs. Therefore, the ALJ's error in
9 failing to address (or ask the vocational expert about)
10 Plaintiff's limitation to "frequent simple gripping" with her
11 left hand and fingers was harmless.

12
13 Moreover, there is nothing in the DOT descriptions of the
14 inspector and sorter jobs indicating any requirements of
15 operating hand controls and using tools. Plaintiff relies on
16 the Occupational Information Network, commonly known as the

17
18
19 ⁷ When Dr. Moore was asked to clarify his opinion in another
20 case in which a plaintiff was limited to "occasional and frequent simple
gripping," Dr. Moore stated:

21 As it relates to further clarification of these terms, if
22 the claimant were required to use gripping for performing
23 activities such as using pliers or screwdrivers, he would be
24 able to do this on an occasional basis, as this would require
25 relatively strong gripping. On the other hand, the claimant
26 could frequently do such things as handle money, where
27 gripping with full strength would not be required. . . . [¶]
As it relates to a position such as a packager, this might
prove to be difficult to the claimant, as forceful gripping
would be required. On the other hand, he would likely be able
to operate a cash register, with a frequency required by a
cashier, or do such things as punch out tickets and seipe
credit cards, as would be required by a ticket seller or
taker.

28 Granados-Dominguez v. Astrue, 2009 WL 3526579, *5 (C.D. Cal.).

1 O*NET, Nguyen v. Colvin, 2014 WL 2207058, *2, n.1 (C.D.
2 Cal.), in an effort to show that the jobs of inspector and
3 sorter involved the tasks of "using hand controls to start
4 machines, adjusting processing equipment, and operating hand
5 trucks and lifts." (See Joint Stip. at 5-6). However,
6 Plaintiff does not cite to any authority holding that a
7 federal court should or must rely on the O*NET to determine
8 the requirements of particular jobs which an ALJ has found
9 a claimant can perform. Indeed, the case Plaintiff cites --
10 Lee v. Barnhart, 63 Fed.Appx. 291, 293 (9th Cir. 2003)(Joint
11 Stip. at 6), stating that "SSR 00-4p does not preclude
12 reliance on the O-NET; it merely provides that where there is
13 a conflict between the DOT and another source, and the ALJ
14 relies on the other source, the ALJ must explain his reasons
15 for doing so" -- is not applicable to the present case.
16 Since it appears that Plaintiff's "slight difficulty
17 operating hand controls and moderate difficulty using tools"
18 with her left arm is not inconsistent with the operation of
19 hand controls and use of tools requirements of the inspector
20 and sorter jobs,⁸ the ALJ's error in failing to address (or
21 ask the vocational expert about) these limitations was
22 harmless.

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27 ⁸ Based on these findings, the Court does not need to address
28 Defendant's alternative contentions regarding Plaintiff's unrestricted
use of her right upper extremity.

ORDER

For the foregoing reasons, the decision of the Commissioner is AFFIRMED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: February 15, 2018

/s/
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE