

SEP 14 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DONNA L. FRITZ,

Plaintiff - Appellant,

v.

COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,

Defendant - Appellee.

No. 11-15820

D.C. No. 2:09-cv-03588-CMK

MEMORANDUM*

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

Submitted September 11, 2012**
San Francisco, California

Before: WALLACE, THOMAS, and BERZON, Circuit Judges.

Fritz appeals from the district court's summary judgment upholding the Commissioner's final denial of benefits. We have jurisdiction under 28 U.S.C. §

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

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

1291. We apply de novo review, *Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007), and affirm.

Substantial evidence supports the administrative law judge's (ALJ) finding that Fritz would not need five-minute breaks after every hour of standing or walking. The contrary testimony of Dr. Jensen, a nonexamining, nontreating physician, conflicts with that of Dr. Kumar, an examining physician, and is not otherwise supported by the record. *See Lester v. Chater*, 81 F.3d 821, 831 (9th Cir. 1995).

The ALJ offered specific, clear, and convincing reasons to support his adverse credibility finding against Fritz, including (1) the reports of Dr. Kumar and other physicians, (2) the lack of objective medical evidence supporting the alleged limitation, and (3) evidence in the record that Fritz had undergone successful conservative treatment and was able to perform daily functions. *See Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007).

The ALJ's refusal to include the rejected limitations in hypothetical questions to the vocational expert was permissible. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (ALJ is not required to include rejected limitations).

The ALJ's failure to ask the vocational expert whether the expert's testimony contradicted the Dictionary of Occupational Titles was harmless error

because Fritz has not shown any contradiction to be present. *See Massachi v. Astrue*, 486 F.3d 1149, 1154 n.19 (9th Cir. 2007).

AFFIRMED.