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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GRACE CORRALES,
Plaintiff,
v.
CAROLYN W. COLVIN,¹
Acting Commissioner of Social
Security,
Defendant.

) NO. CV 12-07480-MAN
)
) MEMORANDUM OPINION
)
) AND ORDER

Plaintiff filed a Complaint on September 7, 2012, seeking review of the denial of plaintiff’s application for a period of disability, disability insurance benefits (“DIB”), and supplemental security income (“SSI”). On October 15, 2012, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. The parties filed a Joint Stipulation on September 6, 2013, in which: plaintiff seeks an order reversing the Commissioner’s decision and remanding this case for the payment of benefits or, alternatively, for further administrative proceedings; and the Commissioner requests that her decision be affirmed or, alternatively, remanded for further administrative proceedings. The Court has taken the parties’ Joint Stipulation under submission without oral argument.

¹ Carolyn W. Colvin became the Acting Commissioner of the Social Security Administration on February 14, 2013, and is substituted in place of former Commissioner Michael J. Astrue as the defendant in this action. (*See* Fed. R. Civ. P. 25(d).)

1 After reviewing the record, the ALJ determined that plaintiff has the residual functional
2 capacity (“RFC”) to perform “a full range of work at all exertional levels but with the following
3 nonexertional limitations: limited to simple instructions and decisions, and no more than
4 occasional contact with supervisors, coworkers and the public.” (A.R. 30.) The ALJ further
5 determined that plaintiff is unable to perform her past relevant work as a marker, receptionist,
6 security guard, psychiatric aide, or cashier checker. (A.R. 32.) However, based upon plaintiff’s
7 RFC and after having considered plaintiff’s age, education,³ work experience, and the testimony
8 of the vocational expert, the ALJ found that “there are jobs that exist in significant numbers in
9 the national economy that [plaintiff] can perform,” including the jobs of “cleaner” and “washing
10 machine loader and puller.” (A.R. 23-33.) Accordingly, the ALJ concluded that plaintiff has not
11 been under a disability, as defined in the Social Security Act, from June 1, 2008, through the date
12 of his decision. (A.R. 33.)

13 14 **STANDARD OF REVIEW**

15
16 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to determine
17 whether it is free from legal error and supported by substantial evidence in the record as a whole.
18 Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is “such relevant evidence
19 as a reasonable mind might accept as adequate to support a conclusion.” *Id.* (citation omitted).
20 The “evidence must be more than a mere scintilla but not necessarily a preponderance.” Connett
21 v. Barnhart, 340 F.3d 871, 873 (9th Cir. 2003). “While inferences from the record can constitute
22 substantial evidence, only those ‘reasonably drawn from the record’ will suffice.” Widmark v.
23 Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006)(citation omitted).

24
25 Although this Court cannot substitute its discretion for that of the Commissioner, the Court
26 nonetheless must review the record as a whole, “weighing both the evidence that supports and

27 _____
28 ³ The ALJ found that plaintiff “has at least a high school education and is able to
communicate in English.” (A.R. 32; citing 20 C.F.R. §§ 404.1564, 416.964.)

1 the evidence that detracts from the [Commissioner's] conclusion." Desrosiers v. Sec'y of Health
2 and Hum. Servs., 846 F.2d 573, 576 (9th Cir. 1988); *see also* Jones v. Heckler, 760 F.2d 993, 995
3 (9th Cir. 1985). "The ALJ is responsible for determining credibility, resolving conflicts in medical
4 testimony, and for resolving ambiguities." Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir.
5 1995).

6
7 The Court will uphold the Commissioner's decision when the evidence is susceptible to
8 more than one rational interpretation. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005).
9 However, the Court may review only the reasons stated by the ALJ in his decision "and may not
10 affirm the ALJ on a ground upon which he did not rely." Orn, 495 F.3d at 630; *see also* Connett,
11 340 F.3d at 874. The Court will not reverse the Commissioner's decision if it is based on harmless
12 error, which exists only when it is "clear from the record that an ALJ's error was 'inconsequential
13 to the ultimate nondisability determination.'" Robbins v. Soc. Sec. Admin., 466 F.3d 880, 885 (9th
14 Cir. 2006)(quoting Stout v. Comm'r, 454 F.3d 1050, 1055 (9th Cir. 2006)); *see also* Burch, 400
15 F.3d at 679.

16 17 DISCUSSION

18
19 Plaintiff claims that the ALJ erred in rejecting: (1) the opinion of plaintiff's treating
20 physician; and (2) plaintiff's subjective symptom testimony. (Joint Stipulation ("Joint Stip.") at
21 4-9, 15-25.)

22 23 I. The ALJ Failed To Set Forth Appropriate Reasons For Rejecting The 24 Opinion Of Plaintiff's Treating Physician.

25
26 It is the responsibility of the ALJ to analyze evidence and resolve conflicts in medical
27 testimony. Magallanes v. Bowen, 881 F.2d 747, 750 (9th Cir. 1989). In the hierarchy of physician
28 opinions considered in assessing a social security claim, "[g]enerally, a treating physician's opinion

1 carries more weight than an examining physician's, and an examining physician's opinion carries
2 more weight than a reviewing physician's." Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir.
3 2001); 20 C.F.R. §§ 404.1527(d), 416.927(d).

4
5 The opinions of treating physicians are entitled to the greatest weight, because the treating
6 physician is hired to cure and has a better opportunity to observe the claimant. Magallanes, 881
7 F.2d at 751. When a treating physician's opinion is not contradicted by another physician, it may
8 be rejected only for "clear and convincing" reasons. Lester v. Chater, 81 F.3d 821, 830 (9th Cir.
9 1995). When contradicted by another doctor, a treating physician's opinion may only be rejected
10 if the ALJ provides "specific and legitimate" reasons supported by substantial evidence in the
11 record. *Id.*

12
13 On July 23, 2009, plaintiff's treating psychiatrist Ronnie Cummings, M.D. completed a
14 Mental Residual Functional Capacity Questionnaire. (A.R. 272-77.) Dr. Cummings noted that he
15 had been treating plaintiff since February 2009, and saw her every two months thereafter. (A.R.
16 272.) He diagnosed plaintiff with major depressive disorder. (*Id.*) Dr. Cummings noted that
17 plaintiff has decreased energy, generalized persistent anxiety, persistent disturbances of mood
18 or affect, and sleep disturbance. (A.R. 273-74.) He opined that, with respect to understanding
19 and memory, plaintiff has: mild limitations in her ability to remember work and work-like
20 procedures; mild limitations in her ability to understand very short and simple instructions; and
21 marked limitations in her ability to understand and remember detailed instructions. (A.R. 275.)
22 With respect to sustained concentration and persistence, Dr. Cummings opined that plaintiff has:
23 moderate limitations in her ability to carry out very short and simple instructions; and marked
24 limitations in her ability to carry out detailed instructions, maintain attention and concentration
25 for extended periods, perform activities within a schedule, maintain regular attendance, be
26 punctual within customary tolerances, sustain an ordinary routine without special supervision,
27 work in coordination with or proximity to others without being distracted by them, make simple
28 work-related decisions, complete a normal work-day and work-week without interruptions from

1 psychologically-based symptoms, and perform at a consistent pace without an unreasonable
2 number and length of rest periods. (*Id.*) In terms of social interactions, Dr. Cummings opined
3 that plaintiff has: mild limitations in her ability to interact appropriately with the general public,
4 maintain socially appropriate behavior, and adhere to basic standards of neatness and cleanliness;
5 and marked limitations in her ability to ask simple questions or request assistance, accept
6 instructions and respond appropriately to criticism from supervisors, and get along with coworkers
7 or peers without distracting them or exhibiting behavioral extremes. (A.R. 276.) With respect
8 to adaptation, Dr. Cummings opined that plaintiff has: mild limitations in her ability to travel to
9 unfamiliar places and use public transportation; and marked limitations in her ability to respond
10 appropriately to changes in the work setting, be aware of normal hazards and take appropriate
11 precautions, set realistic goals or make plans independently of others, and tolerate normal levels
12 of stress. (A.R. 276.) Dr. Cummings further opined that plaintiff requires unscheduled breaks
13 and would likely be absent from work four days per month as a result of her impairment and/or
14 treatment for her impairment. (*Id.*)

15
16 On August 4, 2010, Dr. Cummings completed another Mental Residual Functional Capacity
17 Questionnaire. (A.R. 504-09.) Dr. Cummings again diagnosed plaintiff with major depressive
18 disorder and noted that he saw plaintiff approximately every three months. (A.R. 504.) Dr.
19 Cummings noted that plaintiff suffers from anhedonia or pervasive loss of interest in almost all
20 activities, decreased energy, emotional withdrawal or isolation, mood disturbance, psychomotor
21 agitation, and sleep disturbance. (A.R. 505-06.) Dr. Cummings opined that plaintiff has similar
22 limitations⁴ as those found in his July 2009 Questionnaire.

23
24 ⁴ Although the limitations assessed in the Questionnaires are similar, there are some
25 notable differences. For example, in the latter Questionnaire, in the category of understanding,
26 Dr. Cummings opined that plaintiff has: marked limitations in her ability to remember locations
27 and work-like procedures; moderate limitation in her ability to remember very short and simple
28 instructions; and extreme limitations in her ability to understand and remember detailed
instructions. (A.R. 507.) In the category of sustained concentration and persistence, Dr.
Cummings opined that plaintiff has: moderate limitations in her ability to make simple work-
related decisions and to work in coordination with or proximity to others without being distracted
by them; and extreme limitations in her ability to carry out detailed instructions, complete a
normal work-day and work-week without interruptions from psychologically-based symptoms, and

1 In his decision, the ALJ rejected the opinion of Dr. Cummings, as set forth in the
2 Questionnaires, in favor of the opinions of examining psychiatrist Minh-Khoi Duong, M.D.⁵ and
3 State agency reviewing physician C. Dudley, M.D.,⁶ because Dr. Cummings “did not support his
4 opinion with any treatment record, progress notes, or objective medical evidence.” (A.R. 32.)
5

6 The ALJ's sole reason for rejecting the opinion of Dr. Cummings is impermissibly
7 conclusory. *See Regennitter v. Comm'r of SSA*, 166 F.3d 1294, 1299 (9th Cir. 1999)(noting that
8 “conclusory reasons will not justify an ALJ's rejection of a medical opinion”); *Embrey v. Bowen*,
9 849 F.2d 418, 421–22 (9th Cir. 1988)(“To say that medical opinions are not supported by
10 sufficient objective findings or are contrary to the preponderant conclusions mandated by the
11 objective findings does not achieve the level of specificity our prior cases have required The
12 ALJ must do more than offer his conclusions. He must set forth his own interpretations and
13 explain why they, rather than the doctors', are correct.”). Further, there are myriad treatment
14 notes that may support Dr. Cummings' opinion. (*See, e.g.*, A.R. 631 (7/23/10 - major depressive
15 disorder diagnosis with “target symptoms” of depression, anxiety, and insomnia; GAF score of 57,
16

17 perform at a consistent pace without an unreasonable number and length of rest periods. (*Id.*)
18 In the category of social interaction, Dr. Cummings opined that plaintiff has moderate limitations
19 in her ability to ask simple questions or request assistance and get along with coworkers or peers
20 without distracting them or exhibiting behavioral extremes. Lastly, in the category of adaptation,
21 Dr. Cummings opined that plaintiff has moderate limitations in her ability to be aware of normal
22 hazards and take appropriate precautions.

21 ⁵ On July 8, 2009, Dr. Duong opined that:

22 [Plaintiff]'s ability to understand and carry out simple instructions is normal.
23 [Plaintiff]'s ability to understand and carry out complex or detailed instructions is
24 normal. [Plaintiff]'s ability to maintain focus and concentration required to do work
25 related activities is normal. [Plaintiff]'s ability to relate to and interact with co-
26 workers, colleagues, and supervisors is normal. [Plaintiff]'s ability to cope with
27 work place stress is moderately limited. [Plaintiff]'s ability to deal with changes in
28 a routine work setting is moderately limited. [Plaintiff]'s activities of daily living are
normal.]

(A.R. 262.)

⁶ Dr. Dudley opined that plaintiff was capable of simple repetitive tasks with
appropriate concentration, persistence, and pace. (A.R. 291.)

1 indicating moderate symptoms); A.R. 632 (4/30/10 - same); A.R. (2/5/10 - symptoms include
2 depression, anxiety, and insomnia; prescribed Cymbalta and Atarax); A.R. 636 (7/23/09 - “target
3 symptoms” include depression; plaintiff continues to have occasional down days; prescribed
4 Cymbalta and Atarax); A.R. 638-39 (2/2/09 - presenting symptoms include depressed mood and
5 energy, insomnia and panic attacks; plaintiff has constricted affect; previous medications include
6 Ambien and Prozac). Thus, as Dr. Cummings’ treatment notes could support his assessment of
7 plaintiff’s limitations, the ALJ’s rationale is not a specific and legitimate reason for rejecting Dr.
8 Cummings’ opinion.

9
10 Accordingly, the ALJ failed to properly reject the opinion of Dr. Cummings.⁷

11
12 **II. The ALJ Failed To Provide The Requisite Clear And Convincing**
13 **Reasons For Rejecting Plaintiff’s Subjective Pain Testimony.**

14
15 Once a disability claimant produces objective medical evidence of an underlying impairment
16 that is reasonably likely to be the source of claimant’s subjective symptom(s), all subjective
17 testimony as to the severity of the claimant’s symptoms must be considered. Moisa v. Barnhart,
18 367 F.3d 882, 885 (9th Cir. 2004); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991); *see also*
19 20 C.F.R. §§ 404.1629(a), 416.929(a) (explaining how pain and other symptoms are evaluated).
20 “[U]nless an ALJ makes a finding of malingering based on affirmative evidence thereof, he or she
21 may only find an applicant not credible by making specific findings as to credibility and stating
22 clear and convincing reasons for each.” Robbins, 466 F.3d at 883. The factors to be considered
23 in weighing a claimant’s credibility include: (1) the claimant’s reputation for truthfulness; (2)
24 inconsistencies either in the claimant’s testimony or between the claimant’s testimony and her
25 conduct; (3) the claimant’s daily activities; (4) the claimant’s work record; and (5) testimony from

26
27 ⁷ Although the Commissioner now offers other reasons to explain the ALJ’s rejection
28 of Dr. Cummings’ opinion, the Court cannot entertain these post hoc rationalization. *See, e.g.,*
Orn, 495 F.3d at 630 (“We review only the reasons provided by the ALJ in the disability
determination and may not affirm on a ground upon which he did not rely”).

1 physicians and third parties concerning the nature, severity, and effect of the symptoms of which
2 the claimant complains. *See Thomas*, 278 F.3d at 958-59; *see also* 20 C.F.R. §§ 404.1529(c),
3 416.929(c).

4
5 The ALJ cited no evidence of malingering by plaintiff, but concluded, “[a]fter careful
6 consideration of the evidence, . . . [that plaintiff]’s medically determinable impairments could
7 reasonably be expected to cause the alleged symptoms.” (A.R. 31.) Further, the ALJ determined
8 that plaintiff’s “statements concerning the intensity, persistence and limiting effects of [her]
9 symptoms are not credible to the extent they are inconsistent with the above [RFC] assessment.”
10 (*Id.*) Given the absence of malingering, the ALJ’s reasons for finding that plaintiff is not credible
11 with respect to her subjective symptom testimony must be “clear and convincing.”

12
13 The ALJ first rejected plaintiff’s subjective symptom testimony based on his conclusion that
14 there was little objective support for plaintiff’s allegations of mental and physical limitations. (A.R.
15 31.) Assuming *arguendo* that the objective medical evidence did not corroborate the degree of
16 plaintiff’s allegedly disabling symptoms, this factor cannot form the “sole basis” for discounting
17 plaintiff’s subjective symptom testimony. *Burch*, 400 F.3d at 681; *see Bunnell*, 947 F.2d at 34
18 (noting that “[i]f an adjudicator could reject a claim of disability simply because a claimant fails
19 to produce medical evidence supporting the severity of the pain, there would be no reason for
20 an adjudicator to consider anything other than medical findings”). Accordingly, because the ALJ’s
21 first ground cannot, by itself, constitute a clear and convincing reason for discrediting plaintiff’s
22 testimony, the ALJ’s credibility determination rises or falls with the ALJ’s other ground for
23 discrediting plaintiff.

24
25 Although not entirely clear, it appears that the ALJ also rejected plaintiff’s subjective
26 symptom testimony, because plaintiff stopped working for reasons other than her alleged
27 disability. Specifically, in summarizing Dr. Duong’s findings, the ALJ noted the following:
28 “[plaintiff] admitted she was able to work during Christmas of 2008, but only stopped because

1 the job was seasonal.” (A.R. 31.) When a claimant stops working for reasons other than
2 disability, the ALJ may draw an adverse inference as to the credibility of her disability claim. *See*
3 Brutton v. Massanari, 268 F.3d 824, 828 (9th Cir. 2001)(affirming the ALJ's adverse credibility
4 determination based, in part, on the claimant's admission that he left his job due to a lay-off,
5 rather than because he was injured). In view of the fact that plaintiff stopped working for a
6 reason other than her alleged disability, the ALJ's reasoning may constitute a clear and convincing
7 reason for finding plaintiff to be not credible.

8
9 However, as this case is being remanded for the ALJ to reconsider Dr. Cummings' opinion,
10 which may support plaintiff's complaints and her alleged limitations, the ALJ should also reassess
11 plaintiff's credibility. After so doing, the ALJ must either credit plaintiff's subjective symptom
12 testimony or provide clear and convincing reasons why plaintiff's testimony in this respect is not
13 credible.

14 15 **III. Remand Is Required.**

16
17 The decision whether to remand for further proceedings or order an immediate award of
18 benefits is within the district court's discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir.
19 2000). Where no useful purpose would be served by further administrative proceedings, or where
20 the record has been fully developed, it is appropriate to exercise this discretion to direct an
21 immediate award of benefits. *Id.* at 1179 (“[T]he decision of whether to remand for further
22 proceedings turns upon the likely utility of such proceedings.”). However, where there are
23 outstanding issues that must be resolved before a determination of disability can be made, and
24 it is not clear from the record that the ALJ would be required to find the claimant disabled if all
25 the evidence were properly evaluated, remand is appropriate. *Id.* at 1179-81.

26
27 Remand is the appropriate remedy to allow the ALJ the opportunity to remedy the above-
28 mentioned deficiencies and errors. *See* Bunnell, 336 F.3d at 1116 (affirming remand order based,

1 in part, on ALJ's failure to provide adequate reasons for rejecting claimant's treating physicians'
2 opinions). On remand, the ALJ must correct the above-mentioned deficiencies and errors.

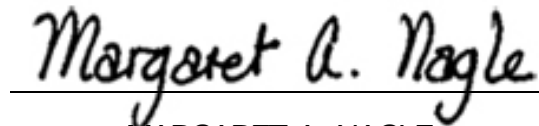
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4 **CONCLUSION**

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6 Accordingly, for the reasons stated above, IT IS ORDERED that the decision of the
7 Commissioner is REVERSED, and this case is REMANDED for further proceedings consistent with
8 this Memorandum Opinion and Order.

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10 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of this
11 Memorandum Opinion and Order and the Judgment on counsel for plaintiff and for defendant.

12
13 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

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15 DATED: December 18, 2013



16
17 MARGARET A. NAGLE

18 UNITED STATES MAGISTRATE JUDGE
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