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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BRANDY RENAY BRAMMER,
Plaintiff,
v.
CAROLYN W. COLVIN, Acting
Commissioner of Social
Security,
Defendant.

Case No. EDCV 15-0756 SS

MEMORANDUM DECISION AND ORDER

I.

INTRODUCTION

Brandy Renay Brammer ("Plaintiff") seeks review of the final decision of the Commissioner of the Social Security Administration (the "Commissioner" or the "Agency") denying her application for Disability Insurance Benefits ("DIB") and Supplement Security Income ("SSI"). The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate Judge.

1 For the reasons stated below, the decision of the Commissioner is
2 REVERSED and REMANDED for further administrative proceedings
3 consistent with this decision.

4
5 **II.**

6 **PROCEDURAL HISTORY**

7
8 On May 21, 2009, Plaintiff filed for DIB and SSI, claiming
9 that she became disabled on September 25, 1999. (Administrative
10 Record ("AR") 264-67, 277-83). Plaintiff based her alleged
11 disability on "[l]ower back injury, bu[l]ging disc,
12 deg[enerative] disc,[]nerve pain, failed surgery, pinched
13 nerves." (AR 313). The Agency denied Plaintiff's applications
14 on August 22, 2009 (AR 131-37) and upon reconsideration on March
15 18, 2010. (AR 140-44).

16
17 Plaintiff requested a hearing, which was held before
18 Administrative Law Judge ("ALJ") Jay E. Levine on May 12, 2011.
19 (AR 81-107). On June 24, 2011, ALJ Levine determined that
20 Plaintiff was not disabled. (AR 113-22).

21
22 Plaintiff filed a request for review of ALJ Levine's
23 decision, which the Appeals Council (the "Council") granted. (AR
24 127). On November 16, 2012, the Council vacated the ALJ's
25 decision and remanded the matter for further proceedings. (AR
26 127-29). Upon remand, the Council directed the ALJ to further
27 consider whether Plaintiff was capable of performing any of her
28 past relevant work, further evaluate Plaintiff's mental

1 impairment, and give further consideration to Plaintiff's maximum
2 RFC during the entire period at issue. (AR 128). Further, if
3 necessary the ALJ was required to obtain evidence from a
4 vocational expert. (AR 129).

5
6 On April 25, 2013, ALJ Tamara Turner-Jones (the "ALJ")
7 conducted a hearing following the Council's remand order. (AR
8 41-80). On June 14, 2013, the ALJ issued an unfavorable
9 decision. (AR 13-28). Plaintiff sought review before the
10 Council (AR 7-9), which the Council denied on February 20, 2015.
11 (AR 1-4). The ALJ's determination thus became the final decision
12 of the Commissioner. Plaintiff filed the instant action on April
13 17, 2015.

14
15 **III.**

16 **FACTUAL BACKGROUND**

17
18 Plaintiff was born on February 20, 1980. (AR 26). She was
19 nineteen years old as of the alleged disability onset date and
20 twenty-three years old at the time of her hearing before the ALJ.
21 (AR 43). In September 1999, Plaintiff suffered a work-related
22 injury. (AR 434). Plaintiff's last-insured date was June 30,
23 2003. (AR 15).

1 **A. Relevant Medical Evidence**

2
3 Dr. Timothy P. Gray, an orthopaedic surgeon, provided
4 Plaintiff treatment of one to two sessions per month between
5 January 2000 to April 2002 in connection with her 1999 workers'
6 compensation claim. (AR 370-441). Dr. Gray primarily treated
7 Plaintiff for her complaints of low back pain with disk
8 degeneration and bilateral leg pain. (Id.). Dr. Gray noted that
9 an October 1999 MRI of Plaintiff's lumbar spine revealed a
10 "central disk herniation" and "some minimal degenerative changes"
11 at L4-5. (AR 437). Dr. Gray treated Plaintiff's pain with inter
12 alia, physical therapy, injections, pain management, a back
13 brace, and medications, including Darvocet, Vistaril, Vioxx,
14 Tylenol #3, Tylenol #4, Prozac, Ultracet, and Paxil. (AR 371-73,
15 377-80, 383-84, 387-88, 391, 393-94, 397-98, 401, 403, 406-07,
16 408, 411, 415, 419, 423, 425, 426, 429, 431, 432, 438-39). On
17 September 29, 2000, Plaintiff underwent lumbar diskograms which
18 revealed positive pain and an annular tear at L4-5 and possibly
19 at L5-S1. (AR 409-10). On December 5, 2000, Plaintiff underwent
20 an IDET procedure at L4-5 and L5-S1. (AR 403, 405). In June
21 2001, Plaintiff began to complain of low back pain again, and
22 continued to do so through April 2002, Dr. Gray's last treatment
23 note of record. (AR 371-400). While he treated Plaintiff, Dr.
24 Gray primarily placed Plaintiff on modified work duty, limited to
25 sedentary or light work in two to four hour shifts. (AR 371-73,
26 378-79, 393, 398, 401-02, 426-27, 429, 431-32).

1 Dr. Thomas Haider, Plaintiff's more recent treating
2 physician, who also treated Plaintiff in connection with her
3 workers' compensation claim, saw Plaintiff at least sixty times
4 between October 2004 to April 2013 for complaints of low back and
5 leg pain. (AR 567-673, 799-864). On November 2, 2006, Dr.
6 Haider performed on Plaintiff a laminotomy, discectomy, and
7 foraminotomy at L4-5 on the right side. (AR 494-95). After the
8 surgery, Plaintiff reported worsening of symptoms. (AR 581, 587,
9 591, 597, 603-04, 606, 613-14, 619, 621). Dr. Haider reported
10 that a January 2008 radiograph of Plaintiff's cervical spine
11 showed "straightening as well as reversal of cervical lordosis
12 [and] spondylosis of the C2-C4 levels." (AR 599). A July 2008
13 MRI of Plaintiff's lumbar spine showed "continuation of prominent
14 posterior disc bulge measuring 4 mm in size at the level of L4-
15 5," "bilateral foraminal stenosis," "disc dessication" at L4-5,
16 "mild bilateral facet arthropathy" at L3-4 and L5-S1, and
17 "diffuse disc desiccation" at L3-4, L4-5, and L5-S1. (AR 582).

18
19 Between 2004 and 2008, Dr. Haider treated Plaintiff with
20 inter alia, trigger point injections (AR 585, 602 647) and
21 narcotic pain medications, including Fentanyl patches, Norco,
22 Duragesics, Lorcet, and Ultram. (AR 582, 589, 592, 595, 599,
23 605, 607, 613, 615, 622, 625-26, 627, 636, 638, 645, 649, 651,
24 653, 655, 657, 661, 663, 665, 669-70). In October 2008, due to
25 difficulty controlling her medications, Plaintiff entered an in-
26 patient detox program. (AR 576, 579). Between 2009 and 2013,
27 Dr. Haider treated Plaintiff with trigger point injections, heat
28 wraps, and non-narcotic pain medications. (AR 569, 802, 810,

1 812-13, 820, 823-25, 829-30, 832, 837-38, 839-40, 843, 845-46,
2 853). A September 2009 MRI of Plaintiff's lumbar spine revealed
3 "significant right sided forminal stenosis due to 4mm broad based
4 disc bulging" and "moderate to severe disc dessication at L4-5."
5 (AR 812). Based on a December 2011 MRI of Plaintiff's lumbar,
6 Dr. Haider noted that there was "progression of the severe disc
7 space collapse at L4-5," "central and forminal stenosis secondary
8 to a 3.8 mm circumferential disc bulge as well as bilateral facet
9 arthrosis," and "degenerative disc disease with a 2.5 mm
10 circumferential disc bulge" at L5-S1. (AR 821). An April 2013,
11 MRI of Plaintiff's lumbar spine revealed "[r]ight laminectomy at
12 L4," "[g]rade 1 retrolisthesis of L4," a "3.8 mm circumferential
13 disc bulge" at L4-5, "[b]ilateral facet arthrosis and moderate
14 bilateral neural foraminal narrowing" at L4-5 and L5-S1, and a
15 "2.8 mm disc bulge" at L5-S1. (AR 855). An April 2013
16 eletrodiagnostic report also revealed mild to moderate right L5
17 and S1 sensory radiculopathy. (AR 856). Between 2005 and 2013,
18 Dr. Haider's progress notes repeatedly indicated that Plaintiff
19 had difficulty walking, difficulty changing positions and getting
20 onto the examining table, tenderness over the low back, muscle
21 spasm, restricted motion with pain of the lumbar, guarding with
22 motion, antalgic gait, and/or positive straight leg test
23 bilaterally. (AR 568, 572, 576, 578, 582, 585, 588, 592, 595,
24 598, 602, 604, 606, 610, 612, 614, 619, 629, 631, 635, 637, 640,
25 643, 647, 653, 655, 661, 665, 800, 802, 810, 812, 816, 818, 823,
26 828, 830, 832).

1 On April 23, 2013, Dr. Haider completed a "Physical Residual
2 Capacity Question." (AR 860-64). In the questionnaire, Dr.
3 Haider diagnosed Plaintiff with "status post laminectomy lumbar
4 surgery in 2006." (AR 860). He noted his clinical and objective
5 findings included positive MRI, nerve conduction, and x-ray
6 findings. (Id.). Plaintiff's treatment included short courses
7 of physical therapy, medications, injections, MRIs, and surgery.
8 (AR 861). He opined that Plaintiff could occasionally carry ten
9 pounds. (AR 862). She has significant limitations in doing
10 repetitive reaching, handling or fingering. (Id.). Plaintiff
11 has marked limitation in bending and twisting at the waist. (AR
12 862-63). She can walk one block without rest and can
13 continuously sit and stand for fifteen minutes every hour. (AR
14 863). Plaintiff can sit for twenty minutes and stand for fifteen
15 minutes in a less than two-hour period. (Id.). She can also sit
16 for forty minutes and stand for twenty-five minutes in a two-hour
17 period. (Id.). Plaintiff must walk every fifteen minutes for
18 ten minutes each time. (Id.). She would also need to shift
19 positions and take unscheduled breaks. (Id.). Finally,
20 Plaintiff would be absent from work more than three times a month
21 due to her impairments or treatment. (AR 864).

1 IV.

2 THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

3
4 To qualify for disability benefits, a claimant must
5 demonstrate a medically determinable physical or mental
6 impairment that prevents her from engaging in substantial gainful
7 activity and that is expected to result in death or to last for a
8 continuous period of at least twelve months. Reddick v. Chater,
9 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. §
10 423(d)(1)(A)). The impairment must render the claimant incapable
11 of performing the work she previously performed and incapable of
12 performing any other substantial gainful employment that exists
13 in the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098
14 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

15
16 To decide if a claimant is entitled to benefits, an ALJ
17 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920.
18 The steps are:

- 19
- 20 (1) Is the claimant presently engaged in substantial
21 gainful activity? If so, the claimant is found
22 not disabled. If not, proceed to step two.
 - 23 (2) Is the claimant's impairment severe? If not, the
24 claimant is found not disabled. If so, proceed
25 to step three.
 - 26 (3) Does the claimant's impairment meet or equal one
27 of the specific impairments described in 20
28 C.F.R. Part 404, Subpart P, Appendix 1? If so,

1 the claimant is found disabled. If not, proceed
2 to step four.

3 (4) Is the claimant capable of performing her past
4 work? If so, the claimant is found not disabled.
5 If not, proceed to step five.

6 (5) Is the claimant able to do any other work? If
7 not, the claimant is found disabled. If so, the
8 claimant is found not disabled.

9
10 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,
11 262 F.3d 949, 953-54 (9th Cir. 2001) (citations omitted); 20
12 C.F.R. §§ 404.1520(b)-(g)(1) & 416.920(b)-(g)(1).

13
14 The claimant has the burden of proof at steps one through
15 four, and the Commissioner has the burden of proof at step five.
16 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an
17 affirmative duty to assist the claimant in developing the record
18 at every step of the inquiry. Id. at 954. If, at step four, the
19 claimant meets her burden of establishing an inability to perform
20 past work, the Commissioner must show that the claimant can
21 perform some other work that exists in "significant numbers" in
22 the national economy, taking into account the claimant's residual
23 functional capacity ("RFC"), age, education, and work experience.
24 Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721; 20
25 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may do
26 so by the testimony of a VE or by reference to the Medical-
27 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,
28 Appendix 2 (commonly known as "the Grids"). Osenbrock v. Apfel,

1 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both
2 exertional (strength-related) and non-exertional limitations, the
3 Grids are inapplicable and the ALJ must take VE testimony. Moore
4 v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000) (citing Burkhart v.
5 Bowen, 856 F.2d 1335, 1340 (9th Cir. 1988)).

6
7 **V.**

8 **THE ALJ'S DECISION**

9
10 The ALJ employed the five-step sequential evaluation
11 process. At step one, the ALJ found that Plaintiff had not
12 engaged in substantial gainful employment since her alleged onset
13 date of September 25, 1999. (AR 15). At step two, the ALJ found
14 that Plaintiff had the severe impairments of degenerative disc
15 disease of the lumbar spine, status post laminotomy and
16 diskectomy, sprain/strain of the cervical spine, asthma, and
17 obesity. (AR 16).

18
19 At step three, the ALJ found that Plaintiff did not have an
20 impairment or combination of impairments that met or medically
21 equaled the severity of an impairment listed in 20 C.F.R. Part
22 404, Subpart P, Appendix 1 (20 C.F.R. §§ 404.1520(d), 404.1525,
23 404.1526, 416.920(d), 416.925 and 416.926). (AR 18). The ALJ
24 then found that Plaintiff had the following RFC:

25
26 [Plaintiff] has the residual functional capacity to
27 perform a range of sedentary work as defined in 20 CFR
28 404.1567(a) and 416.967(a) and SSR 83-10 specifically

1 as follows: [Plaintiff] can lift and/or carry up to 10
2 pounds; she can stand and/or walk for two hours out of
3 an eight-hour workday with customary breaks; she can
4 sit for six hours out of an eight-hour workday with
5 customary breaks; she can occasionally kneel, stoop,
6 crawl, or crouch; she can occasionally climb ramps or
7 stairs, but she can never climb ladders, ropes and
8 scaffolds; she can [] frequently use the hands for
9 fine and gross manipulations; she can occasionally
10 reach overhead bilaterally (above shoulder level); she
11 can frequently rotate the neck fully from side to
12 side; she must avoid exposure to unprotected heights
13 and dangerous machinery; she must avoid concentrated
14 exposure to extremely cold temperatures and pulmonary
15 irritants such as dusts, fumes, gases, and odors;
16 [Plaintiff] can sustain concentration, attention,
17 persistence and pace in at least two-hour blocks of
18 time; and she can interact appropriately with
19 coworkers, supervisors, and the general public; due to
20 the side effects of medication and chronic pain,
21 [Plaintiff] is limited to unskilled tasks and she will
22 be off-task for five percent of the workday.

23
24 (Id.).

1 In making this finding, the ALJ considered Plaintiff's
2 subjective allegations, but did not find them fully credible.
3 (AR 20-25). The ALJ also noted that:

4
5 No single assessment has been completely adopted as
6 the [RFC] determined here. In viewing the totality of
7 the evidence in a light most favorable to [Plaintiff],
8 the undersigned has assessed those specific
9 restrictions on a function-by-function basis that are
10 best supported by the objective evidence as a whole.
11 The undersigned has also more than generously
12 considered [Plaintiff's] subjective complaints of
13 chronic pain and problems with her neck and upper
14 extremities. The [RFC] assessed herein more than
15 accommodates for [Plaintiff's] actual limitations.

16
17 (AR 26).

18
19 At step four, the ALJ found that Plaintiff has no past
20 relevant work. (Id.). At step five, the ALJ found that,
21 considering Plaintiff's age, education, work experience and RFC,
22 she could perform jobs that exist in significant numbers in the
23 national economy. (Id.). Based on the VE's testimony, the ALJ
24 concluded that Plaintiff could perform the requirements of lens
25 gauger, table worker, addresser, surveillance system monitor, and
26 bench assembler. (AR 27). Accordingly, the ALJ found that
27 Plaintiff was not disabled through the date of the decision. (AR
28 28).

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VI.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), a district court may review the Commissioner's decision to deny benefits. The court may set the decision aside when the ALJ's findings are based on legal error or are not supported by substantial evidence in the record as a whole. Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097). "Substantial evidence is more than a scintilla, but less than a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v. Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant evidence which a reasonable person might accept as adequate to support a conclusion." Id. (citing Jamerson, 112 F.3d at 1066; Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1997)).

To determine whether substantial evidence supports a finding, the court must "'consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [Commissioner's] conclusion.'" Aukland, 257 F.3d at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming or reversing that conclusion, the court may not substitute its judgment for the Commissioner's. Reddick, 157 F.3d at 720-21 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

1 F.2d 747, 751 (9th Cir. 1989). Where the treating doctor's
2 opinion is not contradicted by another doctor, it may be rejected
3 only for "clear and convincing" reasons. Lester v. Chater, 81
4 F.3d 821, 830 (9th Cir. 1995) (as amended). Even if the treating
5 physician's opinion is contradicted by another doctor, the ALJ
6 may not reject this opinion without providing specific,
7 legitimate reasons, supported by substantial evidence in the
8 record. Id. at 830-31; see also Orn v. Astrue, 495 F.3d 625, 632
9 (9th Cir. 2007); Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198
10 (9th Cir. 2008).

11
12 **1. Dr. Timothy P. Gray**

13
14
15 Plaintiff argues that the "ALJ was correct in stating that
16 Dr. Gray's records indicate that [Plaintiff] was released to
17 perform primarily sedentary work," however, the ALJ failed to
18 properly consider Dr. Gray's conclusion that Plaintiff would be
19 limited to working at that level only for two to four hours per
20 day. (MSC at 4-9; Reply at 3-5). The Court agrees.

21 In determining Plaintiff's RFC, the ALJ noted that she gave
22 "significant weight, but not controlling weight to the opinions
23 expressed by Dr. Gray." (AR 25). The ALJ explained that
24 although Dr. Gray "felt throughout the workers' compensation
25 records that [Plaintiff] could perform at least sedentary work .
26 . . [s]ince his assessments of [Plaintiff's] capacity was done
27 within the workers' compensation setting and do not reflect the
28 specific function-by-function residual functional capacity

1 required by the Regulations, it is not accorded controlling
2 weight.” (Id.). Thus, the ALJ implicitly rejected Dr. Gray’s
3 findings that Plaintiff was limited to shifts of two to four
4 hours, and failed to provide specific and legitimate reasons for
5 doing so. The ALJ is required to consider all relevant medical
6 evidence when determining whether a claimant is disabled. 20
7 C.F.R. §§ 404.1520b, 416.927(c). The ALJ is also required to
8 assess whether a claimant has the ability to work on a sustained
9 basis. Reddick, 157 F.3d at 724. Thus, merely because Dr.
10 Gray’s opinion did not include a function-by-function RFC
11 assessment was not a specific and legitimate reason to reject his
12 opinion.

13
14 The ALJ also has a duty to translate Dr. Gray’s workers’
15 compensation findings into Social Security terms. Macri v.
16 Chater, 93 F.3d 540, 544 (9th Cir. 1996); Desrosiers v. Secretary
17 of Health & Human Services, 846 F.2d 573, 576 (9th Cir. 1988);
18 Booth, 181 F. Supp. 2d at 1104. Although workers’ compensation
19 disability ratings are not controlling in Social Security cases,
20 an ALJ must nevertheless evaluate medical opinions stated in
21 workers’ compensation terminology just as he would evaluate any
22 other medical opinion. Id. The ALJ must “translate” terms of art
23 contained in such medical terminology in order to accurately
24 assess the implications of those opinions for the Social Security
25 disability determination. See Desrosiers, 846 F.2d at 576.
26 “While the ALJ’s decision need not contain an explicit
27 ‘translation,’ it should at least indicate that the ALJ
28

1 recognized the differences between the relevant state workers'
2 compensation terminology, on the one hand, and the relevant
3 Social Security disability terminology, on the other hand, and
4 took those differences into account in evaluating the medical
5 evidence.'" Booth, 181 F. Supp. 2d at 1105. Here, although Dr.
6 Gray made findings relevant to his workers' compensation
7 evaluation of Plaintiff, they were not translated for determining
8 Plaintiff's eligibility for social security benefits.

9
10 Because the ALJ failed to provide specific and legitimate
11 reasons for rejecting Dr. Gray's opinion, the case must be
12 remanded to remedy this defect. Upon remand, the ALJ must
13 translate Dr. Gray's workers' compensation findings into
14 appropriate social security terminology, and then either provide
15 specific and legitimate reasons to reject Dr. Gray's opinions or
16 incorporate the limitations provided by Dr. Gray into the RFC
17 determination.

18
19 **2. Dr. Thomas Haider**

20
21 Plaintiff contends that the ALJ failed to articulate legally
22 sufficient reasons for rejecting Dr. Haider's opinions. (MSC at
23 7-9; Reply at 5). The Court agrees.

24
25 In determining Plaintiff's RFC, the ALJ considered Dr.
26 Haider's April 23, 2013 "Physical Residual Functional Capacity
27 Questionnaire." (AR 860-64). As noted by the ALJ, Dr. Haider
28 opined that Plaintiff could lift and carry up to ten pounds. (AR

1 25). Plaintiff was limited in her ability to perform
2 manipulative maneuvers with her hands and she had marked
3 limitation her ability to twist at the waist. (Id.). She could
4 walk for one block without rest and be absent from work more than
5 three times per month. (Id.). Finally, the ALJ noted that Dr.
6 Haider's opinion regarding Plaintiff's ability to sit and stand
7 was "unclear and confusing." (Id.).
8

9 Although the ALJ gave "great weight" to Dr. Haider's April
10 2013 assessment that Plaintiff could "lift and carry up to 10
11 pounds," she gave "minimal weight to the other limitations, as
12 they are not well supported by the objective record as a whole."
13 (AR 25). More specifically, the ALJ rejected Dr. Haider's
14 opinion that Plaintiff would be "absent more than three times per
15 month [because it] is speculative and without substantial support
16 from the record." (Id.). In support of her finding, the ALJ
17 appears to cite to inter alia that: (1) Plaintiff retained the
18 ability to ambulate effectively and she did not need an assistive
19 device for ambulation or stability; (2) diagnostic imaging
20 "revealed a moderate pathology in the lumbar spine at most" and
21 "[e]lectrodiagnostic testing only recently confirmed mild to
22 moderate sensory radiculopathy"; (3) there is "nothing in the
23 record, except for [Plaintiff's] subjective complaints, showing
24 any significant limitations in the cervical spine or the upper
25 extremities"; and (4) Plaintiff responded well to "conservative
26 nonnarcotic pain medications and she has not had to seek
27 emergency or urgent care for acute symptom exacerbations." (AR
28 25). The Court finds these reasons are not specific and

1 legitimate reasons supported by substantial evidence to reject
2 Dr. Haider's opinion.

3
4 As an initial matter, because the ALJ specifically found Dr.
5 Haider's opinion regarding Plaintiff's ability to sit and stand
6 "unclear and confusing," the ALJ had a duty to re-contact Dr.
7 Haider for clarification rather than simply rejecting his
8 opinion. See Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir.
9 2001) (ALJ has a duty to develop the record further when there is
10 ambiguous evidence).

11
12 Moreover, the ALJ erred in rejecting Dr. Haider's opinion as
13 "speculative." As discussed above, Dr. Haider treated Plaintiff
14 over the course of nearly nine years on a frequent and continual
15 basis, and his opinion is supported by clinical findings and
16 objective diagnostic testing. (AR 567-673, 799-864). Under
17 these circumstances, the ALJ's assertion that Dr. Haider's
18 opinion is "speculative" is not a specific and legitimate reason
19 to reject his opinion.

20
21 Next, although the ALJ cites to moderate pathology in
22 Plaintiff's lumbar spine, as well as mild to moderate sensory
23 radiculopathy to reject Dr. Haider's opinion, the ALJ fails to
24 explain how those findings are inconsistent with Dr. Haider's
25 opinion.

1 The ALJ's next reasoning that the record "largely" shows
2 that Plaintiff was able to ambulate effectively and there is
3 nothing to indicate she was reliant on an assistive device for
4 ambulation or stability lacks substantial support in the record.
5 Numerous progress notes from Dr. Haider reflect that Plaintiff
6 had "difficulty walking," "difficulty changing position and
7 getting onto the examining table," "guarding with motion,"
8 "antalgic gate" and/or positive straight leg test. (AR 568, 572,
9 576, 578, 582, 585, 588, 592, 595, 598, 602, 604, 606, 610, 612,
10 614, 619, 629, 631, 635, 637, 640, 643, 647, 653, 655, 661, 665,
11 800, 802, 810, 812, 816, 818, 823, 828, 830, 832).

12
13 The ALJ's statement that there is "nothing in the record,
14 except for [Plaintiff's] subjective complaints, showing any
15 significant limitations in the cervical spine or the upper
16 extremities" is contradicted by the record. Rather, the evidence
17 reflects, Dr. Haider found on several occasions "tenderness in
18 the cervical spine, left pericervical w/spasm, right pericervical
19 w/spasm, and trapezius" and "evidence of muscle spasm at the
20 cervical spine." (AR 572, 575, 581, 584, 587, 591, 594, 597).
21 Dr. Haider also noted that "[r]adiographs of the cervical spine
22 show cervical straightening as well as reversal of cervical
23 lordosis as well as spondylosis of the C2-C4 level" and "severe
24 muscle spasm." (AR 599). Thus, Dr. Haider did not base his
25 opinions regarding Plaintiff's cervical spine or upper extremity
26 limitations solely on Plaintiff's subjective complaints.

1 Finally, the finding that Plaintiff responded well to
2 conservative non-narcotic pain medications is not entirely
3 consistent with the record. As an initial matter, in 2008,
4 Plaintiff underwent detoxification due to her inability to
5 control the use of narcotic medications. As a result, Plaintiff
6 was prescribed only non-narcotic medications after 2008. (AR
7 576, 579, 804). Dr. Haider's progress notes reflect that the
8 non-narcotic medications were not effective in alleviating her
9 pain because Plaintiff continually complained of increasing or
10 severe pain, which Dr. Haider continued to treat through 2013.
11 (AR 568, 571, 573, 800, 802, 810, 812, 823, 825, 828, 832, 837-
12 38, 842-43, 845, 852-53). Plaintiff also requested, and was
13 given several trigger point or nerve block injections to help
14 alleviate her pain. (AR 568, 810, 812, 823-24, 828, 830, 843,
15 846, 853). Accordingly, the finding that Plaintiff "responded
16 well to conservative nonnarcotic pain medications" is not
17 supported by the medical evidence. Dr. Haider's progress notes
18 chronicle Plaintiff's struggle with her back and leg pain, and at
19 no point show sustained improvement or stabilization with
20 conservative treatment. Thus, the ALJ's conclusion cannot be
21 considered a specific and legitimate reason.

22
23 On remand, the ALJ should contact Dr. Haider, obtain
24 clarification regarding his opinion, reconsider Dr. Haider's
25 opinion, and as necessary, revise Plaintiff's RFC.
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VIII.

CONCLUSION

Accordingly, IT IS ORDERED that judgment be entered REVERSING the decision of the Commissioner and REMANDING this matter for further proceedings consistent with this decision. IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order and the Judgment on counsel for both parties.

DATED: December 29, 2015

/s/

SUZANNE H. SEGAL
UNITED STATES MAGISTRATE JUDGE

NOTICE

THIS DECISION IS NOT INTENDED FOR PUBLICATION IN LEXIS/NEXIS, WESTLAW OR ANY OTHER LEGAL DATABASE.