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

NANCY FLORES,)	No. EDCV 17-0251-AS
)	
Plaintiff,)	MEMORANDUM OPINION
v.)	
)	
NANCY A. BERRYHILL,)	
Acting Commissioner of Social)	
Security,)	
)	
Defendant.)	
)	

PROCEEDINGS

On February 10, 2017, Plaintiff filed a Complaint seeking review of the denial of her applications for Social Security benefits. (Docket Entry No. 1). The parties have consented to proceed before the undersigned United States Magistrate Judge. (Docket Entry Nos. 11-12). On July 17, 2017, Defendant filed an Answer along with the Administrative Record ("AR"). (Docket Entry Nos. 15-16). On December 6, 2017, the parties filed a Joint Stipulation ("Joint

1 Stip."), setting forth their respective positions regarding
2 Plaintiff's claims. (Docket Entry No. 22).

3
4 The Court has taken this matter under submission without oral
5 argument. See C.D. Cal. L.R. 7-15.

6
7 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

8
9 On November 16, 2012, Plaintiff, formerly employed as a
10 caregiver and warehouse worker (AR 247), filed applications for
11 Disability Insurance Benefits and Supplemental Security Income,
12 alleging an inability to work since October 1, 2012.¹ (AR 210, 214).

13
14 On November 19, 2014, Administrative Law Judge ("ALJ") Troy
15 Silva examined the record and heard testimony from vocational expert
16 ("VE") Troy Scott and Plaintiff, who was represented by counsel.
17 (See AR 44-76). At the hearing, Plaintiff amended her disability
18 onset date to January 1, 2014. (AR 54). On January 27, 2015, the
19 ALJ issued a decision denying Plaintiff's applications. (See AR 26-
20 39).

21
22 The ALJ applied the five-step sequential process in evaluating
23 Plaintiff's case. At step one, the ALJ determined that Plaintiff had
24 not engaged in substantial gainful activity after the alleged amended
25 onset date of January 1, 2014. (AR 29). At step two, the ALJ found

26
27 ¹ Plaintiff previously applied for Social Security benefits in
28 2005, and her application was denied in a decision issued on August
1, 2007. (AR 81-89).

1 that Plaintiff has the following severe impairments: headaches,
2 asthma, cervical myofascial pain disorder, low back pain syndrome,
3 and left shoulder pain. (AR 29). At step three, the ALJ found that
4 Plaintiff's impairments did not meet or equal a listing found in 20
5 C.F.R. Part 404, Subpart P, Appendix 1. (AR 30). Before proceeding
6 to step four, the ALJ found that Plaintiff had the Residual
7 Functional Capacity ("RFC")² to perform medium work with the
8 following limitations:

9
10 [Plaintiff] can lift and carry 50 pounds occasionally and
11 25 pounds frequently. She can stand and walk for six hours
12 out of an eight-hour workday, and she can sit for six hours
13 out of an eight-hour workday. She cannot work in a cold
14 environment or an environment with pulmonary irritants.

15
16 (Id.). At step four, the ALJ adopted the VE's testimony in finding
17 that Plaintiff was capable of performing her past relevant work as a
18 home health aide (Dictionary of Occupational Titles ("DOT") 354.377-
19 014), both as she performed it and as the job is generally performed.
20 (AR 38). As a result of these findings, the ALJ concluded that
21 Plaintiff is not disabled within the meaning of the Social Security
22 Act. (AR 39).

23
24
25 _____
26 ² A Residual Functional Capacity is what a claimant can still
27 do despite existing exertional and non-exertional limitations. See
28 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

1 Plaintiff requested that the Appeals Council review the ALJ's
2 Decision. (See AR 19). The request was denied on December 14, 2016
3 (AR 1-5). The ALJ's decision then became the final decision of the
4 Commissioner, allowing this Court to review it. See 42 U.S.C. §§
5 405(g), 1383(c).

6 7 **STANDARD OF REVIEW**

8
9 This Court reviews the Administration's decision to determine if
10 it is free of legal error and supported by substantial evidence. See
11 Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial
12 evidence" is more than a mere scintilla, but less than a
13 preponderance. Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir.
14 2014). To determine whether substantial evidence supports a finding,
15 "a court must consider the record as a whole, weighing both evidence
16 that supports and evidence that detracts from the [Commissioner's]
17 conclusion." Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir.
18 2001) (internal quotation omitted). As a result, "[i]f the evidence
19 can support either affirming or reversing the ALJ's conclusion, [a
20 court] may not substitute [its] judgment for that of the ALJ."
21 Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).

22 23 **PLAINTIFF'S CONTENTIONS**

24
25 Plaintiff alleges that the ALJ failed to (1) properly rely on
26 the VE's testimony and (2) make an RFC finding that is supported by
27 substantial evidence. (See Joint Stip. at 4-26).

1 DISCUSSION

2
3 After consideration of the record as a whole, the Court finds
4 that the Commissioner's findings are supported by substantial
5 evidence and are free from material legal error.³
6

7 **A. The ALJ Properly Relied on the VE's Testimony To Find That**
8 **Plaintiff Could Perform Her Past Relevant Work**
9

10 Plaintiff contends that the ALJ improperly relied on the VE's
11 testimony because the ALJ failed to reconcile a conflict between
12 Plaintiff's RFC and the DOT description of the home health aide
13 occupation. (Joint Stip. at 4-6, 8-10).
14

15 The ALJ relies on the DOT and VE testimony in considering
16 potential occupations that a claimant can perform. 20 C.F.R. §
17 416.966(e); Zavalin v. Colvin, 778 F.3d 842, 845-46 (9th Cir. 2015).
18 "When there is an apparent conflict between the [VE's] testimony and
19 the DOT – for example, expert testimony that a claimant can perform
20 an occupation involving DOT requirements that appear to be more than
21 the claimant can handle – the ALJ is required to reconcile the
22 inconsistency." Zavalin, 778 F.3d at 846 (citing Massachi v. Astrue,
23 486 F.3d 1149, 1153-54 (9th Cir. 2007)); see also SSR 00-4p (stating
24 that adjudicators must "[i]dentify and obtain a reasonable
25

26 ³ The harmless error rule applies to the review of
27 administrative decisions regarding disability. See McLeod v. Astrue,
28 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart, 400 F.3d
676, 679 (9th Cir. 2005) (an ALJ's decision will not be reversed for
errors that are harmless).

1 explanation for any conflicts between occupational evidence provided
2 by VEs ... and information in the [DOT], including its companion
3 publication, the Selected Characteristics of Occupations Defined in
4 the Revised Dictionary of Occupational Titles (SCO)"). An ALJ's
5 failure to inquire into an apparent conflict is harmless where there
6 is no actual conflict between the RFC and the DOT. Ranstrom v.
7 Colvin, 622 F. App'x 687, 689 (9th Cir. 2015) (citing Massachi, 486
8 F.3d at 1154 n. 19).

9
10 Here, Plaintiff claims that the ALJ's RFC determination that
11 Plaintiff cannot work in a cold environment or an environment with
12 pulmonary irritants conflicts with the DOT's statement that the home
13 health aide occupation involves occasional "exposure to weather" and
14 occasional "wet[ness] and/or humid[ity]." DOT 354.377-014. Plaintiff
15 points out that the SCO defines "exposure to weather" as "[e]xposure
16 to outside atmospheric conditions." Selected Characteristics of
17 Occupations Defined in the Revised Dictionary of Occupational Titles,
18 Appendix D (U.S. Dept. of Labor 1993). "Atmospheric conditions" is
19 separately defined as "[e]xposure to such conditions as fumes,
20 noxious odors, dusts, mists, gases, and poor ventilation, that affect
21 the respiratory system, eyes, or the skin." Id. Therefore,
22 Plaintiff contends that the FOT's reference to "exposure to weather"
23 implies exposure to pulmonary irritants which conflict with her
24 asthma and the RFC limitation that she must avoid pulmonary
25 irritants. (Joint Stip. at 4-6, 8-10). The Court disagrees.

26
27 Contrary to Plaintiff's contentions, the ALJ's RFC finding did
28 not limit Plaintiff's exposure to weather or to wetness and/or

1 humidity; it found that Plaintiff must avoid "a cold environment or
2 an environment with pulmonary irritants." (AR 30). The hypothetical
3 person the ALJ described to the VE was one who "should avoid
4 concentrated exposure to pulmonary or respiratory irritants," and who
5 "would need to avoid concentrated exposure to extreme cold or heat."
6 (AR 72). Based on these limitations, along with others, the VE
7 testified that Plaintiff would be able to perform the job of home
8 health aide as it is generally performed and as Plaintiff actually
9 performed it. (Id.). When asked if the VE's testimony was
10 consistent with the DOT, the VE replied that it was. (AR 73).

11
12 There is nothing in the DOT description of the occupation of
13 home health aide occupation (also called a "home attendant") to
14 suggest that the job, as generally performed, involves exposure to
15 cold or to pulmonary irritants. According to the DOT, a home health
16 aide is one who "[c]ares for elderly, convalescent, or handicapped
17 persons in patient's home," performing such tasks as changing bed
18 linens, washing laundry, preparing food, and helping to dress and
19 bathe the patient. DOT 354.377-014. The job also involves
20 "[a]ccompan[ying] ambulatory patients outside home, serving as guide,
21 companion, and aide," as well as "miscellaneous duties as requested,
22 such as obtaining household supplies and running errands." Id.

23
24 Although the DOT states that the job of home health aide
25 involves occasional "exposure to weather," (id.), that does not mean
26 the job involves exposure to pulmonary irritants, such as dust or
27 fumes, that would not normally be implied by the term "weather." The
28 DOT uses a different categorical term, "atmospheric conditions," to

1 refer to exposure to dust, fumes and other breathable irritants,⁴
2 (see SCO, Appendix D), and specifically states that "atmospheric
3 conditions" are "not present" in the job of a home health aide. DOT
4 354.377-014. Moreover, a common sense reading of the DOT description
5 suggests that the "exposure to weather" merely occurs in the normal
6 course of being outdoors when "[a]ccompan[ing] ambulatory patients
7 outside [the] home" or when running errands, as needed.

8
9 Plaintiff also contends that the home health aide job conflicts
10 with her asthma because it involves "wetness and/or humidity," (Joint
11 Stip. at 9-10), claiming that "wetness and/or humidity" is a
12 pulmonary irritant because it "could affect [Plaintiff] due to her
13 asthma," (id. at 10), and noting that asthma's "triggers" include
14 "bad weather, such as thunderstorms or high humidity." (Id. at 10
15 n.2 (quoting <https://www.cdc.gov/asthma/triggers.html>)). However,
16 there is nothing in the DOT's description of the home health aide
17 occupation to suggest that a home health aide's exposure to wetness
18 and/or humidity would rise to the level of pulmonary irritation.⁵
19 Accordingly, the VE accurately testified that his testimony was

21 ⁴ The SCO defines the categorical term "atmospheric conditions"
22 as "[e]xposure to such conditions as fumes, noxious odors, dusts,
23 mists, gases, and poor ventilation, that affect the respiratory
24 system, eyes, or the skin." SCO, Appendix D. Contrary to
25 Plaintiff's argument, it is clear from the DOT and SCO that
26 "atmospheric conditions" and "exposure to weather" are meant as
27 distinct categories, despite the fact that the latter term is defined
28 as "exposure to outside atmospheric conditions." Id.

29 ⁵ As used in the DOT, the term "wet and/or humid" is defined as
30 "[c]ontact with water or other liquids or exposure to nonweather-
31 related humid conditions." SCO, Appendix D. This category,
32 therefore, does not include "bad weather, such as thunderstorms."

1 consistent with the DOT, and the ALJ did not materially err in
2 relying on that testimony.

3
4 Finally, there is no indication in the record that Plaintiff's
5 own past employment as a home health aide exposed her to pulmonary
6 irritants or otherwise troubled her asthma condition. Plaintiff
7 testified that her job involved changing diapers, washing and feeding
8 people who were unable to care for themselves due to strokes or other
9 conditions. (AR 50). The only difficulty that Plaintiff noted about
10 her job was the lifting it required. (AR 51). Because the ALJ found
11 Plaintiff capable of working as a home health aide both as generally
12 and actually performed, the apparent lack of pulmonary irritants in
13 Plaintiff's past relevant work supports the ALJ's finding.

14
15 **B. The ALJ's RFC Finding Is Supported by Substantial Evidence**

16
17 Plaintiff asserts that the ALJ's RFC finding is not supported by
18 substantial evidence because Plaintiff "cannot lift/carry items
19 weighing 25 to 50 pounds while using a cane and with limited upper
20 left extremity mobility." (Joint Stip. at 11). Plaintiff also
21 contends that the ALJ erred in rejecting the opinion of Dr. Azizollah
22 Karamlou, the consultative examiner, who determined that, "[a]t most,
23 [she] can perform light work." (Id. at 11-13). Plaintiff claims
24 that if she were found capable of only light work, she would "grid[]
25 out under grid rule 202.09" due to her illiteracy.⁶ (Id.) (citing 20
26 C.F.R., Part 404, Subpart P, Appendix 2, 202.09).

27
28 ⁶ The ALJ did not believe Plaintiff's assertions of
illiteracy. See AR 37. Given the Court's finding that the ALJ

1 An RFC assessment is not a medical opinion. Rather, it is an
2 "administrative finding" the ALJ reaches after considering all the
3 relevant evidence, including diagnoses, treatment, observations by
4 treating physicians, medical records, and the claimant's own
5 subjective symptoms. See Social Security Ruling 96-5p; 20 C.F.R. §
6 404.1527 (e)(2) (a residual functional capacity finding is not a
7 medical opinion but an administrative finding that is reserved to the
8 Commissioner).

9
10 When assessing doctors' medical opinions, an examining
11 physician's opinion is "entitled to greater weight than the opinion
12 of a nonexamining physician." Lester v. Chater, 81 F.3d 821, 830
13 (9th Cir. 1995). "If a treating or examining doctor's opinion is
14 contradicted by another doctor's opinion, an ALJ may only reject it
15 by providing specific and legitimate reasons that are supported by
16 substantial evidence." Trevizo v. Berryhill, 871 F.3d 664, 675 (9th
17 Cir. 2017) (quoting Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198
18 (9th Cir. 2008)). "[A]n ALJ errs when he rejects a medical opinion
19 or assigns it little weight while doing nothing more than ignoring
20 it, asserting without explanation that another medical opinion is
21 more persuasive, or criticizing it with boilerplate language that
22 fails to offer a substantive basis for his conclusion." Garrison v.

23
24
25 properly rejected Dr. Karamlou's opinion regarding Plaintiff's
26 limitation to light work, the Court does not address Plaintiff's
27 claims regarding her illiteracy.
28

1 Colvin, 759 F.3d 995, 1012-13 (9th Cir. 2014) (citing Nguyen v.
2 Chater, 100 F.3d 1462, 1464 (9th Cir. 1996)).

3
4 As set forth above, the ALJ found that Plaintiff had the RFC to
5 perform medium work with certain limitations. (AR 30). In arriving
6 at this RFC finding, the ALJ reviewed and considered the physical,
7 musculoskeletal and neurological examinations conducted by Dr.
8 Karamlou on April 23, 2013, (AR 32; 377-81), incorporating some of
9 Dr. Karamolou's findings and rejecting others that lacked support in
10 the record.

11
12 Dr. Karamlou found that Plaintiff has "the following problems":
13 History of trauma to the chest along with the motor vehicle accident.
14 She was hit by machinery and she has had continuous headache. She
15 also has breathing problem as a result of the injury to the left
16 lung. She currently has low back pain syndrome with sciatica of the
17 left leg. [She] walks with a cane for long distance support. (AR
18 380). Dr. Karamlou opined that Plaintiff can lift and carry twenty
19 pounds occasionally and ten pounds frequently, walk, stand and sit
20 for six hours in an eight-hour day; push and pull occasionally; and
21 can climb, balance, kneel and crawl frequently. (Id.). Dr. Karamlou
22 observed that Plaintiff "walks with a cane just for long distance
23 support," but found that she does not need a cane or other assistive
24 device to walk, and she can "walk on uneven terrain, climb ladders,
25 and work at heights." (AR 379, 381). Dr. Karamlou opined that
26 Plaintiff "should avoid extremes in temperature, dust and chemicals
27 due to injury to the lung." (AR 381).

1 The ALJ rejected Dr. Karamlou's opinion regarding Plaintiff's
2 ability to lift and carry twenty pounds occasionally and ten pounds
3 frequently, finding no support in the medical record for this
4 opinion. "The medical evidence of record does not show a worsening of
5 the claimant's impairments since the prior decision other than the
6 internal medicine consultative examiner indicating a light residual
7 functional capacity, but this assessment does not seem supported by
8 the objective evidence." (AR 32, 37).⁷ "I am using a medium
9 residual functional capacity given in the last decision due to the
10 lack of objective findings showing a worsening of the claimant's
11 condition." (AR 37).

12
13 The record supports the ALJ's finding. Medical records dated
14 February 12 and 17, 2014, reveal that although Plaintiff complained
15 of left shoulder pain, examination revealed a normal range of motion
16 and normal strength. (AR 33, 412, 430). Records of examinations on
17 March 6 and 18, 2014, also showed normal range of motion and normal
18 motor strength despite Plaintiff's complaints of ongoing shoulder
19 pain. (AR 33, 473, 515). A June 11, 2014, emergency room visit for
20 abdominal pain, for which Plaintiff was treated and released, also
21 confirmed normal range of motion in the neck. (AR 33, 529). On
22 October 11, 2014, Plaintiff was treated for pneumonia but a physical
23 examination was completely normal. (AR 33, 1392). Records from an
24 emergency room visit on October 28, 2014 indicate that Plaintiff

25
26 ⁷ As noted, Plaintiff had previously filed an application for
27 Social Security Income in 2005, which was denied on August 1, 2007.
28 (AR 81-89).

1 complained of low back pain, appeared to be in mild to moderate pain,
2 and was advised to apply ice and cold packs for three days. The
3 attending physician did not believe that lumber spine x-rays were
4 necessary. (AR 34, 1437). The ALJ also noted that a review of the
5 medical records submitted after the hearing date did not support
6 Plaintiff's complaints of back, neck and shoulder pain to the extent
7 alleged at the hearing. (AR 37). An examination on November 22, 2014
8 revealed 5/5 strength in upper and lower extremities. (AR 1459).

9
10 The ALJ also declined to adopt Dr. Karamlou's opinion that
11 Plaintiff can push and pull occasionally and can climb, balance,
12 kneel and crawl frequently, (AR 380), finding that Dr. Karamlou's own
13 assessment did not support the greater limitations in lifting,
14 pushing and pulling. For example, upon examining Plaintiff, Dr.
15 Karamlou found that Plaintiff's muscle strength was "in the range of
16 5/5 and 5/5," and her range of motion in the shoulders, elbows, and
17 wrists was "grossly within normal limits bilaterally." (AR 379-80).
18 Dr. Karamlou also found that Plaintiff could grip forty-five pounds
19 with her right hand and forty pounds with her left, that her grip
20 strength was "5/5 bilaterally," and that joint flexion in Plaintiff's
21 hands was grossly within normal limits (AR 380).

22
23 The ALJ's RFC finding incorporated Dr. Karamlou's opinion that
24 Plaintiff can walk, stand and sit for six hours in an eight-hour day,
25 and that she does not need an assistive device for walking. (AR 30,
26 380-81). Moreover, by finding that Plaintiff "cannot work in a cold
27 environment or an environment with pulmonary irritants," (AR 30), the
28 ALJ also incorporated Dr. Karamlou's opinion that Plaintiff "should

1 avoid extremes in temperature, dust and chemicals due to injury to
2 the lung." (AR 381).

3
4 The ALJ noted that when questioned about the use of an assistive
5 device, plaintiff stated that she used [it] primarily because she is
6 under 5' in height[], and she uses it to prop her feet when using the
7 toilet or to retrieve items that are too high for her to reach. (AR
8 32, 66, 296). This was consistent with Dr. Karamlou's opinion that
9 Plaintiff did not need the cane or other assistive device to walk and
10 supported by medical examinations which generally show a normal gait
11 without assistance. (E.g., AR 491, 529). Plaintiff does not point
12 to any medical opinion or other evidence in the record to show that
13 she needs a cane to walk.

14
15 The ALJ's RFC finding was consistent with the opinions of the
16 state agency non-examining physicians, (see AR 117, 138), who found
17 that Plaintiff was limited "to medium exertion with preclusions from
18 concentrated exposure to fumes, odors, dust, gases and poor
19 ventilation." (AR 38). The ALJ gave "great weight" to these
20 opinions finding them to be "consistent with the overall evidence."
21 (AR 38).

22
23 The ALJ's decision to reject Dr. Karamlou's opinion regarding
24 Plaintiff's ability to lift and carry twenty pounds occasionally and
25 ten pounds frequently and limitations of Plaintiff's ability to push
26 and pull, climb, balance, kneel and crawl in determining Plaintiff's
27 RFC is supported by substantial evidence in the record.

ORDER

For the foregoing reasons, the decision of the Commissioner is
AFFIRMED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: December 28, 2017

/s/

ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE