

O

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GARABED BOGHOSSIAN,)	Case No. CV 10-7782-SP
Plaintiff,)	
vs.)	MEMORANDUM OPINION AND
)	ORDER
MICHAEL J. ASTRUE,)	
Commissioner of Social Security)	
Administration,)	
Defendant.)	

I.

INTRODUCTION

Plaintiff filed a complaint on October 27, 2010, seeking review of the Commissioner’s denial of his application for a period of disability, disability insurance benefits, and Supplemental Security Income benefits. Both plaintiff and defendant consented to proceed for all purposes before the assigned Magistrate Judge pursuant to 28 U.S.C. § 636(c). The court deems the matter suitable for adjudication without oral argument.

The parties raise one disputed issue: whether the Administrative Law Judge (“ALJ”), in determining plaintiff’s residual functional capacity (“RFC”), improperly disregarded or discounted the opinion of the treating physician,

1 psychiatrist Lukas Alexanian, M.D., in favor of a consultative examiner’s opinion,
2 without appropriate justification.

3 Having carefully studied, inter alia, the parties’ written submissions and the
4 administrative record (“AR”), the court concludes that, as detailed herein,
5 substantial evidence to support the ALJ’s decision is lacking. Specifically, the
6 ALJ failed to provide specific and legitimate reasons for discounting the treating
7 psychiatrist’s opinion. The court therefore reverses and remands the
8 Commissioner’s decision denying benefits.

9 II.

10 FACTUAL AND PROCEDURAL BACKGROUND

11 Plaintiff Garabed Boghossian was 44 years old when he applied for a period
12 of disability and disability insurance benefits on January 8, 2009. AR 486, 491.
13 He alleged disability beginning January 6, 2008. *Id.* at 486, 491. On April 7,
14 2009, the Commissioner denied the applications for benefits. *Id.* at 454-59.
15 Plaintiff filed a request for a hearing on May 5, 2009. *Id.* at 462.

16 On March 16, 2010, plaintiff, represented by counsel, appeared and testified
17 at a hearing before the ALJ. *Id.* at 425-51. The ALJ also heard testimony from
18 Rheta Baron King, an impartial vocational expert (“VE”). *Id.* at 447-50.

19 On March 24, 2010, the ALJ denied plaintiff’s request for benefits. *Id.* at
20 411-23. The ALJ applied the well-known five-step sequential evaluation process.
21 *See* Social Security Ruling (“SSR”) 82-62; 20 C.F.R. § 404.1520; *see also Hoopai*
22 *v. Astrue*, 499 F.3d 1071, 1074 (9th Cir. 2007).

23 The ALJ found, at step one, that plaintiff had not engaged in substantial
24 gainful activity since January 6, 2008, the alleged onset date. AR 416.

25 At step two, the ALJ found that plaintiff suffered from a number of severe
26 impairments: degenerative disc disease of the lumbar spine, degenerative disc
27 disease of the cervical spine, major depression disorder, panic disorder, and
28 anxiety disorder. *Id.* Further, plaintiff suffered from the non-severe physical

1 impairments of obesity and hypertension. *Id.* at 417.

2 At step three, the ALJ found that plaintiff did not have an impairment or
3 combination of impairments that met or medically equaled one of the listed
4 impairments set forth in the Social Security Regulations. *Id.*; *see* 20 C.F.R. pt.
5 404, subpt. P, app. 1. As to plaintiff’s mental impairments, the ALJ found that
6 they did not meet the listing of 12.04 or 12.06 listing, including a consideration of
7 the “paragraph B” criteria. *Id.* at 417-18.

8 The ALJ then assessed plaintiff’s residual functional capacity, which was
9 necessary before proceeding to steps four and five. *Id.* at 418; *see* 20 C.F.R.
10 § 416.920(e); *Massachi v. Astrue*, 486 F.3d 1149, 1151 n.2 (9th Cir. 2007). The
11 ALJ found that the plaintiff maintained the ability to perform light work as defined
12 in 20 C.F.R. 404.1567(b), with the following limitations:

13 the claimant can stand and walk for six hours in an eight hour work
14 day, sit for six hours in an eight hour work day, occasionally stoop
15 and crouch, frequently engage in all other postural activities, and that
16 the claimant must avoid exposure to extreme cold. The claimant also
17 can only perform simple, routine, repetitive work, with only
18 occasional contact with the public and only occasional changes in the
19 work setting, with some limitations in concentration.

20 *Id.* In so finding, the ALJ found the plaintiff’s statements regarding the intensity,
21 persistence, and limiting effects of his symptoms not credible. *Id.* at 419. The
22 ALJ gave substantial weight to the opinion of Dr. Sadasivam, a consultative
23 examiner, and a state agency medical consultant. *Id.* at 420. As to the plaintiff’s
24 mental limitations, the ALJ gave the greatest weight to Dr. Bedrin, a consultative
25 examiner, and – at issue here – “some weight” to the opinion of Dr. Alexanian, a
26 treating physician. *Id.* at 420-21. In giving Dr. Alexanian only “some weight,”
27 the ALJ noted that Dr. Alexanian’s opinion was based on a treatment history of the
28 claimant, but “the evidence received at the hearing level shows that the claimant is

1 not as limited as Dr. Alexanian asserts. [Dr. Alexanian’s] opinion is also not
2 based on a review of the entire record.” *Id.* at 421.

3 At step four, the ALJ found plaintiff unable to perform past relevant light
4 work as an Industrial Truck Operator. AR at 421-22.

5 At step five, the ALJ considered plaintiff’s age, education, work experience,
6 and RFC to conclude that there are jobs that exist in significant numbers in the
7 national economy that the plaintiff could perform. *Id.* at 422.

8 Plaintiff filed a timely request for review of the ALJ’s decision, which was
9 denied by the Appeals Council. AR at 410, 1-4. The ALJ’s decision stands as the
10 final decision of the Commissioner.

11 III.

12 STANDARD OF REVIEW

13 This court is empowered to review decisions by the Commissioner to deny
14 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security
15 Administration must be upheld if they are free of legal error and supported by
16 substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001)
17 (*as amended*). If the court, however, determines that the ALJ’s findings are based
18 on legal error or are not supported by substantial evidence in the record, the court
19 may reject the findings and set aside the decision to deny benefits. *Aukland v.*
20 *Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); *Tonapetyan v. Halter*, 242 F.3d
21 1144, 1147 (9th Cir. 2001).

22 “Substantial evidence is more than a mere scintilla, but less than a
23 preponderance.” *Aukland*, 257 F.3d at 1035. Substantial evidence is such
24 “relevant evidence which a reasonable person might accept as adequate to support a
25 conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276
26 F.3d at 459. To determine whether substantial evidence supports the ALJ’s
27 finding, the reviewing court must review the administrative record as a whole,
28 “weighing both the evidence that supports and the evidence that detracts from the

1 ALJ's conclusion." *Mayes*, 276 F.3d at 459. The ALJ's decision "cannot be
2 affirmed simply by isolating a specific quantum of supporting evidence."
3 *Aukland*, 257 F.3d at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th
4 Cir. 1998)). If the evidence can reasonably support either affirming or reversing
5 the ALJ's decision, the reviewing court "may not substitute its judgment for that
6 of the ALJ." *Id.* (quoting *Matney ex rel. Matney v. Sullivan*, 981 F.2d 1016, 1018
7 (9th Cir. 1992)).

8 IV.

9 DISCUSSION

10 Plaintiff contends that the ALJ erred in reaching his RFC determination
11 because the ALJ failed to provide adequate reasons for rejecting Dr. Alexanian's
12 opinion that plaintiff was severely impaired by depression and anxiety. The court
13 agrees.

14 An opinion of a treating physician is given more weight than the opinion of
15 a non-treating physician. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). When
16 a treating physician's opinion is contradicted by another doctor, "the ALJ may not
17 reject this opinion without providing specific and legitimate reasons supported by
18 substantial evidence in the record. This can be done by setting out a detailed and
19 thorough summary of the facts and conflicting clinical evidence, stating his
20 interpretation thereof, and making findings." *Id.* at 632 (citations and quotation
21 marks omitted). An ALJ may reject a treating physician's opinion based on an
22 examining physician's opinion with independent clinical findings. *Andrews v.*
23 *Shalala*, 53 F.3d 1035, 1041 (9th Cir.1995). A nonexamining physician's opinion
24 may constitute substantial evidence when it is supported by other evidence in the
25 record and is consistent with it. *Id.*

26 Dr. Alexanian filled out a mental residual functional capacity questionnaire
27 on November 25, 2009, after having first seen plaintiff monthly since August of
28 that year. AR at 883, 878. He stated that plaintiff suffered from major depression

1 and panic disorder, that plaintiff had marked or extreme functional limitations for
2 almost every mental activity, and that plaintiff would need to take breaks in work
3 every five to ten minutes. AR at 881-82, 878. Dr. Alexanian also wrote a letter
4 dated April 26, 2010, noting that the plaintiff suffered from severe depression and
5 anxiety for years despite high doses of psychotropic medications. AR at 948. It
6 was his professional opinion that plaintiff “is totally and permanently disabled and
7 should get the government help.” *Id.*

8 Here, the parties apparently agree that Dr. Alexanian’s opinion was
9 contradicted by other non-treating physicians’ opinions and medical records, so is
10 not entitled to controlling weight. *See* JS at 4 (citing *Lester v. Chater*, 81 F.3d
11 821, 830-31 (9th Cir. 1995)). But although Dr. Alexanian's opinion was not
12 entitled to controlling weight, the ALJ was not permitted to reject the opinion
13 without providing specific and legitimate reasons supported by substantial
14 evidence in the record for doing so. *See Lester*, 81 F.3d at 830. This he failed to
15 do.

16 The ALJ stated two reasons for rejecting Dr. Alexanian's opinion: (1) “the
17 evidence received at the hearing level shows that the claimant is not as limited as
18 Dr. Alexanian asserts” (AR at 421); and (2) Dr. Alexanian's opinion "was not
19 based on a review of the entire record." The ALJ did not elaborate on either of
20 these reasons. While the second reason does not need much elaboration, it also is
21 not a sufficient reason by itself for rejecting Dr. Alexanian’s opinion. *See* 20
22 C.F.R. §§ 404.1527(d)(6) and 416.927(d)(6) (the extent to which a physician is
23 familiar with the entire record is one of six factors the ALJ must consider). Thus,
24 the ALJ’s primary reason for rejecting Dr. Alexanian’s opinion would seem to be
25 the first: that the evidence shows “the claimant is not as limited as Dr. Alexanian
26 asserts.” But this bare statement does not meet the “specific and legitimate
27 reasons supported by substantial evidence” standard.

28 In determining plaintiff’s disability status, the ALJ was obligated to

1 determine plaintiff's RFC after considering "all of the relevant medical and other
2 evidence" in the record, including all medical opinion evidence. 20 C.F.R.
3 §§ 404.1545(a) (3), 416.945(a)(3); see SSR 96-8p. Analyzing whether a severe
4 mental impairment reduces a plaintiff's RFC must include consideration of the
5 abilities (on a sustained basis) to understand, to carry out and remember
6 instructions; to respond appropriately to supervision, coworkers, and customary
7 work pressures in a work setting; and to deal with changes in a routine work
8 setting. SSR 85-15, 85-16. "A substantial loss of ability to meet any of these
9 basic work-related activities would severely limit the potential occupational base."
10 SSR 85-15.

11 Dr. Alexanian's opinion contained specific findings relevant to this mental
12 impairment RFC analysis. Dr. Alexanian opined that plaintiff had extreme
13 limitations in sustaining an ordinary routine, carrying out detailed instructions,
14 making simple work-related decisions, and maintaining a consistent pace. AR at
15 881. He reported that plaintiff had marked inabilities to accept instruction,
16 respond appropriately to criticism, and maintain socially appropriate behavior.
17 AR at 882. He noted that plaintiff had extreme inabilities to interact appropriately
18 with the general public and to get along with coworkers or peers without
19 distracting them or exhibiting behavioral extremes. *Id.* In fact, Dr. Alexanian
20 reported that the plaintiff has extreme or marked limitations in every social
21 category but one. *Id.* The ALJ's conclusory statement that the evidence showed
22 plaintiff was not so limited is insufficient to indicate his basis for rejecting or
23 discounting Dr. Alexanian's detailed findings.

24 The court recognizes that an ALJ may reject a treating physician's
25 controverted opinion by "setting out a detailed and thorough summary of the facts
26 and conflicting clinical evidence, stating his interpretations thereof, and making
27 findings." *Orn*, 495 F.3d at 632. And in the paragraphs preceding the ALJ's
28 rejection of Dr. Alexanian's opinion, the ALJ did summarize and discuss much of

1 the evidence concerning plaintiff's mental limitations. *See* AR at 419-21.
2 Nonetheless, this discussion does not adequately set forth the ALJ's
3 interpretations and findings vis-a-vis Dr. Alexanian's opinion to allow one to
4 determine the ALJ's specific reasons for rejecting Dr. Alexanian's opinion.
5 Indeed, the ALJ did not in fact entirely reject Dr. Alexanian's opinion, but instead
6 stated that he gave it "only some weight." AR at 421. The ALJ's opinion fails to
7 reveal, however, which parts of Dr. Alexanian's opinion he rejected and which he
8 accepted, stating only that he found plaintiff to be "not as limited as Dr. Alexanian
9 asserts." *Id.*

10 The biggest hint the ALJ gave as to his reasoning might be found in his
11 discussion of treating psychologist Dr. Marciano's opinion. In addition to giving
12 "only some weight" to Dr. Alexanian's opinion, the ALJ also gave only "some
13 weight" to Dr. Marciano's opinion. AR at 421. Although the ALJ incorporated
14 aspects of Dr. Marciano's opinion into the RFC (AR at 419), the ALJ also found
15 "other medical opinions more consistent with the record as a whole." AR at 421.
16 These other opinions were apparently those of the physicians who examined
17 plaintiff during emergency room visits (*see* AR at 420, 639-40), and that of
18 consultative examiner Dr. Bedrin. AR at 420. One may extrapolate that the ALJ
19 also accepted these other opinions over Dr. Alexanian's. But again, the absence of
20 any further explanation is inadequate. While an ALJ certainly may accept the
21 opinion of a consulting physician over that of a treating physician, from the ALJ's
22 opinion here, one cannot determine whether the ALJ in fact had specific and
23 legitimate reasons for accepting Dr. Bedrin's opinion over Dr. Alexanian's
24 opinion.

25 This was not harmless error. Where the ALJ ignores competent evidence
26 and fails to provide reasons for rejecting the evidence at issue, an error is harmless
27 only if the court "can confidently conclude that no reasonable ALJ, when not
28 making the same error as the ALJ, could have reached a different disability

1 determination." *Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050, 1055-56 (9th
2 Cir. 2006); *see also Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155,
3 1162-63 (9th Cir. 2008). Given the scant explanation for rejecting Dr. Alexanian's
4 opinion, the court cannot confidently conclude that no other result could have
5 been reached.

6 As such, the ALJ erred in rejecting Dr. Alexanian's opinion.

7 V.

8 **REMAND IS APPROPRIATE**

9 The decision whether to remand for further proceedings or reverse and
10 award benefits is within the discretion of the district court. *McAllister v. Sullivan*,
11 888 F.2d 599, 603 (9th Cir. 1989). Where no useful purpose would be served by
12 further proceedings, or where the record has been fully developed, it is appropriate
13 to exercise this discretion to direct an immediate award of benefits. *See Benecke*
14 *v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004); *Harman v. Apfel*, 211 F.3d
15 1172, 1179-80 (9th Cir. 2000) (decision whether to remand for further proceedings
16 turns upon their likely utility). But where there are outstanding issues that must be
17 resolved before a determination can be made, and it is not clear from the record
18 that the ALJ would be required to find plaintiff disabled if all the evidence were
19 properly evaluated, remand is appropriate. *See Benecke*, 379 F.3d at 595-96;
20 *Harman*, 211 F.3d at 1179-80.

21 Here, as set out above, remand is required because the ALJ erred in failing
22 to provide adequate reasons for rejecting a treating physician's opinion. On
23 remand, the ALJ shall reconsider Dr. Alexanian's opinion regarding plaintiff's
24 mental limitations, and either credit Dr. Alexanian's opinion or provide specific
25 and legitimate reasons supported by substantial evidence for rejecting them. In
26 addition, if necessary, the ALJ shall obtain additional information and clarification
27 regarding plaintiff's mental limitations and the effect they may have on plaintiff's
28 residual functional capacity. The ALJ shall then proceed through steps four and

1 five to determine what work, if any, plaintiff is capable of performing.

2 **VI.**

3 **CONCLUSION**

4 IT IS THEREFORE ORDERED that Judgment shall be entered
5 REVERSING the decision of the Commissioner denying benefits, and
6 REMANDING the matter to the Commissioner for further administrative action
7 consistent with this decision.

8
9 DATED: November 14, 2011

10
11 

12 HON. SHERI PYM
13 UNITED STATES MAGISTRATE JUDGE