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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TAMMY SUE COOPRIDER,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

No. 2:15-cv-0385 DB

ORDER

This social security action was submitted to the court without oral argument for ruling on plaintiff’s motion for summary judgment.¹ For the reasons explained below, plaintiff’s motion is denied, defendant’s cross-motion is granted, and the decision of the Commissioner of Social Security (“Commissioner”) is affirmed.

PROCEDURAL BACKGROUND

On June 5, 2011, plaintiff filed applications for Disability Insurance Benefits (“DIB”) under Title II of the Social Security Act (“the Act”) and for Supplemental Security Income (“SSI”) under Title XVI of the Act alleging disability beginning on February 28, 2004. (Transcript (“Tr.”) at 19, 107.) Plaintiff’s applications were denied initially, (id. at 141-48), and

¹ Both parties have previously consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c). (See Dkt. Nos. 10 & 11.)

1 upon reconsideration. (Id. at 151-60.)

2 Thereafter, plaintiff requested a hearing which was held before an Administrative Law
3 Judge (“ALJ”) on May 21, 2013. (Id. at 52.) Plaintiff was represented by an attorney and
4 testified at the administrative hearing. (Id. at 52-78.) In a decision issued on July 22, 2013, the
5 ALJ found that plaintiff was not disabled. (Id. at 35.) The ALJ entered the following findings:

6 1. The claimant meets the insured status requirements of the Social
7 Security Act through June 30, 2009.

8 2. The claimant has not engaged in substantial gainful activity
9 since June 11, 2009, the amended alleged onset date (20 CFR
10 404.1571 *et seq.*, and 416.971 *et seq.*).²

11 3. The claimant has the following severe impairments: moderate
12 degenerative disc disease with spinal stenosis resulting in
13 cervicalgia; arthritis of the right shoulder status post right rotator
14 cuff repair; mild obstructive sleep apnea; diabetes mellitus under
15 good control; hypertension under good control; anemia under good
16 control; carpal tunnel syndrome of the right hand; history of
17 obesity; hip pain with diagnosis of bursitis; and anxiety/post-
18 traumatic stress disorder (PTSD) (20 CFR 404.1520(c) and
19 416.920(c)).

20 4. The claimant does not have an impairment or combination of
21 impairments that meets or medically equals the severity of one of
22 the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1
23 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925
24 and 416.926).

25 5. After careful consideration of the entire record, the undersigned
26 finds that the claimant has the residual functional capacity to
27 perform a range of light work, as defined in 20 CFR 404.1567(b)
28 and 416.967(b) and SSR 83-10, specifically as follows: the
claimant can lift and/or carry 20 pounds occasionally and 10
pounds frequently; she can stand and/or walk for 3 hours out of an
8-hour workday; she can sit for 6 hours out of an 8-hour workday
with regular breaks; she can frequently reach, handle, and finger
with bilateral upper extremities, except she is limited to occasional
overhead reaching with the right upper extremity; she can change
postural positions every 20 minutes; she can occasionally perform
postural activities, except she cannot climb or crawl; she cannot
work at heights, at high temperatures, or around extreme vibration;
she is limited to unskilled work; and she is unable to work in close
proximity to the public.

 6. The claimant is unable to perform any past relevant work (20
CFR 404.1565 and 416.965).

² On October 31, 2012, plaintiff amended her alleged disability onset date to June 11, 2009. (Tr. at 19.)

1 7. The claimant was born on April 2, 1964 and was 45 years old,
2 which is defined as a younger individual age 18-49, on the alleged
disability onset date (20 CFR 404.1563 and 416.963).

3 8. The claimant has a limited education and is able to communicate
4 in English (20 CFR 404.1564 and 416.964).

5 9. Transferability of job skills is not material to the determination
6 of disability because using the Medical-Vocational Rules as a
7 framework supports a finding that the claimant is “not disabled,”
8 whether or not the claimant has transferable job skills (See SSR 82-
9 41 and 20 CFR Part 404, Subpart P, Appendix 2).

10 10. Considering the claimant’s age, education, work experience,
11 and residual functional capacity, there are jobs that exist in
12 significant numbers in the national economy that the claimant can
13 perform (20 CFR 404.1569, 404.1569(a), 416.969, and 416.969(a)).

14 11. The claimant has not been under a disability, as defined in the
15 Social Security Act, from June 11, 2009, through the date of this
16 decision (20 CFR 404.1520(g) and 416.920(g)).

17 (Id. at 21-35.)

18 On December 15, 2014, the Appeals Council denied plaintiff’s request for review of the
19 ALJ’s July 22, 2013 decision. (Id. at 1-3.) Plaintiff sought judicial review pursuant to 42 U.S.C.
20 § 405(g) by filing the complaint in this action on February 18, 2015.

21 LEGAL STANDARD

22 “The district court reviews the Commissioner’s final decision for substantial evidence,
23 and the Commissioner’s decision will be disturbed only if it is not supported by substantial
24 evidence or is based on legal error.” Hill v. Astrue, 698 F.3d 1153, 1158-59 (9th Cir. 2012).
25 Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to
26 support a conclusion. Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001); Sandgathe v.
27 Chater, 108 F.3d 978, 980 (9th Cir. 1997).

28 “[A] reviewing court must consider the entire record as a whole and may not affirm
simply by isolating a ‘specific quantum of supporting evidence.’” Robbins v. Soc. Sec. Admin.,
466 F.3d 880, 882 (9th Cir. 2006) (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir.
1989)). If, however, “the record considered as a whole can reasonably support either affirming or
reversing the Commissioner’s decision, we must affirm.” McCarty v. Massanari, 298 F.3d
1072, 1075 (9th Cir. 2002).

1 A five-step evaluation process is used to determine whether a claimant is disabled. 20
2 C.F.R. § 404.1520; see also Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). The five-step
3 process has been summarized as follows:

4 Step one: Is the claimant engaging in substantial gainful activity?
5 If so, the claimant is found not disabled. If not, proceed to step
6 two.

7 Step two: Does the claimant have a “severe” impairment? If so,
8 proceed to step three. If not, then a finding of not disabled is
9 appropriate.

10 Step three: Does the claimant’s impairment or combination of
11 impairments meet or equal an impairment listed in 20 C.F.R., Pt.
12 404, Subpt. P, App. 1? If so, the claimant is automatically
13 determined disabled. If not, proceed to step four.

14 Step four: Is the claimant capable of performing his past work? If
15 so, the claimant is not disabled. If not, proceed to step five.

16 Step five: Does the claimant have the residual functional capacity
17 to perform any other work? If so, the claimant is not disabled. If
18 not, the claimant is disabled.

19 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

20 The claimant bears the burden of proof in the first four steps of the sequential evaluation
21 process. Bowen v. Yuckert, 482 U.S. 137, 146 n. 5 (1987). The Commissioner bears the burden
22 if the sequential evaluation process proceeds to step five. Id.; Tackett v. Apfel, 180 F.3d 1094,
23 1098 (9th Cir. 1999).

24 APPLICATION

25 In her pending motion plaintiff asserts the following two principal claims: (1) the ALJ’s
26 treatment of the medical opinion evidence constituted error; and (2) the ALJ improperly rejected
27 plaintiff’s own subjective testimony.³

28 **I. Medical Opinion Evidence**

Plaintiff challenges the ALJ’s treatment of the medical opinions offered by treating
physician Dr. Hamid Kourdoni and examining physician Dr. John Kiefer. (Pl.’s MSJ (Dkt. No.

³ Plaintiff’s motion purportedly asserts three claims of error. However, two of those claims
pertain to the ALJ’s treatment of the medical opinion evidence. Accordingly, the court will
address the ALJ’s treatment of the medical opinion evidence as a single claim addressing both of
plaintiff’s arguments.

1 22) at 23-29.⁴) The weight to be given to medical opinions in Social Security disability cases
2 depends in part on whether the opinions are proffered by treating, examining, or nonexamining
3 health professionals. Lester, 81 F.3d at 830; Fair v. Bowen, 885 F.2d 597, 604 (9th Cir. 1989).
4 “As a general rule, more weight should be given to the opinion of a treating source than to the
5 opinion of doctors who do not treat the claimant” Lester, 81 F.3d at 830. This is so because
6 a treating doctor is employed to cure and has a greater opportunity to know and observe the
7 patient as an individual. Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996); Bates v. Sullivan,
8 894 F.2d 1059, 1063 (9th Cir. 1990).

9 The uncontradicted opinion of a treating or examining physician may be rejected only for
10 clear and convincing reasons, while the opinion of a treating or examining physician that is
11 controverted by another doctor may be rejected only for specific and legitimate reasons supported
12 by substantial evidence in the record. Lester, 81 F.3d at 830-31. “The opinion of a nonexamining
13 physician cannot by itself constitute substantial evidence that justifies the rejection of the opinion
14 of either an examining physician or a treating physician.” (Id. at 831.) Finally, although a
15 treating physician’s opinion is generally entitled to significant weight, “[t]he ALJ need not
16 accept the opinion of any physician, including a treating physician, if that opinion is brief,
17 conclusory, and inadequately supported by clinical findings.” Chaudhry v. Astrue, 688 F.3d 661,
18 671 (9th Cir. 2012) (quoting Bray v. Comm’r of Soc. Sec. Admin., 554 F.3d 1219, 1228 (9th Cir.
19 2009)).

20 **A. Dr. Hamid Kourdoni**

21 Here, on July 13, 2012, Dr. Kourdoni completed an “Upper Extremity Physical Residual
22 Functional Capacity Evaluation.” (Tr. at 1623.) The ALJ afforded Dr. Kourdoni’s opinion
23 “significant weight, but not great weight” because the opinion was “brief, conclusory, and . . .
24 inadequately supported by clinical findings.” (Id. at 33.) Specifically, the ALJ noted that Dr.
25 Kourdoni’s opinion that plaintiff was “limited to occasional reaching and handling with the right
26 upper extremity” was not supported by the record. (Id.)

27 ⁴ Page number citations such as this one are to the page numbers reflected on the court’s CM/ECF
28 system and not to page numbers assigned by the parties.

1 In support of this conclusion, the ALJ noted that, although plaintiff had right rotator cuff
2 repair in February of 2011, “treatment records” thereafter reveal that plaintiff’s “right shoulder
3 pain improved with an initial course of physical therapy” and with “minimal complaints of right
4 should pain afterwards.” (*Id.*) A conflict between treatment notes and a physician’s opinion
5 constitutes adequate reason to discredit the physician’s opinion. See Ghanim v. Colvin, 763 F.3d
6 1154, 1161 (9th Cir. 2014) (“A conflict between treatment notes and a treating provider’s
7 opinions may constitute an adequate reason to discredit the opinions of a treating physician or
8 another treating provider.”); Valentine v. Comm’r of Soc. Sec. Admin., 574 F.3d 685, 692-93
9 (9th Cir. 2009) (conflict with treatment notes is a specific and legitimate reason to reject treating
10 physician’s opinion); Connett v. Barnhart, 340 F.3d 871, 875 (9th Cir. 2003) (“We hold that the
11 ALJ properly found that Dr. Magsarili’s extensive conclusions regarding Connett’s limitations are
12 not supported by his own treatment notes.”).

13 Moreover, the ALJ’s finding is supported by substantial evidence in the record. In this
14 regard, plaintiff commenced physical therapy shortly after her shoulder surgery. Notes from
15 those treatment sessions reveal that plaintiff progressed to having “[g]ood ROM and improving
16 strength and function,” with “excellent relief in motion/strength,” requiring “Tylenol only for
17 pain . . . ‘once in a while!’” (Tr. at 441, 446.) Plaintiff was discharged from physical therapy on
18 June 2, 2011, with the notation “[t]reatment objectives achieved.” (*Id.* at 433.) On June 17,
19 2011, Dr. Kourdoni noted that plaintiff’s “[r]ight shoulder pain, is in good control.” (*Id.* at 430.)
20 An October 19, 2012, examination found that plaintiff had “full range of motion of shoulder and
21 rotator cuff is intact.” (*Id.* at 1710.) In this regard, the court finds that the ALJ provided clear
22 and convincing reasons for discrediting Dr. Kourdoni’s opinion.⁵

23 **B. Dr. John Kiefer**

24 With respect to Dr. Kiefer, on September 20, 2011, Dr. Kiefer completed “a
25 comprehensive psychiatric evaluation,” of plaintiff. (Tr. at 1119.) Therein, Dr. Kiefer opined

26 ⁵ Plaintiff also argues that the ALJ should have considered whether plaintiff was entitled to a
27 closed period of disability. (Pl.’s MSJ (Dkt. No. 22) at 25.) Plaintiff, however, has failed to
28 point to any persuasive evidence establishing that she was unable to engage in any substantial
gainful activity because of her conditions for a continuous period of not less than twelve months.

1 that several of plaintiff's functional abilities were "poor." (Id. at 1123.) The ALJ, however,
2 afforded "little weight" to Dr. Kiefer's opinion. (Id. at 27.) In this regard, the ALJ found that Dr.
3 Kiefer's opinion contained "inconsistencies," was not supported by "the relatively limited
4 positive findings from his own examination," and seemed to "accept uncritically as true most, if
5 not all, of what the claimant reported." (Id. at 27-28.)

6 An ALJ may reject a physician's opinion that is premised largely on a claimant's
7 subjective complaints that have been properly discounted. See Tommasetti v. Astrue, 533 F.3d
8 1035, 1041 (9th Cir. 2008); Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001); Morgan
9 v. Commissioner of Social Sec. Admin., 169 F.3d 595, 602 (9th Cir. 1999). As noted below, here
10 the ALJ properly discounted plaintiff's subjective complaints.

11 Moreover, the ALJ's finding is supported by substantial evidence in the record. In this
12 regard, Dr. Kiefer's examination found that plaintiff described her mood as "depressed," that she
13 had a restricted affect, and a deficient fund of knowledge/information. (Tr. at 1121.) However,
14 Dr. Kiefer also found plaintiff to be "casually dressed and well groomed," with a "neutral
15 attitude," normal speech, clear articulation, normal concentration, and average intellectual
16 functioning. (Id. at 1121-22.) Plaintiff was able to "repeat 3/3 words immediately and 2/3 words
17 after five minutes," was able to "repeat six digits forward and four digits in reverse." (Id. at
18 1122.) Plaintiff was also "able to demonstrate some abstract thinking," "differentiate
19 appropriately," and "follow a simple three-step command and list the days of the week
20 backwards." (Id.)

21 Nonetheless, despite these relatively benign findings, Dr. Kiefer opined that plaintiff's
22 "ability to interact with coworkers," to "sustain an ordinary routine without special supervision,"
23 to "complete a normal workday/workweek without interruptions," and to "deal with various
24 changes in the work setting," were "poor." (Id. at 1123.) Dr. Kiefer also opined that the
25 likelihood of plaintiff emotionally deteriorating in the work environment was "high." (Id.) Thus,
26 the ALJ correctly found that Dr. Kiefer's opinion contained "inconsistencies" and appeared to be
27 based largely on plaintiff's subjective complaints. Accordingly, the court finds that the ALJ gave
28 clear and convincing reasons for discrediting Dr. Kiefer's opinion.

1 For the reasons stated above, the court finds that plaintiff is not entitled to relief with
2 respect to this claim.

3 **II. Plaintiff's Subjective Testimony**

4 Plaintiff argues that the ALJ's treatment of plaintiff's testimony constituted error. (Pl.'s
5 MSJ (Dkt. No. 22) at 29-33.) The Ninth Circuit has summarized the ALJ's task with respect to
6 assessing a claimant's credibility as follows:

7 To determine whether a claimant's testimony regarding subjective
8 pain or symptoms is credible, an ALJ must engage in a two-step
9 analysis. First, the ALJ must determine whether the claimant has
10 presented objective medical evidence of an underlying impairment
11 which could reasonably be expected to produce the pain or other
12 symptoms alleged. The claimant, however, need not show that her
13 impairment could reasonably be expected to cause the severity of
14 the symptom she has alleged; she need only show that it could
15 reasonably have caused some degree of the symptom. Thus, the
16 ALJ may not reject subjective symptom testimony . . . simply
17 because there is no showing that the impairment can reasonably
18 produce the degree of symptom alleged.

19 Second, if the claimant meets this first test, and there is no evidence
20 of malingering, the ALJ can reject the claimant's testimony about
21 the severity of her symptoms only by offering specific, clear and
22 convincing reasons for doing so

23 Lingenfelter v. Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007) (citations and quotation marks
24 omitted). "The clear and convincing standard is the most demanding required in Social Security
25 cases." Moore v. Commissioner of Social Sec. Admin., 278 F.3d 920, 924 (9th Cir. 2002). "At
26 the same time, the ALJ is not required to believe every allegation of disabling pain, or else
27 disability benefits would be available for the asking" Molina v. Astrue, 674 F.3d 1104, 1112
28 (9th Cir. 2012).

29 "The ALJ must specifically identify what testimony is credible and what testimony
30 undermines the claimant's complaints." Valentine, 574 F.3d at 693 (quoting Morgan v. Comm'r
31 of Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999)). In weighing a claimant's credibility, an
32 ALJ may consider, among other things, the "[claimant's] reputation for truthfulness,
33 inconsistencies either in [claimant's] testimony or between [her] testimony and [her] conduct,
34 [claimant's] daily activities, [her] work record, and testimony from physicians and third parties
35 concerning the nature, severity, and effect of the symptoms of which [claimant] complains."

1 Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002) (modification in original) (quoting
2 Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir. 1997)). If the ALJ’s credibility finding is
3 supported by substantial evidence in the record, the court “may not engage in second-guessing.”

4 Id.

5 Here, the ALJ found that plaintiff’s medically determinable impairments could reasonably
6 be expected to cause some of her alleged symptoms, but that plaintiff’s statements concerning the
7 intensity, persistence and limiting effects of those symptoms were not credible to the extent they
8 were inconsistent with the ALJ’s residual functional capacity assessment. (Tr. at 25.) In this
9 regard, the ALJ noted that treatment records revealed “multiple notations indicating the claimant
10 failed to follow prescribed treatment recommendations” (Id.) “[I]n assessing a claimant’s
11 credibility, the ALJ may properly rely on ‘unexplained or inadequately explained failure to seek
12 treatment or to follow a prescribed course of treatment.’” Molina, 674 F.3d at 1113 (quoting
13 Tommasetti, 533 F.3d at 1039)).

14 Moreover, the ALJ’s finding is supported by substantial evidence in the record. In this
15 regard, multiple treatment notes reveal instances in which plaintiff was prescribed medication but
16 had “not started it yet,” (Tr. at 428), “never tried that so far,” (id. at 527), “did not take,” (id. at
17 546), “was started on . . . but did not take any medication,” (id. at 664), and “was started on . . .
18 but she has not taken the medication so far.” (Id. at 798.)

19 The ALJ also discredited plaintiff’s testimony due to an inconsistency between her
20 testimony at the administrative hearing and the evidence of record. (Id. at 25.) In this regard,
21 plaintiff testified at the May 21, 2013 administrative hearing that she was last employed in 2004.
22 (Id. at 56-57.) Plaintiff’s treatment records, however, reveal that plaintiff worked for at least “a
23 month-and-a-half,” around December of 2007. (Id. at 867.) “[T]he ALJ may consider
24 inconsistencies . . . in the claimant’s testimony” Molina, 674 F.3d at 1112.

25 Accordingly, the court finds that plaintiff is also not entitled to relief with respect to her
26 claim that the ALJ erred by rejecting plaintiff’s testimony concerning the severity of her
27 impairments.

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CONCLUSION

For all the reasons stated above, the court finds that plaintiff is not entitled to summary judgment in her favor with respect to any of her arguments.

Therefore, IT IS HEREBY ORDERED that:

- 1. Plaintiff’s motion for summary judgment (Dkt. No. 22) is denied;
- 2. Defendant’s cross-motion for summary judgment (Dkt. No. 27) is granted; and
- 3. The decision of the Commissioner of Social Security is affirmed.

Dated: January 17, 2017



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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