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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TANICHA C. JONES,
Plaintiff,
v.
ANDREW SAUL, Commissioner of Social Security,
Defendant.

No. 2:18-cv-1094-EFB

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying her applications for a period of disability and Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI of the Social Security Act. The parties have filed cross-motions for summary judgment. ECF Nos. 11 & 17. For the reasons discussed below, 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 applications for a period of disability, DIB, and SSI, alleging that she had been disabled since July 31, 2012.¹ Administrative Record (“AR”), ECF No. 10, at 649-58. Her

¹ Plaintiff subsequently amended her disability onset date to October 25, 2013. AR 659-68.

1 applications were denied initially and upon reconsideration. *Id.* at 557-61, 565-69. A hearing
2 was subsequently held before administrative law judge (“ALJ”) Michael Blume. *Id.* at 82-111.
3 Plaintiff was represented by counsel at the hearing, at which she, a medical expert, and a
4 vocational expert testified. *Id.*

5 On August 24, 2016, the ALJ issued a decision finding that plaintiff was not disabled
6 under sections 216(i), 223(d), and 1614(a)(3)(A) of the Act.² *Id.* at 61-75. The ALJ made the
7 following specific findings:

- 8 1. The claimant meets the insured status requirements of the Social Security Act through
9 September 30, 2019. Exhibit 12D at 1.

10
11 ² 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, disability
14 is defined, in part, as an “inability to engage in any substantial gainful activity” due to “a
15 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 2. The claimant has not engaged in substantial gainful activity since October 25, 2013, the
2 alleged onset date (20 C.F.R. §§ 404.1571 *et seq.*, and 416.971, *et seq.*).

3 * * *

4 3. The claimant has the following severe impairments: obesity, possible osteoarthritis of the
5 knees, degenerative joint disease of the left shoulder, degenerative disc disease of the
6 cervical spine, degenerative disc disease of the lumbar spine status post lumbar spine
7 surgery, bone Spurs both feet, and possible diabetic neuropathy (20 C.F.R. §§ 404.1520(c)
8 and 416.920(c)).

9 * * *

10 4. The claimant does not have an impairment or combination of impairments that meets or
11 medically equals the severity of one of the listed impairments in 20 C.F.R. Part 404,
12 Subpart P, Appendix 1 (20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526, 416.920(d),
13 416.925 and 416.926).

14 * * *

15 5. The claimant has the residual functional capacity to perform sedentary work as defined in
16 20 C.F.R. §§ 404.1567(a) and 416.967(a), except she can lift or carry ten pounds
17 frequently and occasionally; can engage in frequent but not constant left upper-extremity
18 overhead reaching; occasionally climb stairs and ramps; never climb ropes, ladders or
19 scaffolds; and can frequently balance, stoop, kneel, crouch and crawl.

20 * * *

21 6. The claimant is unable to perform any past relevant work (20 C.F.R. §§ 404.1565 and
22 416.965).

23 * * *

24 7. The claimant was born on [in] 1978 and was 35 years old, which is defined as a younger
25 individual age 18-44, on the alleged disability onset date (20 C.F.R. §§ 404.1563 and
26 416.963).

27 8. The claimant has at least a high school education and is able to communicate in English
28 20 C.F.R. §§ 404.1564 and 416.964).

* * *

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

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1 10. Considering the claimant's age, education, work experience, and residual functional
2 capacity, there are jobs that exist in significant numbers in the national economy that the
3 claimant can perform (20 C.F.R. §§ 404.1569, 404.1569(a), 416.969, and 416.969(a)).

4 * * *

5 11. The claimant has not been under a disability, as defined in the Social Security Act, from
6 October 25, 2013, through the date of this decision (20 C.F.R. §§ 404.1520(g) and
7 416.920(g)).

8 *Id.* at 64-75.

9 Plaintiff's request for Appeals Council review was denied on March 15, 2018, leaving the
10 ALJ's decision as the final decision of the Commissioner. *Id.* at 1-7.

11 II. Legal Standards

12 The Commissioner's decision that a claimant is not disabled will be upheld if the findings
13 of fact are supported by substantial evidence in the record and the proper legal standards were
14 applied. *Schneider v. Comm'r of the Soc. Sec. Admin.*, 223 F.3d 968, 973 (9th Cir. 2000);
15 *Morgan v. Comm'r of the Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Tackett v. Apfel*,
16 180 F.3d 1094, 1097 (9th Cir. 1999).

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

22 "The ALJ is responsible for determining credibility, resolving conflicts in medical
23 testimony, and resolving ambiguities." *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir.
24 2001) (citations omitted). "Where the evidence is susceptible to more than one rational
25 interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be upheld."
26 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

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1 III. Analysis

2 Plaintiff's sole argument is that the ALJ erred by failing to provide legally sufficient
3 reasons for rejecting the opinion of her treating physician, Dr. Kenneth Kim. ECF No. 11 at 5-11.

4 In June 2016, after providing pain management to plaintiff for nearly three years, Dr. Kim
5 completed a physical residual functional capacity questionnaire. AR 1564-68. Dr. Kim reported
6 that plaintiff's diagnosed impairments were shoulder and neck pain, which were established by
7 impingement examination findings and MRIs of the shoulder and cervical spine. *Id.* at 1564. He
8 identified plaintiff's symptoms as severe shoulder pain with decreased range of motion, as well as
9 neck spasms and pain with decreased range of motion. *Id.* Dr. Kim opined that plaintiff could lift
10 less than 10 pounds occasionally, walk 1-2 city blocks without rest; sit for 1-2 hours at one time;
11 stand for 1-2 hours at one time; sit and stand/walk for a total of 1-2 hours in an 8-hour workday;
12 and bend, stoop, and use her hands for grasping and twisting objects 25 percent of a normal 8-
13 hour workday, but could not perform any reaching. *Id.* at 1566-67. He also determined that
14 plaintiff must be able to shift positions at will, take unscheduled breaks every 45 minutes, and
15 that her pain frequently interferes with attention and concentration and causes her to be absent
16 from work more than three times a month. *Id.* at 1565-67.

17 The ALJ provided three reasons for according little weight to Dr. Kim's treating opinion.
18 First, the ALJ concluded that the opinion was inconsistent with Dr. Kim's findings on
19 examination, including those from a contemporaneous examination, which "were essentially
20 within normal limits." AR 72. In making this finding, the ALJ cited to a single page of Dr.
21 Kim's treatment notes that, accordingly to the ALJ, reflected normal findings from around the
22 time Dr. Kim rendered his opinion. *Id.* (citing Exhibit 3F at 59 or AR 1021). The page cited by
23 the ALJ, however, is from Dr. Kim's initial evaluation of plaintiff in September 2013, well before
24 his June 2016 opinion. *Id.* at 1021. Moreover, the page does not include any objective findings,
25 but instead describes plaintiff's past medical history and social history. *Id.* Nothing on that page
26 offers a basis for concluding that Dr. Kim's treating opinion was inconsistent with his findings on
27 examination, let alone those from a contemporaneous examination.

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1 There are, however, examination findings documented in later portions of the 14-page
2 treatment note from Dr. Kim’s initial evaluation of plaintiff. While the ALJ provided a summary
3 of the medical evidence that noted some of Dr. Kim’s objective findings, the ALJ did not identify
4 which findings he believed to be “essentially within normal limits” or inconsistent with Dr. Kim’s
5 opinion.³ Instead, the ALJ merely offered his conclusion that Dr. Kim’s opinion was inconsistent
6 with his treatment records, without providing his own interpretation of the treatment notes and an
7 explanation of how such evidence undermines Dr. Kim’s opinion. *See Reddick v. Chater*, 157
8 F.3d 715, 725 (9th Cir. 1998) (“The ALJ must do more than offer his conclusions. He must set
9 forth his own interpretations and explain why they, rather than the doctors’, are correct.”); *see*
10 *also Sanchez v. Comm’r Soc. Sec.*, 2019 WL 2448433, at *8 (E.D. Cal. June 12, 2019) (ALJ erred
11 in rejecting opinions based on purported inconsistency with plaintiff’s activities “because the ALJ
12 does not explain how the cited daily activities demonstrate any particular inconsistency with the
13 doctors’ opinions.”).

14 Nor was the ALJ permitted to give reduced weight to Dr. Kim’s treating opinion based on
15 the finding that it was “contradicted by every other probative opinion in the record.” AR 72. The
16 only other medical opinions assessing plaintiff’s limitations during the relevant period were from
17 two state agency non-examining physicians and a non-examining medical expert who testified at
18 plaintiff’s hearing.⁴ AR 98-107, 544-45, 553-54. These non-examining opinions do not
19 constitute substantial evidence that could support the rejection of Dr. Kim’s treating opinion. *See*
20 *Buck v. Berryhill*, 869 F.3d 1040, 1050 (9th Cir. 2017) (“The opinion of a nonexamining

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22 ³ For instance, Dr. Kim noted plaintiff’s range of motion in her cervical spine was limited
23 due to pain and there was tenderness at the rhomboid and trapezius for her cervical spine.
24 Plaintiff’s range of motion was also limited in her right shoulder due to pain; Hawkins and Neer
25 tests were positive; and tenderness in the greater tubercle of humerus and bursa were noted. Dr.
26 Kim also noted sensation decreased over thumb, index finger, and middle finger on the left side.
It is not clear whether the ALJ believes that these findings, or other objective findings,
undermined Dr. Kim’s opinion.

27 ⁴ The record contains an opinion from examining physician Dr. Mark Shelub, but the
28 opinion was rendered before the alleged disability onset date and was not weighed by the ALJ.
Id. at 903-916.

1 physician cannot by itself constitute substantial evidence that justifies that rejection” of a treating
2 opinion).

3 The ALJ’s remaining reason for according little weight to Dr. Kim’s treating opinion was
4 that it was based solely on plaintiff’s subjective complaints, which are unsupported and
5 inconsistent with the other medial opinions.⁵ *Id.* Generally, the opinion of a treating physician
6 may be rejected where it is premised primarily on plaintiff’s subjective complaints and the ALJ
7 properly discounted plaintiff’s credibility. *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir.
8 2001). However, “an ALJ does not provide clear and convincing reasons for rejecting [a]
9 physician’s opinion by questioning the credibility of the [plaintiff’s] complaints where the doctor
10 does not discredit those complaints and supports his ultimate opinion with his own observations.”
11 *Ryan v. Comm’r of Soc. Sec. Admin*, 528 F.3d 1194, 1200-01 (9th Cir. 2008).

12 Here, Dr. Kim specifically stated that plaintiff’s diagnosis and assessed limitations were
13 established by impingement examination findings and MRIs of her shoulder and cervical spine.
14 AR 1564. Furthermore, his treatment records reflect regular physical examination documenting
15 numerous objective findings, including reduced range of motion in the cervical spine and
16 shoulders due to pain, tenderness to palpation, positive Neer and Hawkins tests, and decreased
17 sensation in the left hand. *Id.* at 963-1031. Thus, even assuming that Dr. Kim relied on
18 plaintiff’s subjective complaints in arriving at his opinion, that fact does not justify rejecting the
19 opinion since he supported it by his own objective findings. *Ryan*, 528 F.3d at 1200-01.

20 IV. Conclusion

21 Accordingly, it is hereby ORDERED that:

- 22 1. Plaintiff’s motion for summary judgment is granted;
- 23 2. The Commissioner’s cross-motion for summary judgment is denied;
- 24 3. The matter is remanded for further proceedings consistent with this order; and

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28 ⁵ The ALJ concluded that plaintiff’s allegations concerning severity and limiting effect of
her impairments were not fully credible. AR 68. Plaintiff does not challenge that finding.

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4. The Clerk of Court is directed to enter judgment in plaintiff's favor.

DATED: September 30, 2019.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE