

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 15 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

STACEY M. BROWN,

Plaintiff - Appellant,

v.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant - Appellee.

No. 08-17357

D.C. No. 2:07-cv-00638-CMK

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Craig Kellison, Magistrate Judge, Presiding

Submitted December 11, 2009**
San Francisco, California

Before: O'SCANNLAIN, RAWLINSON and BEA, Circuit Judges.

Appellant Stacey Brown appeals the district court's entry of summary judgment in favor of the Commissioner.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Substantial evidence supports the ALJ's adverse credibility finding because he properly relied upon medical records of Brown's examining physician, Dr. Chee, that contradicted Brown's testimony regarding the severity of her symptoms. *See Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) (concluding that the ALJ's adverse credibility determination was proper when it relied on the examining physician's contradictory opinion). Because this is a valid basis supporting the ALJ's decision, any error the ALJ made in improperly considering other evidence was harmless. *See Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009).

The ALJ's assessment of Brown's RFC was proper because once an adverse credibility determination is made, an ALJ is not required to credit that testimony in assessing a claimant's RFC. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1215, 1217 (9th Cir. 2005).

AFFIRMED.