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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SUSANA MALIG MANGUNE, Plaintiff, vs. NANCY BERRYHILL, Acting Commissioner of Social Security, Defendant.	Case No. 5:16-CV-00632 (VEB) DECISION AND ORDER

I. INTRODUCTION

In December of 2014, Plaintiff Susana Malig Mangune applied for Disability Insurance benefits and Supplemental Security Income benefits under the Social Security Act. The Commissioner of Social Security denied the applications.[1]

[1] On January 23, 2017, Nancy Berryhill took office as Acting Social Security Commissioner. The Clerk of the Court is directed to substitute Acting Commissioner Berryhill as the named defendant in this matter pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure.

Plaintiff, by and through her attorney, Lawrence D. Rohlfing, Esq. commenced this action seeking judicial review of the Commissioner's denial of benefits pursuant to 42 U.S.C. §§ 405 (g) and 1383 (c)(3).

The parties consented to the jurisdiction of a United States Magistrate Judge. (Docket No. 11, 12). On February 17, 2017, this case was referred to the undersigned pursuant to General Order 05-07. (Docket No. 19).

II. BACKGROUND

Plaintiff applied for Disability Insurance benefits and SSI benefits on December 19, 2014, alleging disability beginning June 19, 2013. (T at 164-67).[2] The applications were denied initially and on reconsideration. Plaintiff requested a hearing before an Administrative Law Judge ("ALJ").

On June 12, 2015, a hearing was held before ALJ Dante Alegra. (T at 45). Plaintiff appeared with an attorney and testified. (T at 49-65). The ALJ also received testimony from Victoria Ray, a vocational expert. (T at 66-69).

On September 2, 2015, the ALJ issued a written decision denying the applications for benefits. (T at 18-43). The ALJ's decision became the

[2] Citations to ("T") refer to the administrative record at Docket No. 17.

Commissioner's final decision on February 4, 2016, when the Appeals Council denied Plaintiff's request for review. (T at 1-7).

On April 6, 2016, Plaintiff, acting by and through her counsel, filed this action seeking judicial review of the Commissioner's denial of benefits. (Docket No. 1). The Commissioner interposed an Answer on August 31, 2016. (Docket No. 16). The parties filed a Joint Stipulation on November 30, 2016. (Docket No. 18).

After reviewing the pleadings, Joint Stipulation, and administrative record, this Court finds that the Commissioner's decision must be affirmed and this case be dismissed.

III. DISCUSSION

A. Sequential Evaluation Process

The Social Security Act ("the Act") defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a claimant shall be determined to be under a disability only if any impairments are of such severity that he or she is not only unable to do previous work but cannot, considering his or her age, education and work experiences, engage in any other

substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person is engaged in substantial gainful activities. If so, benefits are denied. 20 C.F.R. §§ 404. 1520(a)(4)(i), 416.920(a)(4)(i). If not, the decision maker proceeds to step two, which determines whether the claimant has a medically severe impairment or combination of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

If the claimant does not have a severe impairment or combination of impairments, the disability claim is denied. If the impairment is severe, the evaluation proceeds to the third step, which compares the claimant's impairment(s) with a number of listed impairments acknowledged by the Commissioner to be so severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or equals one of the listed impairments, the claimant is conclusively presumed to be disabled. If the impairment is not one conclusively presumed to be disabling, the evaluation proceeds to the fourth step, which determines whether the impairment

prevents the claimant from performing work which was performed in the past. If the claimant is able to perform previous work, he or she is deemed not disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant's residual functional capacity (RFC) is considered. If the claimant cannot perform past relevant work, the fifth and final step in the process determines whether he or she is able to perform other work in the national economy in view of his or her residual functional capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

The initial burden of proof rests upon the claimant to establish a *prima facie* case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is met once the claimant establishes that a mental or physical impairment prevents the performance of previous work. The burden then shifts, at step five, to the Commissioner to show that (1) plaintiff can perform other substantial gainful activity and (2) a "significant number of jobs exist in the national economy" that the claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

B. Standard of Review

Congress has provided a limited scope of judicial review of a Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner's decision,

made through an ALJ, when the determination is not based on legal error and is supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).

"The [Commissioner's] determination that a plaintiff is not disabled will be upheld if the findings of fact are supported by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n 10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-02 (9th Cir. 1989). Substantial evidence "means such evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)(citations omitted). "[S]uch inferences and conclusions as the [Commissioner] may reasonably draw from the evidence" will also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir. 1965). On review, the Court considers the record as a whole, not just the evidence supporting the decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

It is the role of the Commissioner, not this Court, to resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational interpretation, the Court may not substitute its judgment for that of the

Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Brawner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the administrative findings, or if there is conflicting evidence that will support a finding of either disability or non-disability, the finding of the Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

C. Commissioner's Decision

The ALJ determined that Plaintiff had not engaged in substantial gainful activity since June 19, 2013, the alleged onset date, and met the insured status requirements of the Social Security Act through December 31, 2018 (the "date last insured"). (T at 23). The ALJ found that Plaintiff's lumbar spine degenerative disc disease was a "severe" impairment under the Act. (Tr. at 23).

However, the ALJ concluded that Plaintiff did not have an impairment or combination of impairments that met or medically equaled one of the impairments set forth in the Listings. (T at 25).

The ALJ determined that Plaintiff retained the residual functional capacity ("RFC") to perform light work, as defined in 20 CFR §404.1567 (b), with the

following limitations: she can lift/carry 20 pounds occasionally and 10 pounds frequently; stand/walk for 6 hours in an 8-hour workday; and sit for 6 hours in an 8-hour workday. The ALJ found that Plaintiff could frequently climb, but could not climb ladders, ropes, or scaffolds; she can frequently balance, stoop, kneel, crouch, and crawl. (T at 25).

The ALJ concluded that Plaintiff could not perform her past relevant work as a nurse. (T at 36). Considering Plaintiff's age (54 years old on the alleged onset date), education (at least high school), work experience (some skills acquired from past relevant work), and residual functional capacity, the ALJ found that jobs exist in significant numbers in the national economy that Plaintiff can perform. (T at 36).

Accordingly, the ALJ determined that Plaintiff was not disabled within the meaning of the Social Security Act between June 19, 2013 (the alleged onset date) and September 2, 2015 (the date of the decision) and was therefore not entitled to benefits. (T at 37). As noted above, the ALJ's decision became the Commissioner's final decision when the Appeals Council denied Plaintiff's request for review. (T at 1-7).

D. Disputed Issues

As set forth in the Joint Stipulation (Docket No. 18, at p. 4), Plaintiff offers two (2) main arguments in support of her claim that the Commissioner's decision

should be reversed. First, she challenges the ALJ's assessment of the medical opinion evidence. Second, Plaintiff argues that the ALJ's consideration of her ability to walk was flawed. This Court will address each argument in turn.

IV. ANALYSIS

A. Medical Opinion Evidence

In disability proceedings, a treating physician's opinion carries more weight than an examining physician's opinion, and an examining physician's opinion is given more weight than that of a non-examining physician. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). If the treating or examining physician's opinions are not contradicted, they can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If contradicted, the opinion can only be rejected for "specific" and "legitimate" reasons that are supported by substantial evidence in the record. *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995).

An ALJ satisfies the "substantial evidence" requirement by "setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings." *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014)(quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)).

"The ALJ must do more than state conclusions. He must set forth his own interpretations and explain why they, rather than the doctors,' are correct." *Id*.

In the present case, Dr. Khushro Unwalla performed a consultative psychiatric examination in July of 2015. Dr. Unwalla diagnosed major depressive disorder with psychotic features and post-traumatic stress disorder by history. (T at 627). He assigned a Global Assessment of Functioning ("GAF") score[3] of 61 (T at 627). "A GAF of 61-70 indicates '[s]ome mild symptoms (e.g., depressed mood and mild insomnia) or some difficulty in social, occupational, or school functioning (e.g., occasional truancy, or theft within the household), but generally functioning pretty well, has some meaningful interpersonal relationships.'" *Tagger v. Astrue*, 536 F. Supp. 2d 1170, 1174 n.8 (C.D. Cal. 2008).

Dr. Unwalla assessed mild limitations with regard to Plaintiff's ability to perform simple and repetitive tasks, as well as detailed and complex tasks; mild difficulties with regard to the performance of work activities on a consistent basis without special or additional supervision; mild limitation as to completing a normal workday and workweek; mild limitation with regard to accepting instructions from supervisors and interactions with co-workers and the public; and mild difficulties as

[3] "A GAF score is a rough estimate of an individual's psychological, social, and occupational functioning used to reflect the individual's need for treatment." *Vargas v. Lambert*, 159 F.3d 1161, 1164 n.2 (9th Cir. 1998).

to handling customary stresses, changes, and demands of gainful employment. (T at 627). He described Plaintiff's prognosis as "guarded." (T at 628).

Relying on Dr. Unwalla's assessment and other evidence of record, the ALJ concluded that Plaintiff did not have a "severe" mental health impairment, as defined under the Social Security Act. (T at 24). However, as required, the ALJ still considered the evidence regarding Plaintiff's mental health functioning when determining her RFC. (T at 24-25, 31-36). This Court finds the ALJ's assessment consistent with the applicable legal standard and supported by substantial evidence.

Treatment notes from Dr. Syam Kunam, Plaintiff's treating psychiatrist, were largely unremarkable, describing Plaintiff as cooperative, properly oriented, with logical thought processes and appropriate behavior. (T at 461-68).

Dr. Paula Kresser and Dr. R.E. Brooks, non-examining State Agency review consultants, reviewed the record in May and November of 2014, respectively, and opined that there was no evidence of significant mental health limitations. (T at 80-81, 98-99). State Agency review physicians are highly qualified experts and their opinions, if supported by other record evidence, may constitute substantial evidence sufficient to support a decision to discount a treating physician's opinion. *See Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir. 1996); *see also* 20 CFR § 404.1527 (f)(2)(i)("State agency medical and psychological consultants and other program

physicians, psychologists, and other medical specialists are highly qualified physicians, psychologists, and other medical specialists who are also experts in Social Security disability evaluation.").

As discussed above, Dr. Unwalla performed a consultative examination and assessed no more than mild mental health limitations. (T at 627-28). Dr. Unwalla personally observed and examined Plaintiff and his findings were consistent with the objective evidence of record, including the treatment notes. As such, his opinion was sufficient to constitute substantial evidence in support of the ALJ's decision. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (holding that examining physician's "opinion alone constitutes substantial evidence, because it rests on his own independent examination of [claimant]").

Dr. Unwalla's report was submitted after the administrative hearing was closed. Plaintiff contends that the ALJ erred by failing to provide her the opportunity to address Dr. Unwalla's opinion before rendering a decision. In particular, Plaintiff argues that she should have been given the opportunity to question Dr. Unwalla regarding the potential impact of even mild limitations on her ability to perform work in the health care field. Plaintiff contends that this violated the Commissioner's *Hearings, Appeals, and Litigation Law Manual* ("HALLEX"), which requires the proffer of post-hearing evidence to the claimant or her

representatives, so as to provide the claimant with an "opportunity to examine the evidence and comment on, object to, or refute the evidence by submitting other evidence, requesting a supplemental hearing, or if required for a full and true disclosure of the facts, cross-examining the author(s) of the evidence." HALLEX I-2-7-30.

However, the Ninth Circuit has held that HALLEX does not impose "judicially enforceable duties." *Lowry v. Barnhart*, 329 F.3d 1019, 1023 (9th Cir. 2003). As such, courts will not "review allegations of noncompliance with the manual" because it "does not have the force and effect of law [and] is not binding on the Commissioner." *Moore v. Apfel*, 216 F.3d 864, 868 (9th Cir. 2000).

Moreover, even granting that the ALJ's failure to proffer Dr. Unwalla's report prior to issuing a decision was error (and this Court certainly does not intend to endorse the ALJ's apparent disregard for HALLEX's proffer provision), Plaintiff has not established prejudice warranting remand. "Reversal on account of error is not automatic, but requires a determination of prejudice." *Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012). "The burden is on the party claiming error to demonstrate not only the error, but also that it affected his 'substantial rights,' which is to say, not merely his procedural rights." *Id.* Here, Plaintiff had the opportunity to present her arguments regarding Dr. Unwalla's report to the Appeals Council, but

chose not to do so. Further, Plaintiff has presented her arguments to this Court, which has considered them and found them unavailing for the reasons stated herein.

The ALJ's decision was supported by the record, including the treatment notes and assessments of the consultative examiner and State Agency review consultants.

It is the role of the Commissioner, not this Court, to resolve conflicts in evidence. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989); *Richardson*, 402 U.S. at 400. If the evidence supports more than one rational interpretation, this Court may not substitute its judgment for that of the Commissioner. *Allen v. Heckler*, 749 F.2d 577, 579 (9th 1984). If there is substantial evidence to support the administrative findings, or if there is conflicting evidence that will support a finding of either disability or nondisability, the Commissioner's finding is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987). Here, the ALJ's decision was supported by substantial evidence and must therefore be sustained.

B. ALJ's Consideration of Plaintiff's Ability to Walk

The ALJ determined that Plaintiff retained the RFC to perform light work, as defined in 20 CFR §404.1567 (b), with some limitations. With regard to walking, the ALJ found that Plaintiff could walk for 6 hours in an 8-hour workday. (T at 25). The ALJ's finding was supported by the assessment of Dr. Ruben Ustarius, a consultative examiner. Dr. Ustarius opined that Plaintiff could walk for 6 hours in

an 8-hour workday. (T at 495). Plaintiff does not challenge Dr. Ustarius's assessment or the ALJ's reliance thereon, but does argue that the ALJ should have given more specific consideration to evidence of record, including Dr. Ustarius's clinical findings, regarding the *pace* of Plaintiff's ambulation.

This Court finds Plaintiff's argument unavailing. The ALJ's assessment of Plaintiff's ability to walk was supported by substantial evidence, including Dr. Ustarius's report, as well as the opinions of Dr. Panek and Dr. Steinsapir, non-examining State Agency review physicians. (T at 82-85, 97-98). The ALJ thoroughly considered all of the evidence of record, including the evidence regarding the impact of Plaintiff's impairments on her walking pace, when determining Plaintiff's RFC. This Court finds no basis for a remand. *See Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999)(holding that if evidence reasonably supports the Commissioner's decision, the reviewing court must uphold the decision and may not substitute its own judgment).

V. CONCLUSION

After carefully reviewing the administrative record, this Court finds substantial evidence supports the Commissioner's decision, including the objective medical evidence and supported medical opinions. It is clear that the ALJ thoroughly

examined the record, afforded appropriate weight to the medical evidence, including the assessments of the treating and examining medical providers and medical experts, and afforded the subjective claims of symptoms and limitations an appropriate weight when rendering a decision that Plaintiff is not disabled. This Court finds no reversible error and because substantial evidence supports the Commissioner's decision, the Commissioner is GRANTED summary judgment and that Plaintiff's motion for judgment summary judgment is DENIED.

VI. ORDERS

IT IS THEREFORE ORDERED that:

Judgment be entered AFFIRMING the Commissioner's decision and DISMISSING this action, and it is further ORDERED that

The Clerk of the Court file this Decision and Order, serve copies upon counsel for the parties, and CLOSE this case.

DATED this 25th day of July, 2017,

/s/Victor E. Bianchini
VICTOR E. BIANCHINI
UNITED STATES MAGISTRATE JUDGE