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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

KIMBERLY ROBERTS SPENCER,)	No. ED CV 13-00069-VBK
)	
Plaintiff,)	MEMORANDUM OPINION
)	AND ORDER
v.)	
)	(Social Security Case)
CAROLYN W. COLVIN, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the Administrative Record ("AR") before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified AR.

Plaintiff raises the following issue:

1. Whether the Administrative Law Judge ("ALJ") properly

1 "The medical records reveal the claimant has not generally
2 received the type of medical treatment one would expect for
3 a totally disabled individual. There were virtually no
4 treatment notes for the claimant's back."

5 (Id.)

6
7 This secondary basis, which the Court will discuss, is further
8 significant, because at the brief hearing before the ALJ, no Medical
9 Expert was called.

10 Both the law and the clear rules governing assessment of
11 subjective symptom testimony are so established, that the Court
12 wonders why such a case should come before it. In the absence of
13 malingering (and none was demonstrated or found in this record), it is
14 up to the ALJ to set forth "clear and convincing reasons" to reject
15 pain and limitation testimony. See Smolen v. Chater, 80 F.3d 1273,
16 1291 (9th Cir. 1996); Dodrill v. Shalala, 12 F.3d 915, 918 (9th Cir.
17 1993). To permit judicial review, case precedent requires that the
18 ALJ must "specifically identify what testimony is credible and what
19 evidence undermines the claimant's complaints." Greger v. Barnhart,
20 464 F.3d 968, 972 (9th Cir. 2006). See also Dodrill v. Shalala,
21 supra, 12 F.3d at 918, and Parra v. Astrue, 481 F.3d 742, 750 (9th
22 Cir. 2007). These authorities make it clear that the use of
23 boilerplate language will never suffice. Moreover, the Court must
24 turn to the four corners of the ALJ's Decision to determine whether it
25 is supported by substantial evidence, and whether, in the case of a
26 credibility analysis, it is supported by clear and convincing
27 evidence. Most of the Commissioner's argument in the JS cites the
28 Commissioner's opinion of the medical evidence in the record, but this

1 cannot be substituted for a Decision which adequately and clearly
2 states the basis for its conclusions. Indeed, the Commissioner's own
3 Rulings provide exactly this instruction. SSR 96-7p requires that a
4 credibility finding "must be sufficiently specific to make clear to
5 the individual and to any subsequent reviewers the weight the
6 adjudicator gave to the individual's statements and the reason for
7 that weight."

8 The ALJ's Decision is further undermined by the fact that his
9 conclusions as to credibility rely upon his own opinion: both as to
10 what treatment would be expected for an individual such as this
11 Plaintiff, and second, his observations of Plaintiff's physical
12 demeanor at the short hearing. Even according some specificity to the
13 ALJ's determination that Plaintiff has not generally received the type
14 of treatment one would expect, this is belied by the record. The
15 Court need not reiterate the substantial references to the record set
16 forth by Plaintiff in the JS at pp. 6, et seq. Suffice it to say that
17 Plaintiff complained of back and joint pain as early as May 2009 (AR
18 186), and that physical examinations corroborate that she has
19 objective limitations. For example, on November 30, 2009, Plaintiff
20 was treated at University Pain Consultants, complaining of low back
21 and right leg pain. (AR 206-207.) Physical examination indicated she
22 had positive tenderness, positive facet loading, antalgic gait, and
23 positive straight leg raising on the right side. (Id.) She received
24 a diagnosis of thoracic or lumbosacral neuritis or radiculitis and
25 osteoarthritis. (Id.) She received a prescription for Vicodin and an
26 MRI of her lumbar spine was ordered. (AR 207.)

27 Other reports of objective treatment in the record are consistent
28 with the above conclusions. Moreover, in addition to receiving pain

1 medications, Plaintiff has undergone a cortisone injection in her
2 right knee (AR 361). The record indicates that she received
3 continuous treatment for knee problems throughout 2010, with cortisone
4 injections in both knees. (AR 331-359.) The next year, she received
5 a syndisc one injection her left knee (AR 329). She reported that her
6 pain is severe and it becomes worse when she stands, walks, or does
7 other activities. (AR 383-387.) She received prescriptions for
8 various drugs for her neuropathic pain. (AR 387.) In 2009, treating
9 physician Dr. Leung noted that conservative modalities of treatment
10 had failed and he recommended surgical consultation, which Plaintiff
11 at that time declined. (AR 395.)

12 The above is not intended to be complete summary of the medical
13 evidence in the record, but simply demonstrates that Plaintiff has
14 received substantial and fairly continuous treatment over a period of
15 several years for her pain complaints; has been medicated for this;
16 and has been referred for surgical consultation. Thus, the Court has
17 no way to glean what the ALJ meant with regard to a type of medical
18 treatment that would be expected, but which Plaintiff has not
19 received.

20 The other basis for the ALJ's credibility determination is his
21 observation that Plaintiff demonstrated an "apparent lack of
22 discomfort during the hearing ..." While giving this "some slight
23 weight," because it is the only other stated basis for the credibility
24 determination, it must be evaluated. Plaintiff characterizes this
25 part of the ALJ's Decision as "sit and squirm" jurisprudence, which
26 has been noted by the Ninth Circuit for many years as an impermissible
27 basis for credibility assessment. See *Perminteer v. Heckler*, 765 F.2d
28 870, 872 (9th Cir. 1985). Even at that, the Commissioner depreciates

