

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**

MISSY D.,¹)	NO. CV 17-5834-KS
Plaintiff,)	
v.)	MEMORANDUM OPINION AND ORDER
NANCY A. BERRYHILL, Acting)	
Commissioner of Social Security,)	
Defendant.)	
_____)	

INTRODUCTION

Plaintiff filed a Complaint on August 7, 2017 seeking review of the denial of her application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act. (Dkt. No. 1.) The parties have consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. (Dkt. Nos. 11-13.) On July 30, 2018, the parties filed a Joint Stipulation. (Dkt. No. 21 (“Joint Stip.”).) Plaintiff seeks an order reversing the Commissioner’s decision and remanding the matter for an award of benefits, or in the alternative, remanding for further administrative proceedings. (Joint Stip.

¹ Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 at 8, 12-13.) The Commissioner requests that the Administrative Law Judge’s decision be
2 affirmed or, in the alternative, remanded for further proceedings. (*Id.* at 12, 13-14.) The
3 Court has taken the matter under submission without oral argument.
4

5 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**

6

7 On December 4, 2013, Plaintiff protectively filed an application for SSI.²
8 (Administrative Record (“AR”) 25, 62, 126-35.) Plaintiff alleged disability commencing on
9 February 8, 2013 due to “chronic lumbar pain in spine.” (AR 62, 146.) After the
10 Commissioner denied Plaintiff’s application initially (AR 71-75), Plaintiff requested a
11 hearing (AR 76).
12

13 At a hearing held on February 8, 2016, at which Plaintiff appeared with counsel,
14 Administrative Law Judge Sally C. Reason (“ALJ”) heard testimony from Medical Expert,
15 Dr. Anthony Francis, Plaintiff, and Ronald Hatakeyama, Vocational Expert (“VE”). (AR 38-
16 61.) On February 24, 2016, the ALJ issued an unfavorable decision denying Plaintiff’s
17 application for SSI. (AR 22-33.) On June 13, 2017, the Appeals Council denied Plaintiff’s
18 request for review. (AR 2-6.) This timely complaint seeking review of that denial followed.
19 (Dkt. No. 1.)
20

21 **SUMMARY OF ADMINISTRATIVE DECISION**

22

23 Applying the five-step sequential evaluation process, the ALJ found at step one that
24 Plaintiff had not engaged in substantial gainful activity since she applied for SSI. (AR 27.)
25 At step two, the ALJ found that Plaintiff had the following severe impairments: degenerative
26 disc disease of the lumbar spine, mild levoscoliosis of the thoracic spine, morbid obesity, left
27

28 ² Plaintiff was 43 years old on the application date and thus met the agency’s definition of a younger person. *See*
20 C.F.R. § 416.963(c).

1 shoulder rotator cuff tendonitis, back sprain, and opiate dependence. (AR 27.) The ALJ
2 found that Plaintiff’s other medically determinable impairments were non-severe. (*Id.*) At
3 step three, the ALJ found that Plaintiff did not have an impairment or combination of
4 impairments that met or medically equaled the severity of any impairments listed in 20
5 C.F.R. part 404, subpart P, appendix 1 (20 C.F.R. §§ 416.920(d), 416.925, 416.926). (AR
6 28.) The ALJ then determined that Plaintiff had the residual functional capacity (“RFC”) to
7 “perform light work . . . with the following limitations: she can occasionally perform
8 postural activities and she should avoid hazards such as working at heights and climbing
9 ladders, ropes, and scaffolds.” (*Id.*)

10
11 Based on the testimony of the VE, at step four, the ALJ found that Plaintiff could not
12 perform her past relevant work as a certified nurse’s assistant. (AR 31.) The ALJ did find,
13 however, at step five that Plaintiff could perform other jobs existing in the national economy,
14 including companion (DOT³ 309.677-010), a light, semiskilled occupation; and personal
15 attendant (DOT 309.674-014), a light semiskilled occupation. (AR 31-32.) Accordingly, the
16 ALJ concluded that Plaintiff was not disabled within the meaning of the Social Security Act.
17 (AR 32-33.)

18 19 STANDARD OF REVIEW

20
21 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to
22 determine whether it is free from legal error and supported by substantial evidence in the
23 record as a whole. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). “Substantial evidence
24 is ‘more than a mere scintilla but less than a preponderance; it is such relevant evidence as a
25 reasonable mind might accept as adequate to support a conclusion.’” *Gutierrez v. Comm’r of*
26 *Soc. Sec.*, 740 F.3d 519, 522-23 (9th Cir. 2014) (citations omitted). “Even when the
27

28 ³ “DOT” refers to the *Dictionary of Occupational Titles* (U.S. Department of Labor, 1991).

1 evidence is susceptible to more than one rational interpretation, we must uphold the ALJ’s
2 findings if they are supported by inferences reasonably drawn from the record.” *Molina v.*
3 *Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (citation omitted).

4
5 Although this Court cannot substitute its discretion for the Commissioner’s, the Court
6 nonetheless must review the record as a whole, “weighing both the evidence that supports
7 and the evidence that detracts from the Commissioner’s conclusion.” *Lingenfelter v. Astrue*,
8 504 F.3d 1028, 1035 (9th Cir. 2007) (citation omitted); *Desrosiers v. Sec’y of Health &*
9 *Human Servs.*, 846 F.2d 573, 576 (9th Cir. 1988) (citation omitted). “The ALJ is responsible
10 for determining credibility, resolving conflicts in medical testimony, and for resolving
11 ambiguities.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995) (citation omitted).

12
13 The Court will uphold the Commissioner’s decision when the evidence is susceptible
14 to more than one rational interpretation. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir.
15 2005) (citation omitted). However, the Court may review only the reasons stated by the ALJ
16 in his decision “and may not affirm the ALJ on a ground upon which he did not rely.” *Orn*,
17 495 F.3d at 630 (citing *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)). The Court
18 will not reverse the Commissioner’s decision if it is based on harmless error, which exists if
19 the error is “‘inconsequential to the ultimate nondisability determination,’ or that, despite the
20 legal error, ‘the agency’s path may reasonably be discerned.’” *Brown-Hunter v. Colvin*, 806
21 F.3d 487, 492 (9th Cir. 2015) (citations omitted).

22 23 **DISPUTED ISSUE**

24
25 Plaintiff raises a single issue: Whether the ALJ properly considered the medical
26 evidence as contained in the treating opinions. (Joint Stip. at 4.) For the reasons discussed
27 below, the Court concludes that this issue does not warrant reversal of the ALJ’s decision.

28 ///

1 **DISCUSSION**

2
3 **I. Whether the ALJ Properly Evaluated the Treating Physician Opinions and**
4 **Records**

5
6 Plaintiff contends that the ALJ failed to properly weigh the opinions and records of
7 two of her treating physicians, Doctors Karlon Johnson, M.D., and Josh Baek, D.O.. (Joint
8 Stip. at 4-8.)

9
10 **A. Treating Record Evidence**

11
12 Doctors Karlon Johnson, M.D., and Josh Baek, D.O., treated Plaintiff at the Northeast
13 Community Clinic. (AR 193-209, 226-290.) The record shows Plaintiff received treatment
14 at the Northeast Community Clinic from November 9, 2012 through May 20, 2015. (AR
15 193-209, 226-290.) Plaintiff did see doctors other than Doctors Johnson and Baek at the
16 Northeast Community Clinic during that time frame, but Plaintiff does not dispute the ALJ's
17 weighing of these other doctors' findings.

18
19 On January 30, 2013, Plaintiff saw Dr. Baek and reported experiencing back pain for
20 two weeks and requested physical therapy and an x-ray. (AR 202-03.) Dr. Baek observed
21 Plaintiff's gait to be "antalgic due to pain" and noted tenderness on the paravertebral muscles
22 along the thoracic and lumbar spine. (AR 203.) Dr. Baek wrote "chronic pain syndrome"
23 and "backache unspecified" on Plaintiff's chart. (*Id.*) He prescribed Vicodin, Soma, and
24 Ibuprofen and ordered physical therapy and x-rays of Plaintiff's thoracic and lumbar spine.
25 (*Id.*)

26
27 On February 7, 2013, Plaintiff saw Dr. Baek and reported experiencing pain in her left
28 shoulder that she believed was triggered because of her work. (AR 200.) Plaintiff said she

1 had been taking a muscle relaxant, anti-inflammatory, and Vicodin, but was still
2 experiencing pain. (*Id.*) Dr. Baek told her to ice her shoulder, rest, and to keep taking the
3 muscle relaxant and anti-inflammatory. (*Id.*) He also excused her from work for two days,
4 as she requested, and advised her to return if the pain persisted and they would take an MRI
5 to check for a rotator cuff tear. (AR 200-01.)
6

7 On February 25, 2013, Plaintiff underwent x-rays of her thoracic and lumbar spine.
8 (AR 208-09.) The thoracic spine x-ray showed mild levoscoliosis based on a “mild curve of
9 the thoracic spine to the left measuring 5 degrees” but everything else on the thoracic x-ray
10 appeared normal. (AR 208.) The x-ray of Plaintiff’s lumbar spine was normal. (AR 209.)
11

12 On March 12, 2013, Plaintiff saw Dr. Johnson and reported experiencing lower back
13 pain for over a year but said she had only attended one or two physical therapy sessions.
14 (AR 198-99.) Dr. Johnson wrote “backache unspecified” on Plaintiff’s chart. (AR 198.) Dr.
15 Johnson continued Plaintiff’s physical therapy, limited her to lifting no more than five
16 pounds for three weeks, prescribed pain medication including Vicodin, and directed Plaintiff
17 to return for a follow-up in three weeks. (AR 199.) Dr. Johnson also specifically included
18 work restrictions that Plaintiff should not lift or pull more than five pounds, and she should
19 not bend, stoop, or crawl and included a follow-up on the work restriction in three weeks.
20 (AR 199.)
21

22 On April 2, 2013, Plaintiff saw Dr. Johnson for a follow-up on her lower back pain.
23 (AR 196-97.) Plaintiff reported missing her physical therapy sessions, but had a session
24 scheduled for that day. (AR 196.) Findings from x-rays of Plaintiff’s thoracic and lumbar
25 spine on Plaintiff’s chart included “mild levoscoliosis, otherwise WNL,” meaning within
26 normal limits. (AR 196.) Dr. Johnson wrote lumbago and “non-compliant with physical
27 therapy” on Plaintiff’s chart. (AR 196.) Dr. Johnson extended Plaintiff’s work restricts for
28 two weeks and refilled her medications. (AR 196.) Dr. Johnson also noted that he told

1 Plaintiff he “would not extend her work restrictions” if she did not follow his recommended
2 treatment. (AR 196.)
3

4 On May 2, 2013, Plaintiff reported to Dr. Baek that she had experienced back pain for
5 over a year, had finished physical therapy, but still had pain in her mid and lower back that
6 radiated down to her left leg. (AR 194-95.) Dr. Baek noted “lumbago with radiculopathy”
7 and “chronic pain syndrome” on Plaintiff’s chart, continued her work restriction until she
8 could see an orthopedic doctor, and refilled her prescriptions for pain medications. (AR
9 194.) He also referred her to an orthopedic doctor for: “1. Evaluation of the pain which
10 appears to be herniated disc. 2. Treatment of the pain with possible surgery or injection.
11 [and] 3. Order MRI at his/her discretion for confirmation.” (AR 195.)
12

13 On October 4, 2013, Plaintiff saw Dr. Kevin Park for an orthopedic re-evaluation.
14 (AR 277-78.) The record indicates this was a follow-up visit, but no other records from this
15 doctor are included in Plaintiff’s record. Dr. Park diagnosed Plaintiff with “low back pain
16 with underlying L4-L5 and L5-S1 degenerative disc disease with right-sided foraminal
17 stenosis.” (AR 277.) He also noted Plaintiff’s disability status as “permanent stationary”
18 and there was no change in her permanent work restriction or future medical treatment. (AR
19 278.) Plaintiff’s progress notes from the physical examination, however, only indicate
20 tenderness in the lumbosacral spine, a negative straight leg raise test, and normal motor
21 strength, sensory examination, deep tendon reflexes, and toe and heel stance. (AR 277.)
22

23 On January 15, 2014, Plaintiff saw Dr. Johnson and reported experiencing lower back
24 pain for four weeks. (AR 254-55.) Dr. Johnson wrote lumbago on Plaintiff’s chart,
25 prescribed baclofen, voltaren, and “warm water soaks and gentle massage” as needed. (AR
26 254.)

27 ///

28 ///

1 On March 17, 2014, Plaintiff underwent x-rays showing multiple views of her lumbar
2 spine. (AR 274.) The x-rays showed her lumbar spine was normal. (*Id.*)
3

4 On March 13, 2014, Plaintiff underwent an orthopedic consultation examination
5 performed by Dr. Anh Tat Hoang. (AR 219-23.) Dr. Hoang observed “tenderness over
6 lumbar spinous process” but no muscle spasms and no sciatic notch tenderness. (AR 221.)
7 Dr. Hoang noted that Plaintiff winced with pain when trying to perform the straight leg raise
8 test from the supine position. (*Id.*) Plaintiff tested positive for left shoulder rotator cuff
9 impingement. (*Id.*) The x-rays of Plaintiff’s lumbar spine did not reveal any problems. (AR
10 222.) The x-ray of Plaintiff’s left shoulder also did not reveal any problems. (*Id.*) Dr.
11 Hoang diagnosed Plaintiff with “lumbar sprain/strain” and “left shoulder rotator cuff
12 tendinitis.” (*Id.*) Dr. Hoang then opined Plaintiff could perform medium work. (AR 223.)
13

14 On June 6, 2014, Dr. Luigi Galloni, an orthopedic surgeon, examined Plaintiff after a
15 referral for an orthopedic consultation. (AR 275.) Dr. Galloni noted Plaintiff had
16 “tenderness at the lower segment of the L5-S1 level at the midline and the facets.” (AR
17 276.) He also noted “some slight paravertebral muscular tenderness with tension” and that
18 Plaintiff experienced pain in her lower back during the straight leg raise test. (*Id.*) Based on
19 his observations, Dr. Galloni opined Plaintiff had “axial low back pain” and he wanted to
20 “rule out discogenic versus facetogenic pain.” (AR 276.) He recommended “a good
21 restorative physical therapy program for the lower back concentrating on stretching and
22 strengthening,” x-rays of her lumbar spine, an MRI of her lumbar spine, and continued pain
23 medication as directed by her primary doctor. (AR 276.)
24

25 At the ALJ hearing on February 8, 2016, Dr. Anthony Francis testified as the medical
26 expert. (AR 38.) Dr. Francis stated that Plaintiff’s record indicated “chronic
27 musculoskeletal pain” without evidence of radiculopathy and left shoulder strain. (AR 45.)
28 Dr. Francis opined that a medium RFC would be appropriate, but the additional evidence of

1 fibromyalgia presented at the ALJ hearing would also support reducing the RFC to light.⁴
2 (AR 45-47.)

3
4 **B. Applicable Law**
5

6 There are three categories of physicians: treating physicians, examining physicians,
7 and nonexamining physicians. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995); see 20
8 C.F.R. § 416.927.⁵ Treating physician opinions should be given more weight than
9 examining or nonexamining physician opinions. *Orn*, 495 F.3d at 632. If the treating
10 physician’s opinion is not contradicted by another doctor, it may be rejected only if the ALJ
11 provides “clear and convincing reasons supported by substantial evidence in the record.” *Id.*
12 If the treating physician’s opinion is contradicted by another doctor, it may be rejected only
13 by “specific and legitimate reasons supported by substantial evidence in the record.” *Id.*
14

15 Examining physician opinions are given more weight than nonexamining physician
16 opinions. *Lester*, 81 F.3d at 830. If the examining physician’s opinion is not contradicted by
17 another doctor, it too may be rejected only if the ALJ provides clear and convincing reasons
18 supported by substantial evidence in the record. *Id.* If the examining physician’s opinion is
19 contradicted by another doctor, it may be rejected only if there are specific and legitimate
20 reasons supported by substantial evidence in the record. *Id.* at 830-31.

21 ///

22 ///

23 ///

24 _____
25 ⁴ The ALJ noted in her February 2016 decision that Plaintiff was diagnosed with fibromyalgia in December 2015.
26 (AR 27, 33.) The ALJ found that this impairment was nonsevere because it did not meet the twelve-month duration
27 requirement. (AR 27.) The parties do not dispute this.

28 ⁵ Effective March 27, 2017, the Social Security Administration revised its regulations governing the evaluation of
medical opinion evidence, including 20 C.F.R § 416.927. Claims filed before March 27, 2017, are governed by 20 C.F.R.
§ 416.927, while claims filed on or after March 27, 2017 are governed by § 416.920c. Thus, the revisions are not
applicable or relevant to the analysis here of Plaintiff’s December 4, 2013 application for SSI.

1 An ALJ can satisfy the substantial and legitimate reasons standard by “setting out a
2 detailed and thorough summary of the facts and conflicting clinical evidence, stating his
3 interpretations thereof, and making findings.” *Orn*, 495 F.3d at 632.

4 5 **C. Analysis** 6

7 Here, Plaintiff challenges the ALJ’s treatment of the opinions of Drs. Johnson and
8 Baek. (Joint Stip. at 4-8.) Plaintiff argues that the ALJ did not provide any reasoning for
9 rejecting these opinions, but rather substituted her own lay opinion. (Joint Stip. at 6.)
10 Defendant argues that the ALJ provided legally sufficient reasons supported by the record
11 for discounting the opinions, namely that the ALJ relied on the testimony of a medical expert
12 and the opinions referenced by Plaintiff were not opinions of “lasting functional limitations.”
13 (*Id.* at 8-12.)
14

15 The opinions of Drs. Johnson and Baek that Plaintiff contends were rejected without
16 analysis are located at AR 195 and AR 199. (*See* Joint Stip. at 5-6.) Dr. Johnson found
17 Plaintiff had an unspecified backache and directed Plaintiff on March 12, 2013 to lift no
18 more than five pounds for three weeks and also imposed this as a work restriction on
19 Plaintiff with additional work restrictions of no bending, stooping, or crawling for three
20 weeks. (AR 199.) These restrictions were to be re-evaluated at Plaintiff’s follow up
21 appointment three weeks later. (AR 199.) Dr. Baek diagnosed Plaintiff with lumbago and
22 chronic pain symptom and continued Dr. Johnson’s restrictions on May 2, 2013 until
23 Plaintiff could be examined by an orthopedic doctor. (AR 195.)
24

25 Although the ALJ did not refer to these medical records by stating the doctors’ names,
26 the ALJ did address them in detail in her decision. (AR 29.) The ALJ cited to them by
27 exhibit and page number. (AR 29.) She noted the records were from dates prior to the
28 application filing date. (AR 29.) She also noted that: “[t]here were some positive

1 examination findings, but thoracic x-ray imaging revealed only mild levoscoliosis and
2 lumbar x-ray imaging was normal.” (AR 29.) The ALJ continued her evaluation by noting a
3 few months after these x-rays, Plaintiff underwent an orthopedic re-evaluation by Dr. Park in
4 which Plaintiff was diagnosed with “lumbar degenerative disk disease at L4-5 and L5-S1
5 with foraminal stenosis.” (*Id.*) Plaintiff’s recommended treatment plan following this
6 diagnosis included “medication, a back brace, and a home exercise program.” (*Id.*) The ALJ
7 then noted that the record contained no subsequent records from the doctor who did this re-
8 evaluation. (*Id.*)
9

10 The ALJ also noted that the record contained later objective test results, lumbar spine
11 x-rays from 2014, that were normal. (*Id.*) The ALJ pointed out that orthopedic consultative
12 examiner, Dr. Hoang, only diagnosed Plaintiff with lumbar sprain/strain and left shoulder
13 rotator cuff tendonitis. (*Id.*) The ALJ also observed that orthopedic consultative examiner,
14 Dr. Galloni, recommended additional physical therapy and an MRI, but there is no record of
15 either. (AR 30.) The ALJ does not specifically say that Dr. Johnson’s and Dr. Baek’s
16 records are contradicted, but her recitation of the orthopedic examiners findings and opinions
17 shows the treating doctors’ opinions were contradicted by the examining physicians. Thus,
18 the ALJ was required to give specific and legitimate reasons for discounting the opinions of
19 Drs. Johnson and Baek, who were treating physicians. *Orn*, 495 F.3d at 632.
20

21 As noted above, “[t]he ALJ can meet this burden by setting out a detailed and
22 thorough summary of the facts and conflicting clinical evidence, stating his interpretation
23 thereof, and making findings.” *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)
24 (citation omitted). As the Ninth Circuit emphasized in *Magallanes*, an ALJ need not recite
25 “magic words” that “I reject [Drs. Johnson and Baek’s] opinion[s]... because . . .” *Id.* at
26 755. Rather, the Court may properly read the ALJ’s discussion of Dr. Johnson’s and Dr.
27 Baek’s opinions and draw relevant inferences “if those inferences are there to be drawn.” *Id.*
28 at 755.

1 Here, Dr. Johnson’s restrictions on Plaintiff’s work activity were for a brief period of
2 three weeks subject to a follow up appointment. (AR 198-99.) Because these restrictions
3 were for three weeks only, an inference can be drawn that the ALJ did not treat this as a
4 medical opinion identifying ongoing limitations that would support a finding of disability.
5 Similarly, Dr. Baek’s work restriction was to “continue until [Plaintiff] can be seen by an
6 orthopedic doctor.” (AR 194-95.) Further, Dr. Johnson’s progress notes specifically left it
7 to the “ortho doctor” to “[o]rder MRI at his/her discretion for confirmation.” (AR 195.)
8 Here, too, a reasonable inference can be drawn that Dr. Johnson’s notes do not reflect a
9 conclusive diagnosis, but a recommended course of treatment pending further confirmation
10 of Plaintiff’s condition through an MRI at the discretion of an orthopedic specialist.
11 Similarly, Dr. Baek’s progress notes from May 2013 indicate that Plaintiff’s work restriction
12 would continue “until [Plaintiff] can be seen by orthopedic doctor.” (AR 257.) Dr. Baek
13 likewise left it to the orthopedic specialist to order an MRI “at his/her discretion for
14 confirmation.” (*Id.*) Thus, neither Dr. Baek nor Dr. Johnson gave an opinion that Plaintiff
15 has a lasting physical limitation, which is required under Agency regulations for proof of
16 disability. *See* 42 U.S.C. § 1382c(a)(3); 20 C.F.R. §§ 416.909, 416.912 (to establish
17 disability claimant must show the existence of a medically determinable impairment that
18 could be expected to last for a continuous period of not less than twelve months, and the
19 impairment has rendered claimant unable to engage in substantial gainful activity for at least
20 twelve consecutive months). Even so, the ALJ provided adequate explanation for how she
21 viewed these treating doctors’ records in the context of the record as a whole.
22

23 The ALJ addressed these specific records, stating they included “positive examination
24 findings,” but were otherwise unsupported by objective clinical evidence. (AR 29.) The
25 record specifically cited by Plaintiff from Dr. Johnson is dated March 12, 2013. (AR 198-
26 99.) The record specifically cited by Plaintiff from Dr. Baek is dated May 2, 2013. (AR
27 194-95.) Neither of these records include a reference to any supporting objective clinical
28 tests, such as an x-ray, but x-rays of Plaintiff’s thoracic and lumbar spine were taken in

1 February 2013 that revealed mild levoscoliosis of the thoracic spine and a normal lumbar
2 spine. (AR 208-09.)
3

4 “The ALJ need not accept the opinion of any physician, including a treating physician,
5 if that opinion is brief, conclusory, and inadequately supported by clinical findings.”
6 *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002). While the x-ray showed mild
7 levoscoliosis, there is nothing in the record to indicate that the temporary restrictions ordered
8 by Drs. Johnson and Baek were ever converted into permanent restrictions or into opinions
9 on disability. Moreover, while there were positive examination findings, the objective tests
10 showed only “mild levoscoliosis” and were otherwise normal. (AR 29.) The ALJ also noted
11 a normal lumbar x-ray from 2014. (AR 29.) The ALJ’s review of the record for the time
12 period encompassing these two doctor’s opinions shows there was no substantial evidence in
13 the record to support finding their restrictions were anything other than temporary.
14

15 Medical opinions not based on clinical evidence can be rejected. *See Bayliss v.*
16 *Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005). The ALJ noted that while the 2014
17 treatment records from Dr. Johnson “document ongoing pain complaints and requests for
18 medication refills” there were “only occasional objective assessments demonstrating lumbar
19 tenderness and reduced range of motion.” (AR 29.) These are specific and legitimate
20 reasons for discounting Dr. Johnson’s opinions. The ALJ noted that lumbar x-rays taken in
21 March 2014 were normal and the orthopedic consultative examiner, Dr. Hoang, documented
22 “lumbar tenderness and reduced flexion,” but the examination was “otherwise within normal
23 limits.” (*Id.*) Further the ALJ noted that Plaintiff had declined to have injections as well as
24 surgery to help alleviate her back pain. (AR 30.)
25

26 Although the ALJ also addressed the 2015 x-ray that showed Plaintiff had
27 hemisacrilization and pseudarthrosis, the x-rays near the time of Dr. Johnson’s and Dr.
28 Baek’s opinions did not show any such physical abnormality. The objective tests done close

1 in time to the doctors' opinions are the basis for those opinions, and x-rays in 2013 and even
2 in 2014 do not support Plaintiff's suggestion that these doctors had provided sufficient
3 evidence to render Plaintiff disabled by her condition. Moreover, even if these doctors had
4 opined that Plaintiff was disabled, "the treating physician's opinion on the ultimate issue of
5 disability is not necessarily conclusive." *Rodriguez v. Bowen*, 876 F.2d 759, 762 (9th Cir.
6 1989). The ultimate determination of disability is expressly reserved to the Commissioner.
7 (*Id.*)

8
9 The ALJ stated that she gave "great weight" to the opinion of the medical expert, Dr.
10 Anthony Francis, who testified at the ALJ hearing. (AR 30.) The ALJ found that the
11 medical expert had reviewed Plaintiff's record, his medical opinion was well supported by
12 the relevant evidence, and he was an orthopedic specialist with Board certifications in
13 surgery and spinal surgery. (AR 30.) The factors used when weighing medical opinions are:
14 (1) has the source examined Plaintiff; (2) the length, frequency, nature, and extent of the
15 treatment relationship; (3) how well is the opinion supported by relevant evidence; (4) how
16 consistent is the opinion with the record; (5) is the source a specialist; and (6) any other
17 factors. 20 C.F.R. § 416.927(c)(1)-(6).

18
19 Here, as noted, the ALJ thoroughly discussed the opinions of Drs. Johnson and Baek
20 in her decision, and expressly identified the opinion of medical expert, Dr. Francis, as being
21 more consistent with the objective medical evidence. In so doing, even though the ALJ did
22 not expressly assign a weight to the opinions of Dr. Johnson and Dr. Baek, she nonetheless
23 satisfied her obligation to provide a comprehensive summary, make interpretations, and give
24 specific and legitimate reasons for discounting these two treating doctors' medical opinions.
25 *Orn*, 495 F.3d at 632.

26
27 Accordingly, the Court finds no legal error in the ALJ's assessment of the medical
28 opinions of Plaintiff's treating physicians.

1 Even if the ALJ erred by failing to expressly articulate what weight she gave to the
2 opinions of Drs. Johnson and Baek, any error was harmless. Because the ALJ's decision
3 contains specific and legitimate reasons for discounting the opinions of these treating
4 physicians, the ALJ's decision-making path is clearly discernible. Consequently, neither
5 remand for an award of benefits nor remand for further administrative proceedings is
6 warranted and the ALJ's decision must be affirmed.


7
8 **CONCLUSION**

9
10 For the reasons stated above, IT IS ORDERED that the decision of the Commissioner
11 is AFFIRMED.

12
13 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of this
14 Memorandum Opinion and Order and the Judgment on counsel for plaintiff and counsel for
15 defendant.

16
17 LET JUDGMENT BE ENTERED ACCORDINGLY.

18
19 DATE: October 24, 2018



20
21

KAREN L. STEVENSON
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
26
27
28