

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ESTELA LIZARRAGA,

Plaintiff,

vs.

MICHAEL J. ASTRUE,

Defendant.

CASE NO. 09CV1385 DMS (JMA)

**ORDER (1) DENYING
PLAINTIFF’S MOTION FOR
REVERSAL OR REMAND OF
DECISION DENYING SOCIAL
SECURITY DISABILITY
BENEFITS, AND (2) GRANTING
DEFENDANT’S CROSS-MOTION
FOR SUMMARY JUDGMENT**

[Docket Nos. 12, 14]

Plaintiff Estela Lizarraga (“Plaintiff”) moves for reversal or remand of a decision denying her Social Security disability benefits. Defendant Michael J. Astrue, in his capacity as Commissioner of the Social Security Administration, opposes Plaintiff’s motion and cross-moves for summary judgment. Plaintiff neither filed an opposition to Defendant’s cross-motion for summary judgment nor a reply to Defendant’s opposition to her motion for reversal. Plaintiff argues in her motion for reversal that the Administrative Law Judge (“ALJ”) erred by: (1) disregarding the physical functional capacity assessments of two of Plaintiff’s treating physicians, (2) disregarding mental functional capacity assessments of three mental health experts, and (3) improperly discrediting Plaintiff’s credibility. For the reasons discussed below, the Court denies Plaintiff’s motion for reversal, and grants Defendant’s cross-motion for summary judgment.

1 **I.**

2 **BACKGROUND**

3 Plaintiff was born on December 9, 1954, and possesses a ninth grade education.
4 (Administrative Record (“AR”) at 27-28.) Since 1998, Plaintiff has worked as a vegetable sorter and
5 quality control technician, bakery clerk, cashier, and food service worker. (*Id.* at 149-55.) On
6 February 7, 2006, Plaintiff filed an application for Social Security disability benefits, alleging a
7 disability onset date of May 17, 2002. (*Id.* at 115-19.) Plaintiff alleged she was injured at work as a
8 bakery clerk on January 20, 2002. (*Id.* at 244.) She continued working until May 17, 2002, when pain
9 in her neck, back, shoulder, and knees prevented her from standing, walking, bending, twisting, or
10 lifting. (*Id.* at 135.)

11 Plaintiff’s application was denied at both the initial and reconsideration levels. (*Id.* at 61-65,
12 69-73.) Plaintiff then requested a hearing before an administrative law judge. (*Id.* at 74.) A hearing
13 was held on November 1, 2007, before ALJ Larry B. Parker, at which Plaintiff, her counsel, and a
14 vocational expert appeared. (*Id.* 24-58.) On February 26, 2008, ALJ Parker issued a written decision
15 denying Plaintiff disability benefits. (*Id.* at 9-17.) Plaintiff appealed the decision. The Appeals
16 Council denied review on April 28, 2009, and Plaintiff filed a request for judicial review pursuant to
17 42 U.S.C. § 405(g) on June 25, 2009. (*Id.* at 1-5.)

18 **II.**

19 **MEDICAL HISTORY**

20 The record contains evidence of Plaintiff’s medical reports and expert opinions, as well as
21 Plaintiff’s testimony. At the hearing, Plaintiff testified that she stopped working due to pain in her
22 neck, back and knees. (*Id.* at 29.) She underwent surgery on her back and left knee, but the pain
23 worsened. (*Id.* at 32-33.) She continued having pain in her neck, shoulders, arms, back, knees, legs,
24 and hips, which limited her ability to sit, stand, and walk for long periods of time. (*Id.* at 32-33, 37-39.)
25 Around the house, Plaintiff was able to do some dusting and could wash a few dishes. (*Id.* at 41-42.)
26 Her cousin did most of the grocery shopping, but Plaintiff could shop for a few light items when
27 necessary. (*Id.* at 42.) She attended church on Sundays and occasionally went for walks on the beach.
28 (*Id.* at 45-43.) Additionally, Plaintiff was treated psychiatrically for depression. (*Id.* at 40.) She

1 testified she had problems dealing with people, was angry more, and was unable to concentrate
2 because of her pain. (*Id.*)

3 **A. Physical Impairment Treatment Evidence**

4 On November 1, 2002, Dr. Bernicker performed surgery on Plaintiff's left knee. (AR at 236-
5 37.) On November 16, 2004, Drs. Korsh and Bench performed an anterior lumbar decompression and
6 fusion at L5-S1. (*Id.* at 287-89.) On September 27, 2005, Dr. Korsh performed a partial corpectomy
7 and anterior fusion at C3-4. (*Id.* at 264-66.) Plaintiff also received pain management treatment from
8 Dr. Rose. (*Id.* at 211, 234.)

9 On November 15, 2006, Dr. Korsh provided a Primary Treating Physician's Requested
10 Supplemental Report. (*Id.* at 545-46.) Dr. Korsh opined that Plaintiff had a disability precluding
11 heavy lifting, repetitive motion of the neck, and overhead use of the arms. Dr. Korsh further stated
12 that Plaintiff had lost "50% of her pre-injury capacity for performing such activities as bending,
13 stooping, pushing, pulling, climbing, or other activities involving comparable physical effort." (*Id.*)

14 On July 6, 2006, Dr. Byron King provided a Qualified Medical Examiner's Report. (*Id.* at 569-
15 78.) Dr. King performed a physical examination of Plaintiff and examined her medical records. (*Id.*
16 at 569.) Dr. King had previously provided other Qualified Medical Examiner's Reports for Plaintiff.
17 (*Id.* at 570.) Dr. King found that Plaintiff had a fusion at L5-S1 on her lower back, limited range of
18 motion on the cervical and lumbar spine, and general discomfort around the knees. (*Id.* at 574-76.)
19 Dr. King concluded that her multi-level condition, including chronic pain management needs, limited
20 her to semi-sedentary work where she could work 50% of the time sitting and 50% of the time
21 standing or walking. (*Id.* at 576.) Dr. King determined that Plaintiff would need future medical care
22 by an orthopedic surgeon for her spine and knee complaints, but would not likely require future
23 surgery; however, she would need a pain management physician and psychiatrist. (*Id.* at 577.)

24 Dr. King provided an additional report on June 19, 2007. (*Id.* at 689-703.) He found that
25 Plaintiff continued to have limited range of motion in the cervical and lumbar spine and reiterated his
26 conclusion that Plaintiff was limited to semi-sedentary work. (*Id.* at 696, 700.) Dr. King also noted
27 that Plaintiff's subjective complaints exceeded his objective findings. (*Id.* at 696.)

28 On June 6, 2006, Dr. Thomas Dorsey provided an Orthopaedic Consultation Report. (*Id.* at

1 559-62.) Dr. Dorsey performed a physical examination on Plaintiff and found she had full range of
2 motion in her knees, and normal ranges of motion in her shoulders and hips. (*Id.* at 561.) Dr. Dorsey
3 concluded that Plaintiff had no impairment-related physical limitations. (*Id.* at 562.)

4 **B. Mental Impairment Treatment Evidence**

5 In a report dated October 18, 2006, Dr. Lynne DeBoskey, a psychologist, diagnosed Plaintiff
6 with major depression and anxious mood due to stressors related to living with chronic pain; pain
7 disorder associated with both depression and physical injuries, and panic disorder without
8 agoraphobia. (*Id.* at 617-21.) Dr. DeBoskey found that Plaintiff was courteous and polite but that at
9 times she displayed signs of an irritable and anxious depressed mood. (*Id.* at 619.) Dr. DeBoskey
10 found that Plaintiff's ability to maintain attention and carry out short and simple instructions was
11 slightly impaired, while her ability to maintain attention for extended periods was moderately to
12 severely impaired. (*Id.*) Dr. DeBoskey found that Plaintiff was preoccupied with feelings of
13 pessimism and pain, but that she had shown some stabilization in her mood due to her pain
14 management treatment. (*Id.*) Dr. DeBoskey found that Plaintiff's ability to interact with others in a
15 work place and maintain a work schedule was moderately to severely impaired; she noted, however,
16 that constant pain and reliance on medication made it unlikely. She further opined that Plaintiff could
17 maintain consistent, adaptive behaviors. (*Id.* at 620.) Dr. DeBoskey concluded that Plaintiff could
18 maintain her psychological state with treatment, but that her condition was unlikely to improve over
19 the following twelve months. (*Id.* at 621.)

20 Plaintiff was also examined by Dr. Don Houts, a psychiatrist whose evaluation was requested
21 for worker's compensation purposes. (*Id.* at 653-87.) On June 18, 2007, Dr. Houts diagnosed Plaintiff
22 with major depression due to industrial injuries and chronic pain, pain disorder associated with both
23 psychological factors and industrial injuries, and personality disorder with schizoid, dependent,
24 obsessive-compulsive, and histrionic features. (*Id.* at 679.) On July 16, 2007, Dr. Houts clarified
25 several of his opinions. (*Id.* at 707-710.) Dr. Houts concluded that Plaintiff had slight impairment in
26 her ability to perform simple and repetitive tasks. (*Id.* at 708.) She had moderate impairment in her
27 ability to: (1) comprehend and follow instructions, (2) maintain a work pace appropriate to a given
28 work load, (3) perform complex or varied tasks, (4) make generalizations, evaluations or decisions

1 without immediate supervision, and (5) accept and carry out responsibility for direction, control, and
2 planning. (*Id.* at 708-09.) She had moderate to moderate-to-severe impairment in her ability to relate
3 to others beyond giving and receiving instructions and effectively influence people on a consistent
4 basis. (*Id.*)

5 Dr. Hurwitz, a state agency physician, found Plaintiff to be moderately limited in her ability
6 to carry out detailed instructions, maintain attention and concentration for extended periods, interact
7 with the public, and set realistic goals or make plans independently of others. (*Id.* at 638-39.)
8 Plaintiff was found not significantly limited in all other areas of assessment, including her ability to
9 carry out short and simple instructions, perform activities within a schedule, accept instructions and
10 respond to criticism from superiors and maintain socially appropriate behavior. (*Id.*)

11 III.

12 ALJ's DECISION

13 After reviewing the medical evidence submitted and conducting a hearing, the ALJ denied
14 Plaintiff disability benefits. (*Id.* at 9-17.) In reaching his decision that Plaintiff was not disabled, the
15 ALJ employed the five-step sequential process to evaluate Plaintiff's application for disability benefits.
16 20 C.F.R. §§ 404.1520 (b)-(f).¹ At step one, the ALJ found that Plaintiff had not engaged in any
17 substantial gainful activity at any time relevant to the decision. (*Id.* at 11.) At step two, the ALJ found
18 that Plaintiff had the following severe impairments: "lumbar radiculopathy, right shoulder pain, and
19 bilateral knee pain." (*Id.*) At step three, the ALJ determined that the Plaintiff "does not have an
20 impairment or combination of impairments that meets or medically equals one of the listed
21 impairments[.]" (*Id.*) The ALJ found that Plaintiff retains the residual functional capacity to perform

22
23 ¹ To determine whether a plaintiff is disabled, the SSA regulations provide a five-step
24 sequential process. The five steps of the inquiry are (1) Is the plaintiff presently working in a
25 substantially gainful activity? If so, then the plaintiff is not disabled within the meaning of the Social
26 Security Act. If not, proceed to step two. (2) Is the plaintiff's impairment severe? If so, proceed to
27 step three. If not, then the plaintiff is not disabled. (3) Does the impairment "meet or equal" one of
28 a list of specific impairments described in 20 C.F.R. Part 220, Appendix 1? If so, then the plaintiff
is disabled. If not, proceed to step four. (4) Is the plaintiff able to do any work that he or she has done
in the past? If so, then the plaintiff is not disabled. If not, proceed to step five. (5) Is the plaintiff able
to do any other work? If so, then the plaintiff is not disabled. If not, then the plaintiff is disabled.
Bustamante v. Massanari, 262 F.3d 949, 953 (9th Cir. 2001). The plaintiff maintains the burden of
proof for steps one through four. However, should an inquiry proceed to step five, the burden then
shifts to the Commissioner.

1 light work jobs and simple, repetitive tasks with no public contact. (*Id.* at 12.) At step four, the ALJ
2 concluded that Plaintiff could not return to any past relevant work. (*Id.* at 16.) At step five, based on
3 Plaintiff's age, education, work experience, and residual functioning capacity, the ALJ concluded that
4 Plaintiff could perform other work existing in significant numbers in the national economy, such as
5 production inspector and production assembler; and thus, Plaintiff was not disabled. (*Id.* at 16-17.)

6 IV.

7 DISCUSSION

8 Plaintiff argues the ALJ erred in (1) disregarding the physical functional capacity assessments
9 of Dr. Korsh and Dr. King, (2) disregarding the mental functional capacity assessments of Drs.
10 DeBoskey, Houts and Hurwitz, and (3) improperly discrediting Plaintiff's credibility. Defendant
11 disputes each of these arguments.

12 A. Legal Standard

13 Under the Social Security Act, "disability" is defined as the:

14 inability to engage in any substantial gainful activity by reason of any medically
15 determinable physical or mental impairment which can be expected to result in
16 death or which has lasted or can be expected to last for a continuous period of not
less than twelve months.

17 42 U.S.C. § 423(d)(1)(A). The impairment must be so severe that the claimant "is not only unable to
18 do his previous work but cannot . . . engage in any other kind of substantial gainful work." 42 U.S.C.
19 § 423(d)(2)(A). In addition, the impairment must result "from anatomical, physiological, or
20 psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory
21 techniques." 42 U.S.C. § 423(d)(3).

22 A court may not set aside a denial of benefits unless the Commissioner's findings are based
23 upon legal error or are not supported by substantial evidence in the record as a whole. 42 U.S.C. §
24 405(g); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989); *Martinez v. Heckler*, 807 F.2d 771,
25 772 (9th Cir. 1986); *Taylor v. Heckler*, 765 F.2d 872, 875 (9th Cir. 1985). Substantial evidence is such
26 relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson*
27 *v. Perales*, 402 U.S. 389, 401 (1971); *Orteza v. Shalala*, 50 F.3d 748, 749 (9th Cir. 1995). It is more
28 than a scintilla but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n. 10 (9th

1 Cir. 1975).

2 To determine whether substantial evidence exists to support the ALJ's decision, a court reviews
3 the record as a whole, not just the evidence supporting the decision of the ALJ. *Walker v. Matthews*,
4 546 F.2d 814, 818 (9th Cir. 1976). A court may not affirm the Commissioner's decision simply by
5 isolating a specific quantum of supporting evidence. *Hammock v. Bowen*, 879 F.2d 498, 501 (9th Cir.
6 1989). In short, a court must weigh the evidence that supports the Commissioner's conclusions and
7 that which does not. *Martinez*, 807 F.2d at 772.

8 If there is substantial evidence to support the decision of the ALJ, the decision must be upheld
9 even when there is evidence on the other side, *Hall v. Secretary*, 602 F.2d 1372, 1374 (9th Cir. 1979),
10 and even when the evidence is susceptible to more than one rational interpretation. *Gallant v. Heckler*,
11 753 F.2d 1450, 1453 (9th Cir. 1984). If supported by substantial evidence, the findings of the
12 Commissioner as to any fact will be conclusive. 42 U.S.C. § 405(g); *Vidal v. Harris*, 637 F.2d 710,
13 712 (9th Cir. 1981).

14 **B. Physical Functional Capacity**

15 Plaintiff first argues that the ALJ, while claiming to give weight to Dr. Korsh's opinion, did
16 not properly incorporate his opinion into the findings on Plaintiff's residual functional capacity.
17 Plaintiff also argues that the ALJ ignored Dr. King's opinion.

18 The ALJ found that Plaintiff could perform the "full range of light work." Light work is
19 defined as:

20 lifting no more than 20 pounds at a time with frequent lifting or carrying of objects
21 weighing up to 10 pounds. Even though the weight lifted may be very little, a job is
22 in this category when it requires a good deal of walking or standing, or when it
23 involves sitting most of the time with some pushing and pulling of arm or leg
24 controls. To be considered capable of performing a full or wide range of light work,
you must have the ability to do substantially all of these activities. If someone can do
light work, we determine that he or she can also do sedentary work, unless there are
additional limiting factors such as loss of fine dexterity or inability to sit for long
periods of time.

25 20 C.F.R. 404.1567(b). Thus, jobs in this category may involve a combination of walking, standing,
26 and sitting, as well as lifting light objects.

27 Plaintiff argues that because Dr. King and Dr. Korsh's opinions were contradicted by Dr.
28 Dorsey, the ALJ had to provide specific and legitimate reasons for disregarding Dr. King and Dr.

1 Korsh's opinions. However, the ALJ did not disregard the opinions of Drs. King and Korsh, and did
2 not adopt the opinion of Dr. Dorsey. In fact, the ALJ did not discuss Dr. Dorsey's opinion and
3 implicitly rejected the doctor's conclusion that Plaintiff had no impairment-related physical limitations
4 by finding that Plaintiff was limited to light work. The ALJ's finding is consistent with the opinions
5 of both Dr. Korsh and Dr. King. Dr. Korsh opined that Plaintiff was precluded from heavy lifting,
6 repetitive motion of the neck, and overhead use of her arms, and that Plaintiff had lost approximately
7 50% of her pre-injury ability to bend, stoop, push, pull, and climb. (AR at 545-46.) Dr. King opined
8 that Plaintiff was limited to semi-sedentary work involving 50% sitting and 50% standing or walking.
9 (*Id.* at 576.) Neither Dr. Korsh, nor Dr. King concluded that Plaintiff was unable to do any work
10 involving lifting light objects, walking, standing, sitting, or pushing. Accordingly, the ALJ did not
11 disregard the opinions of Dr. Korsh and Dr. King by finding Plaintiff capable of performing light
12 work.

13 **C. Mental Functional Capacity**

14 Plaintiff next argues that three mental health professionals assessed greater limitations on
15 Plaintiff's mental functional capacity than the limitation described by the ALJ. The ALJ found that
16 Plaintiff was limited to simple, repetitive tasks with no public contact. Plaintiff argues the ALJ
17 disregarded Dr. DeBoskey's opinion that Plaintiff had moderate to severe impairment in her ability
18 to discern important details of written instructions, setting and accomplishing realistic goals, and
19 remembering detailed instructions. Plaintiff further argues the ALJ disregarded Dr. Houts' opinion
20 that Plaintiff had moderate impairment in her ability to comprehend and follow instructions, to
21 maintain a work pace appropriate to a given work load, and to perform complex tasks.²

22 However, the ALJ's decision is consistent with the expert opinion testimony. Dr. Houts found
23 that Plaintiff had only slight impairment with her ability to perform simple and repetitive tasks. (AR
24 at 708.) Dr. DeBoskey found that Plaintiff had only slight impairment in carrying out short and simple

25
26
27 ² Plaintiff also argues that the opinion of Dr. Rodarte should be considered. Dr. Rodarte
28 provided a one paragraph letter which states, without any supporting documentation, that Plaintiff had
been psychiatrically hospitalized for two suicide attempts. Those "episodes" took place after the ALJ
decision and do not reflect Plaintiff's mental status through February 26, 2008, which is the time
period involved with respect to the ALJ's decision. (*See* AR at 2.)

1 instructions.³ (*Id.* at 619-20.) Dr. Hurwitz found Plaintiff not significantly limited in her ability to
2 understand and carry out short and simple instructions. (*Id.* at 638.) Thus, the ALJ appropriately found
3 that Plaintiff was able to perform simple, repetitive tasks.

4 Additionally, the ALJ took into account the limitations on Plaintiff's ability to interact with
5 others by limiting her public contact. Dr. DeBoskey said Plaintiff's "abilities for interacting
6 appropriately with the public on a consistent basis are moderately impaired when she is overwhelmed."
7 (*Id.* at 620.) Dr. Houts stated Plaintiff's ability to relate to others beyond giving and receiving
8 instructions was between moderate and moderate-to-severe. (*Id.* at 708.) Dr. Hurwitz found Plaintiff
9 moderately limited in her ability to interact appropriately with the general public. (*Id.* at 639.)
10 Therefore, the ALJ properly limited Plaintiff to jobs with no public contact.

11 Accordingly, the ALJ's determination that Plaintiff could perform simple, repetitive tasks with
12 no public contact is supported by substantial evidence.

13 **D. Plaintiff's Credibility**

14 Finally, Plaintiff argues that the ALJ's reasons for finding Plaintiff's testimony not credible
15 were irrelevant to the issue of credibility and not supported by the record. "Generally, 'questions of
16 credibility and resolution of conflicts in the testimony are functions solely' for the agency." *Parra v.*
17 *Astrue*, 481 F.3d 742, 750 (9th Cir. 2007), *cert. denied*, 552 U.S. 1141 (2008), (quoting *Sample v.*
18 *Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982)). In a case such as this, where the ALJ rejects the
19 claimant's subjective testimony, the ALJ must provide "clear and convincing reasons" for doing so,
20 "by specifically identifying 'what testimony is not credible and what evidence undermines the
21 claimant's complaints.'" *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)).

22 Here, the ALJ met that standard. (*See* AR at 15.) Specifically, he provided numerous reasons
23 for rejecting Plaintiff's statements concerning "the intensity, persistence and limiting effects of" her

25 ³ The ALJ disregarded Dr. DeBoskey's opinion to the extent the doctor found Plaintiff's
26 "mental condition was so severe that her symptoms would last twelve months." (AR at 14.) The ALJ
27 stated that Plaintiff's psychiatric medication had changed and that her symptoms were better. (*Id.*)
28 This is supported by Dr. Houts' report in 2007 which indicated that Plaintiff's medication had changed
since Dr. DeBoskey's exam, and that Plaintiff reported her depression was better since beginning the
behavioral pain management program with Dr. DeBoskey and other physicians. (*Id.* at 662, 664.) The
citations in Plaintiff's motion to persistent "mood problems" are from reports made prior to the
examinations by Dr. DeBoskey and Dr. Houts.

1 symptoms. First, the ALJ found that Plaintiff is able to take care of her activities of daily living, “such
2 as dressing herself, cooking, shopping, and housekeeping.” (*Id.*) Plaintiff asserts this is not supported
3 by Plaintiff’s testimony. However, Plaintiff testified that she dusts, washes dishes, does light grocery
4 shopping, goes for walks on the beach and goes to church every Sunday. (*Id.* at 42-43.) Additionally,
5 the ALJ found that: (1) Plaintiff indicated her knee pain was better and her range of motion increased
6 after her knee surgery, (2) an MRI of Plaintiff’s knee in 2004 was normal, (3) medical evidence
7 showed Plaintiff tolerated her back surgery well and was able to walk without assistance following the
8 surgery, (4) Dr. Korsh indicated Plaintiff was precluded from heavy lifting and repetitive motion of
9 the neck and overhead use of her arms, (5) Dr. Houts gave Plaintiff an overall rating of moderate, (6)
10 Plaintiff had “not been hospitalized for psychiatric symptoms”, and (7) the State agency found Plaintiff
11 “could perform a light level of exertion.” (*Id.* at 15.) Plaintiff claims these are merely isolated aspects
12 of the record, but it is clear the ALJ thoroughly examined the record and rendered a decision in light
13 of all the evidence. The ALJ’s stated reasons provide “clear and convincing” evidence for rejecting
14 Plaintiff’s credibility. Thus, the ALJ’s treatment of Plaintiff’s credibility is supported by substantial
15 evidence.

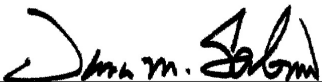
16 **V.**

17 **CONCLUSION**

18 For these reasons, Plaintiff’s motion for reversal and/or remand is denied and Defendant’s
19 cross-motion for summary judgment is granted. The Clerk shall enter judgment accordingly, and
20 terminate this case.

21 **IT IS SO ORDERED.**

22 DATED: January 20, 2010

23 
24 _____
25 HON. DANA M. SABRAW
26 United States District Judge
27
28