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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALEXIS DENISE BLACKWELL,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

No. 2:17-cv-01599 CKD

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying an application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act (“Act”). The parties have consented to Magistrate Judge jurisdiction to conduct all proceedings in the case, including the entry of final judgment. For the reasons discussed below, the court will deny plaintiff’s motion for summary judgment and grant the Commissioner’s cross-motion for summary judgment.

BACKGROUND

Plaintiff, born October 16, 1961, applied on August 30, 2012 for SSI, alleging disability beginning October 19, 2010. Administrative Transcript (“AT”) 236-242. Her alleged disability onset date was later amended to July 30, 2011. AT 18, 57. Plaintiff alleged she was unable to work due to bilateral carpal tunnel syndrome, rotator cuff issues, high blood pressure, and

1 depression. AT 93. In a decision dated January 11, 2016, the ALJ determined that plaintiff was
2 not disabled.¹ AT 18-31. The ALJ made the following findings (citations to 20 C.F.R. omitted):

- 3 1. The claimant meets the insured status requirements of the Social
4 Security Act through December 31, 2015.
- 5 2. The claimant has not engaged in substantial gainful activity since
6 July 30, 2011, the amended onset date.
- 7 3. The claimant has the following severe impairments: carpal tunnel
8 syndrome, rotator cuff tear of left shoulder, wrist tendonitis,
9 obesity, and complex regional pain syndrome.
- 10 4. The claimant does not have an impairment or combination of
11 impairments that meets or medically equals one of the listed
12 impairments in 20 CFR Part 404, Subpart P, Appendix 1.

13 _____
14 ¹ Disability Insurance Benefits are paid to disabled persons who have contributed to the
15 Social Security program, 42 U.S.C. § 401 et seq. Supplemental Security Income is paid to
16 disabled persons with low income. 42 U.S.C. § 1382 et seq. Both provisions define disability, in
17 part, as an “inability to engage in any substantial gainful activity” due to “a medically
18 determinable physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A).
19 A parallel five-step sequential evaluation governs eligibility for benefits under both programs.
20 See 20 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S.
21 137, 140-142, 107 S. Ct. 2287 (1987). The following summarizes the sequential evaluation:

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

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

28 Step three: Does the claimant’s impairment or combination
of impairments meet or equal an impairment listed in 20 C.F.R., Pt.
404, Subpt. P, App.1? If so, the claimant is automatically 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. Bowen, 482 U.S. at 146 n.5, 107 S. Ct. at 2294 n.5. The Commissioner bears the
burden if the sequential evaluation process proceeds to step five. Id.

1 5. After careful consideration of the entire record, the undersigned
2 finds that the claimant has the residual functional capacity to perform
3 sedentary work, except that she is limited to lifting and/or carrying
4 ten pounds occasionally and less than ten pounds frequently; sitting,
5 standing, and walking six hours each in an eight-hour workday; no
6 more than frequent pushing and pulling with the bilateral upper
7 extremities; only frequent climbing, balancing, stooping, kneeling,
8 crouching, and crawling; only frequent overhead reaching with the
9 non-dominant left upper extremity; and the claimant is limited to
10 only frequent bilateral handling and fingering.

11 6. The claimant is unable to perform any past relevant work.

12 7. The claimant was born on October 16, 1961 and was 49 years old,
13 which is defined as a younger individual age 45-49, on the amended
14 disability onset date. The claimant subsequently changed age
15 category to closely approaching advanced age.

16 8. The claimant has at least a high-school education and is able to
17 communicate in English.

18 9. The claimant has acquired work skills from past relevant work.

19 10. Considering the claimant's age, education, work experience, and
20 residual functional capacity, the claimant has acquired work skills
21 from past relevant work that are transferable to other occupations
22 with jobs existing in significant numbers in the national economy.

23 10. The claimant has not been under a disability, as defined in the
24 Social Security Act, from July 30, 2011, through the date of this
25 decision.

26 AT 20-31.

27 ISSUES PRESENTED

28 Plaintiff argues that the ALJ committed the following errors in finding plaintiff not
disabled: The ALJ's residual functional capacity determination is not supported by substantial
evidence.

LEGAL STANDARDS

The court reviews the Commissioner's decision to determine whether (1) it is based on
proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means "such relevant evidence as a reasonable

1 mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th
2 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is
3 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
4 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citations omitted).
5 “The court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one
6 rational interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

7 The record as a whole must be considered, Howard v. Heckler, 782 F.2d 1484, 1487 (9th
8 Cir. 1986), and both the evidence that supports and the evidence that detracts from the ALJ’s
9 conclusion weighed. See Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not
10 affirm the ALJ’s decision simply by isolating a specific quantum of supporting evidence. Id.; see
11 also Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the
12 administrative findings, or if there is conflicting evidence supporting a finding of either disability
13 or nondisability, the finding of the ALJ is conclusive, see Sprague v. Bowen, 812 F.2d 1226,
14 1229-30 (9th Cir. 1987), and may be set aside only if an improper legal standard was applied in
15 weighing the evidence. See Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

16 ANALYSIS

17 A. Residual Functional Capacity

18 Plaintiff generally asserts that the RFC is not supported by substantial evidence.
19 Specifically, she claims that the ALJ improperly discounted the opinion of a State Agency doctor,
20 Dr. Christopher Maloney, as to plaintiff’s manipulative limitations. While Dr. Maloney opined,
21 after reviewing plaintiff’s records in 2013, that she was limited to occasional handling, fingering,
22 and feeling in her right hand (AT 118), the RFC allowed for “frequent bilateral handling and
23 fingering.” AT 22.

24 Social Security Ruling 96-8p sets forth the policy interpretation of the Commissioner for
25 assessing residual functional capacity. SSR 96-8p. Residual functional capacity is what a person
26 “can still do despite [the individual’s] limitations.” 20 C.F.R. §§ 404.1545(a), 416.945(a) (2003);
27 see also Valencia v. Heckler, 751 F.2d 1082, 1085 (9th Cir. 1985) (residual functional capacity
28 reflects current “physical and mental capabilities”). RFC is assessed based on the relevant

1 evidence in the case record, including the medical history, medical source statements, and
2 subjective descriptions and observations made by the claimant, family, neighbors, friends, or
3 other persons. 20 C.F.R. §§ 404.1545(a)(1), 404.1545(a)(3). When assessing RFC, the ALJ must
4 consider the claimant’s “ability to meet the physical, mental, sensory, and other requirements of
5 work[.]” 20 C.F.R. §§ 404.1545(a)(4).

6 The ALJ considered opinions by two State Agency consultants, Dr. Dann and Dr.
7 Maloney, regarding plaintiff’s physical capacity to perform work-related functions:

8 Dr. C.R. Dann, M.D., found that the claimant was capable of work at
9 the medium exertional level with frequent postural activities, limited
10 left overhead reaching, limited handling, and limited fingering (Ex.
11 1A, pg. 10-11). Upon reconsideration, Dr. Christopher Maloney,
12 M.D., indicated that the claimant should be limited to work at the
13 light exertional level with reaching, handling, fingering, and feeling
14 limitations. The opinions of the state agency medical consultants ...
15 are given partial weight. Their limited reaching, handling, fingering,
16 and feeling limitations are consistent with the medical evidence of
record showing mild median neuropathy across the right wrist and
mild carpal tunnel syndrome of the left wrist (Ex. 16F, p.7) along
with a partial thickness tear of the supraspinatus of the left shoulder
(Ex. 3F/ex. 5F, p. 4). However, based on the claimant’s additional
impairment of obesity and other opinions indicating that the claimant
is limited to sedentary work, the undersigned finds that the claimant
should be limited to work at the sedentary level rather than medium
or light.

17 AT 26; see AT 102-104 (Dr. Dann’s opinion), AT 117-118 (Dr. Maloney’s opinion). Unlike Dr.
18 Maloney, Dr. Dann found plaintiff able to perform frequent handling and fingering in both upper
19 extremities “due to mild CTS [carpal tunnel syndrome] w/o atrophy and mild NCT [nerve
20 conduction test” findings.” AT 104.

21 As stated above, the ALJ gave both Agency doctors’ opinions “partial weight,” finding
22 both opinions consistent with evidence of mild neuropathy in plaintiff’s right wrist and mild
23 carpal tunnel syndrome of the left wrist. See AT 1181 (2014 progress notes finding “very mild
24 median neuropathy across the wrists” and “left median neuropathy across the wrist [consistent
25 with] mild carpal tunnel syndrome”; both wrists were noted to have improved since prior studies).
26 In formulating the RFC, the ALJ ultimately adopted Dr. Dann’s view that plaintiff could perform
27 frequent handling and fingering.

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1 Plaintiff argues that the ALJ failed to explain why Dr. Maloney's manipulative limitations
2 were rejected. However, the ALJ reviewed the objective medical evidence concerning plaintiff's
3 carpal tunnel syndrome, including a September 2011 surgery on her right and subsequent nerve
4 conduction studies. AT 24, 552. A December 2011 nerve conduction study and EMG showed
5 mild carpal tunnel syndrome in the right wrist and early moderate carpal tunnel syndrome in the
6 left wrist. AT 24, 1022, 1039. Also in December 2011, an arthrogram of plaintiff's left shoulder
7 showed a partial tear thickness of the supraspinatus tendon, but otherwise intact labrum and no
8 rotator cuff tear. AT 29, 489-490. In a September 2012 examination, plaintiff presented with
9 continuing pain in the right hand and increased pain and numbness in the left hand. AT 1039.
10 She was diagnosed with positive Tinel's sign over the median nerve at the right and left wrists, a
11 pain-free range of motion in the right shoulder, restricted range of motion in the left shoulder, and
12 no muscle atrophy in the left hand. AT 1040. "Hand grip strength cannot be properly done as she
13 showed poor effort," the examiner noted. AT 1040.

14 The ALJ summarized the subsequent medical evidence concerning plaintiff's wrists, arms,
15 and shoulder, including September 2014 notes of a full range of motion and mild right hand
16 weakness, "with good sensation in the ulnar distribution of her hand and possibly a little bit of
17 weakness in her fourth and fifth digits" (AT 24, 1189); a November 2014 EMG noting "very mild
18 median neuropathy across the right wrist and mild carpal tunnel syndrome on the left wrist (AT
19 25, 1181); and September 2015 notes indicating that plaintiff's "right wrist had normal flexion to
20 75 degrees, decreased extension to 45 degrees, and normal radial and ulnar deviation. The
21 claimant avoided using the right hand and kept the thumb adducted at all times. Her grip strength
22 in her right hand was noted at two out of five, but she did not use her thumb. Her left grip
23 strength was noted as five out of five." AT 25, 1660.

24 The ALJ summarized the findings of Dr. Elise Smith-Hofer, who examined plaintiff in
25 2012 in connection with her workers compensation claim:

26 Dr. Smith-Hofer noted that the claimant held her hand and thumb in
27 a very firm, fixed position and reported spasms in the thumb and
28 forearm but seemed to relax her hand and thumb when there was not
a request for an evaluation. She also opined that the claimant's poor
grip strength on the right hand may have been due to poor effort. Dr.

1 Smith Hofer stated that the claimant may benefit from Botox
2 injections, but that she refused his [sic] recommendation due to an
3 alleged phobia of needles. Dr. Smith-Hofer indicated that she was
not able to explain the claimant's hand pain . . . [Her] opinion is given
some weight.

4 AT 27; see AT 553.

5 As to plaintiff's left shoulder, the ALJ noted her 2011 arthroscopy and related records,
6 along with 2015 examination notes stating "that the claimant was very guarded and used her body
7 and trapezius to move her shoulder when asked." AT 25, 1660. The ALJ assigned "great
8 weight" to the opinion of Dr. Jeffrey Metheny, who in 2011 opined that "her objective exam is
9 quite good, and I have very little objective evidence to keep her from work" based on reported
10 issues with her left shoulder. AT 26, 718.

11 The ALJ concluded that the RFC was supported by the objective medical evidence as set
12 forth above. AT 29. "The statements made by the claimant were taken into consideration;
13 however, her refusal of additional medical treatment, poor effort, practicing of pain behavior
14 activities, and fabrication of her physical findings, along with the level of activity that she could
15 tolerate lead to a determination that the claimant's allegations are not entirely credible," the ALJ
16 wrote. AT 29 (record citations omitted). Plaintiff does not challenge the ALJ's adverse
17 credibility finding, which has support in the record as set forth above and was a factor in the RFC
18 assessment. In sum, the ALJ adopted Dr. Dann's opinion that plaintiff could perform frequent
19 handling and fingering as being the most consistent with the overall medical record and in light of
20 documented issues with plaintiff's credibility and effort.

21 For the reasons discussed above, the court concludes that plaintiff's assessed RFC was
22 adequately explained and grounded in substantial evidence.

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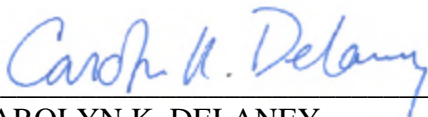
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CONCLUSION

For the reasons stated herein, IT IS HEREBY ORDERED that:

1. Plaintiff’s motion for summary judgment (ECF No. 15) is denied;
 2. The Commissioner’s cross-motion for summary judgment (ECF No. 20) is granted;
- and
3. Judgment is entered for the Commissioner.

Dated: September 24, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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