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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-EASTERN DIVISION**

CUSTODIO MERAZ,
Plaintiff,
v.
MICHAEL J. ASTRUE,
Commissioner of Social Security,
Defendant.

Case No. EDCV 09-1397 (SH)
MEMORANDUM DECISION
AND ORDER

This matter is before the Court for review of the decision by the Commissioner of Social Security denying plaintiff’s application for Disability Insurance Benefits. Pursuant to 28 U.S.C. § 636(c), the parties have consented that the case may be handled by the undersigned. The action arises under 42 U.S.C. § 405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The plaintiff and the defendant have filed their pleadings, the defendant has filed the certified transcript of record, and the parties have filed a Joint Stipulation.

1 After reviewing the matter, the Court concludes that the decision of the Commissioner
2 should be reversed and remanded.

3 On April 21, 2006, plaintiff Custodio Meraz filed an application for a period of
4 disability and disability insurance benefits, alleging disability beginning March 8, 2006,
5 due to chronic pain in neck, back, and left shoulder, and left leg injury. (Administrative
6 Record [“AR”] 111). On January 22, 2009, an Administrative Law Judge (“ALJ”)
7 determined the plaintiff was not disabled within the meaning of the Social Security Act.
8 (AR 8-18).
9

10 Following the Appeals Council’s denial of plaintiff’s request for a review of the
11 hearing decision (AR 1-3), plaintiff filed an action in this Court.

12 Plaintiff makes six challenges to the ALJ’s Decision denying disability benefits.
13 Plaintiff alleges the ALJ erred in (1) failing to discuss lay witness testimony, (2) failing to
14 properly consider the treating physician’s physical residual functional capacity
15 assessment, (3) failing to properly assess the weight given to the treating physician’s
16 opinion that plaintiff’s physical limitations affected his ability to work, (4) failing to
17 properly consider plaintiff’s subjective symptoms and make proper credibility findings,
18 (5) failing to properly evaluate medical equivalency at step 3 of the evaluation process,
19 and (6) failing to pose a complete hypothetical question to the Vocational Expert.
20

21 For the reasons discussed below, the Court finds that plaintiff’s first, third, and
22 fourth claims of error have merit. Since the matter is remanded for further proceeding
23 based on the plaintiff’s first, third, and four claims, the Court will not address the second,
24 fifth, or sixth claims of error.

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ISSUE NO. 1:

1 Plaintiff asserts that the ALJ erred in failing to discuss lay witness testimony in the
2 form of third party function reports completed by plaintiff's daughter, Junia R. Esparza.
3 Defendant argues that any perceived error in the ALJ's failure to discuss the lay witness
4 testimony was harmless error.

5 Ms. Esparza completed three separate third party function reports, dated July 20,
6 2006, August 5, 2006, and February 20, 2007. (AR 139, 147, 173). Ms. Esparza's
7 statements in the third party function reports indicate plaintiff cannot sit or stand for long
8 periods of time without feeling severe pain and discomfort. (AR 143, 177, 178). Ms.
9 Esparza's statements also indicate plaintiff can walk the distance of one block, but that he
10 must subsequently rest for 10-30 minutes. (AR 152, 178). Ms. Esparza's statements
11 indicate that, when sitting, plaintiff's pain causes him to change positions every half hour.
12 (AR 152). Ms. Esparza's statements also indicate plaintiff uses a cane prescribed by his
13 doctor when standing and walking. (AR 179).

14 The ALJ failed to discuss the third party function reports completed by Ms.
15 Esparza. (See AR 8-18). When an ALJ fails to discuss competent lay testimony, "a
16 reviewing court cannot find harmless error unless it can confidently conclude that no
17 reasonable ALJ, when fully crediting the testimony, could have reached a different
18 disability determination." Stout v. Commissioner, 454 F.3d 1050, 1056 (9th Cir. 2006).

19 Ms. Esparza's statements could have led a reasonable ALJ to reach a different
20 disability determination. Here, the ALJ reached the following disability determination:
21 "the claimant has the residual functional capacity to perform light work as defined in
22 CFR 404.1567(b) and is further limited to occasional climbing of ladders, ropes, and
23 scaffolds, and occasional overhead activity with the dominant left upper extremity." (AR
24 12-13). Ms. Esparza's statements, however, indicate plaintiff has difficulty performing
25 basic mobility functions, such as standing and walking. A reasonable ALJ, when
26 crediting Ms. Esparza's statements, could have reach the conclusion that "climbing of
27 ladders, ropes, and scaffolds" was beyond the plaintiff's abilities.
28

1 A reasonable ALJ could have reached a different disability determination. Thus,
2 the ALJ's failure to discuss Ms. Esparza's statements was not harmless error.
3

4 **ISSUE NO. 3:**

5 Plaintiff asserts the ALJ erred in assessing the weight given to treating physician
6 Dr. Schnitzer because the ALJ declined to afford Dr. Schnitzer's opinion substantial
7 weight, without providing specific and legitimate reasons for rejecting his opinion.
8 Defendant argues the ALJ properly afforded Dr. Schnitzer's opinion little evidentiary
9 weight because Dr. Schnitzer's opinion was conclusory and based primarily on plaintiff's
10 subjective complaints, which the ALJ deemed not credible.
11

12 The opinions of treating physicians are entitled to special weight. Magallanes v.
13 Bowen, 881 F.2d 747, 751 (9th Cir. 1989). Where the treating doctor's opinion is not
14 contradicted by another doctor, it may be rejected only for "clear and convincing"
15 reasons. Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). Even if the treating
16 physician's opinion is contradicted by another doctor, the ALJ may not reject this opinion
17 without providing specific, legitimate reasons supported by substantial evidence in the
18 record. Id. at 830-31. Treating physicians' opinions are not afforded more weight if they
19 are conclusory or not supported by medical evidence. Batson v. Comm'r of Soc. Sec.,
20 359 F.3d 1190, 1195 (9th Cir. 2004).
21

22 The treating physician in question, Mark S. Schnitzer, M.D. from the Center For
23 Neurological Surgery, performed an evaluation of plaintiff's disability on April 3, 2006.
24 (AR 336-38). Dr. Schnitzer stated that plaintiff was disabled from work requiring
25 walking, prolonged standing, exertion or lifting due to disk disruptions and chronic pain.
26 (AR 337-38).

27 The ALJ found Dr. Schnitzer's reports primarily summarized the plaintiff's
28 subjective complaints and diagnoses but did not present objective clinical or laboratory

1 diagnostic findings that supported Dr. Schnitzer’s opinion. (AR 16). The ALJ
2 accordingly afforded Dr. Schnitzer’s opinion little evidentiary weight. (Id.).

3 However, the ALJ’s finding that Dr. Schnitzer’s opinion was conclusory is
4 inconsistent with the administrative record. The administrative record demonstrates that
5 Dr. Schnitzer’s opinion was based on physical examination, studies, and tests. (AR 219).
6 Among other things, Dr. Schnitzer performed a “cutaneous sensory examination,” tested
7 plaintiff’s “deep tendon reflexes,” performed a “straight leg raising” test, and had
8 plaintiff undergo a “lumbosacral spine MRI.” (Id.). Dr. Schnitzer’s opinions were
9 supported by medical evidence, and therefore were not conclusory.
10

11 The ALJ failed to provide specific and legitimate reasons, supported by substantial
12 evidence, for not giving Dr. Schnitzer’s opinion significant weight. Accordingly, the
13 ALJ erred in not affording Dr. Schnitzer’s opinion substantial evidentiary weight.
14

15 **ISSUE NO. 4:**

16 Plaintiff asserts the ALJ failed to show plaintiff was malingering or present clear
17 and convincing reasons for rejecting plaintiff’s testimony regarding his subjective
18 symptoms, and therefore erred in finding that plaintiff was not a credible witness.
19 Defendant argues the ALJ properly rejected plaintiff’s testimony regarding his
20 symptoms.
21

22 Unless there is affirmative evidence showing that the claimant is malingering, the
23 ALJ’s reasons for rejecting the claimant’s testimony must be “clear and convincing.”
24 Valentine v. Comm’r, 574 F.3d 685, 693 (9th Cir. 2009).

25 Here, the ALJ found plaintiff “lacked credibility on several issues and it is
26 therefore highly suggestive that [plaintiff] exaggerated his symptoms, and therefore was
27 not found to be an entirely credible witness.” (AR 17). In reaching his conclusion, the
28 ALJ noted physical examinations of the plaintiff were “generally unremarkable,” plaintiff
had been “exercising diligently on a treadmill,” and plaintiff’s daily activities indicated

1 an “active life.” (AR 15-17). The ALJ concluded such evidence was inconsistent with
2 complaints of disabling pain. (AR 17). The ALJ also questioned plaintiff’s credibility
3 because plaintiff “made attempts to influence an examining physician’s opinion on his
4 disability status.” (AR 15, citing AR 304 [reflecting that on October 20, 2006, plaintiff
5 told a Kaiser Permanente doctor that he “want[ed] to be ‘off work’ for disability until
6 March”]).

7
8 The ALJ’s conclusion that plaintiff’s statement to the Kaiser Permanente doctor
9 was an attempt to influence a physician’s opinion is speculative. Plaintiff’s statement did
10 not constitute “affirmative evidence” of malingering or a “clear and convincing” reason
11 for rejecting plaintiff’s testimony. Furthermore, plaintiff’s ability to perform light
12 exercise, leave his home, or visit relatives was not necessarily inconsistent with
13 subjective symptoms of pain that could prevent someone from functioning in the
14 workplace. Thus, plaintiff’s ability to perform basic physical activities did not support a
15 finding that plaintiff was malingering, or constitute a “clear and convincing” reason for
16 rejecting plaintiff’s testimony.

17 The ALJ failed to show that the plaintiff was malingering, and also failed to
18 provide a “clear and convincing” reason for rejecting plaintiff’s testimony. Accordingly,
19 the ALJ erred in finding plaintiff’s testimony was not credible.
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21 **ORDER**

22 For the foregoing reasons, the decision of the Commissioner is reversed, and the
23 matter is remanded for further proceedings in accordance with the decision, pursuant to
24 Sentence 4 of 42 U.S.C. § 405(g).

25 DATED: January 31, 2011

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STEPHEN J. HILLMAN
UNITED STATES MAGISTRATE JUDGE