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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GRACIELA HERNANDEZ ALCALA,)	Case No. ED CV 14-526-PJW
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
v.)	
)	
CAROLYN W. COLVIN,)	
ACTING COMMISSIONER OF THE)	
SOCIAL SECURITY ADMINISTRATION,)	
)	
Defendant.)	

I.

INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying her applications for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI"). She claims that the Administrative Law Judge ("ALJ") erred when he rejected her treating psychologist's opinion, found that she was not credible, and concluded that she could perform various jobs. For the reasons explained below, the Court concludes that the ALJ did not err.

1 II.

2 SUMMARY OF PROCEEDINGS

3 In June 2011, Plaintiff applied for DIB and SSI, alleging that
4 she had been unable to work since February 27, 2010, due to a
5 combination of impairments, including high blood pressure, diabetes,
6 and depression. (Administrative Record ("AR") 32-39, 100, 117, 168-
7 81.) After her applications were denied initially and on
8 reconsideration, she requested and was granted a hearing before an
9 ALJ. (AR 98-103, 110-24.) On October 4, 2012, she appeared with
10 counsel and testified at the hearing. (AR 24-48.) On December 4,
11 2012, the ALJ issued a decision denying the applications. (AR 10-19.)
12 Plaintiff appealed to the Appeals Council, which denied review. (AR
13 1-6.) This action followed.

14 III.

15 DISCUSSION

16 A. The ALJ's Credibility Determination

17 Plaintiff testified at the administrative hearing that she
18 suffered from episodes of dizziness, had gained weight over the last
19 year, was unable to perform various daily activities, had blurred
20 vision, and needed to lie down for four to five hours a day. (AR 32-
21 40.) The ALJ rejected this testimony because he found that it was
22 inconsistent with statements she had made to her doctors and because
23 there was no medical basis for her claim that she had to lie down four
24 to five hours a day. (AR 17.) Plaintiff contends that these reasons
25 are not clear and convincing reasons for rejecting her testimony.
26 (Joint Stip. at 13-15.) For the following reasons, the Court finds
27 that they are.

1 ALJs are tasked with judging the credibility of witnesses,
2 including the claimants. In evaluating testimony, they employ
3 ordinary credibility evaluation techniques. *Smolen v. Chater*, 80 F.3d
4 1273, 1284 (9th Cir. 1996). Where a claimant has produced objective
5 medical evidence of an impairment which could reasonably be expected
6 to produce the symptoms alleged and there is no evidence of
7 malingering, the ALJ can only reject the testimony for specific,
8 clear, and convincing reasons, *id.* at 1283-84, that are supported by
9 substantial evidence in the record. *Thomas v. Barnhart*, 278 F.3d 947,
10 959 (9th Cir. 2002).

11 The record supports the ALJ's finding that Plaintiff's testimony
12 was inconsistent with the record. For example, she testified that she
13 weighed 195 pounds at the time of the hearing in October 2012 and had
14 gained 11 pounds over the last year. (AR 35.) The medical records
15 contradict that testimony. They establish that during the year before
16 the hearing she weighed between 211 and 220 pounds. (AR 385, 396,
17 398, 406.) Thus, she had lost weight at the time of the hearing, not
18 gained it.

19 During this same period, Plaintiff was telling her treating
20 doctor that she was doing relatively well. For example, in June 2012,
21 she told her doctor that her health "is generally good" and denied,
22 among other things, fatigue and sleep disturbance. (AR 408.) At the
23 hearing four months later, however, she testified that her body hurt
24 so much that she had to lie down for four or five hours a day. (AR
25 36-37.) This was obviously inconsistent with her statements to her
26 treating doctor and, as the ALJ noted, there is no evidence in the
27 record to support a medical basis for her having to lie down for four
28 hours every day.

1 The ALJ was free to focus on these contradictions in evaluating
2 Plaintiff's testimony. *Smolen*, 80 F.3d at 1284 (explaining ALJs are
3 entitled to rely on ordinary credibility evaluation techniques,
4 including a claimant's prior inconsistent statements concerning his
5 symptoms, in evaluating his credibility). Clearly, her testimony at
6 the administrative hearing--that she was doing poorly--was
7 qualitatively different from what she told her doctor in the months
8 leading up to the administrative hearing--that she was doing
9 relatively well. And, though her testimony that she had gained weight
10 over the proceeding year was not so critical in and of itself, it was
11 emblematic of the fact that she was exaggerating her condition to
12 appear more impaired than she was. As such, the ALJ did not err in
13 concluding that she was not credible.

14 Plaintiff argues that the ALJ overlooked her son's written
15 questionnaire in which he, like Plaintiff had done, chronicled her
16 many difficulties. (Joint Stip. at 15.) This was a mistake on the
17 ALJ's part. He should have noted the questionnaire and set forth his
18 reasons for discounting it. The Court does not find, however, that
19 this failure mandates reversal. Clearly, the son's submission, which
20 was filled out on the same day as Plaintiff's, was, in all material
21 respects, identical to Plaintiff's submission as well as her testimony
22 at the administrative hearing. (AR 195-202, 210-17.) The ALJ
23 properly rejected Plaintiff's testimony, setting forth clear and
24 convincing reasons for doing so. In the context of this case, the
25 Court finds that those reasons were sufficient to explain away the
26 son's statements, too. See *Molina v. Astrue*, 674 F.3d 1104, 1117 (9th
27 Cir. 2012); *Valentine v. Comm'r Soc. Security*, 574 F.3d 685, 694 (9th
28 Cir. 2009).

1 B. The Treating Psychologist's Opinion

2 Plaintiff contends that the ALJ erred when he rejected her
3 treating psychologist's opinion and accepted, instead, the opinion of
4 the examining psychiatrist. (Joint Stip. at 6-8.) For the following
5 reasons, the Court finds that the ALJ did not err here.

6 It is the province of the ALJ to resolve conflicts in the medical
7 evidence. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).
8 Generally speaking, three types of doctors supply that evidence:
9 treating doctors, examining doctors, and reviewing doctors. All other
10 things being equal, treating doctors are entitled to the greatest
11 weight because they are hired to cure and have more opportunity to
12 know and observe the patient. *Id.* at 1041; see also 20 C.F.R.
13 416.927(d)(2) ("Generally, we give more weight to opinions from your
14 treating sources, since these sources are likely to be the medical
15 professionals most able to provide a detailed, longitudinal picture of
16 your medical impairment(s) and may bring a unique perspective to the
17 medical evidence that cannot be obtained from the objective medical
18 findings alone or from reports of individual examinations").
19 Examining doctors are next, followed by reviewing doctors. See *Lester*
20 *v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995). ALJs, however, are
21 not required to accept the opinion of any doctor and, where the
22 opinion is contradicted, may reject it for specific and legitimate
23 reasons that are supported by substantial evidence in the record. *Id.*
24 at 830.

25 Prior to the administrative hearing, Plaintiff submitted a one-
26 page letter/report from her treating psychologist in which he
27 summarized her complaints and his analysis of them. (AR 356.) He
28 diagnosed her with post-traumatic stress disorder ("PTSD"), which he

1 believed was triggered by her being laid off from her job. (AR 356.)
2 He did not, however, attempt to set forth what, if any, limitations
3 this condition caused. (AR 356.) Nor did he include any treatment
4 notes.

5 The ALJ complained to Plaintiff's counsel more than once at the
6 hearing that the treating psychologist's letter was conclusory and
7 that the doctor had not submitted any treatment notes to support his
8 opinion. (AR 31, 40.) Plaintiff's counsel acknowledged this problem
9 and agreed to submit the records after the hearing. (AR 31.) But
10 Plaintiff and/or her counsel never submitted any treatment notes.
11 Instead, they submitted an updated version of the treating
12 psychologist's original letter/report, which contained an additional
13 paragraph summarizing the doctor's thoughts since the earlier
14 letter/report. (AR 518-19.)

15 The ALJ rejected this opinion because it was conclusory and was
16 not supported by any treatment notes or by any other doctor. (AR 17.)
17 He accepted, instead, the examining psychiatrist's opinion that
18 Plaintiff's psychological ailments would not prevent her from working.
19 (AR 13.) Plaintiff argues that the ALJ erred in doing so. That
20 argument is rejected.

21 Doctors are not empowered to determine whether a claimant is
22 disabled under Social Security law. See Social Security Ruling 96-5p
23 (explaining medical opinion that claimant is disabled, "even when
24 offered by a treating source, can never be entitled to controlling
25 weight or given special significance"). Only an ALJ can do that.
26 Doctors are called upon to offer opinions as to a claimant's medical
27 condition so that an ALJ can decide if he or she is disabled. Often,
28 as is the case here, the doctors' opinions are in conflict with one

1 another and the ALJ is required to decide which opinion to accept and
2 which to reject. In doing so, the ALJ must necessarily evaluate the
3 strength of each doctor's opinion.

4 The strength of a doctor's opinion comes in large measure from
5 the data, records, and evidence that he or she relied on in rendering
6 the opinion. For treating doctors, this is usually found in the
7 doctor's treatment notes, which typically consist of a chronological
8 series of entries setting out the patient's complaints, how the doctor
9 treated those complaints, and how the patient responded to the
10 treatment. Often, the results of tests that have been performed are
11 also included in the treatment records.

12 There are still no treatment notes from the treating psychologist
13 in this record, despite the fact that the ALJ pointed this out to
14 Plaintiff's counsel at the hearing--the same counsel who represents
15 Plaintiff in this appeal--and counsel told the ALJ that he would
16 follow up and submit the records after the hearing. (AR 31.) That
17 was more than two years ago. The Court presumes that the reason
18 counsel has never produced any treatment notes is because they do not
19 exist.

20 In the absence of any treating records, all that exists is the
21 doctor's conclusory report that Plaintiff suffers from PTSD, which the
22 doctor believes was triggered by her being laid off from her job. (AR
23 356.) Like the ALJ, the Court questions the validity of this opinion.
24 Because there are no records, it is unknown whether the doctor
25 performed any tests on Plaintiff or reviewed any medical records. Nor
26 is it clear what the basis for his opinion is. Though the doctor
27 notes that he saw Plaintiff twice monthly over an 18-month period, he
28

1 does not say how long the sessions were or what took place during
2 them. (AR 356, 518-19.)

3 It appears that the opinion is based solely on Plaintiff's claims
4 of what was wrong with her and what she believed was causing her
5 symptoms, which the doctor apparently accepted at face value. His
6 wholesale acceptance of her statements in formulating his opinion is
7 particularly problematic in this case because the ALJ found that she
8 was not credible. See, e.g., *Tommasetti v. Astrue*, 533 F.3d 1035,
9 1041 (9th Cir. 2008) (affirming ALJ's rejection of treating doctor's
10 opinion, which was primarily based on claimant's statements to doctor,
11 where claimant was found to be incredible). The treating doctor's
12 failure to provide his treatment notes and any test findings severely
13 undermines his opinion and supports the ALJ's decision to reject it.
14 See, e.g., *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001)
15 (affirming ALJ's rejection of treating doctor's opinion because it was
16 unsupported by rationale, treatment notes, and/or objective medical
17 findings).

18 In contrast to the treating doctor, the examining psychiatrist
19 laid out exactly what he relied on in formulating his opinion. (AR
20 253-56.) He took a detailed history from Plaintiff and conducted a
21 mental status examination, employing a series of tests that are
22 routinely seen by the Court in these types of cases. (AR 255.)

23 The ALJ was charged with resolving the contradictory opinions in
24 this case. He accepted the one that was supported by the record and
25 rejected the one with little or no support. The Court cannot say that
26 he erred in doing so. For that reason, his decision will be upheld.

1 C. Plaintiff's Eye Impairment

2 Plaintiff complains that the ALJ overlooked her diabetic
3 retinopathy when listing her severe impairments. (Joint Stip. at 4-
4 5.) She believes that this condition is responsible for her visual
5 acuity being 20/30 and 20/40.

6 The Agency disagrees. It points out that the testing that
7 revealed her visual acuity at 20/30 and 20/40 was done with only one
8 eye open at a time and that when Plaintiff was tested with both eyes
9 open her vision was 20/25 in both eyes. (AR 248, 412.) It points out
10 further that no doctor ever suggested that her vision impacted her
11 ability to work and that, in fact, the doctors who examined her eyes
12 consistently noted that they were normal. (AR 303, 305, 310, 334,
13 339, 342, 344, 362, 370, 406, 408.)

14 Here, again, the Court sides with the Agency. The medical record
15 does not establish that Plaintiff's vision problems impacted her
16 ability to work. In fact, her visual acuity (20/25) at 40+ years of
17 age appears to be nearly perfect. The fact that she reportedly
18 experienced "flashes & floaters" and "blurry foggy vision" on occasion
19 does not change the analysis nor did any doctor opine that it did.
20 For this reason, her argument that the ALJ should have included
21 retinopathy as a severe impairment is rejected.

22 D. The Residual Functional Capacity Determination

23 Finally, Plaintiff argues that the ALJ erred in establishing her
24 residual functional capacity and, consequently, in formulating the
25 hypothetical questions to the vocational expert. There is no merit to
26 this argument.

27 Plaintiff contends that the ALJ erred when he failed to include
28 visual limitations stemming from her retinopathy in the residual

1 functional capacity determination. As the Court explained above,
2 however, the ALJ did not err in failing to find that her retinopathy
3 or any problems with her vision caused by it impacted her ability to
4 work. Thus, the ALJ did not need to include anything in the residual
5 functional capacity finding or the hypothetical question to the
6 vocational expert to account for it. *Osenbrock v. Apfel*, 240 F.3d
7 1157, 1163-64 (9th Cir. 2001) (explaining ALJ only required to include
8 limitations in residual functional capacity and hypothetical question
9 to vocational expert that are supported by substantial evidence in the
10 record).

11 Similarly, Plaintiff complains that the ALJ failed to take into
12 account her testimony that she suffered from headaches and blurry
13 vision and was required to lie down for four to five hours a day.
14 (Joint Stip. at 20.) But the evidence of these ailments came from
15 Petitioner's testimony, which the ALJ found was incredible. He was
16 not, therefore, required to include them in the residual functional
17 capacity finding or the hypothetical question to the vocational
18 expert. *Osenbrock*, 240 F.3d at 1163-64.

19 The ALJ limited Plaintiff to simple and routine tasks. (AR 14.)
20 The vocational expert determined that, despite this limitation,
21 Plaintiff could perform the job of electronics worker. (AR 44-46.)
22 Plaintiff argues that she cannot perform this job because it involves
23 reasoning level two, which is beyond simple, routine work. The law
24 does not support this argument. An ability to perform simple,
25 repetitive tasks is consistent with level two reasoning. See *Terry v.*
26 *Astrue*, 580 F.3d 471, 478 (7th Cir. 2009); *Renfrow v. Astrue*, 496 F.3d
27 918, 921 (8th Cir. 2007).

1 Plaintiff also claims that she cannot perform the job of
2 electronics worker because it is light work and, therefore, requires
3 standing for more than two hours a day. Plaintiff is mistaken. The
4 vocational expert testified that the reason that this job is
5 categorized as light work, instead of sedentary work, is because of
6 the lifting requirement (up to 20 pounds), not because of the standing
7 required. (AR 46.) Thus, because Plaintiff can lift 20 pounds, she
8 can perform this job despite her limitation on standing.

9 The ALJ limited Plaintiff to standing for up to two hours a day.
10 (AR 14.) The vocational expert testified that Plaintiff could not
11 perform the job of house cleaner as a result. (AR 46.) The ALJ
12 apparently disregarded this testimony but failed to explain why. (AR
13 18.) This was error.

14 In the end, even with the ALJ's erroneous finding that Plaintiff
15 could work as a house cleaner, there are still enough jobs in the
16 national and local economy identified by the vocational expert that
17 she can perform--electronics worker, 5,000 locally and 80,000
18 nationally, and assembler, 1,300 locally and 21,000 nationally (AR 44-
19 45)--to support the ALJ's finding that she is not disabled.


20 IV.

21 CONCLUSION

22 For these reasons, the ALJ's decision is affirmed and the case is
23 dismissed with prejudice.

24 IT IS SO ORDERED.

25 DATED: March 4, 2015

26 
27 PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE