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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHARON PAGUE,
Plaintiff

v.

NANCY A. BERRYHILL¹, Acting
Commissioner of Social Security,
Defendant.

Case No. 5:16-cv-00590-GJS

**MEMORANDUM OPINION AND
ORDER**

I. PROCEDURAL HISTORY

Plaintiff Sharon Pague (“Plaintiff”) filed a complaint seeking review of Defendant Commissioner of Social Security’s (“Commissioner”) denial of her application for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”). The parties filed consents to proceed before the undersigned United States Magistrate Judge [Dkts. 11, 12] and briefs addressing disputed issues

¹ The Court notes that Nancy A. Berryhill became the Acting Commissioner of the Social Security Administration on January 23, 2017. Accordingly, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, the Court orders that the caption be amended to substitute Nancy A. Berryhill for Carolyn W. Colvin as the defendant in this action.

1 in the case [Dkt. 19 (“Pltf.’s Br.”) and Dkt. 20 (“Def.’s Br.”)]. The Court has taken
2 the parties’ briefing under submission without oral argument. For the reasons set
3 forth below, the Court affirms the decision of the ALJ and orders judgment entered
4 accordingly.

5 II. ADMINISTRATIVE DECISION UNDER REVIEW

6 On May 26, 2011, Plaintiff filed an application for DIB and SSI, alleging that
7 she became disabled as of December 10, 2010. [Dkt. 15, Administrative Record
8 (“AR”) 167-175, 186.] The Commissioner denied her initial claim for benefits and
9 then denied her claim upon reconsideration. [AR 10 and 47-70, 73-94.] On October
10 5, 2012, a hearing was held before Administrative Law Judge (“ALJ”) Michael D.
11 Radensky. [AR 23-46.] On October 25, 2012, the ALJ issued a decision denying
12 Plaintiff’s request for benefits. [AR 7-22.] Plaintiff requested review from the
13 Appeals Council, which denied review. [AR 1-4.]

14 Plaintiff filed a civil action on February 14, 2014. United States Magistrate
15 Judge Michael R. Wilner remanded the case to the Commissioner for further
16 proceedings on December 30, 2014. [AR 525-538 (*Pague v. Colvin*, EDCV 14-293-
17 MRW, Dkt. 20).] Subsequently, on September 23, 2015, a second hearing was held
18 before ALJ Dante M. Alegre. [AR 472-496.] On December 11, 2015, the ALJ
19 issued a decision again denying Plaintiff’s request for benefits. [AR 434-446.]
20 Plaintiff requested review from the Appeals Council on February 11, 2016, but
21 subsequently withdrew her request for review and sought review directly from this
22 Court. *See* 20 C.F.R. §§ 404.984, 416.1484.

23 Applying the five-step sequential evaluation process, the ALJ found that
24 Plaintiff was not disabled. *See* 20 C.F.R. §§ 404.1520(b)-(g)(1) 416.920(b)-(g)(1).
25 At step one, the ALJ concluded that Plaintiff has not engaged in substantial gainful
26 activity since December 10, 2010, the alleged onset date, through December 31,
27 2015, her date last insured. [AR 437.] At step two, the ALJ found that Plaintiff
28 suffered from the following severe impairments: bipolar disorder, mood disorder,

1 post-traumatic stress disorder (“PTSD”), status-post mastectomy, chemotherapy,
2 and radiation from ductal carcinoma. [AR 437 (citing 20 C.F.R. §§ 404.1520(c) and
3 416.920(c).] Next, the ALJ determined that Plaintiff did not have an impairment or
4 combination of impairments that meets or medically equals the severity of one of
5 the listed impairments. [AR 438 (citing 20 C.F.R. Part 404, Subpart P, Appendix 1;
6 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926).]

7 The ALJ found that Plaintiff had the following residual functional capacity
8 (RFC):

9 [M]edium work as defined in 20 CFR 404.1567(b) and
10 416.967(c) involving the following: lifting and/or carrying
11 50 pounds occasionally and 25 pounds frequently; sitting,
12 standing, and/or walking for six hours out of an eight-
hours workday; and unskilled work but no fast production
work.

13 [AR 439.] Applying this RFC, the ALJ found that Plaintiff was unable to perform
14 her past relevant work, but determined that based on her age (44 years old) limited
15 education, and ability to communicate in English, she could perform representative
16 occupations such as night cleaner (DOT 381.687-018), furniture cleaner (DOT
17 709.687-014), and linen room attendant (DOT 222.387-030) and, thus, is not
18 disabled. [AR 445.]

19 III. GOVERNING STANDARD

20 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s decision to
21 determine if: (1) the Commissioner’s findings are supported by substantial evidence;
22 and (2) the Commissioner used correct legal standards. *See Carmickle v.*
23 *Commissioner*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d
24 1071, 1074 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a
25 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*
26 *Perales*, 402 U.S. 389, 401 (1971) (internal citation and quotations omitted); *see*
27 *also Hoopai*, 499 F.3d at 1074.

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1 **IV. DISCUSSION**

2 Plaintiff contends the ALJ erroneously discounted the opinion of examining
3 physician Dr. Khushro Unwalla. [Pltf.’s Br. at 8:22-11:3.] In opposition, the
4 Commissioner contends that the ALJ’s assessment of Dr. Unwalla’s opinion was
5 proper. [Def.’s Br. at 4:23-7:12.]

6 An ALJ is obligated to take into account all medical opinions of record,
7 resolve conflicts in medical testimony, and analyze evidence. 20 C.F.R. §§
8 404.1527(c) and 416.927; *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989).
9 In conducting this analysis, the opinion of a treating or examining physician is
10 entitled to greater weight than that of a non-examining physician. *Garrison v.*
11 *Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014). To reject the uncontradicted opinion of
12 a treating or examining physician, the ALJ must provide clear and convincing
13 reasons. *Ghanim v. Colvin*, 763 F.3d 1154, 1160-61 (9th Cir. 2014); *Lester v.*
14 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995). When a treating or examining physician’s
15 opinion is contradicted by another opinion, an ALJ may not reject the opinion
16 without “specific and legitimate reasons” that are supported by substantial evidence
17 in the record. *Ghanim*, 763 F.3d at 1161; *Garrison*, 759 F.3d at 1012; *Lester*, 81
18 F.3d at 830-31. “This is so because, even when contradicted, a treating or
19 examining physician’s opinion is still owed deference and will often be ‘entitled to
20 the greatest weight . . . even if it does not meet the test for controlling weight.’”
21 *Garrison*, 759 F.3d at 1012 (internal citation omitted).

22 Dr. Unwalla completed a psychiatric evaluation of Plaintiff on May 1, 2015.
23 In his report, he noted that Plaintiff was shaking and tremulous, exhibited
24 psychomotor agitation and a reactive affect, appeared anxious, and demonstrated
25 disorganized and confused thought processes. [AR 596.] Among other things, Dr.
26 Unwalla found that Plaintiff had marked difficulties in the following: interacting
27 with others; social functioning; concentrating; performing simple, repetitive tasks;
28 and performing detailed and complex tasks. [AR 597.]

1 The ALJ discounted the opinion of Dr. Unwalla and instead relied on the
2 contradictory opinion of the non-treating, non-examining psychological consultant,
3 Dr. Anna M. Franco. [AR 47-69; 441-442.] The ALJ gave Dr. Unwalla’s opinion
4 “little weight” for one reason. [AR 442.] The ALJ stated that “the findings noted
5 by Dr. Unwalla are an anomaly,” because they were inconsistent with the treatment
6 record. [AR 442.] The Court finds that the ALJ’s stated reason satisfies the specific
7 and legitimate reason requirement.

8 Contrary to Plaintiff’s assertion, the fact that Dr. Unwalla reviewed the record
9 *does not* necessarily make his opinion consistent with that record. [See Pltf.’s Br. at
10 9:14-10:5.] Here, the ALJ found that the longitudinal treatment records regarding
11 Plaintiff’s bipolar disorder, PTSD, and mood disorder “indicate[d] that Plaintiff was
12 doing fairly well,” with only isolated instances of severe findings. [AR 441.]
13 Specifically, “[a]side from some findings of a depressed mood, a blunted affect, and
14 tearfulness at times...any more significant findings were even more isolated.” [AR
15 441 (citing AR 254, 260, 329-331, 337, 345, 360, 904, 906-909.)] The ALJ noted
16 two treatment records where Plaintiff appeared to be suffering from more severe
17 mental health issues. In December 2013, Plaintiff’s treatment note indicated that
18 she had poor concentration, impaired judgement, depression, anxiety, and reported
19 that she was suffering from paranoia and hallucinations. [AR at 910.] A month
20 later, in January 2014, Plaintiff’s treatment note indicated that she appeared
21 disheveled, had poor eye contact, was withdrawn, had a depressed mood and
22 constricted affect, and again reported that she was suffering from hallucinations.
23 [AR at 915.] However, the ALJ concluded that aside from these two treatment
24 notes, the remaining findings were generally within normal limits. [See AR 254,
25 260, 329-331, 337, 345, 360, 904, 906-909.] In addition, although Plaintiff
26 participated in a court-mandated mental health program for child endangerment in
27 March 2011, the treatment notes indicated that she had excellent participation in the
28 program, did well on her medications, and no further case management services

1 were needed as of June 2011. [AR 290, 293, 346.]

2 This lack of support in the treatment notes, objective evidence, and medical
3 record as a whole is a specific and legitimate reason supported by substantial
4 evidence for discounting Dr. Unwalla’s opinion. See C.F.R. §§ 404.1527(c)(4) and
5 416.927 (“[g]enerally, the more consistent an opinion is with the record as a whole,
6 the more weight we will give to that opinion.”); *Mendoza v. Astrue*, 371 Fed. Appx.
7 829, 831–32 (9th Cir. 2010) (“The ALJ permissibly rejected a medical opinion of a
8 non-treating examining physician that was unsupported by the record as a whole.”)
9 (internal citation omitted); *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992)
10 (finding that an ALJ may reject the conclusory opinion of a treating or examining
11 physician if the opinion is unsupported by clinical findings).

12 **V. CONCLUSION**

13 For all of the foregoing reasons, **IT IS ORDERED** that the decision of the
14 Commissioner finding Plaintiff not disabled is **AFFIRMED**.

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16 **IT IS SO ORDERED.**

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18 DATED: March 07, 2017



19 GAIL J. STANDISH
20 UNITED STATES MAGISTRATE JUDGE
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