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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CAREN CUNNINGHAM,)	Case No. EDCV 09-1635-JEM
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
v.)	AFFIRMING DECISION OF
)	COMMISSIONER
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

PROCEEDINGS

On September 14, 2009, Caren Cunningham (“Plaintiff” or “Claimant”) filed a complaint seeking review of the decision by the Commissioner of Social Security (“Commissioner”) denying Plaintiff’s application for Supplemental Social Security income (“SSI”) benefits. The Commissioner filed an Answer on March 15, 2010. On June 17, 2010, the parties filed a Joint Stipulation (“JS”).

Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before the Magistrate Judge. The matter is now ready for decision. After reviewing the pleadings, transcripts, and administrative record (“AR”), the Court concludes that the Commissioner’s decision should be affirmed and the case dismissed with prejudice.

BACKGROUND

1
2 Plaintiff is a 39 year old female who was determined to have the medically
3 determinable severe impairments of degenerative disc disease of the lumbar spine, chronic
4 obstructive pulmonary disease secondary to tobacco abuse and somatoform disorder. (AR
5 10.) Plaintiff has not engaged in substantial gainful activity since the July 13, 2006,
6 application date. (AR 10.)

7 Plaintiff's claim for SSI benefits was denied initially on December 16, 2006, and on
8 reconsideration on September 14, 2007. (AR 8.) She filed a timely request for hearing,
9 which was held before Administrative Law Judge ("ALJ") F. Keith Varni on January 6, 2009,
10 in San Bernardino, California. (AR 8.) Claimant appeared and testified. (AR 8.) So did
11 vocational expert Joseph M. Mooney. (AR 8.)

12 The ALJ issued an unfavorable decision on May 8, 2009. (AR 8-17.) The ALJ
13 concluded that Claimant's impairments did not meet or equal a listing (AR 13-14) and
14 assessed a residual functional capacity ("RFC")¹ for light work with a limitation of standing or
15 working for 2 hours in an 8 hour workday. (AR 12.) Nonexertional limitations include "never
16 climbing ladders, ropes or scaffolds; occasionally climbing ramps or stairs; occasionally
17 balancing, stooping, kneeling, crouching and crawling; avoiding all exposure to hazards
18 such as dangerous moving machinery, electric shock, radiation and unprotected heights;
19 avoiding concentrated exposure to extreme cold; and mentally limited to unskilled work
20 (simple, routine and repetitive tasks) in a nonpublic work environment." (AR 12.) The ALJ
21 discredited Plaintiff's credibility as to her alleged subjective pain symptoms (AR 13-15), a
22 finding not challenged by Plaintiff.

23 The ALJ found that Claimant is unable to perform her prior work as a smoke shop
24 cashier, casino cashier, and gas station cashier. (AR 15.) The ALJ, however, concluded
25 that there were other jobs in the national economy that Plaintiff could perform, including

26
27 ¹ Residual functional capacity is what one "can still do despite [his or her] limitations"
28 and represents an assessment "based on all the relevant evidence." 20 C.F.R. §§
404.1545(a)(1), 416.945(a)(1).

1 table worker, small part or bench assembler and polisher/finisher. (AR 16.) Consequently,
2 the ALJ found Claimant not disabled within the meaning of the Social Security Act. (AR 16.)

3 **DISPUTED ISSUES**

4 As reflected in the Joint Stipulation, the disputed issues that Plaintiff is raising as
5 grounds for reversal are as follows:

- 6 1. Whether the ALJ properly developed the record.
- 7 2. Whether the ALJ properly considered the treating doctor's opinion regarding
8 Plaintiff's medication side effects.
- 9 3. Whether the ALJ properly considered the consultative examiner's opinion.
- 10 4. Whether the ALJ properly considered the treating physician's opinion and properly
11 developed the record regarding Plaintiff's need for a walker or cane.

12 **STANDARD OF REVIEW**

13 Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine
14 whether the ALJ's findings are supported by substantial evidence and whether the proper
15 legal standards were applied. DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991).
16 Substantial evidence means "more than a mere scintilla' but less than a preponderance."
17 Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v. Perales, 402
18 U.S. 389, 401 (1971)).

19 Substantial evidence is "such relevant evidence as a reasonable mind might accept
20 as adequate to support a conclusion." Richardson, 402 U.S. at 401 (internal quotations and
21 citations omitted). This Court must review the record as a whole and consider adverse as
22 well as supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir.
23 2006). Where evidence is susceptible to more than one rational interpretation, the ALJ's
24 decision must be upheld. Morgan v. Comm'r, 169 F.3d 595, 599 (9th Cir. 1999). "However,
25 a reviewing court must consider the entire record as a whole and may not affirm simply by
26 isolating a 'specific quantum of supporting evidence.'" Robbins, 466 F.3d at 882 (quoting
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1 Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495 F.3d
2 625, 630 (9th Cir. 2007).

3 **SEQUENTIAL EVALUATION**

4 The Social Security Act defines disability as the “inability to engage in any substantial
5 gainful activity by reason of any medically determinable physical or mental impairment
6 which can be expected to result in death or . . . can be expected to last for a continuous
7 period of not less than 12 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The
8 Commissioner has established a five-step sequential process to determine whether a
9 claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920.

10 The first step is to determine whether the claimant is presently engaging in
11 substantial gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the
12 claimant is engaging in substantially gainful activity, disability benefits will be denied.
13 Bowen v. Yuckert, 482 U.S. 137, 140 (1987). Second, the ALJ must determine whether the
14 claimant has a severe impairment or combination of impairments. Parra, 481 F.3d at 746.
15 Third, the ALJ must determine whether the impairment is listed, or equivalent to an
16 impairment listed, in Appendix I of the regulations. Id. If the impediment meets or equals
17 one of the listed impairments, the claimant is presumptively disabled. Bowen, 482 U.S. at
18 141. Fourth, the ALJ must determine whether the impairment prevents the claimant from
19 doing past relevant work (PRW). Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir. 2001).
20 Before making the step four determination, the ALJ first must determine the claimant’s RFC.
21 20 C.F.R. § 416.920(e). The RFC must consider all of the claimant’s impairments, including
22 those that are not severe. 20 C.F.R. §§ 416.920(e), 416.945(a)(2); Social Security Ruling
23 (“SSR”) 96-8p. If the claimant cannot perform his or her past relevant work, the ALJ
24 proceeds to the fifth step and must determine whether the impairment prevents the claimant
25 from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864, 869
26 (9th Cir. 2000).

1 The claimant bears the burden of proving steps one through four, consistent with the
2 general rule that at all times the burden is on the claimant to establish his or her entitlement
3 to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established by the
4 claimant, the burden shifts to the Commissioner to show that the claimant may perform
5 other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). If the
6 Commissioner cannot meet this burden, then the claimant is disabled and entitled to
7 benefits. Id.

8 DISCUSSION

9 I. PLAINTIFF'S MEDICAL BACKGROUND

10 After receiving epidural anesthesia for a hysterectomy in 2006, Claimant has
11 complained of pain and numbness ever since. (AR 10.) Physical exams, MRIs and nerve
12 conduction studies, however, were normal except for mild degenerative changes of the
13 lumbar spine and mild disc bulging and no neuropathy. (AR 10-11.) A treating physician
14 nonetheless prescribed a medley of strong narcotic medications, including hydrocodone,
15 diazepam, morphine, and valium. (AR 11.) Claimant also was prescribed methodone and
16 neurontin for back pain. (AR 11.) Other medications have included Xanax, Norco, Singulair
17 (for asthma), gabapen (gabapentin), loritab, albuterol, amitriptyhine, flonase, sumatriptan,
18 topiramate, zortex, zyrtec, topamax, Advair, Flovent, and Dilaudid. (AR 33, 37, 38, 107,
19 134, 149, 173, 192, 247, 262.)

20 The consulting orthopedist Dr. Tarno did not believe there was any medical
21 justification for such medications and that Claimant was overmedicated. He diagnosed
22 probable narcotic dependency. (AR 11, 14, 261, 264.) He did not understand how an
23 epidural injection could produce persistent back pain. (AR 262.)

24 A consulting mental examination also was normal, although Dr. Larson did diagnose
25 pain disorder and mood disorder. (AR 11.)

1 **II. THE ALJ DID NOT FAIL TO**
2 **DEVELOP THE RECORD ON OTHER JOBS**

3 The ALJ found that Plaintiff could not perform her past relevant work. (AR 15.) At
4 step five of the sequential process, however, the ALJ determined, based on the testimony of
5 vocational expert (“VE”) Joseph Mooney, that Claimant could perform other jobs in the
6 national economy, specifically that of table worker, assembler, and finisher. (AR 16.)
7 Plaintiff complains that neither the ALJ nor the VE provided the job code numbers from the
8 Dictionary of Occupational Titles (“DICOT”). This was error, Plaintiff contends, because her
9 RFC precludes exposure to “dangerous moving machinery” and the identified jobs
10 “potentially” could involve such dangerous machinery.

11 The ALJ, however, met his step five burden to establish that Plaintiff could perform
12 the specified jobs. There is no Social Security regulation or case authority that requires an
13 ALJ or VE to list DICOT job code numbers. The ALJ, moreover, because of Claimant’s
14 nonexertional limitations (AR 16), properly consulted and relied on the VE’s testimony,
15 which constitutes substantial evidence. Moore, 216 F.3d at 869-70. An ALJ may rely on a
16 VE’s response to a hypothetical question containing all of the RFC limitations found credible
17 by the ALJ and supported by substantial evidence. Bayliss v. Barnhart, 427 F.3d 1211,
18 1217-18 (9th Cir. 2005). Here, the ALJ provided the VE with all of Plaintiff’s RFC limitations,
19 including avoidance of exposure to dangerous working machinery. (AR 40-41.) The VE
20 testified that, with the assessed limitations, Claimant could perform the jobs of table worker,
21 assembler and finisher. (AR 41.)

22 The Ninth Circuit has held that the ALJ must inquire whether the VE is deviating from
23 DICOT and obtain a reasonable explanation based on persuasive evidence for any
24 deviation. SSR 00-4p, 2000 WL 1898704; Massachi v. Astrue, 486 F.3d 1149, 1152-1153
25 (9th Cir. 2007). Failure to inquire, however, has been held harmless error if there is no
26 conflict or if the VE provided sufficient support for his or her conclusions so as to justify any
27 conflict. Id. at 1154 n.19.
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1 Here, the ALJ made a specific finding that there was no inconsistency between the
2 VE's testimony and DICOT: "Pursuant to SSR 00-4p, the vocational expert's testimony is
3 consistent with the information contained in the Dictionary of Occupational Titles." (AR 16.)
4 Although this finding is somewhat conclusory, there is in fact no conflict between the VE's
5 testimony and the DICOT job descriptions. Claimant initially argued only that the identified
6 jobs "potentially" involved dangerous moving machinery and that the ALJ failed to develop
7 the record by not examining the DICOT job descriptions to determine if they did. The
8 Commissioner responded by providing the job code numbers and establishing that the job
9 descriptions for table worker (DICOT 739.687-182), assembler (700.684-014) and finisher
10 (731.687-014) do not require exposure to "dangerous moving machinery" precluded by
11 Claimant's RFC. Claimant's reply was that the table worker and assembler jobs involve
12 moving machinery -- examining tiles passing along a conveyor (table worker) and using a
13 foot press (for assembling jewelry). Claimant's assertion is belied by the information in
14 DICOT. For all three jobs specified by the VE, the information provided in DICOT for
15 "moving mechanical parts" is "Not Present - Activity or condition does not exist." Moving
16 machinery, moreover, is not "dangerous" moving machinery. Also, Claimant does not
17 even contend that the finisher job involves moving machinery, much less dangerous
18 moving machinery.

19 There was no evidence that the VE departed from the DICOT or that the
20 specified jobs involved dangerous moving machinery or were inconsistent with
21 Claimant's RFC. The ALJ made a specific finding that the VE's testimony was
22 consistent with DICOT job information. (AR 16.) Thus, any error by the ALJ in not
23 expressly inquiring whether the VE was deviating from DICOT was harmless and
24 there was no failure to develop the record adequately. The ALJ properly relied on the
25 VE's testimony in making his step five determination that Plaintiff could perform other
26 jobs in the national economy. The ALJ carried the Commissioner's burden in making
27 that determination.

1 **III. THE ALJ PROPERLY DISCOUNTED THE TREATING**
2 **DOCTOR’S OPINION ON MEDICATION SIDE EFFECTS**

3 Dr. Samuel Wilson, M.D., in a September 16, 2008, Physical Capacities
4 evaluation form, opined that Plaintiff’s pain medications, because of their sedating
5 effect, “might” affect her ability to work. (AR 364.) Plaintiff herself indicated that she
6 is unable to work because her many medications make her “sleepy” and “dopey.”
7 (AR 34, 102, 138, 150.) Plaintiff contends that the ALJ improperly rejected Dr.
8 Wilson’s opinion and failed to evaluate Plaintiff’s medication side effects.

9 Plaintiff’s argument has no merit. If a treating physician’s opinion is
10 contradicted by another doctor, such as an examining physician, the ALJ may reject
11 the treating physician’s opinion by providing specific, legitimate reasons, supported
12 by substantial evidence in the record. Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir.
13 1995); Orn, 495 F.3d at 632; Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002);
14 Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995). Here, the ALJ rejected
15 Dr. Wilson’s opinion for specific and legitimate reasons supported by substantial
16 evidence.

17 First, the ALJ was not obligated to accept Dr. Wilson’s equivocal opinion that
18 Plaintiff “might” affect her ability to work because it was “brief, conclusory, and
19 inadequately supported by clinical findings.” Thomas, 278 F.3d at 957 (“The ALJ
20 need not accept the opinion of any physician, even a treating physician, if that
21 opinion is brief, conclusory and inadequately supported by clinical findings”); see also
22 Batson v. Comm’r of Soc. Sec. Adm., 359 F.3d 1190, 1195 (9th Cir. 2004); Matney v.
23 Sullivan, 981 F.2d 1016, 1019 (9th Cir. 1992). The ALJ in this case specifically
24 discounted Dr. Wilson’s opinion because it was “brief, conclusory, and inadequately
25 supported by clinical findings.” (AR 15.) Dr. Wilson’s opinion was a check-box form
26 with little accompanying narrative or treatment notes. Crane v. Shalala, 76 F.3d 251,
27 253 (9th Cir. 1996) (ALJ may reject check-off reports that do not explain basis for
28 conclusions). The ALJ properly rejected Dr. Wilson’s opinion.

1 Second, the ALJ found there was no medical justification for the strong pain
2 medications that Claimant was taking. Physical and psychological exams and MRI
3 scans were essentially normal except for mild lumber strain, and “it is questionable
4 whether the Claimant even has any significant degenerative disc disease given the
5 minimal findings on repeat MRI scans.” (AR 10-11, 13.) The orthopedic consulting
6 examiner Dr. Tarno opined that Claimant does not have a history consistent with a
7 severe back problem. (AR 14.) Relying on Dr. Tarno’s evaluation, the ALJ
8 concluded:

9 The claimant is clearly overmedicated and probably has a
10 diagnosis of narcotic dependence (Exhibit 6F, 9). It is hard to
11 believe the claimant has been prescribed a medley of strong
12 narcotic pain medications, including morphine and methodone, for
13 “back pain” without any underlying objective findings. It is even
14 more surprising that the claimant has been prescribed methodone
15 without first being prescribed conservative treatment methods such
16 as physical therapy and pain management. The claimant has not
17 even been referred to an orthopedic surgeon or neurologist for
18 further evaluation of her pain.

19 (AR 14.) Plaintiff’s assertion that the ALJ made this finding without seeking the
20 opinion of a medical expert is simply wrong. The ALJ clearly was referring to
21 Dr. Tarno’s opinion at Exhibit 6F, 9 that Claimant was overmedicated (AR 264) and
22 also referred to his opinion about narcotic dependency elsewhere in the decision.
23 (AR 11.)

24 Third, the ALJ properly discounted Plaintiff’s credibility because her subjective
25 pain allegations were “significantly out of proportion to objective pathology.” (AR 13.)
26 The ALJ concluded that Claimant’s assertion that she must spend most of the day in
27 bed because of pain is “simply not credible.” (AR 13.) She also has exhibited poor
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1 work motivation, choosing not to work for years when she could have done so. (AR
2 14-15.) Significantly, Claimant does not challenge or even address the ALJ's
3 discounting of Plaintiff's credibility in regard to her subjective pain complaints.

4 The ALJ did not fail to evaluate Plaintiff's medication side effects. The ALJ
5 properly rejected the argument that Claimant could not work because of medication
6 side effects. An ALJ should consider all factors that might have a significant impact
7 on an individual's ability to work, including the side effects of medication. SSR 96-7p;
8 Erickson v. Shalala, 9 F.3d 813, 817-18 (9th Cir. 1993), citing Varney v. Secretary of
9 HHS, 846 F.2d 581, 585 (9th Cir. 1987) (superseded by statute on other grounds,
10 see Bunnell v. Sullivan, 912 F.2d 1149, 1153-54 (9th Cir. 1990)). Under Varney, an
11 ALJ may not reject a claimant's testimony about the subjective limitations of
12 medication side effects without making specific findings similar to those required for
13 excess pain testimony. Varney, 846 F.2d at 585. Thus, where there is medical
14 evidence of impairments that reasonably could cause a claimant's symptoms, an ALJ
15 can reject a claimant's testimony only for specific, clear and convincing reasons
16 based on substantial evidence unless there is evidence of malingering. See, e.g.,
17 Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998).

18 Here, the ALJ found that Claimant's impairments could cause her subjective
19 pain symptoms (AR 13) but discounted her credibility and made findings of
20 malingering. (AR 13-15.) Cases in this Circuit have found that alleged medication
21 side effects can be disregarded if unsupported by medical findings. Gallegos v.
22 Astrue, 2010 WL 330242 at *2-*3 (C.D. Cal. 2010) (complaints of medication side
23 effects may be ignored if unsupported by objective medical evidence, particularly
24 where credibility has been rejected); Mitchell v. Astrue, 2008 WL 4793678 at *4-*5
25 (C.D. Cal. 2008) (failure to discuss side effects not error where unsupported by
26 objective findings). Although those cases concern medical evidence of medication
27 side effects rather than medical evidence of pain as is the case here, the same
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1 principle is applicable. Howard v. Heckler, 782 F.2d 1484, 1488 (9th Cir. 1986)
2 (subjective complaints of pain may be disregarded if unsupported by clinical findings).
3 The ALJ decision does not dispute that the strong narcotic medications taken by
4 Plaintiff would cause side effects but rejects the need for such medications which, if
5 discontinued or reduced, would not prevent Claimant from working. Thus,
6 Claimant's argument that the ALJ failed to evaluate her medication side effects
7 misses the point of the ALJ's decision. The ALJ found that there was no medical
8 justification for Claimant's medications on which Claimant has become dependent.

9 The ALJ had specific, legitimate reasons supported by substantial evidence for
10 rejecting Dr. Wilson's opinion that Plaintiff's medications "might" affect her ability to
11 work, and did not fail to evaluate Plaintiff's medication side effects. There was no
12 error.

13 **IV. THE ALJ PROPERLY CONSIDERED THE** 14 **CONSULTATIVE EXAMINER'S OPINION**

15 Claimant's next argument is that the ALJ failed to indicate whether he was
16 accepting or rejecting the opinion of the consulting psychological examiner L.D.
17 Larson, Ph.D. that Plaintiff's pain medications "could impact her ability to maintain
18 adequate focus and attention." (AR 253.) This argument fails for the same reason it
19 failed in regard to Dr. Wilson. The ALJ reasonably concluded that Plaintiff's
20 subjective complaints of pain were not credible and that there was no medical
21 justification for the strong narcotic medications that she was (is) taking.

22 **V. THE ALJ DID NOT ERR REGARDING** 23 **PLAINTIFF'S NEED FOR A CANE**

24 Claimant contends that the ALJ failed to provide specific and legitimate reasons for
25 rejecting Dr. Wilson's opinion that Plaintiff needs a cane or walker to stand or walk. (AR
26 363.) Claimant also argues that the ALJ failed to develop the record adequately on
27 Plaintiff's need for a cane. Claimant's assertions are, in effect, also a challenge to the ALJ's
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1 RFC which does not contain any limitations that a cane or walker is necessary to walk or
2 stand.

3 The ALJ, however, rejected Dr. Wilson's opinion, which was disputed, for specific,
4 legitimate reasons supported by substantial evidence. First, Dr. Tarno, a Board certified
5 orthopedic consulting examiner, opined that Plaintiff does not have "a history that is
6 consistent with any cause of severe back problems." (AR 264.) He observed that she
7 came into his office walking fully erect although using a cane to assist in ambulation
8 because of balance issues, not pain. (AR 262.) Dr. Tarno specifically found that a cane or
9 other assistive device was not necessary for ambulation and gave an assessment that
10 Plaintiff could stand or walk at least 2 hours in an 8 hour workday. (AR 259.) Also, a
11 February 24, 2006, treatment note from University Medical Center in Las Vegas indicated
12 that "the patient is ambulating around with a normal gait." (AR 269.)

13 Second, the ALJ specifically rejected Plaintiff's contention that she needs or even
14 was prescribed a walker:

15 With regard to the claimant's contention that she was prescribed a
16 walker, this allegation is not supported by the record. First of all, as
17 discussed, the objective medical evidence does not document the need
18 for a walker. Indeed, exams show that the claimant has no difficulty
19 ambulating without any assistive device. When seen for an initial visit at
20 High Desert Community Care Center, where Dr. Samuel Wilson works,
21 there is [*sic*] note under the weight section which simply states "in
22 walker" (Exhibit 15F/22). There is nothing in the High Desert Community
23 Care Center records showing a walker was prescribed and that the
24 claimant has an impairment supported by objective clinical findings
25 supporting the need for a walker. It would appear that the claimant
26 arrived with a walker and from that it was imputed the claimant requires
27 the use of a walker.

1 (AR 14.) These comments were made as part of the ALJ's rejection of Plaintiff's credibility
2 on her subjective pain allegations, a finding Claimant does not contest.

3 Third, the ALJ specifically rejected Dr. Wilson's opinion:

4 As for the opinion evidence, the undersigned gives little weight to the
5 functional assessment completed by Dr. Samuel Wilson at High Desert
6 Community Care Center finding the claimant cannot perform even
7 sedentary work on a sustained basis due to back pain and pain
8 medications, and needs a walker or cane to stand and walk (Exhibit
9 16F). I give no weight to his opinion that the claimant is unable to work,
10 and little weight to his opinion that the claimant is only capable of far less
11 than sedentary exertion. Nothing in his treating records or anywhere
12 else in the record even begins to support the extreme limitations he
13 assessed for this disability claim. In fact, his ridiculous assessments are
14 flatly contradicted by the objective clinical findings of record, including
15 physical exams performed at High Desert Community Care Center,
16 where Dr. Wilson works. Either Dr. Wilson was ignorant of the objective
17 diagnostic findings in the record or chose to ignore them. Accordingly, I
18 cannot give significant weight to Dr. Wilson's statement since his opinion
19 is brief, conclusory, and inadequately supported by clinical findings (20
20 CFR 416.927(d)(2)).

21 (AR 15.) Plaintiff argues that the ALJ failed to develop the record fully by not recontacting
22 Dr. Wilson to obtain clarification of his opinion on Plaintiff's need for walker. This argument
23 fails because there was nothing ambiguous about Dr. Wilson's opinion, the evidence was
24 sufficient to make a disability determination, Bayliss, 427 F.3d at 1217, and the ALJ
25 correctly discounted Dr. Wilson's opinion because it was a checkbox evaluation that was
26 "brief, conclusory, and inadequately supported by clinical findings." (AR 15.) See Batson,
27 359 F.3d at 1195.

1 The ALJ did not err in rejecting Dr. Wilson's opinion regarding the need for a cane.
2 The ALJ's RFC was supported by substantial evidence.

3 **ORDER**

4 IT IS HEREBY ORDERED that Judgment be entered affirming decision of the
5 Commissioner of Social Security and dismissing the case with prejudice.

6 LET JUDGMENT BE ENTERED ACCORDINGLY.

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8 DATED: December 1, 2010

/s/ John E. McDermott
JOHN E. MCDERMOTT
UNITED STATES MAGISTRATE JUDGE

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