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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBIN T. KIM,)	NO. CV 17-6807-E
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION
)	
NANCY A. BERRYHILL,)	
Commissioner of Social Security,)	
)	
Defendant.)	
)	

PROCEEDINGS

Plaintiff filed a Complaint on September 15, 2017, seeking review of the Commissioner's denial of benefits. The parties filed a consent to proceed before a United States Magistrate Judge on October 5, 2017. Plaintiff filed a motion for summary judgment on January 18, 2018. Defendant filed a motion for summary judgment on February 8, 2018. The Court has taken both motions under submission without oral argument. See L.R. 7-15; "Order," filed September 19, 2017.

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1 **BACKGROUND**

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3 Plaintiff, a former retail sales representative, asserted

4 disability based on alleged physical and emotional impairments

5 (Administrative Record ("A.R.") 1-774). An Administrative Law Judge

6 ("ALJ") found Plaintiff has severe "non-ischemic cardiomyopathy," but

7 retains the residual functional capacity to perform a restricted range

8 of sedentary work "with standing/walking 2 hours in an 8-hour work day

9 [and] sitting 6 hours in an 8-hour work day" (A.R. 17, 19). Relying

10 on the testimony of a vocational expert, the ALJ determined that a

11 person having this residual functional can perform jobs existing in

12 significant numbers in the national economy, including the jobs of

13 "bench hand assembler," "table worker" and "agricultural sorter" (A.R.

14 23-24, 47). Accordingly, the ALJ found Plaintiff not disabled (A.R.

15 24). The Appeals Council denied review (A.R. 1-3).

16

17 **STANDARD OF REVIEW**

18

19 Under 42 U.S.C. section 405(g), this Court reviews the

20 Administration's decision to determine if: (1) the Administration's

21 findings are supported by substantial evidence; and (2) the

22 Administration used correct legal standards. See Carmickle v.

23 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,

24 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner,

25 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such

26 relevant evidence as a reasonable mind might accept as adequate to

27 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401

28 (1971) (citation and quotations omitted); see also Widmark v.

1 Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

2
3 If the evidence can support either outcome, the court may
4 not substitute its judgment for that of the ALJ. But the
5 Commissioner's decision cannot be affirmed simply by
6 isolating a specific quantum of supporting evidence.
7 Rather, a court must consider the record as a whole,
8 weighing both evidence that supports and evidence that
9 detracts from the [administrative] conclusion.

10
11 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and
12 quotations omitted).

13
14 **DISCUSSION**

15
16 After consideration of the record as a whole, Defendant's motion
17 is granted and Plaintiff's motion is denied. The Administration's
18 findings are supported by substantial evidence and are free from
19 material¹ legal error.

20
21 Plaintiff argues that the ALJ erred by rejecting the opinion of
22 an unnamed physician alleged to have been one of Plaintiff's treating
23 physicians. No material error occurred.

24 ///

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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 At the end of the voluminous record is a one-page form bearing an
2 illegible signature (A.R. 774). This form evidently was signed by a
3 physician who saw Plaintiff only twice (April 28, 2017 and May 16,
4 2017). The form states, "Please excuse [Plaintiff] from work . . .
5 Due to . . . Illness." Id. In the "Remarks" section of the form, the
6 physician wrote that Plaintiff is "not able to walk longer than 20-30
7 minutes," experiences shortness of breath climbing stairs and cannot
8 lift more than 10 pounds. Id. The administrative record does not
9 contain any treatment notes from this physician or any examination or
10 test results from this physician.

11
12 Addressing this one-page form, the ALJ stated:

13
14 I give little weight to this assessment because it is not
15 consistent with the objective findings or the record as a
16 whole. It is a one-time statement with no testing involved.
17 The doctor admitted that he only saw the claimant twice.
18 . . ." (A.R. 21).

19
20 Generally, a treating² physician's conclusions "must be given
21 substantial weight." Embrey v. Bowen, 849 F.2d 418, 422 (9th Cir.
22 1988); see Rodriguez v. Bowen, 876 F.2d 759, 762 (9th Cir. 1989) ("the
23 ALJ must give sufficient weight to the subjective aspects of a
24 doctor's opinion. . . . This is especially true when the opinion is
25 that of a treating physician") (citation omitted); see also Orn v.
26 Astrue, 495 F.3d 625, 631-33 (9th Cir. 2007) (discussing deference

27
28 ² The Court assumes arguendo that the signer of the one-
page form qualifies as a "treating physician."

1 owed to treating physician opinions). Where the treating physician's
2 opinions are contradicted, "if the ALJ wishes to disregard the
3 opinion[s] of the treating physician he . . . must make findings
4 setting forth specific, legitimate reasons for doing so that are based
5 on substantial evidence in the record." Winans v. Bowen, 853 F.2d
6 643, 647 (9th Cir. 1987) (citation, quotations and brackets omitted);
7 see Rodriguez v. Bowen, 876 F.2d at 762 ("The ALJ may disregard the
8 treating physician's opinion, but only by setting forth specific,
9 legitimate reasons for doing so, and this decision must itself be
10 based on substantial evidence") (citation and quotations omitted).

11
12 Contrary to Plaintiff's arguments, the ALJ's stated reasons for
13 discounting the unnamed physician's opinion suffice under the
14 applicable case law. See Batson v. Commissioner, 359 F.3d 1190, 1195
15 (9th Cir. 2004) ("an ALJ may discredit treating physicians' opinions
16 that are conclusory, brief, and unsupported by the record as a whole
17 . . . or by objective medical findings"); Connett v. Barnhart, 340
18 F.3d 871, 875 (9th Cir. 2003) (treating physician's opinion properly
19 rejected where physician's records "provide no basis for the
20 functional restrictions he opined should be imposed on [the
21 claimant]"); Matney v. Sullivan, 981 F.2d 1016, 1019-20 (9th Cir.
22 1992) ("The ALJ need not accept an opinion of a physician - even a
23 treating physician - if it is conclusory and brief and is
24 unsupported by clinical findings").

25
26 Plaintiff cites the Social Security Administration's Hearings,
27 Appeals, and Litigation Manual ("HALLEX") in arguing that the ALJ
28 should have recontacted the unnamed physician. However, "HALLEX is a

1 purely internal manual" which "does not have the force and effect of
2 law." Moore v. Apfel, 216 F.3d 864, 868 (9th Cir. 2000). HALLEX "is
3 not binding on the Commissioner." Id. Therefore, the Court "will not
4 review allegations of noncompliance with the [HALLEX] manual." Id.;
5 see also Bales v. Berryhill, 688 Fed. App'x 495, 496 (9th Cir. 2017).
6

7 Alternatively, even if error occurred, Plaintiff has failed to
8 carry his burden of proving that the error was harmful. See Molina v.
9 Astrue, 674 F.3d 1104, 1111, 1115 (9th Cir. 2012) (a social security
10 claimant has the burden of proving that the ALJ's error was
11 consequential to the ultimate non-disability determination). The
12 unnamed physician's restriction of Plaintiff to a ten-pound lifting
13 capacity is not inconsistent with the residual functional capacity the
14 ALJ found to exist. See 20 C.F.R. § 404.1567(a) ("Sedentary work
15 involves lifting no more than 10 pounds at a time . . ."). None of
16 the jobs identified as jobs Plaintiff can perform appear to require
17 stair climbing or extensive walking. See Dictionary of Occupational
18 Titles ("DOT") 715.684-026, 739.687-182, 521.687-086.³ Accordingly,
19 the ALJ's failure to accord "substantial weight" to the opinion of the
20 unnamed physician was inconsequential to the ultimate non-disability
21 determination. See Casey v. Colvin, 637 Fed. App'x 389, 390 (9th Cir.
22 2016) (error harmless where claimant failed to demonstrate that the
23 additional limitation would have had any effect on the kinds of jobs
24

25 ³ Furthermore, the unnamed physician's opinion that
26 Plaintiff is "not able to walk longer than 20-30 minutes" almost
27 certainly meant 20-30 minutes of continuous walking, rather than
28 a cumulative total of 20-30 minutes of walking in an 8-hour work
day. If so, this opinion is not inconsistent with the residual
functional capacity the ALJ found to exist.

1 the vocational expert testified the claimant would be capable of
2 performing).

3
4 Plaintiff also argues that the ALJ failed to develop the record
5 fully and fairly. Proper development of an administrative record
6 nearly always involves a matter of degree. One plausibly may argue in
7 virtually every case that additional investigation or inquiry might
8 have been useful. Under the circumstances of the present case,
9 however, this Court is unable to conclude the ALJ failed to discharge
10 his obligation fully and fairly to develop the record.

11
12 Even if the Court were to assume, arguendo, some error in record
13 development, the result would be the same. Plaintiff has failed to
14 demonstrate any harm resulting from the ALJ's failure further to
15 develop the record. Further development would not have made any
16 difference to the outcome of the case.

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