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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

VIRGINIA MARIE YATES,	)	No. ED CV 14-02442-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 record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

Plaintiff raises the following issues:

1. Whether the Administrative Law Judge ("ALJ") gave proper

1 consideration to Ralph Steiger, M.D.; and

2 2. Whether the ALJ gave proper consideration to Plaintiff's  
3 credibility.

4 (JS at 4.)

5  
6 This Memorandum Opinion will constitute the Court's findings of  
7 fact and conclusions of law. After reviewing the matter, the Court  
8 concludes that the decision of the Commissioner must be affirmed.

9  
10 I

11 **THE ALJ PROPERLY CONSIDERED THE OPINION OF RALPH STEIGER, M.D.**<sup>1</sup>

12 After administrative denials and a hearing before an ALJ (AR 31-  
13 50), an unfavorable Decision was issued. (AR 12-28.) The ALJ utilized  
14 the five-step sequential evaluation process described in 20 C.F.R. §§  
15 404.1520, 416.920, and after determining that Plaintiff had certain  
16 severe impairments which did not meet or equal any Listings, he  
17 assessed a residual functional capacity ("RFC") which permitted  
18 Plaintiff to perform her past relevant work ("PRW"). Thus, the Step  
19 Four finding resulted in a conclusion of non-disability.

20 Dr. Steiger completed an orthopedic evaluation and a Multiple  
21 Impairment Questionnaire.<sup>2</sup> Based upon Dr. Steiger's assessment, he

22 \_\_\_\_\_  
23 <sup>1</sup> Although Plaintiff has limited this issue to the ALJ's  
24 evaluation of examining doctor Steiger, she also extensively discusses  
25 the ALJ's evaluation of treating physician Dr. Bovetas. Therefore, the  
26 Court will include in its discussion of issue no. 1 the ALJ's  
27 evaluation of Dr. Bovetas.

28 <sup>2</sup> This Questionnaire was provided to Dr. Steiger by an unknown  
third party, perhaps Plaintiff's prior counsel. Dr. Steiger completed  
the form on February 7, 2013. He performed a private orthopaedic  
evaluation of Plaintiff on January 15, 2013, resulting in a written

(continued...)

1 limited her exertional functional abilities. (AR 481-482.)

2 The ALJ rejected Dr. Bovetas' opinion in the same portion of the  
3 Decision in which he addressed Dr. Steiger's opinion. (AR 21.) The ALJ  
4 indicated that he considered an April 5, 2011 letter and the Multiple  
5 Impairment Questionnaire referenced above, which he determined to have  
6 been completed more as an accommodation to Plaintiff and to provide  
7 conclusions regarding functional limitations without any rationale  
8 being provided. As the ALJ noted,

9 "Dr. Steiger essentially assessed the claimant [sic]  
10 functional limitations that would preclude her from  
11 performing any work activities on a regular and continuing  
12 basis. The extreme limitations contrast sharply with the  
13 other evidence of record including Dr. Steiger [sic]  
14 treatment records, which renders it less persuasive. The  
15 treatment record showed essentially no objective clinical  
16 findings, other than tenderness, relating to the claimant's  
17 musculoskeletal impairments. There were no diagnostic  
18 findings to support Dr. Steiger [sic] conclusions of spine  
19 degeneration. For these reasons, the undersigned finds this  
20 evidence has no probative value because it is not supported  
21 by any objective evidence."

22 (AR 21.)

23  
24 If the ALJ had rejected Dr. Steiger's conclusions based upon a  
25 generic statement that they were inconsistent with the medical record  
26 as a whole, that would not constitute substantial evidence in that

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27  
28 <sup>2</sup>(...continued)  
report (AR 47-48).

1 such a conclusory finding would hinder effective judicial review. But  
2 here, the ALJ did review the medical evidence of record, including Dr.  
3 Steiger's own records. If the ALJ was correct in concluding that Dr.  
4 Steiger's opinion contained functional limitations inconsistent with  
5 his overall physical examination findings, this would be a supportable  
6 conclusion. See Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir.  
7 2005). Here, the Court finds that the ALJ's conclusion is supportable  
8 based upon its view of the record evidence. Generally, the examination  
9 results were unremarkable, with regard to sensation to pain, touch,  
10 and proprioception (AR 329, 333, 335, 340, 342). Similarly,  
11 Plaintiff's back examinations were normal except for some spinal  
12 tenderness; Dr. Steiger reported her gait to be normal, as well as her  
13 sensation, strength in upper extremities and lower extremities, and  
14 bilaterally, deep tendon reflexed as found to be symmetric and normal.  
15 (See citations to record at JS 17.)

16 The ALJ's further observation that Plaintiff had only received  
17 conservative treatment in the form of medication for her complaints of  
18 musculoskeletal pain is also an acceptable basis upon which to  
19 discount or reject the opinion of an examining physician. (See AR at  
20 333, 342, 19.) See Jones v. Astrue, 499 Fed.Appx. 676, 677 (9th Cir.  
21 2012) (unpublished).

22 Further, the ALJ did properly rely upon the opinion of medical  
23 expert ("ME") Dr. Plotz, who had examined all of the medical evidence  
24 of record and did not assess any of the functional limitations found  
25 by Dr. Steiger. Indeed, Dr. Plotz testified there was nothing in the  
26 record which would explain Plaintiff's back or neck pain. (AR 40.) He  
27 found there were no physical abnormalities relating to the neck, back,  
28 knees, hip or anything else. (Id.)

1 As noted, the Court will also address the ALJ's assessment of  
2 treating physician Dr. Bovetas. Dr. Bovetas concluded that Plaintiff  
3 was disabled, but that is the province of the Commissioner, not a  
4 physician. (See AR 21, 341, 433-440.)

5 As with Dr. Steiger's opinion, the ALJ determined to reject Dr.  
6 Bovetas' opinion because it so sharply contrasted with other evidence  
7 of record, which included Dr. Bovetas' own treatment records. (Id.)  
8 Further, the ALJ reasonably concluded that Dr. Bovetas' opinion was  
9 inconsistent with her own clinical findings (AR 21), based upon a  
10 generally normal set of clinical examination findings, except for  
11 spinal tenderness. (AR 21, 341.) See Tommasetti v. Astrue, 533 F.3d  
12 1035, 1041 (9th Cir. 2008). Indeed, the Court's own review of Dr.  
13 Bovetas' treatment records is not inconsistent with the ALJ's own  
14 review, in that, generally, unremarkable findings were documented.  
15 (See citations at JS 19-20.)

16 For the foregoing reasons, the Court concludes that the ALJ did  
17 not improperly discount or reject the opinions of Drs. Steiger and  
18 Bovetas.

## 19 20 II

### 21 THE ALJ PROPERLY ASSESSED PLAINTIFF'S CREDIBILITY

22 Plaintiff herself did not appear at the hearing before the ALJ.  
23 (AR 49.) The ALJ found that she had waived her right to testify by not  
24 attending. (AR 15.) Plaintiff notes that the ALJ failed to mention  
25 that Plaintiff's representative objected and requested a Notice to  
26 Show Cause, which the ALJ rejected. (AR 49.) Plaintiff's counsel  
27 points out that subsequent correspondence from Plaintiff's husband and  
28 cousin revealed that she had experienced multiple seizures resulting

1 in injuries to her face due to falls, which prevented her from  
2 attending the hearing, and that these events were corroborated by  
3 letters from a nurse and Dr. Bovetas. (See JS at 27.)

4 With regard to Plaintiff's failure to appear at the hearing, the  
5 ALJ is under certain administrative and regulatory requirements which  
6 he must follow when this happens. Here, the requirements outlined in  
7 20 C.F.R. § 404.938 were followed. Plaintiff's representative was  
8 unable to locate her at the hearing. The Notice of Hearing had been  
9 mailed to Plaintiff at her last known address. Finally, an  
10 Acknowledgment of Notice of Hearing was on record indicating Plaintiff  
11 actually received and returned the Acknowledgment form. Consequently,  
12 the ALJ had the discretion to proceed with the hearing, to accept  
13 testimony of other witnesses, and to allow questioning of those  
14 witnesses and argument from Plaintiff's representative. At the  
15 hearing, the ALJ took testimony from an ME and Vocational Expert  
16 ("VE"). (AR 37-42, 44-46. Further, Plaintiff's representative made  
17 arguments on her behalf and did cross-examine the testifying  
18 witnesses. Thus, the Court finds that the ALJ properly found that  
19 Plaintiff had constructively waived her right to attend the hearing.

20 As to Plaintiff's credibility, the ALJ evaluated this based upon  
21 statements from her disability application and seizure questionnaire.  
22 (AR 19, 174, 182-184.)

23 In evaluating Plaintiff's credibility, the ALJ set forth a number  
24 of reasons. First, he determined that her complaints were not  
25 supported by the objective evidence. (AR 19-22.) A lack of medical  
26 evidence cannot form the sole basis for discounting a statement of  
27 alleged symptoms, but it is one factor to be considered in the  
28 credibility analysis. See Burch v. Barnhart, 400 F.3d 676, 681 (9th

1 Cir. 2005).

2 The ALJ also relied upon routine and conservative treatment which  
3 contrasted with the extreme limitations which Plaintiff claimed. (AR  
4 19-20.) Again, this is a permissible factor if supported by the  
5 evidence. See Johnson v. Shalala, 60 F.3d 1428, 1434 (9th Cir. 1995).  
6 The ALJ noted that with regard to Plaintiff's seizures, her  
7 medications were adjusted and she reported feeling better as a result.  
8 (AR 20, 350.)

9 The ALJ also relied upon Dr. Plotz's (ME) testimony as to  
10 Plaintiff's functional abilities. (AR 20.)

11 All in all, the Court determines that the reasons cited by the  
12 ALJ are supported by substantial evidence, and are adequate to assess  
13 credibility.

14 For the foregoing reasons, the Court finds no error in the ALJ's  
15 credibility analysis.

16 The decision of the ALJ will be affirmed. The Complaint will be  
17 dismissed with prejudice.

18 **IT IS SO ORDERED.**

19  
20 DATED: June 8, 2015

/s/

VICTOR B. KENTON  
UNITED STATES MAGISTRATE JUDGE