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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

LATINA ROSHAONDA JONES,)	Case No. 5:17-cv-01697-JDE
)	
Plaintiff,)	MEMORANDUM OPINION AND
)	ORDER
v.)	
NANCY A. BERRYHILL, Acting)	
Commissioner of Social Security,)	
)	
Defendant.)	

Plaintiff Latina Roshaonda Jones (“Plaintiff”) filed a Complaint on August 22, 2017, seeking review of the Commissioner’s denial of her applications for disability insurance benefits (“DIB”) and supplemental security income (“SSI”). The parties filed consents to proceed before the undersigned Magistrate Judge. In accordance with the Court’s Case Management Order, the parties filed a Joint Stipulation (“Jt. Stip.”) on May 17, 2018, addressing their respective positions. The Court has taken the Joint Stipulation under submission without oral argument and as such, this matter now is ready for decision.

1 I.

2 BACKGROUND

3 On October 2, 2013, Plaintiff applied for DIB and SSI, alleging disability
4 beginning January 1, 2010. Administrative Record (“AR”) 30, 202-29. After
5 her applications were denied initially (AR 101-02) and on reconsideration (AR
6 103-34), Plaintiff requested an administrative hearing, which was held on
7 March 2, 2016. AR 30, 48. Plaintiff, represented by counsel, appeared and
8 testified at the hearing before an Administrative Law Judge (“ALJ”), as did a
9 vocational expert, Elizabeth Ramos. AR 50-85.

10 On March 21, 2016, the ALJ issued a written decision finding Plaintiff
11 was not disabled. AR 30-43. The ALJ found that Plaintiff had not engaged in
12 substantial gainful activity since January 1, 2010, the alleged onset date. AR
13 32. The ALJ determined that Plaintiff suffered from the following severe
14 impairment: an affect disorder. AR 32-33. The ALJ found that Plaintiff did not
15 have an impairment or combination of impairments that met or medically
16 equaled a listed impairment. AR 33-34. The ALJ also found that Plaintiff had
17 the residual functional capacity (“RFC”) to perform a full range of work at all
18 exertional levels, with the following non-exertional limitations: Plaintiff could
19 (1) understand, remember, and carry out instructions; (2) perform simple,
20 routine tasks; (3) have incidental contact only with coworkers; and (4) have
21 incidental contact only with the public. AR 34. The ALJ determined that
22 Plaintiff – at 28 years old on the alleged disability onset date – was defined as a
23 younger individual, and that she had no past relevant work. AR 41-42.
24 However, the ALJ concluded she was capable of performing jobs that exist in
25 significant numbers in the national economy, including: table worker
26 (Dictionary of Occupational Titles [“DOT”] 739.687-182); assembler (DOT
27 739.684-094); and loader (DOT 726.687-030). AR 42-43. The ALJ concluded
28 that Plaintiff was not under a disability since the alleged onset date. AR 43.

1 Plaintiff filed a request with the Appeals Council for review of the ALJ's
2 decision. AR 199, 312-13. On June 29, 2017, the Appeals Council denied
3 Plaintiff's request for review, making the ALJ's decision the Commissioner's
4 final decision. AR 1-6. This action followed.

5 II.

6 STANDARD OF REVIEW

7 Under 42 U.S.C. § 405(g), this court may review a decision to deny
8 benefits. The ALJ's findings and decision should be upheld if they are free
9 from legal error and supported by substantial evidence based on the record as a
10 whole. Brown-Hunter v. Colvin, 806 F.3d 487, 492 (9th Cir. 2015) (as
11 amended); Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
12 evidence means such relevant evidence as a reasonable person might accept as
13 adequate to support a conclusion. Lingenfelter v. Astrue, 504 F.3d 1028, 1035
14 (9th Cir. 2007). It is more than a scintilla, but less than a preponderance. Id.
15 To determine whether substantial evidence supports a finding, the reviewing
16 court "must review the administrative record as a whole, weighing both the
17 evidence that supports and the evidence that detracts from the Commissioner's
18 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998). "If the
19 evidence can reasonably support either affirming or reversing," the reviewing
20 court "may not substitute its judgment" for that of the Commissioner. Id. at
21 720-21; see also Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012) ("Even
22 when the evidence is susceptible to more than one rational interpretation, [the
23 court] must uphold the ALJ's findings if they are supported by inferences
24 reasonably drawn from the record."). However, a court may review only the
25 reasons stated by the ALJ "and may not affirm the ALJ on a ground upon
26 which he did not rely." Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007).

27 Lastly, even when the ALJ commits legal error, the Court upholds the
28 decision where that error is harmless. Molina, 674 F.3d at 1115. An error is

1 harmless if it is “inconsequential to the ultimate nondisability determination,”
2 or if “the agency’s path may reasonably be discerned, even if the agency
3 explains its decision with less than ideal clarity.” Brown-Hunter, 806 F.3d at
4 492 (citation omitted).

5 III.

6 DISCUSSION

7 The parties present one disputed issue: whether the ALJ properly
8 considered the psychiatric consultative examining opinion of Dr. Nenita
9 Belen. Jt. Stip. at 4.

10 A. Applicable Law

11 In deciding how to resolve conflicts between medical opinions, the ALJ
12 must consider that there are three types of physicians who may offer opinions
13 in Social Security cases: (1) those who directly treated the plaintiff, (2) those
14 who examined but did not treat the plaintiff, and (3) those who did not treat or
15 examine the plaintiff. See 20 C.F.R. § 404.1527(c); Lester v. Chater, 81 F.3d
16 821, 830 (9th Cir. 1996) (as amended). Treating physician’s opinion are
17 entitled to greater weight because a treating physician is employed to cure and
18 has a greater opportunity to know and observe the patient as an individual. See
19 Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989). “The treating
20 physician’s opinion is not, however, necessarily conclusive as to either a
21 physical condition or the ultimate issue of disability.” Id. “The ALJ may
22 disregard the treating physician’s opinion whether or not that opinion is
23 contradicted.” Id. For instance, “[t]he ALJ need not accept the opinion of any
24 physician . . . if that opinion is brief, conclusory, and inadequately supported
25 by clinical findings.” Bray v. Comm’r Soc. Sec. Admin., 554 F.3d 1219, 1228
26 (9th Cir. 2009) (citation omitted); Tonapetyan v. Halter, 242 F.3d 1144, 1149
27 (9th Cir. 2001). To reject the uncontradicted opinion of a treating physician,
28 the ALJ must provide “clear and convincing reasons that are supported by

1 substantial evidence.” Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005).
2 Where the treating physician’s opinion is contradicted by another physician’s
3 opinion, the “ALJ may only reject it by providing specific and legitimate
4 reasons that are supported by substantial evidence.” Id.

5 Likewise, the ALJ must provide specific and legitimate reasons
6 supported by substantial evidence in rejecting the contradicted opinions of
7 examining physicians. Bayliss, 427 F.3d at 1216. The opinion of a non-
8 examining physician, standing alone, cannot constitute substantial evidence.
9 Widmark v. Barnhart, 454 F.3d 1063, 1066 n.2 (9th Cir. 2006) (citing Lester,
10 81 F.3d at 831); Morgan v. Comm’r Soc. Sec. Admin., 169 F.3d 595, 602 (9th
11 Cir. 1999).

12 **B. Analysis**

13 On March 11, 2014, Dr. Belen conducted a complete psychiatric
14 consultative examination of Plaintiff. AR 376-380. Plaintiff’s chief complaints
15 were feeling suicidal, poor sleep, irritability, anger outbursts, engaging in
16 fights, and smacking others in the face. AR 376-77. She was cooperative and
17 established rapport with Dr. Belen. AR 376. Dr. Belen noted Plaintiff’s history
18 of alcohol and amphetamine abuse, but also noted that Plaintiff said she had
19 been sober for six years. AR 377. When Plaintiff was 16, she had a stillborn
20 child. AR 376. Since that time, she has felt suicidal, but she continually
21 expressed that she would not hurt herself because of her three children. AR
22 376, 379. Her children are ages eight, eleven, and fourteen. AR 377. She lives
23 with and cares for them as a single mother. Id. Dr. Belen also noted Plaintiff’s
24 history includes adequate self-care skills of dressing, bathing, eating, toileting,
25 and safety precautions. Id. She can shop, cook, manage her own money, and
26 go places by herself. AR 377-78, 380.

27 During the examination, Plaintiff demonstrated normal psychomotor
28 activity, with no evidence of involuntary movements. AR 376. Her speech was

1 fluent, coherent, and relevant. AR 378. Her thought processes were linear and
2 goal-directed, without looseness of associations, flight of ideas, racing
3 thoughts, thought blocking, thought insertions, thought withdrawal, or thought
4 broadcasting. Id. There was no evidence of auditory or visual hallucinations,
5 delusions, or illusions. Id. Plaintiff did not report obsessions, compulsions, or
6 paranoia. Id. She denied current suicidal or homicidal ideations. Id. She was
7 alert and oriented to person, place, time, and situation. Id.

8 Dr. Belen diagnosed Plaintiff with a mood disorder, unspecified, ruled
9 out bipolar disorder, and estimated a Global Assessment of Functioning
10 (“GAF”) score of 55.¹ AR 379. Dr. Belen concluded that Plaintiff would have
11 moderate limitations in her ability to: maintain social functioning; perform
12 detailed and complex tasks; perform work activities on a consistent basis
13 without special or additional supervision; complete a normal workday or work
14 week; accept instructions from supervisors and interact with coworkers and the
15 public; and handle the usual stresses, changes, and demands of gainful
16 employment. Id. Dr. Belen noted that Plaintiff had been adhering to her
17 medications and reported that she felt they helped control her temper as well as
18 function as a mother. Id. Dr. Belen opined that prognosis was “good” with
19 continued treatment compliance. Id.

20 The ALJ set forth a detailed summary of Dr. Belen’s examination and
21 gave her opinion “partial but not great weight.” AR 38. The ALJ found Dr.
22 Belen’s assessment was inconsistent with the totality of the evidence. Id. The
23 ALJ noted Plaintiff’s report to Dr. Belen that medication helped control her
24 symptoms. Id. The ALJ also did not find as many limitations as cited by Dr.
25 Belen. Id. The ALJ found Plaintiff’s activities were inconsistent with Dr.

26 ¹ The ALJ explained that, under the Diagnostic & Statistical Manual of Mental
27 Disorders (“DSM”) (4th Ed.), a GAF score of 51 to 60 indicates moderate symptoms
28 or moderate difficulty in social, occupational, or school functioning. AR 37 n.5.

1 Belen's assessed moderate limitations on Plaintiff's ability to perform work
2 activities on a consistent basis without special or additional supervision, and in
3 a completing a normal workday or work week. Id. The ALJ reasoned that
4 Plaintiff was able to take care of three children as a single parent, including
5 providing for them, taking them to school and observing them in the
6 classrooms, playing with them after school, and helping them with homework,
7 on her own. Id. Finally, the ALJ explained that she does not give significant
8 weight to GAF scores. AR 41. The ALJ explained the problems with GAF-
9 score reliability and noted that they do not speak directly to a claimant's work
10 capacity. Id. The ALJ further explained that GAF does not predict prognosis
11 or treatment outcomes, and in 2013 the DSM-V eliminated GAF scales due to
12 widespread concern about standardization, disparity between ratings, and
13 unclear instructions of the GAF. Id.

14 Plaintiff contends that the ALJ improperly discounted Dr. Belen's
15 opinion due to her ability to care for her children. Jt. Stip. at 7-8, 15. Even
16 assuming the ALJ properly relied on that factor, Plaintiff also contends that the
17 ALJ's implicit rejection of other moderate limitations outlined by Dr. Belen
18 was improper. Jt. Stip. at 8-10.

19 An ALJ is permitted to reject a physician's opinion that is unsupported
20 by the record as a whole. Batson v. Comm'r Soc. Sec. Admin., 359 F.3d 1190,
21 1195 (9th Cir. 2004). Here, Dr. Belen's examination indicated that Plaintiff
22 was taking Risperdal, divalproex, and sertraline. AR 377. Dr. Belen found that
23 Plaintiff was adhering to her medication and noted that Plaintiff admitted it
24 controlled her temper and ability to function. AR 379. Dr. Belen also indicated
25 that Plaintiff is "willing to stay on her treatment" despite the side-effect of
26 weight gain. Id. Dr. Belen further found Plaintiff's prognosis "good" if she
27 complies with treatment. Id. The ALJ properly relied on this aspect of Dr.
28 Belen's opinion, and its inconsistency with the totality of the evidence,

1 including Dr. Belen’s own findings. Shavin v. Comm’r Soc. Sec. Admin., 488
2 F. App’x 223, 224 (9th Cir. 2012) (ALJ may reject physician’s opinion by
3 “noting legitimate inconsistencies and ambiguities in the doctor’s analysis or
4 conflicting lab test results, reports, or testimony” (internal citation omitted));
5 Warre v. Comm’r Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir. 2006)
6 (impairments that can be controlled with treatment are not disabling).

7 The ALJ also properly relied on Plaintiff’s admitted activities, namely
8 her ability to care for herself and her children, for two separate reasons. AR 38.
9 First, Dr. Belen found in the evaluation that Plaintiff “is intellectually and
10 psychologically capable of performing activities of daily living.” AR 379. This
11 finding – that Plaintiff is essentially unlimited in her activities – is internally
12 inconsistent with Dr. Belen’s own assessment of moderate limitations. Shavin,
13 488 F. App’x at 224; see also Morgan, 169 F.3d at 601-03 (ALJ may reject a
14 medical opinion that is internally inconsistent).

15 Second, Dr. Belen’s assessed limitations are inconsistent with the
16 activities themselves. (AR 38); See Wilhelm v. Comm’r Soc. Sec. Admin., 597
17 F. App’x 425, 425 (9th Cir. 2015) (ALJ properly discounted doctor’s opinion
18 because it was inconsistent with claimant’s actual activities); Ghanim v.
19 Colvin, 763 F.3d 1154, 1162 (9th Cir. 2014) (inconsistency between
20 physician’s opinion and claimant’s activities may justify rejection of opinion).
21 Here, as noted in Dr. Belen’s evaluation and in the ALJ’s decision, Plaintiff
22 single-handedly (and by all accounts successfully) runs her household and
23 cares for three young children. Plaintiff reported getting her children ready for
24 school and taking them there, with one child each at the elementary, middle,
25 and high schools. AR 74-75, 77. She helps her children at school and talks with
26 their teachers on a daily basis. AR 75-76. She also applied to be assistant at her
27 child’s school. AR 76. After the kids get out of school, she does whatever they
28 want, including taking them to the jumper, going shopping, or doing whatever

1 makes them happy. AR 77. She explained: “All I do . . . is spend time with my
2 kids[.]” AR 75. They get around town by cab, bus, or walking. AR 78. Plaintiff
3 also reported helping her children with their homework, as well as performing
4 household tasks such as shopping, laundry, and cooking. AR 78-79.

5 Accordingly, the ALJ’s finding has ample support in the record, and she
6 properly relied on this factor in discounting Dr. Belen’s opinion. See Rollins v.
7 Massanari, 261 F.3d 853, 856 (9th Cir. 2001) (ALJ properly discounted
8 restrictions in physician’s opinion because they “appear[ed] to be inconsistent
9 with the level of activity that [claimant] engaged in by maintaining a
10 household and raising two young children, with no significant assistance from
11 her ex husband”); Morgan, 169 F.3d at 600 (ALJ properly determined that
12 claimant’s “ability to fix meals, do laundry, work in the yard, and occasionally
13 care for his friend’s child served as evidence of [claimant]’s ability to work”).

14 Finally, the ALJ properly declined to give significant weight to Dr.
15 Belen’s moderate GAF score assessment. AR 37, 41. The DSM’s elimination
16 of GAF scores is substantial evidence supporting the ALJ’s finding. See
17 Hudson v. Berryhill, 2018 WL 1092487, at *10 (D. Or. Feb. 28, 2018) (ALJ
18 provided proper reason for rejecting GAF score: “namely that the . . . DSM-V .
19 . . has stopped using GAF scores”); Mullins v. Comm’r Soc. Sec., 2018 WL
20 2460320, at *6 (E.D. Wash. Mar. 13, 2018) (noting that “[t]he Commissioner
21 has explicitly disavowed use of GAF scores as indicators of disability . . . [and]
22 the GAF scale is no longer included in the DSM-V”); see also McFarland v.
23 Astrue, 288 F. App’x 357, 359 (9th Cir. 2008) (noting that GAF scores lack a
24 direct correlation to the severity requirements in mental disorders listings).

25 Contrary to Plaintiff’s assertion, the ALJ did not “implicitly” reject the
26 other moderate limitations assessed by Dr. Belen. Jt. Stip. at 8-10. The ALJ
27 explicitly stated that she “[did] not find as many moderate limitations as Dr.
28 Belen cited.” AR 38. Further, the ALJ partially credited Dr. Belen’s opinion,

1 and incorporated limitations into the RFC restricting Plaintiff to “simple,
2 routine tasks,” and only incidental contact with coworkers and the public. AR
3 34. Moreover, in finding Plaintiff could perform jobs that exist in significant
4 numbers in the national economy, the ALJ specifically took into consideration
5 that Plaintiff’s ability to perform work at all exertional levels was
6 “compromised by her nonexertional limitations,” and limited Plaintiff to three
7 unskilled jobs. AR 42. The ALJ did not need to discuss every aspect of Dr.
8 Belen’s extensive evaluation, or every other piece of evidence. See Howard v.
9 Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003) (“[I]n interpreting the evidence
10 and developing the record, the ALJ does not need to discuss every piece of
11 evidence.” (internal quotation marks and citation omitted)); see also Hoopai v.
12 Astrue, 499 F.3d 1071, 1077 (9th Cir. 2007) (explaining that the Ninth Circuit
13 has not “held mild or moderate depression to be a sufficiently severe non-
14 exertional limitation that significantly limits a claimant’s ability to do work
15 beyond the exertional limitation.”). Further, the ALJ’s analysis constituted a
16 rational interpretation of the evidence. See Gallant v. Heckler, 753 F.2d 1450,
17 1453 (9th Cir. 1984) (“Where evidence is susceptible of more than one rational
18 interpretation, it is the ALJ’s conclusion which must be upheld.”).


19 The Court finds that the ALJ did not err by only partially crediting Dr.
20 Belen’s opinion. Accordingly, reversal is not warranted.

21 **IV.**

22 **ORDER**

23 IT THEREFORE IS ORDERED that judgment be entered affirming the
24 decision of the Commissioner and dismissing this action with prejudice.

25 Dated: June 28, 2018

26 
27 _____
28 JOHN D. EARLY
United States Magistrate Judge