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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

IRENE ODETTE HILL,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social
Security,

Defendant.

CASE NO. CV 17-8788 SS

MEMORANDUM DECISION AND ORDER

I.

INTRODUCTION

Irene Odette Hill ("Plaintiff") brings this action, seeking to overturn the decision of the Acting Commissioner of Social Security (the "Commissioner" or "Agency") denying her application for Supplemental Security Income. The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate Judge. (Dkt. Nos. 11-13). For the reasons stated below, the Court AFFIRMS the Commissioner's decision.

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II.

PROCEDURAL HISTORY

On July 25, 2014, Plaintiff filed an application for Supplemental Security Income ("SSI") pursuant to Title XVI of the Social Security Act (the "Act") alleging a disability onset date of July 25, 2014. (AR 83, 169-76). The Commissioner denied Plaintiff's application initially and upon reconsideration. (AR 83, 97, 100-04, 109-14). Thereafter, Plaintiff requested a hearing before an Administrative Law Judge ("ALJ"), which took place on June 16, 2016. (AR 46-62, 116). The ALJ issued an adverse decision on September 7, 2016, finding that Plaintiff was not disabled because there are jobs that exist in significant numbers in the national economy that she can perform. (AR 18-24). On November 7, 2017, the Appeals Council denied Plaintiff's request for review. (AR 1-7). This action followed on December 6, 2017.

III.

FACTUAL BACKGROUND

Plaintiff was born on October 18, 1965. (AR 169). She was fifty (50) years old when she appeared before the ALJ on June 16, 2016. (AR 46). Plaintiff is unmarried and lives with her nine-year-old son. (AR 53-54, 169, 196). Plaintiff has a high-school education. (AR 190). She has not worked in the fifteen years prior to her alleged onset date. (AR 190). She alleges disability due to high blood pressure and leg pain. (AR 189).

1 **A. Plaintiff's Statements And Testimony**

2
3 On July 31, 2014, Plaintiff stated that she is unable to work
4 due to symptoms and restrictions resulting from high blood pressure
5 and leg pain. (AR 194). She asserted experiencing debilitating
6 pain in her leg and arm. (AR 194). She has difficulty bending,
7 kneeling, rising from a sitting position, hand manipulation,
8 grasping objects, balancing, and concentrating. (AR 194). She
9 also experiences shortness of breath, depression, anxiety,
10 disturbed sleep patterns, and memory loss. (AR 194).

11
12 On August 12, 2014, Plaintiff submitted an Adult Function
13 Report. (AR 204-12). She asserted that her impairments limit her
14 ability to lift, stand, bend, sit, kneel, and reach. (AR 204).
15 She has trouble sleeping, dressing, and bathing due to her pain.
16 (AR 205). Plaintiff is able to feed herself and do light household
17 chores. (AR 206). She is able to walk, ride in a car, use public
18 transportation, and shop for food, clothing, and personal items.
19 (AR 207). Plaintiff watches television, plays games with her son,
20 socializes with family, and attends church on a regular basis. (AR
21 208).¹

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25 ¹ On August 11, 2014, Robin Scott, who has known Plaintiff for
26 most of her life, submitted a Third Party Function Report, which
27 largely mirrored Plaintiff's Function Report. (Compare AR 204-12,
28 with id. 195-203; see id. 89 (State agency consultant noting that
Plaintiff's alleged activities of daily living mirrors third
party's statements)).

1 At her June 2016 hearing, Plaintiff testified that she has
2 not worked in the past fifteen years due to health problems,
3 including her heart situation, poor circulation in her legs, and
4 tingling. (AR 50). She experiences daily heart flutters, along
5 with chest pain. (AR 51). About once a month, Plaintiff has
6 swelling and numbness in her left leg and foot, which lasts for
7 three to four days. (AR 52). When this occurs, she walks with a
8 limp. (AR 52). Plaintiff's poor circulation also causes heel pain
9 in both feet. (AR 52).

10
11 Plaintiff testified that she can walk for less than a block
12 before needing to rest for twenty-five minutes due to shortness of
13 breath. (AR 54-55). She can stand for ten to fifteen minutes
14 before needing to sit down and rest for twenty-five minutes. (AR
15 54-55). She needs to elevate her legs for one-to-two hours daily.
16 (AR 55).

17
18 **B. September 2008 Decision**

19
20 In a prior decision dated September 25, 2008 ("September 2008
21 Decision"), the ALJ found that Plaintiff's congenital and benign
22 arterial heart blockage and hypertension limited her to a reduced
23 range of light work. (AR 68-69). Specifically, the September 2008
24 Decision determined that Plaintiff was able to walk and stand for
25 six hours, occasionally climb, balance, kneel, bend, crouch, stoop,
26 and crawl, and frequently walk on uneven surfaces, climb ladders,
27 and work at heights. (AR 69). Based on Plaintiff's RFC, age,
28 education, work experience, and the VE's testimony, the ALJ found

1 that Plaintiff could perform her past relevant work as a cafeteria
2 worker, both as she performed it and as generally performed. (AR
3 69-70). Thus, the ALJ found that Plaintiff had not been under a
4 disability, as defined by the Act, since June 26, 2007, the date
5 of the prior application. (AR 70).

6
7 **C. Treatment History**

8
9 In support of her current application, Plaintiff submitted
10 only a few medical records from Pagiel Shechter, M.D., her treating
11 physician. (AR 281-92). An August 2014 x-ray of Plaintiff's right
12 knee indicated mild calcified enthesopathy at the superior pole of
13 the patella. (AR 291). On August 31, 2014, Dr. Shechter opined
14 that Plaintiff is disabled due to hypertension, heart disease,
15 arthritis of knees, and cardiomyopathy. (AR 263).

16
17 On September 13, 2014, after treating Plaintiff on a monthly
18 basis for "years," Dr. Shechter completed a Medical Source
19 Statement. (AR 266-68). He diagnosed hypertension, cardiovascular
20 disease, anemia, and degenerative joint disease and noted that
21 Plaintiff's prognosis was "guarded." (AR 266). Plaintiff's
22 symptoms include pain and weakness. (AR 266). Dr. Shechter opined
23 that Plaintiff can stand or walk less than two hours in an eight-
24 hour workday and requires a job that permits her to shift positions
25 at will. (AR 267). He further opined that Plaintiff can
26 occasionally lift less than ten pounds, rarely lift ten pounds,
27 rarely twist or stoop, and never crouch, squat, climb ladders, or
28 climb stairs. (AR 267). Dr. Shechter also opined that Plaintiff's

1 pain is occasionally severe enough to interfere with the attention
2 and concentration necessary to perform even simple work tasks. (AR
3 268). He concluded that Plaintiff is capable of low stress jobs
4 and would likely miss one day a month as a result of her
5 impairments. (AR 268).

6
7 On February 3, 2015, Plaintiff complained of leg numbness.
8 (AR 285). A physical examination was unremarkable. (AR 285).
9 While a blood test indicated an increased risk for diabetes, in
10 all other respects the test was unremarkable. (AR 286-90). Dr.
11 Shechter diagnosed hypertension and cardiovascular disease and
12 referred Plaintiff to a podiatrist. (AR 285). A June 2015 follow-
13 up examination was unremarkable. (AR 284). Dr. Shechter diagnosed
14 hypertension, cardiovascular disease, and neuropathy and referred
15 her for a mammogram and a GI examination. (AR 284). On October
16 8, 2015, Plaintiff complained of dizziness, frequent urination,
17 and weight loss. (AR 283). A physical examination was
18 unremarkable. (AR 283). Dr. Shechter adjusted Plaintiff's
19 medications and suggested that Plaintiff drink more water and fruit
20 juices. (AR 283). On February 18, 2016, Plaintiff complained of
21 bilateral heel pain, but less dizziness. (AR 282). Other than
22 tenderness in Plaintiff's heels, a physical examination was normal.
23 (AR 282). Dr. Shechter ordered bilateral heel x-rays. (AR 282).
24 A March 2016 follow-up examination was unremarkable. (AR 281).

25
26 On September 26, 2014, Steven B. Gerber, M.D., conducted a
27 complete internal medicine evaluation on behalf of the
28 Commissioner. (AR 270-74). Plaintiff's chief complaint was leg

1 pain. (AR 270). She reported bilateral, constant, sharp pain in
2 her lower legs, which is exacerbated by prolonged sitting and
3 walking and relieved with medication. (AR 270). On examination,
4 Plaintiff was in no distress. (AR 271). She was able to get on
5 and off the examination table without difficulty and no resting
6 ataxia or dyspnea was noted. (AR 271). Plaintiff had normal range
7 of motion and strength in all extremities and was able to ambulate
8 normally. (AR 271, 273-74). A review of Plaintiff's
9 cardiovascular systems indicated no evidence of heaves, thrills,
10 murmurs, rubs, or gallops, and she had regular heart rate and
11 rhythm. (AR 272). In summary, Dr. Gerber noted "no physical
12 findings on examination to account for [Plaintiff's] subjective
13 complaint[s]." (AR 274). He concluded that Plaintiff "has no
14 functional limitations at this time." (AR 274).

15
16 **D. Medical Expert**

17
18 John R. Morse, M.D., a cardio disease specialist, testified
19 at Plaintiff's hearing as a medical expert. (AR 56-58; see id.
20 153). Dr. Morse affirmed that he reviewed all of the medical
21 records. He concluded that "the evidence documents no medically
22 determinable impairments, none whatsoever." (AR 57).

23
24 Dr. Schechter's [sic] notes are woefully insufficient.
25 There's a statement about cardiomyopathy, hypertension,
26 cardiomyopathy [sic], which is not supported by anything
27 in the record. All I have is a CE examiner in September
28 [20]14, which found no, no objective abnormalities, no

1 medically determinable impairments, and offered no
2 residual functional capacity limitations. The rest of
3 the records are of no use whatsoever. What you've read
4 to me [from the September 2008 Decision] is interesting.
5 I suspect it is not indicative of underlying organic
6 heart disease. It may or may not be, but we would need
7 echocardiographic data, we would need a cardiological
8 consult, we would need a whole bunch of information to
9 validate a medically determinable impairment in the
10 cardiovascular system.

11
12 (AR 57) (citations omitted). When asked about the results of
13 Plaintiff's February 2015 blood test, Dr. Morris confirmed that it
14 indicated "prediabetic, but not diabetic." (AR 57). He also
15 observed that the August 2014 x-ray "may indicate some arthritis
16 of [Plaintiff's] right knee." (AR 57).

17
18 **E. State Agency Consultants**

19
20 On October 6, 2014, L. DeSouza, M.D., a State agency
21 consultant, reviewed the available medical record, including
22 records associated with the September 2008 Decision, and concluded
23 that Plaintiff's congenital anomalies of the heart is a severe
24 impairment. (AR 76-78). Dr. DeSouza opined that Plaintiff can
25 occasionally lift twenty pounds, frequently lift ten pounds, and
26 can stand, walk, and sit for six hours in an eight-hour workday,
27 with normal breaks. (AR 79). He further concluded that Plaintiff
28 can occasionally crawl and climb ramps, stairs, ladders, ropes,

1 and scaffolds, and can frequently balance, kneel, and crouch. (AR
2 79-80). Dr. DeSouza, after reviewing the September 2008 Decision,
3 suggested adopting the prior ALJ's RFC, "as there is no new material
4 change" in Plaintiff's impairments. (AR 77).

5
6 On February 25, 2015, B. Morgan, M.D., another State agency
7 consultant, reviewed the available medical record and opined that
8 Plaintiff can frequently climb ramps and stairs. (AR 93).
9 Otherwise, Dr. Morgan concurred with Dr. DeSouza's assessment. (AR
10 89, 91-93).

11 12 IV.

13 THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

14
15 To qualify for disability benefits, a claimant must
16 demonstrate a medically determinable physical or mental impairment
17 that prevents the claimant from engaging in substantial gainful
18 activity and that is expected to result in death or to last for a
19 continuous period of at least twelve months. Reddick v. Chater,
20 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)).
21 The impairment must render the claimant incapable of performing
22 work previously performed or any other substantial gainful
23 employment that exists in the national economy. Tackett v. Apfel,
24 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.
25 § 423(d)(2)(A)).
26
27
28

1 To decide if a claimant is entitled to benefits, an ALJ
2 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The
3 steps are:

4
5 (1) Is the claimant presently engaged in substantial gainful
6 activity? If so, the claimant is found not disabled. If
7 not, proceed to step two.

8 (2) Is the claimant's impairment severe? If not, the
9 claimant is found not disabled. If so, proceed to step
10 three.

11 (3) Does the claimant's impairment meet or equal one of the
12 specific impairments described in 20 C.F.R. Part 404,
13 Subpart P, Appendix 1? If so, the claimant is found
14 disabled. If not, proceed to step four.

15 (4) Is the claimant capable of performing his past work? If
16 so, the claimant is found not disabled. If not, proceed
17 to step five.

18 (5) Is the claimant able to do any other work? If not, the
19 claimant is found disabled. If so, the claimant is found
20 not disabled.

21
22 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,
23 262 F.3d 949, 953-54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b)-
24 (g) (1), 416.920(b)-(g) (1).

25
26 The claimant has the burden of proof at steps one through four
27 and the Commissioner has the burden of proof at step five.
28 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an

1 affirmative duty to assist the claimant in developing the record
2 at every step of the inquiry. Id. at 954. If, at step four, the
3 claimant meets his or her burden of establishing an inability to
4 perform past work, the Commissioner must show that the claimant
5 can perform some other work that exists in "significant numbers"
6 in the national economy, taking into account the claimant's
7 residual functional capacity ("RFC"), age, education, and work
8 experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at
9 721; 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner
10 may do so by the testimony of a VE or by reference to the Medical-
11 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,
12 Appendix 2 (commonly known as "the grids"). Osenbrock v. Apfel,
13 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both
14 exertional (strength-related) and non-exertional limitations, the
15 Grids are inapplicable and the ALJ must take the testimony of a
16 vocational expert ("VE"). Moore v. Apfel, 216 F.3d 864, 869 (9th
17 Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335, 1340 (9th Cir.
18 1988)).

19
20 **V.**

21 **THE ALJ'S DECISION**

22
23 The ALJ employed the five-step sequential evaluation process
24 and concluded that Plaintiff was not disabled within the meaning
25 of the Act. (AR 18). At step one, the ALJ found that Plaintiff
26 has not engaged in substantial gainful activity since July 25,
27 2014, the application date. (AR 20). At step two, the ALJ found
28 that Plaintiff's history of congenital and benign arterial heart

1 blockage and hypertension are severe impairments. (AR 20). At
2 step three, the ALJ determined that Plaintiff does not have an
3 impairment or combination of impairments that meet or medically
4 equal the severity of any of the listings enumerated in the
5 regulations. (AR 20).

6
7 The ALJ then assessed Plaintiff's RFC and concluded she can
8 perform less than the full range of light work as defined in 20
9 C.F.R. § 416.967(b):² "[Plaintiff] can sit, stand and walk for 6
10 hours in an 8 hour day with normal breaks. She can occasionally
11 climb ladders, ropes and scaffolds and can frequently climb ramps
12 and stairs. [Plaintiff] can frequently balance, kneel and crouch
13 and occasionally crawl." (AR 20-21). At step four, the ALJ found
14 that Plaintiff has no past relevant work. (AR 23). Based on
15 Plaintiff's RFC, age, education, work experience, and the VE's
16 testimony, the ALJ determined at step five that there are jobs that
17 exist in significant numbers in the national economy that Plaintiff
18 can perform, including light inspector hand packager, bench
19 assembler, and routing clerk. (AR 23-24). Accordingly, the ALJ

20
21 _____
22 ² "Light work involves lifting no more than 20 pounds at a time
23 with frequent lifting or carrying of objects weighing up to 10
24 pounds. Even though the weight lifted may be very little, a job
25 is in this category when it requires a good deal of walking or
26 standing, or when it involves sitting most of the time with some
27 pushing and pulling of arm or leg controls. To be considered
28 capable of performing a full or wide range of light work, you must
have the ability to do substantially all of these activities. If
someone can do light work, we determine that he or she can also do
sedentary work, unless there are additional limiting factors such
as loss of fine dexterity or inability to sit for long periods of
time." 20 C.F.R. § 416.967(b).

1 found that Plaintiff has not been under a disability, as defined
2 by the Act, since July 25, 2014, the application date. (AR 24).

3
4 **VI.**

5 **STANDARD OF REVIEW**

6
7 Under 42 U.S.C. § 405(g), a district court may review the
8 Commissioner's decision to deny benefits. "[The] court may set
9 aside the Commissioner's denial of benefits when the ALJ's findings
10 are based on legal error or are not supported by substantial
11 evidence in the record as a whole." Aukland v. Massanari, 257 F.3d
12 1033, 1035 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097); see
13 also Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing
14 Fair v. Bowen, 885 F.2d 597, 601 (9th Cir. 1989)).

15
16 "Substantial evidence is more than a scintilla, but less than
17 a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v.
18 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant
19 evidence which a reasonable person might accept as adequate to
20 support a conclusion." (Id.). To determine whether substantial
21 evidence supports a finding, the court must "'consider the record
22 as a whole, weighing both evidence that supports and evidence that
23 detracts from the [Commissioner's] conclusion.'" Aukland, 257 F.3d
24 at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.
25 1993)). If the evidence can reasonably support either affirming
26 or reversing that conclusion, the court may not substitute its
27 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-

1 21 (citing Flaten v. Sec'y of Health & Human Servs., 44 F.3d 1453,
2 1457 (9th Cir. 1995)).

3
4 **VII.**

5 **DISCUSSION**

6
7 Plaintiff asserts that the ALJ erred in rejecting the
8 functional assessments of her treating physician, Dr. Shechter.
9 (Dkt. No. 20 at 4-7).

10
11 An ALJ must take into account all medical opinions of record.
12 20 C.F.R. §§ 404.1527(b), 416.927(b). The regulations "distinguish
13 among the opinions of three types of physicians: (1) those who
14 treat the claimant (treating physicians); (2) those who examine
15 but do not treat the claimant (examining physicians); and (3) those
16 who neither examine nor treat the claimant (nonexamining
17 physicians)." Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995),
18 as amended (Apr. 9, 1996). "Generally, a treating physician's
19 opinion carries more weight than an examining physician's, and an
20 examining physician's opinion carries more weight than a reviewing
21 [(nonexamining)] physician's." Holohan v. Massanari, 246 F.3d
22 1195, 1202 (9th Cir. 2001); accord Garrison v. Colvin, 759 F.3d
23 995, 1012 (9th Cir. 2014). "The weight afforded a non-examining
24 physician's testimony depends 'on the degree to which they provide
25 supporting explanations for their opinions.' " Ryan v. Comm'r of
26 Soc. Sec., 528 F.3d 1194, 1201 (9th Cir. 2008) (quoting 20 C.F.R.
27 § 404.1527(d)(3)).
28

1 The medical opinion of a claimant's treating physician is
2 given "controlling weight" so long as it "is well-supported by
3 medically acceptable clinical and laboratory diagnostic techniques
4 and is not inconsistent with the other substantial evidence in [the
5 claimant's] case record." 20 C.F.R. §§ 404.1527(c)(2),
6 416.927(c)(2). "When a treating doctor's opinion is not
7 controlling, it is weighted according to factors such as the length
8 of the treatment relationship and the frequency of examination,
9 the nature and extent of the treatment relationship,
10 supportability, and consistency with the record." Revels v.
11 Berryhill, 874 F.3d 648, 654 (9th Cir. 2017); see also 20 C.F.R.
12 §§ 404.1527(c)(2)-(6), 416.927(c)(2)-(6). Greater weight is also
13 given to the "opinion of a specialist about medical issues related
14 to his or her area of specialty." 20 C.F.R. §§ 404.1527(c)(5),
15 416.927(c)(5).

16
17 "To reject an uncontradicted opinion of a treating or
18 examining doctor, an ALJ must state clear and convincing reasons
19 that are supported by substantial evidence." Bayliss v. Barnhart,
20 427 F.3d 1211, 1216 (9th Cir. 2005). "If a treating or examining
21 doctor's opinion is contradicted by another doctor's opinion, an
22 ALJ may only reject it by providing specific and legitimate reasons
23 that are supported by substantial evidence." Id.; see also
24 Reddick, 157 F.3d at 725 (the "reasons for rejecting a treating
25 doctor's credible opinion on disability are comparable to those
26 required for rejecting a treating doctor's medical opinion.").
27 "The ALJ can meet this burden by setting out a detailed and thorough
28 summary of the facts and conflicting clinical evidence, stating

1 his interpretation thereof, and making findings.” Trevizo v.
2 Berryhill, 871 F.3d 664, 675 (9th Cir. 2017) (citation omitted).
3 “When an examining physician relies on the same clinical findings
4 as a treating physician, but differs only in his or her conclusions,
5 the conclusions of the examining physician are not ‘substantial
6 evidence.’ ” Orn v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007).
7 Additionally, “[t]he opinion of a nonexamining physician cannot by
8 itself constitute substantial evidence that justifies the rejection
9 of the opinion of either an examining physician or a treating
10 physician.” Lester, 81 F.3d at 831 (emphasis in original).
11 Finally, when weighing conflicting medical opinions, an ALJ may
12 reject an opinion that is conclusory, brief, and unsupported by
13 clinical findings. Bayliss, 427 F.3d at 1216; Tonapetyan v.
14 Halter, 242 F.3d 1144, 1149 (9th Cir. 2001).

15
16 In September 2014, Dr. Shechter completed a Medical Sources
17 Statement. (AR 266-68). Dr. Shechter opined that pain and weakness
18 from Plaintiff’s impairments limit her to standing or walking less
19 than two hours in an eight-hour workday. (AR 266-67). He also
20 opined that Plaintiff needs a job that permits shifting positions
21 at will from sitting, standing, or walking. (AR 267). Dr. Shechter
22 concluded that Plaintiff can occasionally lift less than ten
23 pounds, frequently lift ten pounds, rarely twist or stoop (bend),
24 and never crouch, squat, or climb ladders or stairs. (AR 267).
25 He also opined that Plaintiff’s pain is severe enough to
26 occasionally interfere with her ability to sustain the attention
27 and concentration necessary to perform even simple work tasks. (AR
28

1 268). Finally, Dr. Shechter concluded that Plaintiff's impairments
2 would cause her to miss one day of work per month.³ (AR 268).

3
4 The ALJ rejected Dr. Shechter's opinion because it was "not
5 supported by any findings, test results or laboratory results."
6 (AR 22). Because Dr. Shechter's opinion was contradicted by the
7 consultative examiner, the medical expert, and the State Agency
8 consultants, the Court reviews the ALJ's rejection of Dr.
9 Shechter's opinion for "specific and legitimate reasons that are
10 supported by substantial evidence." Bayliss, 427 F.3d at 1216;
11 see Moore v. Comm'r of Soc. Sec. Admin., 278 F.3d 920, 924 (9th
12 Cir. 2002) ("The ALJ could reject the opinions of Moore's examining
13 physicians, contradicted by a nonexamining physician, only for
14 specific and legitimate reasons that are supported by substantial
15 evidence in the record.") (citation omitted). The Court finds that
16 the ALJ provided specific and legitimate reasons, supported by
17 substantial evidence, for rejecting Dr. Shechter's opinion.

18
19 Dr. Shechter's largely "check-off" opinion was not supported
20 by objective or clinical evidence. Medical opinions that are
21 inadequately explained or lack supporting clinical or laboratory
22 findings are entitled to less weight. Crane v. Shalala, 76 F.3d
23 251, 253 (9th Cir. 1996) (ALJ properly rejected "check-off reports

24 ³ On August 31, 2016, Dr. Shechter opined that Plaintiff "is
25 disabled due to hypertension, heart disease, osteoarthritis of
26 knees, [and] cardiomyopathy." (AR 263). However, whether a
27 claimant is disabled is an issue reserved to the Commissioner. 20
28 C.F.R. § 416.927(d)(1) ("We are responsible for making the
determination or decision about whether you meet the statutory
definition of disability.").

1 that did not contain any explanation of the bases of their
2 conclusions"); Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir.
3 1995) (ALJ properly rejected physician's opinion where it was
4 "conclusory and unsubstantiated by relevant medical
5 documentation"); see also 20 C.F.R. § 416.927(c)(3) ("The more a
6 medical source presents relevant evidence to support a medical
7 opinion, particularly medical signs and laboratory findings, the
8 more weight we will give that medical opinion. The better an
9 explanation a source provides for a medical opinion, the more
10 weight we will give that medical opinion."). The only record
11 submitted that predated Dr. Shechter's opinion, an x-ray of
12 Plaintiff's right knee, indicated only mild arthritis. (AR 291;
13 see id. 57). Further, physical examinations by Dr. Shechter during
14 the relevant period did not reflect the extreme functional
15 limitations that he assessed. See Buck v. Berryhill, 869 F.3d
16 1040, 1050 (9th Cir. 2017) ("A physician's opinion can be
17 discredited based on contradictions between the opinion and the
18 physician's own notes."). Physical examinations in February, June,
19 and October 2015 were all unremarkable. (AR 283-85). In February
20 2016, other than tenderness in Plaintiff's heels, a physical
21 examination was normal. (AR 282). A March 2016 follow-up
22 examination was unremarkable. (AR 281).

23
24 Dr. Shechter variably diagnosed hypertension, cardiovascular
25 disease, arthritis, cardiomyopathy, anemia, degenerative joint
26 disease, and neuropathy. (AR 22, 263, 266, 284). However, the
27 mere existence of these impairments does not provide conclusive
28 support for the extreme disabling limitations opined by Dr.

1 Shechter. Indeed, “[t]he mere existence of an impairment is
2 insufficient proof of a disability.” Matthews v. Shalala, 10 F.3d
3 678, 680 (9th Cir. 1993); see Key v. Heckler, 754 F.2d 1545, 1549
4 (9th Cir. 1985) (“The mere diagnosis of an impairment . . . is not
5 sufficient to sustain a finding of disability.”). Even if a
6 claimant receives a particular diagnosis, it does not necessarily
7 follow that the claimant is disabled, because it is the claimant’s
8 symptoms and true limitations that generally determine whether she
9 is disabled. See Rollins v. Massanari, 261 F.3d 853, 856 (9th Cir.
10 2001). Dr. Shechter cites no clinical tests in support of his
11 extreme limitations.

12
13 Plaintiff’s impairments have resulted primarily in symptoms
14 of pain, weakness, numbness, and dizziness. (AR 22, 266, 283,
15 285). It appears, however, that Dr. Shechter has been able to
16 ameliorate many of Plaintiff’s symptoms with medications. (See,
17 e.g., AR 282-83) (after adjusting Plaintiff’s medications, her
18 dizziness symptoms improved). “Impairments that can be controlled
19 effectively with medication are not disabling for the purpose of
20 determining eligibility for [disability] benefits.” Warre v.
21 Comm’r of Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir. 2006).

22
23 Plaintiff argues that the ALJ’s “single sentence” rejection
24 of Dr. Shechter’s opinion does not provide the level of specificity
25 required by Ninth Circuit caselaw. (Dkt. No. 20 at 6-7). Indeed,
26 “an ALJ errs when he rejects a medical opinion or assigns it little
27 weight while doing nothing more than ignoring it, asserting without
28 explanation that another medical opinion is more persuasive, or

1 criticizing it with boilerplate language that fails to offer a
2 substantive basis for his conclusion." Garrison, 759 F.3d at 1012-
3 13. Here, however, the ALJ provided a detailed discussion of the
4 medical records and the various medical opinions, explaining why
5 he assigned each of the opinions the weight that he did. (AR 22-
6 23). Given that Dr. Shechter's discrete records, including his
7 opinions, consisted of only sixteen pages (AR 263, 266-68, 278,
8 281-91), the ALJ's discussion of Dr. Shechter's opinion was
9 sufficiently specific and supported by substantial evidence.

10
11 Further, the opinions of Drs. Gerber and Morse support the
12 ALJ's rejection of Dr. Shechter's opinion and the ALJ's
13 nondisability finding. Tonapetyan, 242 F.3d at 1149 ("The contrary
14 opinions of [the consultative examiner and the medical expert]
15 serve as additional specific and legitimate reasons for rejecting
16 the opinions of [the treating physicians], and provide assurance
17 that the record was sufficiently developed with regard to the issue
18 of physical impairment."). After performing a complete internal
19 medicine evaluation, Dr. Gerber found "no physical findings on
20 examination to account for [Plaintiff's] subjective complaint[s]." (AR 274; see id. 22). Based on his formal testing and observations
21 of Plaintiff's spontaneous actions, Dr. Gerber concluded that
22 Plaintiff "has no functional limitations at this time." (AR 274;
23 see id. 22). After reviewing the entire medical file, Dr. Morse
24 testified that "the evidence documents no medically determinable
25 impairments, none whatsoever." (AR 57). He found Dr. Shechter's
26 treatment notes "woefully insufficient" to document the existence
27 of any of Dr. Shechter's diagnoses. (AR 57). Other than Dr.

1 Gerber's report, Dr. Morse found the medical records "of no use
2 whatsoever." (AR 57).

3
4 Finally, the ALJ properly rejected Dr. Shechter's opinion
5 because it was contradicted by the State agency consultants'
6 opinions. (AR 22-23). "Where the opinion of the claimant's
7 treating physician is contradicted, and the opinion of a
8 nontreating source is based on independent clinical findings that
9 differ from those of the treating physician, the opinion of the
10 nontreating source may itself be substantial evidence; it is then
11 solely the province of the ALJ to resolve the conflict." Andrews
12 v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995). The State agency
13 consultants found that because the record included "no new material
14 change," from the RFC determination previously set forth in the
15 September 2008 Decision. (AR 77, 89). "[A]n ALJ's findings that
16 a claimant is not disabled creates a presumption that the claimant
17 continued to be able to work after that date." Vasquez v. Astrue,
18 572 F.3d 586, 597 (9th Cir. 2009) (citation omitted). The September
19 2008 Decision found that Plaintiff was capable of a reduced range
20 of light jobs and determined that she was not disabled because she
21 was capable of performing her past relevant job as a cafeteria
22 worker, both as she performed it and as generally performed. (AR
23 69-70). Thus, because the current record indicated "no material
24 change," the ALJ largely adopted the prior decision's RFC.
25 (Compare AR 69, with id. 20-21). Indeed, the ALJ gave Plaintiff
26 "the benefit of the doubt" (AR 22) that her impairments had not
27 improved since the September 2008 Decision was issued.

1 Plaintiff contends that "if the ALJ believed that Dr. Shechter
2 did not provide sufficient supporting documentation, he should have
3 sought clarification." (Dkt. No. 20 at 6-7 & n.3). However, it
4 is Plaintiff's burden to establish her disability with acceptable
5 medical evidence. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir.
6 2005) ("The claimant carries the initial burden of proving a
7 disability in steps one through four of the analysis."). Indeed,
8 "[f]ailure to prove disability justifies a denial of benefits."
9 Ukolov v. Barnhart, 420 F.3d 1002, 1004 (9th Cir. 2005). In narrow
10 circumstances, "[a]n ALJ is required to recontact a doctor . . .
11 if the doctor's report is ambiguous or insufficient for the ALJ to
12 make a disability determination." Bayliss, 427 F.3d at 1217; see
13 20 C.F.R. §§ 404.1512(e), 416.912(e). Here, there were no
14 ambiguities in Dr. Shechter's report. He clearly opined that
15 Plaintiff was unable to stand or walk more than two hours in an
16 eight-hour workday and could only occasionally lift less than ten
17 pounds. (AR 267). The ALJ did not reject Dr. Shechter's opinion
18 because it was ambiguous. Instead, the ALJ rejected the opinion
19 because it was not supported by any objective evidence and was
20 directly contrary to the opinions of Drs. Gerber and Morris. (AR
21 22-23).

22
23 The Court finds that the ALJ provided specific and legitimate
24 reasons, supported by substantial evidence in the record, for
25 rejecting Dr. Shechter's opinion, and no remand is required.
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VIII.

CONCLUSION

Consistent with the foregoing, IT IS ORDERED that Judgment be entered AFFIRMING the decision of the Commissioner. The Clerk of the Court shall serve copies of this Order and the Judgment on counsel for both parties.

DATED: August 10, 2018

/s/
SUZANNE H. SEGAL
UNITED STATES MAGISTRATE JUDGE

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