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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEBORAH ANN FOX,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

No. 2:17-cv-01663 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”). 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.¹

BACKGROUND

Plaintiff, born May 11, 1967, applied on July 15, 2013 for SSI, alleging disability beginning January 1, 2012. Administrative Transcript (“AT”) 150-151. Plaintiff alleged she was unable to work due to knee pain, leg pain, and depression. AT 151. In a decision dated February

¹ The parties have consented to magistrate judge jurisdiction pursuant to Title 28 U.S.C. §636(c)(1). ECF Nos. 7 and 8.

1 18, 2016, the ALJ determined that plaintiff was not disabled.² AT 16-25. The ALJ made the
2 following findings (citations to 20 C.F.R. omitted):

3 1. The claimant has not engaged in substantial gainful activity
4 since July 16, 2013, the application date.

5 2. The claimant has the following severe impairments: status post
6 right total knee, arthroplasty; left knee arthritis; and a major
7 depressive disorder.

8 3. The claimant does not have an impairment or combination of
9 impairments that meets or medically equals one of the listed
10 impairments in 20 CFR Part 404, Subpart P, Appendix 1.

11 4. After careful consideration of the entire record, the undersigned
12 finds that the claimant has the residual functional capacity to

13 ² Disability Insurance Benefits are paid to disabled persons who have contributed to the
14 Social Security program, 42 U.S.C. § 401 et seq. Supplemental Security Income is paid to
15 disabled persons with low income. 42 U.S.C. § 1382 et seq. Both provisions define disability, in
16 part, as an “inability to engage in any substantial gainful activity” due to “a medically
17 determinable physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A).
18 A parallel five-step sequential evaluation governs eligibility for benefits under both programs.
19 See 20 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S.
20 137, 140-142, 107 S. Ct. 2287 (1987). The following summarizes the sequential evaluation:

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

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

27 Step three: Does the claimant’s impairment or combination
28 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.

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

27 The claimant bears the burden of proof in the first four steps of the sequential evaluation
28 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 perform sedentary work, except she is limited to simple, repetitive
2 tasks; should avoid concentrated exposure to fumes, odors, dust and
3 gases; no work around hazards, such as heights and moving
4 machinery; no extreme temperatures; no public contact; and only
5 occasional, superficial contact with others.

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

7 6. The claimant was born on May 11, 1967, which is defined as a
8 younger individual age 45-49 on the date the application was filed.

9 7. The claimant has at least a high-school education and is able to
10 communicate in English.

11 8. Transferability of job skills is not material to the determination
12 of disability because using the Medical-Vocational Rules as a
13 framework supports a finding that the claimant is ‘not disabled,’
14 whether or not the claimant has transferable job skills.

15 9. Considering the claimant’s age, education, work experience, and
16 residual functional capacity, there are jobs that exist in significant
17 numbers in the national economy that the claimant can perform.

18 10. The claimant has not been under a disability, as defined in the
19 Social Security Act, since July 15, 2013, the date the application
20 was filed.

21 AT 18-25.

22 ISSUES PRESENTED

23 Plaintiff argues that the ALJ committed the following error in finding plaintiff not
24 disabled: The ALJ failed to properly evaluate the opinion of consultative psychologist Dr.
25 Charles Odipo.

26 LEGAL STANDARDS

27 The court reviews the Commissioner’s decision to determine whether (1) it is based on
28 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
mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th
Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is
responsible for determining credibility, resolving conflicts in medical testimony, and resolving

1 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citations omitted).

2 “The court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one
3 rational interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

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

13 ANALYSIS

14 Plaintiff contends that the ALJ did not provide specific and legitimate reasons for
15 discounting in part the opinion of Dr. Odipo, who conducted a mental status examination of
16 plaintiff on February 15, 2014. AT 359-362. Plaintiff argues that if Dr. Odipo’s opinion were
17 properly credited, a finding of disability due to depression would be warranted.

18 The weight given to medical opinions depends in part on whether they are proffered by
19 treating, examining, or non-examining professionals. Lester v. Chater, 81 F.3d 821, 830 (9th Cir.
20 1995). Ordinarily, more weight is given to the opinion of a treating professional, who has a
21 greater opportunity to know and observe the patient as an individual. Id.; Smolen v. Chater, 80
22 F.3d 1273, 1285 (9th Cir. 1996).

23 To evaluate whether an ALJ properly rejected a medical opinion, in addition to
24 considering its source, the court considers whether (1) contradictory opinions are in the record,
25 and (2) clinical findings support the opinions. An ALJ may reject an uncontradicted opinion of a
26 treating or examining medical professional only for “clear and convincing” reasons. Lester, 81
27 F.3d at 831. In contrast, a contradicted opinion of a treating or examining professional may be
28 rejected for “specific and legitimate” reasons, that are supported by substantial evidence. Id. at

1 830. While a treating professional’s opinion generally is accorded superior weight, if it is
2 contradicted by a supported examining professional’s opinion (e.g., supported by different
3 independent clinical findings), the ALJ may resolve the conflict. Andrews v. Shalala , 53 F.3d
4 1035, 1041 (9th Cir. 1995) (citing Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). In
5 any event, the ALJ need not give weight to conclusory opinions supported by minimal clinical
6 findings. Meanel v. Apfel, 172 F.3d 1111, 1113 (9th Cir. 1999) (treating physician’s conclusory,
7 minimally supported opinion rejected); see also Magallanes , 881 F.2d at 751. The opinion of a
8 non-examining professional, without other evidence, is insufficient to reject the opinion of a
9 treating or examining professional. Lester, 81 F.3d at 831.

10 In his February 2014 evaluation, Dr. Odipo noted that plaintiff “reports a history of
11 depression” and “reports a history of suicidal ideation but no attempts.” AT 359. She “has never
12 taken psychiatric medication” but “continues to drink excessively to mask her depression.” AT
13 359-360. As to activities of daily living, Dr. Odipo noted that plaintiff could take care of
14 dressing, bathing, and personal hygiene; that she “is not able to pay bills but can handle cash
15 appropriately”; that her relationships with friends and family were poor “since she isolates”; and
16 that her typical day included light chores and managing her pain symptoms. AT 360. Dr. Odipo
17 observed that plaintiff “was sad looking and she had crying spells when recalling her medical
18 problems.” AT 360. He assigned her a GAF of 60³ and diagnosed her with Major Depressive
19 Disorder and Alcohol Abuse on Axis I. AT 361.

20 In his functional assessment, Dr. Odipo found that plaintiff

21 Is capable of managing her funds since she does not appear to have
22 any significant cognitive problems.

23 Is able to adequately perform one or two step simple repetitive
24 tasks.

25 Is not able to adequately perform complex tasks without

26 ³ GAF is a scale reflecting the “psychological, social, and occupational functioning on a
27 hypothetical continuum of mental health-illness.” Diagnostic and Statistical Manual of Mental
28 Disorders at 34 (4th ed. 2000) (“DSM IV-TR”). A GAF of 51-60 indicates moderate symptoms
(e.g., flat affect and circumstantial speech, occasional panic attacks) or moderate difficulty in
social, occupational, or school function (e.g., few friends, conflicts with peers or co-workers). Id.

1 accommodations due to depressive and pain symptoms.

2 She is deemed to be moderately impaired.

3 Is not able to accept instructions from supervisors and interact with
4 coworkers and the public without accommodations due to
depressive symptoms and difficulty being around people. She is
5 deemed to be moderately impaired.

6 Is not able to maintain regular attendance in the workplace without
7 accommodation due to depression and pain symptoms. She is
deemed to be moderately restricted.

8 Is not able to handle normal work related stress from a competitive
9 work environment without accommodations.

10 Her depressive symptoms will impact claimant's ability to handle
work related stress. She is deemed to be moderately restricted.

11 AT 361.

12 The court now turns to the ALJ's review of the mental health evidence. First, the ALJ
13 found plaintiff to have only mild restriction in activities of daily living. AT 19. In addition to Dr.
14 Odipo's findings, the ALJ cited plaintiff's December 2013 report that she "is able to do light
15 house work, including feeding her cats, making simple meals, doing the dishes, vacuuming and
16 laundry, and although she reported some difficulty performing these activities and her personal
17 care, she reported only physical problems." AT 19, citing AT 226-234, 365. Based on Dr.
18 Odipo's assessment, the ALJ found plaintiff to have moderate difficulties in social functioning,
19 concentration, persistence, or pace. AT 19, citing AT 360-361.

20 The ALJ noted that no records indicated that plaintiff had experienced episodes of
21 decompensation, hospitalizations or emergency treatment for her mental impairment. AT 19.

22 Additionally, the claimant's allegations of disabling depression are
23 not supported by the medical record. The only evidence of mental
24 health treatment in the record is for a short period from March to
25 June 2014, when the claimant received therapy from Michelle Irish.
26 (Exhibit 7F.) She diagnosed a post-traumatic stress disorder and a
27 rule out depressive disorder (Id. at 12). On mental status
28 examinations, Ms. Irish observed that the claimant had good eye
contact, clear speech, euthymic mood, good memory, and normal
thought processes, and no delusions, auditory hallucinations, or
suicidal/homicidal ideation (Id. at 8, 9, 10, 11).

1 AT 22, citing AT 382-387.⁴ In fact, the record contains numerous normal mental status
2 examinations. AT 419, 473, 475-476, 478-479, 481-483, 487-488, 494-495, 504-505.

3 The ALJ next summarized Dr. Odipo's findings of February 2014, including his diagnosis
4 of major depressive disorder and alcohol abuse and his assigned GAF of 60. AT 22. "Based on
5 the opinion of Dr. Odipo and giving the claimant the benefit of the doubt," the ALJ concluded
6 "that the claimant has a 'severe' major depressive disorder, but based upon the limited evidence
7 of mental health treatment, [does] not find sufficient evidence that she suffers from disabling
8 mental symptoms." AT 22.

9 In the section of the opinion challenged by plaintiff, the ALJ discounted certain functional
10 assessments by Dr. Odipo:

11 Lastly, consultative evaluator Dr. Odipo opined that the claimant is
12 able to adequately perform one or two step simple repetitive tasks,
13 but is not able to adequately perform complex tasks without
14 accommodations due to depressive and pain symptoms. Further,
15 Dr. Odipo stated both that the claimant is not able to accept
16 instructions from supervisors and interact with coworkers and the
17 public without accommodations, but also stated she was deemed to
18 be moderately impaired. Similarly, he stated both that the claimant
19 is not able to maintain regular attendance in the workplace without
20 accommodations, and not able to handle normal work related stress
21 from a competitive work environment without accommodations,
22 but also that she is deemed moderately restricted in these areas.
The undersigned only gives some weight to Dr. Odipo's opinion
because as noted by the DDS medical consultants, it is internally
inconsistent. While stating that the claimant was not able to accept
instructions or interact with coworkers and the public, he also stated
that she was only moderately impaired, and while stating that the
claimant is not able to maintain regular attendance or handle normal
work related stress, he again stated that the claimant was only
moderately restricted. Moreover, the very limited evidence of
mental health treatment and his own observations of only mild
objective findings on mental status evaluation undermines Dr.
Odipo's opinion.

23 AT 23 (record citations omitted).

24 As to the agency medical consultants, the ALJ noted that they "opined that there was
25 insufficient evidence of a 'severe' mental impairment, and rejected the opinion of . . . Dr. Odipo
26 because his opinion contained inconsistencies and assessed that his opinion was an overestimate

27 ⁴ Plaintiff attended four therapy sessions with Irish, a social worker, after she applied for benefits.
28 AT 382-386.

1 of the severity of the individual’s restrictions and limitations based only on a snapshot of the
2 claimant’s functioning.” AT 23, citing AT 66-67. State agency reviewing psychologist Barbara
3 Moura opined that plaintiff’s impairment from an affective disorder was non-severe, with only
4 mild difficulties in activities of daily living; maintaining social functioning; and maintaining
5 concentration, persistence or pace. AT 51. Dr. Moura opined that Dr. Odipo’s assessment of
6 moderate limitations was “overly restrictive” in light of plaintiff’s functional activities of daily
7 living, lack of mental health history or treatment, and “fairly benign” current mental status
8 examination. AT 51. State agency psychiatrist Dr. M. Salib agreed with this assessment, also
9 finding Dr. Odipo’s assessment “overly restrictive” in light of plaintiff’s lack of treatment history
10 and mild impairments due to mental health issues. AT 64-65. The ALJ gave these opinions
11 “some weight” but found that the claimant was more limited than the agency consultants found,
12 based on updated medical evidence at the hearing. AT 23.

13 Plaintiff argues that the ALJ’s characterization of Dr. Odipo’s opinion as internally
14 inconsistent was not a sufficient reason to reject portions of the opinion. However, in concluding
15 that plaintiff did not suffer from disabling depression, the ALJ also cited plaintiff’s almost
16 nonexistent record of mental health treatment, her ability to perform daily activities, two agency
17 doctors’ opinions that plaintiff was only mildly impaired due to depression, and the observations
18 of Dr. Odipo and a therapist that plaintiff’s mental status appeared largely normal. Based on the
19 foregoing, the ALJ provided specific and legitimate reasons, supported by substantial evidence,
20 for discounting portions of Dr. Odipo’s opinion concerning plaintiff’s functional limitations due
21 to depression.

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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. **16**) is granted;
- and
3. Judgment is entered for the Commissioner.

Dated: May 9, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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