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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TERESA SAMOY,

Plaintiff,

v.

ANDREW SAUL, Commissioner of Social
Security,

Defendant.

No. 2:18-cv-538-EFB

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying her application for Supplemental Security Income (“SSI”) under XVI of the Social Security Act. The parties have filed cross-motions for summary judgment. ECF Nos. 16 & 17. For the reasons discussed below, plaintiff’s motion is granted, the Commissioner’s motion is denied, and the matter is remanded for further proceedings.

I. Background

Plaintiff filed an application for SSI, alleging that she had been disabled since November 1, 2000. Administrative Record (“AR”) at 206-27. Her application was denied initially and upon reconsideration. *Id.* at 105-10, 114-19. Thereafter, a hearing was held before administrative law judge (“ALJ”) Timothy S. Snelling. *Id.* at 50-82. Plaintiff was represented by counsel at the hearing, at which she testified. *Id.*

1 On June 27, 2016, the ALJ issued a decision finding that plaintiff was not disabled under
2 section 1614(a)(3)(A) of the Act.¹ *Id.* at 39-45. The ALJ made the following specific findings:

- 3 1. The claimant has not engaged in substantial gainful activity since September 20, 2013, the
4 application date (20 CFR 416.971 *et seq.*).
- 5 2. The claimant has the following medically severe combinations of impairments:
6 hypertension, diabetes mellitus, hypothyroidism, placement of a spinal shunt, chronic liver
7 disease, a history of polysubstance abuse and alcohol abuse, internal derangement right
8 shoulder, and cervical spine stenosis and spondylosis (20 CFR 416.920(c)).

9 * * *

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 does not have an impairment or combination of impairments that meets or
2 medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart
P, Appendix 1 (20 CFR 416.920(d), 416.925 and 416.926).

3 * * *

4 4. After careful consideration of the entire record, the undersigned finds that the claimant has
5 the residual functional capacity to lift and carry 20 pounds occasionally, 10 pounds
6 frequently, sit 6 hours and stand and walk 6 hours in an 8-hour workday. She can
7 occasionally climb ramps and stairs, stoop, crouch, kneel, and crawl, but the claimant
8 cannot climb ladders, ropes, or scaffolds. In addition, she can perform no more than
9 frequent reaching in all directions overhead with the right upper extremity, and the
claimant must avoid concentrated exposure to temperature extremes, vibration, and
hazards such as “dangerous and unprotected” moving machinery, heights and bodies of
water, etc. (20 CFR 416.967(b)).

10 * * *

11 5. The claimant has no past relevant work (20 CFR 416.965).

12 6. The claimant was born [in] 1969 and was 43 years old, which is defined as a younger
13 individual age 18-49, on the date the application was filed (20 CFR 416.963).

14 7. The claimant has a limited education and is able to communicate in English (20 CFR
15 416.964).

16 8. Transferability of job skills is not an issue because the claimant does not have past
relevant work (20 CFR 416.968).

17 9. Considering the claimant’s age, education, work experience, and residual functional
18 capacity, there are jobs that exist in significant number in the national economy that the
19 claimant could perform (20 CFR 416.969 and 416.969(a)).

20 * * *

21 10. The claimant has not been under a disability, as defined in the Social Security Act, since
22 September 30, 2013, the date the application was filed (20 CFR 416.920(g)).

23 AR at 41-45.

24 Plaintiff’s request for Appeals Council review was denied on January 12, 2018, leaving
25 the ALJ’s decision as Commissioner’s final decision. *Id.* at 1-7.

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1 II. Legal Standards

2 The Commissioner’s decision that a claimant is not disabled will be upheld if the findings
3 of fact are supported by substantial evidence in the record and the proper legal standards were
4 applied. *Schneider v. Comm’r of the Soc. Sec. Admin.*, 223 F.3d 968, 973 (9th Cir. 2000);
5 *Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Tackett v. Apfel*,
6 180 F.3d 1094, 1097 (9th Cir. 1999).

7 The findings of the Commissioner as to any fact, if supported by substantial evidence, are
8 conclusive. *See Miller v. Heckler*, 770 F.2d 845, 847 (9th Cir. 1985). Substantial evidence is
9 more than a mere scintilla, but less than a preponderance. *Saelee v. Chater*, 94 F.3d 520, 521 (9th
10 Cir. 1996). “It means such evidence as a reasonable mind might accept as adequate to support a
11 conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consol. Edison Co. v.*
12 *N.L.R.B.*, 305 U.S. 197, 229 (1938)).

13 “The ALJ is responsible for determining credibility, resolving conflicts in medical
14 testimony, and resolving ambiguities.” *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir.
15 2001) (citations omitted). “Where the evidence is susceptible to more than one rational
16 interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.”
17 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

18 III. Discussion

19 Plaintiff argues that the ALJ erred by failing to provide clear and convincing reasons for
20 rejecting her subjective complaints. ECF No. 16 at 6-9.

21 In evaluating a plaintiff’s testimony regarding subjective pain or symptoms, an ALJ must
22 follow a two-step analysis. First, they must determine whether the plaintiff has presented
23 objective medical evidence of an underlying impairment “which could reasonably be expected to
24 produce the pain or other symptoms alleged.” *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th
25 Cir. 2007). At the first step, “the claimant is not required to show that her impairment could
26 reasonably be expected to cause the severity of the symptom she has alleged; she need only show
27 that it could reasonably have caused some degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d
28 586, 591 (9th Cir. 2009) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996)). “If the

1 claimant meets the first test and there is no evidence of malingering, the ALJ can only reject the
2 claimant’s testimony about the severity of the symptoms if she gives specific, clear and
3 convincing reasons for the rejection.” *Id.* “[F]or the ALJ to reject the claimant’s complaints, the
4 ALJ must provide specific, cogent reasons for the disbelief.” *Berry v. Astrue*, 622 F.3d 1228,
5 1234 (9th Cir. 2010) (internal quotations and quotation marks omitted); *see Diedrich v. Berryhill*,
6 874 F.3d 634, 641 (9th Cir. 2017) (once a plaintiff submits medical evidence of an impairment
7 that could reasonably be expected to produce the alleged symptoms, “the ALJ must give specific,
8 clear and convincing reasons in order to reject the claimant’s testimony about the severity of the
9 symptoms.”).

10 Plaintiff testified that she experiences backpain between her shoulder blades that
11 constantly radiates down her right arm and occasionally down her left arm. AR 56-57. She also
12 reported having no feeling on the right side of her body, which limits her ability to use her right
13 upper extremity. *Id.* at 58, 69-70. She stated that she did not exercise because she feels fatigued
14 “all the time.” *Id.* at 59. She also stated that she could only walk about half a city block before
15 getting tired. *Id.* at 64. In an exertion questionnaire, plaintiff reported that she could lift and
16 carry no more than five to ten pounds but could only lift that amount of weight two times per day.
17 *Id.* at 246.

18 In his decision, the ALJ concluded plaintiff’s impairments could reasonably be expected
19 to cause her alleged symptoms. *Id.* at 44. But he ultimately concluded that the alleged intensity
20 and limiting effect was not entirely consistent with evidence in the record. *Id.* With respect to
21 plaintiff’s diabetes, hypertension, and hypothyroidism, the ALJ observed that treatment records
22 reflected that these impairments were controlled with medication and were uncomplicated. *Id.*
23 As for complaints of right shoulder pain, the ALJ found that plaintiff’s allegations were
24 inconsistent with the medical evidence of record. *Id.* Specifically, the ALJ noted that plaintiff’s
25 “physical examinations showed generally normal findings with full motor strength in all
26 extremities” and that treatment records did not reflect complaints of right shoulder pain until
27 February 2016. *Id.*

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1 The ALJ’s finding that plaintiff’s diabetes, hypertension, and hypothyroidism were
2 controlled by medication, when taken, is supported by the medical evidence of record. *Id.* at 288
3 (plaintiff reported symptoms are fairly controlled), 331 (“dm/htn/thyroid – stable with meds”),
4 340 (same), 352-53 (diabetes controlled with diet and oral medication; blood pressure “not at
5 goal,” but plaintiff was not taking medication), 355-59 (diabetes is uncomplicated and controlled
6 with diet and medication; hypothyroidism uncontrolled but plaintiff not compliant with
7 medication); 361-65 (hypertension and diabetes stable). Accordingly, it was permissible for the
8 ALJ to discount plaintiff’s allegations regarding the limiting effect of these impairments. *See*
9 *Warre v. Comm’r Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (“Impairments that can
10 be controlled effectively with medication are not disabling for the purpose of determining
11 eligibility for SSI benefits.”).

12 However, the ALJ’s sole reason for discounting plaintiff’s allegation of severe shoulder
13 pain—that it was not supported by medical evidence—was not a sufficient basis for rejecting
14 plaintiff’s allegations. As a threshold matter, “an ALJ may not reject a claimant’s subjective
15 complaints based solely on a lack of objective medical evidence to fully corroborate the alleged
16 severity of pain.” *Moisa v. Barnhart*, 367 F.3d 882, 885 (9th Cir. 2004); *see Bunnell v. Sullivan*,
17 947 F.2d 341, 346-47 (9th Cir. 1991) (The ALJ “may not discredit a claimant’s testimony of pain
18 and deny disability benefits solely because the degree of pain alleged by the claimant is not
19 supported by objective medical evidence.”).

20 But more significantly, the purported inconsistency is based on the ALJ’s lay
21 interpretation of the medical evidence. The ALJ correctly noted that treatment records prior to
22 2016 failed to document issues with plaintiff’s right shoulder. But treatment records from
23 February 2016 document complaints of right shoulder pain and examination revealed tenderness
24 and moderately reduced range of motion. AR 384-88. As observed by the ALJ, plaintiff’s
25 physician ordered an MRI, which showed marked deformity to the right shoulder with absence of
26 the humeral head, flattening of the glenoid, marked joint effusion with multiple intra-articular
27 loose bodies of various soft tissues, abnormal signal within remnant humeral shaft, and diffuse
28 atrophy of all rotator cuff muscles. *Id.* at 392.

1 The MRI results were not reviewed by the two physicians who provided opinions
2 regarding plaintiff's functional limitations.² Nevertheless, the ALJ concluded, based on his own
3 review, that the MRI results were consistent with the ability to "frequently reach[] in any
4 direction, as well as overhead reaching with the right upper extremity" AR 44. The ALJ is
5 not a medical expert and is "simply not qualified to interpret raw medical data in functional terms
6" *Nguyen v. Chater*, 172 F.3d 31, 35 (1st Cir. 1999); *see Day v. Weinberger*, 522 F.2d 1154,
7 1156 (9th Cir. 1975) (ALJ should not make his "own exploration and assessment as to claimant's
8 physical condition."); *Rohan v. Chater*, 98 F.3d 966, 970 (7th Cir. 1996) ("ALJs must not
9 succumb to the temptation to play doctor and make their own independent medical findings.").
10 Instead, the ALJ was required to retain a medical expert to evaluate this evidence. Because he
11 failed to do so, his RFC determination is not supported by substantial evidence.

12 Accordingly, the matter must be remanded to allow for proper consideration of the
13 medical evidence. *Dominguez v. Colvin*, 808 F.3d 403, 407 (9th Cir. 2015) ("A district court may
14 reverse the decision of the Commissioner of Social Security, with or without remanding the case
15 for a rehearing, but the proper course, except in rare circumstances, is to remand to the agency for
16 additional investigation or explanation.") (internal quotes and citations omitted).

17 IV. Conclusion

18 Accordingly, it is hereby ORDERED that:

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

23 DATED: September 25, 2019.

24 
25 EDMUND F. BRENNAN
26 UNITED STATES MAGISTRATE JUDGE

27 ² The only medical opinion evidence in the record is from two non-examining physicians.
28 Neither physician opined that plaintiff was limited in her ability to reach. AR 88-90, 98-100. But
both opinions were provided in 2014, well before the MRI was performed. *Id.*