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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

GARY ADRIAN, et al.,)	No. ED CV 13-00897-VBK
)	
Plaintiffs,)	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 issues:

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

1 evaluated the opinions of the treating physician;

2 2. Whether the ALJ properly evaluated the opinions of the
3 consultative psychiatrist; and

4 3. Whether the ALJ properly evaluated the opinions of the
5 Agreed Medical Examiner.

6 (JS at 3.)

7
8 Since the Court determines that the first issue is dispositive of
9 the outcome, the Court declines to address the second and third
10 issues.

11 This Memorandum Opinion will constitute the Court's findings of
12 fact and conclusions of law. After reviewing the matter, the Court
13 concludes that for the reasons set forth, the Decision of the
14 Commissioner must be reversed and the matter remanded for calculation
15 of benefits.

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17 I

18 **THE ALJ FAILED TO PROPERLY EVALUATE THE OPINIONS**
19 **OF TREATING PHYSICIAN DR. STEIGER**

20 Joylynn Adrian ("Claimant" or "Ms. Adrian") originally filed her
21 application for a period of disability and disability insurance
22 benefits on May 29, 2007. (AR 350-352.) After administrative denials,
23 she requested and was granted a hearing on March 24, 2009 before an
24 ALJ, at which time Ms. Adrian testified, along with a medical expert
25 ("ME"), and vocational expert ("VE"). (AR 136-158.) A supplemental
26 hearing was held on September 14, 2009 in which, again, testimony was
27 taken from Ms. Adrian and a VE. (AR 120-135.) The ALJ then issued a
28 Decision denying benefits on November 5, 2009. (AR 162-173.) Pursuant

1 to a request for review, the Appeals Council remanded the matter for
2 further administrative hearing. (AR 174-178.) On remand, the ALJ
3 conducted a hearing on November 21, 2011, at which time testimony was
4 taken from a VE, an ME, and Gary Adrian, as the heir and
5 representative of the estate of Joy Adrian, who had passed away during
6 the request for review procedure before the Appeals Council. (AR 105-
7 119.) The ALJ then issued an unfavorable Decision on December 13,
8 2011. (AR 26-47.) The Appeals Council denied a request for review,
9 leaving the December 13, 2011 Decision as the Commissioner's final
10 Decision. The Court thus reviews that Decision in this civil action.
11 See 42 U.S.C. §§ 405(g); 1383(c).

12 Dr. Ralph N. Steiger acted as Plaintiff's treating physician, and
13 also prepared a Medical Source Statement on October 10, 2007 at the
14 request of the Social Security Administration. (AR 580-582.) Based
15 upon his treatment of Ms. Adrian, Dr. Steiger opined that she would be
16 able to lift and carry up to 10 pounds occasionally and less than 10
17 pounds frequently; that she could stand/walk less than two hours per
18 workday; that she required a cane and a walker to ambulate; that she
19 could sit for only 15 to 30 minutes in an eight-hour workday; and that
20 she needs to alternate between sitting and standing every 5 to 10
21 minutes. (AR 580-581.) If these limitations had been incorporated by
22 the ALJ into the residual functional capacity ("RFC") determined in
23 the Decision, the parties do not dispute that Ms. Adrian would have
24 been determined to be disabled for purposes of Social Security
25 benefits. At the hearing before the ALJ, Ms. Adrian's counsel posed
26 hypothetical restrictions to the VE which were in addition to those
27 posited by the ALJ at AR 125-126. The additional restrictions were
28 that the individual would be unable to sit more than two hours in an

1 eight-hour day. Even before the VE responded, the ALJ "stipulated"
2 that such an individual would be disabled because she would only be
3 able to work four hours a day, which is less than full-time
4 employment. (AR 127.) Thus, the Court's decision comes down to
5 whether or not the ALJ provided legally sufficient reasons to reject
6 the restrictions on Ms. Adrian's exertional abilities as determined by
7 Dr. Steiger. For the reasons to be set forth, the Court determines
8 that the ALJ failed to do that.

9 The Court must search the four corners of the ALJ's Decision to
10 locate articulated "specific and legitimate" reasons for rejecting Dr.
11 Steiger's opinion. See Lester v. Chater, 81 F.3d 821, 830-31 (9th
12 Cir. 1995). The Court must also presume that the ALJ approached the
13 evaluation of Dr. Steiger's opinion in a neutral, unbiased fashion.
14 Unfortunately, that was not the case. In his Decision, the ALJ
15 articulated an extreme bias against "medical records ... prepared in
16 the context of adversarial workers' compensation claim[s]." (AR 37.)
17 He added the following:

18 "The physicians retained by either party in the context of
19 workers' compensation cases are often biased and do not
20 provide truly objective opinions. The claimant's treating
21 physician in the context of a workers' compensation claim
22 are often biased and do not provide truly objective
23 opinions. The claimant's treating physician in the context
24 of a workers' compensation claim often serves as an advocate
25 for the claimant and describes excessive limitations to
26 enhance the claimant's financial recovery."

27 (AR 37-38.)

28

1 None of this bias is found in statute, Social Security
2 regulations, or Ninth Circuit decisions. In fact, the opposite is
3 true. As noted by Judge Wistrich in his opinion in Booth v. Barnhart,
4 181 F.Supp.2d 1099 (C.D. Cal. 2002):

5 "Workers' compensation disability ratings are not
6 controlling in disability cases decided under the Social
7 Security Act, and the terms of art used in the California
8 workers' compensation guidelines are not equivalent to
9 Social Security disability terminology. See Macri v.
10 Chater, 93 F.3d 540, 544 (9th Cir. 1996); Desrosiers v.
11 Secretary of Health and Human Services, 846 F.2d 573, 576
12 (9th Cir. 1988); see also Coria v. Heckler, 750 F.2d 245, 247
13 (3rd Cir. 1984)('The ALJ correctly noted that there are
14 different statutory tests for disability under workers'
15 compensation statutes and under the Social Security Act.');

16 20 C.F.R. §§404.1504, 416.904."

17 (Id. at 1104.)

18
19 The ALJ must evaluate the opinions of physicians who examine and
20 treat individuals in the workers' compensation scheme. Their opinions
21 cannot be ignored; the ALJ must draw logical inferences. See Macri,
22 supra, 93 F.3d at 544.

23 In this case, however, the distinction between Social Security
24 terms and workers' compensation terms is not a factor. That is
25 because, at the request of the Social Security Administration, Dr.
26 Steiger completed a "Medical Source Statement - Physical" which, as
27 the Court has noted, contained Dr. Steiger's evaluation of Ms.
28 Adrian's ability to lift, sit, stand and/or walk, ambulate with the

1 necessity of an assistive device, and alternate standing and sitting.
2 The ALJ did not clearly or definitively reject Dr. Steiger's
3 conclusions. Rather, he commented upon a permanent and stationary
4 report that Dr. Steiger wrote several months after he completed the
5 Medical Source Statement. (AR 619-634.) Referencing only this report,
6 the ALJ wrote that in the workers' compensation context, "permanent
7 and stationary" is not equivalent to the criteria used to determine
8 disability under the Social Security Act. (See AR at 42-43.)
9 Nevertheless, the ALJ indicated that he "has accounted for Dr.
10 Steiger's opinion and has provided a residual functional capacity that
11 allows the claimant to stand or walk for two hours out of an eight-
12 hour workday, ..." (AR 43.)

13 Dr. Steiger had opined in his Medical Source Statement that Ms.
14 Adrian could stand or walk less than two hours in an eight-hour
15 workday. Thus, while the ALJ stated that he "accounted for" Dr.
16 Steiger's opinion, he in fact implicitly rejected it without providing
17 any reason whatsoever. Moreover, this limitation is crucial to the
18 disability determination, in that there is no dispute that if Ms.
19 Adrian was incapable of standing or walking for two hours out of an
20 eight-hour workday, she would be disabled. Moreover, the ALJ provided
21 no analysis or inclusion in the determined RFC of Dr. Steiger's
22 opinion that Ms. Adrian needed a cane or a walker to ambulate, and
23 could sit for only 15 to 30 minutes in an eight-hour workday.

24 Whether or not the ALJ chose to rely, instead, on the opinion of
25 the non-examining, testifying ME, the issue here is whether specific
26 and legitimate reasons were articulated in the ALJ's Decision for
27 rejecting Dr. Steiger's opinions. They clearly were not. Moreover,
28 there is no contradiction between the Medical Source Statement and the

1 permanent and stationary report, with regard to exertional
2 limitations. The latter report was prepared in the context of the
3 workers' compensation case, and thus only addressed whether Ms.
4 Adrian, as a workers' compensation claimant, could perform her
5 existing work. In contrast, the Medical Source Statement prepared by
6 Dr. Steiger went far beyond that, utilizing Social Security concepts
7 and terminology.

8 Thus, the Court concludes that the ALJ failed to properly
9 evaluate Dr. Steiger's opinions, and in fact, gave no reason
10 whatsoever to reject them. As noted, if Dr. Steiger's limitations had
11 been accepted, Plaintiff would have been determined to be disabled.
12 Thus, the question becomes what remedy is appropriate. The Court
13 determines that here, the "Smolen" test is applicable. See Smolen v.
14 Chater, 80 F.3d 1273, 1292 (9th Cir. 1996). Based on the fact that
15 the ALJ failed to provide legally sufficient reasons to reject Dr.
16 Steiger's opinion, that there are no outstanding issues to be
17 resolved, and that had Dr. Steiger's opinions been credited, Ms.
18 Adrian would have been found disabled, the Court determines that the
19 remedy here must be a remand for calculation and award of benefits.
20 The Court is mindful that approximately seven years have passed since
21 Ms. Adrian's disability application was filed, and two evidentiary
22 hearings were conducted. As Ms. Adrian is deceased, the record cannot
23 be expanded.

24 Because the first issue is dispositive as to the question of
25 disability, the Court determines that it need not address Plaintiff's
26 second and third issues.

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