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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

CHA THAO MOUA,  
  
Plaintiff,  
  
v.  
  
COMMISSIONER OF SOCIAL  
SECURITY,  
  
Defendant.

Case No. 1:17-cv-01223-EPG  
  
**FINAL JUDGMENT AND ORDER  
REGARDING PLAINTIFF’S SOCIAL  
SECURITY COMPLAINT**

This matter is before the Court on Plaintiff’s Complaint for judicial review of an unfavorable decision by the Commissioner of the Social Security Administration regarding her application for Supplemental Security Income. The parties have consented to entry of a final judgment by the undersigned United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(c), with any appeal to the Court of Appeals for the Ninth Circuit. (ECF Nos. 6, 8).

The Court, having heard from the parties at a hearing on November 6, 2018, and having reviewed the record, administrative transcript, briefs of the parties, and the applicable law, finds as follows:

Plaintiff primarily challenges the weight given to the opinions of Dr. Yang and Dr. Rios. The ALJ provided the following reasons for rejecting the opinion of Dr. Yang:

Whether a claimant is able to work is an issue reserved to the Commissioner, pursuant to SSR 95-6p. Consequently, Dr. Yang’s opinion regarding this has been disregarded. Generally, more weight is afforded the opinion of a treating source as the treating source is most often in the best position to provide a detailed, longitudinal picture of the claimant’s medical impairments which cannot be obtained from the objective medical findings or one time examination, [sic] If the

1 treating source's medical opinion is not well-supported or consistent with the other  
2 substantial evidence it is not entitled to controlling weight. Here, little weight is  
3 given to the remainder of the doctor's opinion. He identified the claimant's  
4 primary impairments as low back pain and depression. Very little evidence  
5 supports the claimant's back complaints; imaging had been negative. Although  
6 Dr. Yang prescribed the claimant with psychotropic medications, and diagnosed  
7 her with depression, he is not a mental health specialist. Further, he gave the  
8 claimant manipulative limitations, apparently based on the claimant's complaints.  
9 As the doctor acknowledged, he did not have a formal diagnosis for this yet. He  
10 also did not have supporting evidence in the way of imaging.

11 (A.R. 31). Moreover, the ALJ's reasons for rejecting the two opinions from Dr. Rios are as  
12 follows:

13 The claimant was seen by consultative internist Tomas Rios, M.D., in November  
14 2011. The doctor conducted an internal medical examination. No records were  
15 sent for review. The claimant presented with complaints of chronic low back pain  
16 and multiple joint pains, including in her bilateral shoulders, bilateral wrists and  
17 bilateral knees. She reported she had experienced back pain since a 2002 motor  
18 vehicle accident, although she had not received treatment for her back. The  
19 claimant exhibited range of motion deficits in her lumbar spina and left shoulder.  
20 Straight leg raising was 80 degrees bilaterally, without accompanying pain. Dr.  
21 Rios noted the claimant's effort was suboptimal in testing of her lumbar spine.  
22 She had tenderness in her left shoulder and lower back. Motor strength was  
23 globally reduced, but again, he assessed her effort as suboptimal. . . .

24 Dr. Rios performed a thorough, well-documented physical examination of the  
25 claimant. However, little weight is given to this opinion. The doctor appeared to  
26 rely on the claimant's subjective complaints, which were unsupported by medical  
27 findings, and further undermined by his notes stating the claimant's effort during  
28 testing was suboptimal. . . .

29 Tomas Rios performed a second physical assessment of the claimant in December  
30 2015. The claimant complained of multiple joint pains and chronic back pain.  
31 She was able to ambulate through the examination room without assistance. The  
32 claimant's coordination, station and gait were normal. She exhibited some range  
33 of motion deficits in her lumbar region, and minor deficits in her bilateral wrists.  
34 The claimant had tenderness along the bilateral acromioclavicular joints of her  
35 shoulders, at the base of her left thumb, along the mid and lower lumbar spine,  
36 with no spasms, and in the medial compartments of her bilateral knees. Motor  
37 strength was 4+/5 throughout her upper and lower extremities, with no spasms or  
38 muscle wasting. Sensory examination was grossly intact. . . .

39 Some weight is given to this opinion. The diagnosis of lumbar disc disease is  
40 unsupported by x-rays of any magnetic resonance imaging (hereinafter "MRI").  
41 The undersigned finds it significant that the doctor noted she was able to ambulate  
42 around the examination room on her own, and that he said she did not require a  
43 cane.

1 (A.R. 32).

2 This Court finds that these reasons are good reasons supported by substantial evidence.  
3 The ALJ properly summarized the findings of the doctors, including observations and tests not  
4 consistent with their conclusions, and provided specific and legitimate reasons for assigning the  
5 weight he did. In particular, substantial evidence supports the ALJ's finding that Plaintiff's  
6 subjective complaints were not credible, and there was otherwise a lack of substantial medical  
7 evidence supporting their opinion regarding the severity of her limitations.

8 Indeed, Plaintiff does not challenge the ALJ's adverse credibility finding. This finding  
9 was noted throughout the ALJ's opinion, including the following:

- 10 • "The claimant's I.Q. testing is invalid due to malingering, so there is no evidence  
11 establishing her I.Q." (A.R. 27).
- 12 • "The claimant said her mood was sad, but Dr. Murphy said her emotional  
13 expression was not congruent with this. She demonstrated a lack of interest in the  
14 interview and testing. Dr. Murphy administered the Comprehensive Test of  
15 Nonverbal Intelligence. She scored in the very poor range. The doctor opined her  
16 poor performance appeared contrived, and she made little effort to correctly  
17 perform the tasks asked of her. She also scored very low on the Wechsler Memory  
18 Scale, IV Edition. Dr. Murphy said the test results should not be considered valid  
19 due to the claimant's lack of effort." (A.R. 29).
- 20 • "To the extent of the doctor's opinion regarding the claimant's malingering, the  
21 undersigned gives it great weight. This opinion is supported by other  
22 contradictory evidence in the record." (A.R. 29).
- 23 • "Dr. Rios noted the claimant's effort was suboptimal in testing of her lumbar  
24 spine. . . . Motor strength was globally reduced, but again, he assessed her effort as  
25 suboptimal." (A.R. 30).
- 26 • Compare, "She was using a cane to ambulate," (A.R. 28), with, "The undersigned  
27 finds it significant that the doctor noted she was able to ambulate around the  
28 examination room on her own, and that he said she did not require a cane," (A.R.  
32).
- "The claimant has provided inconsistent statements regarding her application. At  
the November 2011 examination with Dr. Rios, she said she did not take any  
medications (Exhibit 1F). The following month she told the psychologist she took  
medication for her back problems (Exhibit 2F). Furthermore, two consultative  
physicians have felt the claimant was malingering. She testified in January 2014  
that she did not understand English, yet her aunt said the claimant was unable to

1 read or write English, but she was able to speak limited English (Exhibit 5E, p. 7).  
2 The claimant also testified she had attended school to learn English for her  
citizenship test, which was in English. She said she passed the test.” (A.R. 34).

- 3 • “The claimant had many complaints, with little, if any, supporting medical  
4 findings or laboratory results. She complained of chest pain and shortness of  
5 breath, but an electrocardiogram was negative. The claimant repeatedly reported  
6 low back pain. X-rays were unremarkable. She said her left shoulder hurt. X-rays  
7 were normal. Consultative examiners questioned the claimant’s effort.” (A.R.  
8 34).

9 Plaintiff does little to refute these critical findings that Plaintiff had been malingering and  
10 reported symptoms contradicted by medical evidence. Plaintiff’s opening brief notes that the  
11 relevant doctors did not opine that Plaintiff performed sub-optimally on *every* test, and that it is  
12 possible Plaintiff underperformed for some reason other than malingering. (ECF No. 17 at 14).  
13 Plaintiff also explains that Dr. Rios’ observation of Plaintiff walking without a cane was  
14 consistent with Dr. Rios’ limitations, (ECF No. 17 at 17), but does not explain why Plaintiff uses  
15 a cane at doctor’s appointments and at the hearing before the ALJ when she does not need one,  
16 (A. R. 16). Plaintiff’s reply brief does not address the issue of malingering. (ECF No. 26).  
17 Plaintiff thus fails to refute a central basis for the ALJ’s opinion: that Plaintiff was not honest  
with the ALJ or her doctors regarding her symptoms, and thus medical opinions that rely  
primarily on Plaintiff’s subjective complaints are properly given little weight.

18 Against these observations of malingering, the record has little objective evidence of  
19 substantial limitations. (A. R. 32). Plaintiff did not have an MRI. X-rays did not show any  
20 impairments. At oral argument, Plaintiff’s counsel pointed to only three pieces of medical  
21 evidence beyond Plaintiff’s own observations: positive straight leg raises, ropiness in muscles,  
22 and tenderness in back. However, the positive straight leg raises and tenderness in back are not  
23 purely objective because they rely on Plaintiff’s reports as to when she felt pain. The ropiness in  
24 muscles is a vague description that does not confirm any specific limitation. Nevertheless, these  
25 minimal objective findings do not support the limitations provided by Drs. Yang and Rios.  
26 Rather, they support the ALJ’s RFC, which included limitations reflecting the ALJ’s finding that  
27 Plaintiff had tenderness in her back and back, right hip, and shoulder strains or sprains.

28 Plaintiff’s counsel did not raise any other issues in her oral argument. The Court has

1 reviewed the ALJ's reasons for weight given to Dr. Zhang and Dr. Parayno, raised in Plaintiff's  
2 briefs, and found those reasons to be adequate especially in light of the adverse credibility  
3 findings discussed above.

4 For the foregoing reasons, the Court finds that the decision of the Commissioner of Social  
5 Security is supported by substantial evidence, and is hereby affirmed.

6 The Clerk of the Court is directed to close this case.

7  
8 IT IS SO ORDERED.

9 Dated: November 6, 2018

10 /s/ Eric P. Grogan  
11 UNITED STATES MAGISTRATE JUDGE  
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