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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BEATRICE CORINA SANCHEZ,
Plaintiff,
v.
CAROLYN W. COLVIN, Acting
Commissioner of Social Security
Defendant.

No. 2:15-cv-1370-EFB

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying her application for a period of disability and Disability Insurance Benefits (“DIB”) under Title II of the Social Security Act. The parties have filed cross-motions for summary judgment. For the reasons that follow, plaintiff’s motion for summary judgment is granted; the Commissioner’s motion is denied; and the matter is remanded for further proceedings.

I. BACKGROUND

Plaintiff filed application for a period of disability and DIB, alleging that she had been disabled since January 10, 2010. Administrative Record (“AR”) 157-163. Plaintiff’s application was denied initially and upon reconsideration. *Id.* at 106-110, 115-119. On November 5, 2014, a hearing was held before administrative law judge (“ALJ”) Carol A. Eckersen. *Id.* at 36-84.

1 Plaintiff was represented by counsel at the hearing, at which she and a vocational expert testified.
2 *Id.*

3 On January 9, 2015, the ALJ issued a decision finding that plaintiff was not disabled
4 under sections 216(i) and 223(d) of the Act.¹ *Id.* at 20-30. The ALJ made the following specific
5 findings:

- 6 1. The claimant meets the insured status requirements of the Social Security Act through
7 March 31, 2015.
- 8 2. The claimant has not engaged in substantial gainful activity since January 1, 2010, the
9 alleged onset date (20 CFR 404.1571 *et seq.*).

10 * * *

11 ¹ Disability Insurance Benefits are paid to disabled persons who have contributed to the
12 Social Security program, 42 U.S.C. §§ 401 *et seq.* Supplemental Security Income (“SSI”) is paid
13 to disabled persons with low income. 42 U.S.C. §§ 1382 *et seq.* Under both provisions,
14 disability is defined, in part, as an “inability to engage in any substantial gainful activity” due to
15 “a medically determinable physical or mental impairment.” 42 U.S.C. §§ 423(d)(1)(a) &
16 1382c(a)(3)(A). A five-step sequential evaluation governs eligibility for benefits. *See* 20 C.F.R.
17 §§ 423(d)(1)(a), 416.920 & 416.971-76; *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). The
18 following summarizes the sequential evaluation:

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

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

25 Step three: Does the claimant’s impairment or combination
26 of impairments meet or equal an impairment listed in 20 C.F.R., Pt.
27 404, Subpt. P, App.1? If so, the claimant is automatically
28 determined disabled. If not, proceed to step four.

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

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

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

The claimant bears the burden of proof in the first four steps of the sequential evaluation
process. *Yuckert*, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential
evaluation process proceeds to step five. *Id.*

1 3. The claimant has the following severe impairments: degenerative joint disease of the left
2 shoulder, degenerative disc disease of the cervical spine, degenerative disc disease of the
3 lumbar spine and degenerative disc disease of the thoracic spine (20 CFR 404.1520(c)).

4 * * *

5 4. The claimant does not have an impairment or combination of impairments that meets or
6 medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart
7 P, Appendix 1 (20 CFR 404.1520(d), 404.1525, and 404.1526).

8 * * *

9 5. After careful consideration of the entire record, I find that the claimant has the residual
10 functional capacity to perform light work as defined in 20 CFR 404.1567(b) except she
11 can only occasionally reach overhead with the left extremity.

12 * * *

13 6. The claimant is capable of performing past relevant work as an administrative clerk
14 (DOT# 219.362-010) and receptionist (DOT# 237.367-038). This work does not require
15 the performance of work-related activities precluded by the claimant's residual functional
16 capacity (20 CFR 404.1565).

17 * * *

18 7. The claimant has not been under a disability, as defined in the Social Security Act, from
19 January 1, 2010, through the date of this decision (20 CFR 404.1520(f)).

20 *Id.* at 22-30.

21 Plaintiff's request for Appeals Council review was denied on May 11, 2015, leaving the
22 ALJ's decision as the final decision of the Commissioner. *Id.* at 1-6.

23 II. LEGAL STANDARDS

24 The Commissioner's decision that a claimant is not disabled will be upheld if the findings
25 of fact are supported by substantial evidence in the record and the proper legal standards were
26 applied. *Schneider v. Comm'r of the Soc. Sec. Admin.*, 223 F.3d 968, 973 (9th Cir. 2000);
27 *Morgan v. Comm'r of the Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Tackett v. Apfel*,
28 180 F.3d 1094, 1097 (9th Cir. 1999).

The findings of the Commissioner as to any fact, if supported by substantial evidence, are
conclusive. *See Miller v. Heckler*, 770 F.2d 845, 847 (9th Cir. 1985). Substantial evidence is
more than a mere scintilla, but less than a preponderance. *Saelee v. Chater*, 94 F.3d 520, 521 (9th

1 Cir. 1996). “It means such evidence as a reasonable mind might accept as adequate to support a
2 conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consol. Edison Co. v.*
3 *N.L.R.B.*, 305 U.S. 197, 229 (1938)).

4 “The ALJ is responsible for determining credibility, resolving conflicts in medical
5 testimony, and resolving ambiguities.” *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir.
6 2001) (citations omitted). “Where the evidence is susceptible to more than one rational
7 interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.”
8 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

9 III. ANALYSIS

10 Plaintiff argues that the ALJ erred in (1) weighing the medical evidence of record, (2)
11 discrediting her subjective complaints, (3) assessing her RCF, and (4) relying on the vocational
12 expert’s testimony to find that she was not disabled. ECF No. 11-1 at 17-28.

13 A. The ALJ Properly Evaluated the Medical Opinion Evidence

14 Plaintiff argues that the ALJ erred in rejecting opinions from her treating and examining
15 physicians. ECF No. 11 at 18-29. The weight given to medical opinions depends in part on
16 whether they are proffered by treating, examining, or non-examining professionals. *Lester*, 81
17 F.3d at 834. Ordinarily, more weight is given to the opinion of a treating professional, who has a
18 greater opportunity to know and observe the patient as an individual. *Id.*; *Smolen v. Chater*, 80
19 F.3d 1273, 1285 (9th Cir. 1996). To evaluate whether an ALJ properly rejected a medical
20 opinion, in addition to considering its source, the court considers whether (1) contradictory
21 opinions are in the record; and (2) clinical findings support the opinions. An ALJ may reject an
22 uncontradicted opinion of a treating or examining medical professional only for “clear and
23 convincing” reasons. *Lester*, 81 F.3d at 831. In contrast, a contradicted opinion of a treating or
24 examining medical professional may be rejected for “specific and legitimate” reasons that are
25 supported by substantial evidence. *Id.* at 830. While a treating professional’s opinion generally
26 is accorded superior weight, if it is contradicted by a supported examining professional’s opinion
27 (e.g., supported by different independent clinical findings), the ALJ may resolve the conflict.
28 *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995) (citing *Magallanes v. Bowen*, 881 F.2d

1 747, 751 (9th Cir. 1989)). However, “[w]hen an examining physician relies on the same clinical
2 findings as a treating physician, but differs only in his or her conclusions, the conclusions of the
3 examining physician are not ‘substantial evidence.’” *Orn v. Astrue*, 495 F.3d 625, 632 (9th Cir.
4 2007).

5 The record contains several opinions from treating physicians. Dr. Carl Shin, a treating
6 physician, diagnosed plaintiff with costochondritis, left-sided neck and shoulder pain, left anterior
7 thigh pain, and low back pain. AR 251. He found that plaintiff had a near full range of motion of
8 the cervical spine, but pain with left lateral rotation and bending. *Id.* at 250. Plaintiff had
9 palpatory tenderness around the shoulder complex and impingement maneuvers increased her
10 pain. *Id.* Dr. Shin opined that plaintiff could lift 10 pounds frequently, 20 pounds occasionally,
11 and no more than 30 pounds; stand and/or walk for less than 8 hours, but more than 6 in an 8-hour
12 day; sit for less than 8 hours, but more than 6 in an 8-hour day; and was limited in pushing and
13 pulling. *Id.* at 254. He further opined that plaintiff could occasionally climb, crawl, reach, and
14 handle. *Id.*

15 Dr. Merrill Douglas, also a treating physician, determined that plaintiff had a chest wall
16 strain and a possible mild left shoulder girdle. *Id.* at 337. She further stated that plaintiff may
17 have incurred a small disk herniation, and probably has myofascial pain that is exacerbated by
18 lifting. *Id.* She opined that plaintiff could return to “full duty” work so long as she was allowed
19 to stretch and ice for 5 minutes every half hour, be allowed to sit or stand at her discretion, lift
20 less than 5 pounds, and perform no heavy pushing or pulling. *Id.* at 338.

21 Plaintiff also received treatment from Dr. Arash Nassim for chest pain along left costal
22 margin. *Id.* at 754. Dr. Nassim opined that this impairment would require plaintiff to take a 15
23 minute break every hour and miss at least three days of work in a month.

24 Plaintiff’s medical records were reviewed by Dr. H. Jone, a non-examining physician,
25 who opined that plaintiff could lift 50 pounds occasionally and 25 pounds frequently; walk and/or
26 stand about 6 hours in an 8-hour workday; sit about 6 hours in an 8-hour workday; and was
27 unlimited in pushing and pulling, except she was limited in reaching overhead. *Id.* at 90.

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1 Plaintiff's records were also reviewed by Dr. J.R. Saphir, who opined that plaintiff could lift 20
2 pounds occasionally and 10 pounds frequently; walk and/or stand about 6 hours in an 8-hour
3 workday; sit about 6 hours in an 8-hour workday; was unlimited in pushing and pulling, except
4 she was limited in reaching overhead. *Id.* 101-102.

5 Plaintiff first contends that the ALJ erred by failing to provide sufficient reasons for
6 rejecting Dr. Shin's opinion that plaintiff was limited to occasionally reaching. ECF No. 11-1 at
7 18. Plaintiff contends that while the ALJ gave significant weight to Dr. Shin's opinion that
8 plaintiff was limited in reaching with his left arm and Drs. Jone and Saphir's opinion that plaintiff
9 was limited to reach overhead with the same extremity, but he "never explained how he resolved
10 the conflict between their opinions in regards to reaching overhead or in all directions." *Id.*

11 Dr. Shin provided his opinion regarding plaintiff's functional limitations on a check-the-
12 box form, and did not provide a narrative qualifying or explaining his opinion that plaintiff was
13 limited in reaching. *See* AR 254. The ALJ gave significant weight to Dr. Shin's opinion, but did
14 explicitly state that he was rejecting his opinion that plaintiff had general limitations in reaching.
15 *Id.* at 29. However, the ALJ provided a lengthy and detailed explanation for the finding that
16 plaintiff's reaching limitations only impacted her ability to reach overhead. *Id.* at 27-29.

17 As observed by the ALJ, x-ray studies of plaintiff's left shoulder were normal. *Id.* at 302
18 ("The shoulder x-rays were normal."). An MRI scan showed mild rotator cuff tendonitis. *Id.* at
19 237-238, 681. In May 2009, plaintiff sought treatment for left shoulder pain. *Id.* at 298. She had
20 tenderness to palpation with a full range of motion in her shoulder, and was diagnosed with
21 rotator cuff impingement and treated with a cortisone injection. *Id.* In February 2010, Dr. Shin
22 found that plaintiff had near full range of motion in her left shoulder and impingement maneuvers
23 appeared negative. *Id.* at 279. In July 2010, plaintiff reported that her left shoulder did not cause
24 her pain, (*id.* at 261), and in September plaintiff reported that her left shoulder pain was "not too
25 bad," (*id.* at 257).

26 The ALJ also noted that plaintiff complained of worsening shoulder pain in October 2010,
27 but then reported only minimal shoulder tenderness in December 2010. *Id.* at 245, 248.

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1 Treatment notes from July 2011 indicated that plaintiff was encouraged to engage in light
2 exercise and “accept her pain.” *Id.* at 237, 736. In October 2013, her treating physician told her
3 that she needs to learn to “cope with the chronic pain” and “push herself to exercise everyday and
4 go about her normal activities so that her upper extremity and axillary area get used to the activity
5 and do not become so sensitive to discomfort or pain.” *Id.* at 698. The ALJ specifically found
6 that the “fact that the [plaintiff’s] treating physicians repeatedly encouraged her to participate in
7 increase activities supports a finding that the claimant can occasionally lift overhead, and lift and
8 carry at least light weights.” *Id.* at 27.

9 Thus, to the extent Dr. Shin opined that plaintiff was limited in reaching in all directions,
10 and not just overhead, the ALJ fully explained why the objective medical evidence of record only
11 warranted a limitation to reaching overhead. Accordingly, the ALJ adequately considered Dr.
12 Shin’s opinion and fully explained why this limited portion of his opinion was discounted.

13 Plaintiff also contends that the ALJ failed to give sufficient reasons for rejecting Dr.
14 Nassim’s opinion that plaintiff would require a 15 minute break every hour and miss at least three
15 days of work in a month. ECF No. 11-1 at 19. The ALJ gave little weight to this opinion, finding
16 that it was inconsistent with minimal image study findings of plaintiff’s spine, her positive
17 response to conservative care, and clinical findings evidencing normal gain and intact
18 neurological findings. *Id.* at 28.

19 Plaintiff does not contend that reasons provided by the ALJ are legally deficient. Rather,
20 plaintiff contends that the reasons are not supported by substantial evidence because the ALJ
21 failed to consider an x-ray of plaintiff’s rib and clinical findings from a May 19, 2014 treatment
22 note “that revealed she continued to have severe pain over the left lateral ribs.” ECF No. 11-1.
23 The evidence cited by plaintiff does not support Dr. Nassim’s opinion. The x-ray report noted
24 that plaintiff complained of pain in her left rib, but the results showed no fracture, lytic or blastic
25 process in the left rib. AR 717. Thus, this imaging report fails to show any impairment that
26 would require her to take rest breaks. As for the treatment note, it reflected that plaintiff
27 continued to complain of left rib pain with an unknown etiology. *Id.* at 714. However, it also

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1 stated that plaintiff's medications were providing pain relief. *Id.* Thus, this evidence also does
2 not support Dr. Nassim's opinion that plaintiff would require frequent breaks.

3 Accordingly, plaintiff has failed to show that the ALJ erred in rejecting opinions from her
4 treating physicians.

5 B. The ALJ Failed to Provide Sufficient Reasons for Her Credibility Finding

6 Plaintiff contends that the ALJ erred by failing to set forth clear and convincing reasons
7 for discrediting her subjective complaints.

8 In evaluating whether subjective complaints are credible, the ALJ should first consider
9 objective medical evidence and then consider other factors. *Bunnell v. Sullivan*, 947 F.2d 341,
10 344 (9th Cir. 1991) (en banc). If there is objective medical evidence of impairment, the ALJ may
11 then consider the nature of the symptoms alleged, including aggravating factors, medication,
12 treatment and functional restrictions. *See id.* at 345-347. The ALJ also may consider: (1) the
13 applicant's reputation for truthfulness, prior inconsistent statements or other inconsistent
14 testimony, (2) unexplained or inadequately explained failure to seek treatment or to follow a
15 prescribed course of treatment, and (3) the applicant's daily activities. *Smolen*, 80 F.3d at 1284.
16 Work records, physician and third party testimony about nature, severity and effect of symptoms,
17 and inconsistencies between testimony and conduct also may be relevant. *Light v. Soc. Sec.*
18 *Admin.*, 119 F.3d 789, 792 (9th Cir. 1997). A failure to seek treatment for an allegedly
19 debilitating medical problem may be a valid consideration by the ALJ in determining whether the
20 alleged associated pain is not a significant nonexertional impairment. *See Flaten v. Secretary of*
21 *HHS*, 44 F.3d 1453, 1464 (9th Cir. 1995). The ALJ may rely, in part, on his or her own
22 observations, *see Quang Van Han v. Bowen*, 882 F.2d 1453, 1458 (9th Cir. 1989), which cannot
23 substitute for medical diagnosis. *Marcia v. Sullivan*, 900 F.2d 172, 177 n. 6 (9th Cir. 1990).
24 "Without affirmative evidence showing that the claimant is malingering, the Commissioner's
25 reasons for rejecting the claimant's testimony must be clear and convincing." *Morgan*, 169 F.3d
26 at 599.

27 The ALJ found that plaintiff's allegations of debilitating pain were not fully credible
28 because she received only conservative care, which was generally effective in managing

1 plaintiff's symptoms. AR 25-27. She also concluded that plaintiff's allegations were not fully
2 supported by the medical evidence of record. *Id.*

3 "[E]vidence of 'conservative treatment' is sufficient to discount a claimant's testimony
4 regarding severe impairments." *Parra v. Astrue*, 481 F.3d 742, 750 (9th Cir. 2007). Further,
5 [i]mpairments that can be controlled effectively with medication are not disabling for the purpose
6 of determining eligibility for [disability] benefits." *Warre v. Comm'r Soc. Sec. Admin.*, 439 F.3d
7 1001, 1006 (9th Cir. 2006).

8 Medical records from 2009 indicate that plaintiff sought treatment for back pain, which
9 was treated with ibuprofen, Flexeril, and Gabapentin. AR 306-310. Between May and July 2010,
10 plaintiff received steroid injections for her cervical spine and shoulder complaints, but she
11 reported little relief. *Id.* at 261, 265. She continued to take Flexeril and Motrin, and was referred
12 for acupuncture. *Id.* at 259-267. In September, she reported that acupuncture provided only
13 transient relief, but indicated she was not experiencing much shoulder pain. *Id.* at 258. Norco
14 was added to her medication regiment. *Id.* at 257-258.

15 In October, plaintiff reported that acupuncture was improving her chest pain, *id.* at 248,
16 but the following month she experienced "quite a bit" of shoulder and chest pain. *Id.* at 245. She
17 was switched from Norco to Vicodin, due to stomach irritation. *Id.* at 245-246. From January
18 through May 2011, plaintiff continued to report persistent pain in her back, neck, and shoulder,
19 which was treated with Vicodin, Motrin, and Flexeril. *Id.* at 239-244. In July she reported
20 "doing fairly well," but continued to have "pain in the neck, radiating to the left shoulder and
21 some low back pain." *Id.* at 237.

22 In July 2013, plaintiff continued to experience chest, shoulder, and neck pain, which was
23 again treated with narcotic pain medication and a muscle relaxer. *Id.* at 743. Her pain persisted
24 into 2014, and she continued to be prescribed Vicodin. *Id.* at 712-14, 732. In April 2014,
25 plaintiff reported a 70 to 80 percent relief with her current regimen. *Id.* at 715. However, a few
26 months later she was referred to a pain management specialist for a second opinion. *Id.* at 729-
27 734. She reported worsening of symptoms and persistent back and neck pain, and the evaluating

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1 physician concluded that plaintiff would benefit from low dose opioids, such as a Butrans patch.
2 *Id.* at 729.

3 Contrary to the ALJ's findings, the record does not indicate that plaintiff's pain symptoms
4 were well managed with conservative treatment. Plaintiff received multiple steroid injection,
5 which provided little to no relief. The record also shows that she was treated extensively with
6 narcotic pain medication and muscle relaxers. Such treatment is not conservative. *Ardito v.*
7 *Astrue*, 2011 WL 2174891, at *4 (C.D. Cal. June 3, 2011) (finding narcotic prescriptions and
8 muscle relaxers to be anything but conservative treatment); *Shepard v. Colvin*, 2015 WL
9 9490094, at *7 (E.D. Cal. 2015) (narcotics are not conservative treatment); *Brunkalla-Saspa v.*
10 *Colvin*, 2014 WL 1095958, at *1 (C.D. Cal. March 18, 2014) (“[T]he ALJ found that Plaintiff had
11 been conservatively treated with Vicodin But Vicodin qualifies as strong medication to
12 alleviate pain”) (citations and quotations omitted); *Harrison v. Astrue*, 2012 WL 527419, at *7
13 (D. Or. Feb. 16, 2012) (nerve blocks and multiple steroid injections “certainly not conservative”).
14 Nor was it successful. Those treatments met with only limited results and a prognosis that
15 plaintiff would have to learn to “cope with the chronic pain.” AR 261, 265, 698.

16 Further, the ALJ's finding that plaintiff's symptoms were well managed is not supported
17 by substantial evidence. In reaching this conclusion, the ALJ relied heavily on only a few
18 medical records without full consideration of the entire record, which evidences a significant
19 struggle to manage plaintiff's pain. The ALJ highlighted the medical records containing
20 plaintiff's reports that she was “doing fairly well” and obtained relief from acupuncture, without
21 regard to the majority of records demonstrating that plaintiff experienced persistent pain.
22 Significantly, at three different parts of the decision the ALJ cited and discussed plaintiff's April
23 2014 report that that she experienced 70 to 80 percent relief with her current regimen, but made
24 no mention that a few months later a pain specialist recommend plaintiff be treated with opioids
25 for her worsening pain. *See* AR 25-27.

26 Thus, the ALJ relied heavily on the records that showed a temporary reduction in
27 plaintiff's symptoms. However, “[o]ccasional symptom-free periods—and even the sporadic
28 ability to work—are not inconsistent with disability.” *Lester*, 81 F.3d at 833. Accordingly, the

1 ALJ's finding that plaintiff's impairments were well managed with conservative treatment is not
2 supported by substantial evidence.

3 The only other reason provided for discounting plaintiff's credibility was that her
4 allegations were inconsistent with the medical evidence of record. AR 26. Although the ALJ
5 may rely on an inconsistency with medical evidence in assessing plaintiff's credibility, that may
6 not be the sole basis for his credibility determination. *Burch v. Barnhart*, 400 F.3d 676, 681 (9th
7 Cir. 2005). Thus, even assuming that substantial evidence supports the ALJ's finding that
8 plaintiff's allegations are inconsistent with the medical evidence of record, the court cannot
9 sustain the credibility finding on this basis alone.

10 Accordingly, the case must be remanded for further proceedings.² *Dominguez v. Colvin*,
11 808 F.3d 403, 407 (9th Cir. 2015) ("Unless the district court concludes that further administrative
12 proceedings would serve no useful purpose, it may not remand with a direction to provide
13 benefits.").

14 IV. CONCLUSION

15 Accordingly, it is hereby ORDERED that:

- 16 1. Plaintiff's motion for summary judgment is granted;
- 17 2. The Commissioner's cross-motion for summary judgment is denied;
- 18 3. The matter is remanded for further proceedings consistent with this order; and
- 19 4. The Clerk is directed to enter judgment in plaintiff's favor.

20 DATED: September 30, 2016.

21 
22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE

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27 _____
28 ² Because the case must be remanded for further consideration, the court declines to
address plaintiff's additional argument.