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

LOUIS BARRON,)	Case No. EDCV 10-1075-MLG
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security,)	
)	
)	
Defendant.)	
_____)	

Plaintiff Louis Barron seeks judicial review of the Commissioner's denial of his application for Supplemental Security Income ("SSI") benefits under the Social Security Act. For the reasons discussed below, the decision of the Commissioner is REVERSED and the matter REMANDED for further proceedings consistent with this opinion.

I. Factual and Procedural History

Plaintiff was born on April 4, 1968 and was 41 years old at the time of the administrative hearing. (Administrative Record ("AR") 9,

1 116.) He has a tenth grade education with no other specialized trade or
2 vocational training. (AR 125.) Plaintiff has past work experience as a
3 hand packager. (AR 15, 147.)

4 Plaintiff filed an application for SSI benefits on February 13,
5 2008, alleging that he had been disabled since January 1, 2008, due to
6 back and knee pain, degenerative spondylosis and major depressive
7 disorder. (AR 45-46.) Plaintiff's application was denied initially on
8 May 9, 2008 (AR 48-51), and upon reconsideration on July 7, 2008 (AR 55-
9 57.) An administrative hearing was held on June 23, 2009 (AR 18-26) and
10 again on August 4, 2009 before Administrative Law Judge ("ALJ") Joseph
11 D. Schloss (AR 27-44). Plaintiff, represented by counsel, testified, as
12 did a Vocational Expert ("VE").

13 On October 14, 2009, ALJ Schloss denied Plaintiff's application for
14 benefits. (AR 9-16.) The ALJ found that Plaintiff had not engaged in
15 substantial gainful activity during the time period at issue. (AR 11.)
16 The ALJ further found that the medical evidence established that
17 Plaintiff suffered from the following severe impairments: degenerative
18 disc disease of the lumbar spine, obesity and old head injury. (Id.) The
19 ALJ found that Plaintiff's impairments did not meet, or were not
20 medically equal to, one of the impairments listed in 20 C.F.R., Part
21 404, Subpart P, Appendix 1. (Id.) The ALJ concluded that Plaintiff
22 retained the residual functional capacity ("RFC") to "perform light work
23 as defined in 20 CFR 416.967(b). Specifically, he is capable of lifting
24 and/or carrying 20 pounds occasionally and 10 pounds frequently;
25 standing and/or walking 2 hours in an 8-hour workday; sitting 6 hours in
26 an 8-hour workday; pushing and pulling with lower extremities
27 occasionally; and occasionally performing postural activities such as
28 climbing, balancing and squatting. He cannot climb ladders, ropes, or

1 scaffolds. He is capable of performing simple repetitive tasks." (AR
2 12.) The ALJ found that Plaintiff was unable to perform his past
3 relevant work as a hand packager. (AR 15.) However, the ALJ found, based
4 on the VE's testimony, that there were jobs that exist in significant
5 numbers in the national economy that Plaintiff could perform, such as
6 electronics worker, garment sorter, small items assembly and product
7 inspector. (AR 16.) Accordingly, the ALJ concluded that Plaintiff was
8 not disabled within the meaning of the Social Security Act. (Id.)

9 On June 30, 2010, the Appeals Council denied review (AR 1-3), and
10 Plaintiff timely commenced this action for judicial review. On January
11 20, 2011, the parties filed a Joint Stipulation ("Joint Stip.") of
12 disputed facts and issues. Plaintiff contends that the ALJ erred by
13 failing to properly consider the opinion of the consulting internal
14 medicine examiner. (Joint Stip. 2.) Plaintiff requests that the Court
15 reverse and remand for an award of benefits, or in the alternative,
16 reverse and remand for a new administrative hearing. (Joint Stip. 8-9.)
17 The Commissioner requests that the ALJ's decision be affirmed. (Joint
18 Stip. 9.)

19 After reviewing the parties' respective contentions and the record
20 as a whole, the Court finds Plaintiff's contention regarding the ALJ's
21 error in failing to properly consider the opinion of the examining
22 physician to be meritorious and remands this matter for further
23 proceedings consistent with this opinion.

24 25 **II. Standard of Review**

26 Under 42 U.S.C. § 405(g), a district court may review the Social
27 Security Commissioner's decision to deny benefits. The Court must uphold
28 the Social Security Administration's disability determination unless it

1 is not supported by substantial evidence or is based on legal error.
2 *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008)(citing
3 *Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir.
4 2006)). Substantial evidence means more than a scintilla, but less than
5 a preponderance; it is evidence that "a reasonable person might accept
6 as adequate to support a conclusion." *Lingenfelter v. Astrue*, 504 F.3d
7 1028, 1035 (9th Cir. 2007)(citing *Robbins v. Soc. Sec. Admin.*, 466 F.3d
8 880, 882 (9th Cir. 2006)). To determine whether substantial evidence
9 supports a finding, the reviewing court "must review the administrative
10 record as a whole, weighing both the evidence that supports and the
11 evidence that detracts from the Commissioner's conclusion." *Reddick v.*
12 *Chater*, 157 F.3d 715, 720 (9th Cir. 1996). "If the evidence can support
13 either affirming or reversing the ALJ's conclusion," the reviewing court
14 "may not substitute [its] judgment for that of the ALJ." *Robbins*, 466
15 F.3d at 882.

16 17 **III. Discussion**

18 Plaintiff contends that the ALJ improperly disregarded the report
19 of Dr. Sharam Pourrabbani, an examining internal medicine physician.
20 (Joint Stip. 3.) More specifically, Plaintiff claims that the ALJ erred
21 by adopting the opinion of a non-examining state agency physician
22 without providing any reasons for implicitly rejecting the examining
23 physician's report. (Id.) The Court agrees.

24 After examining Plaintiff on January 17, 2007, Dr. Pourrabbani
25 found that Plaintiff had various functional limitations: (1) a
26 limitation in fine and gross manipulation of the left hand due to an
27 abnormality of the thumb and (2) Plaintiff could only "rarely" perform
28 certain postural activities, such as kneeling, bending, stooping or

1 climbing. (AR 227.) The opinion of the state agency reviewing physician,
2 Dr. Yvonne Post, D.O., differed because it did not include the handling
3 limitations found by Dr. Pourrabbani. (AR 302.) Dr. Post's report also
4 differed by concluding that Plaintiff could perform postural activities
5 frequently, rather than rarely. (Id.)

6 The Commissioner is directed to weigh medical opinions based in
7 part on their source, specifically, whether proffered by treating,
8 examining, or non-examining professionals. *Lester v. Chater*, 81 F.3d
9 821, 830-31 (9th Cir. 1995). Generally, more weight is given to the
10 opinion of a treating professional, who has a greater opportunity to
11 know and observe the patient as an individual, than the opinion of a
12 non-treating professional. See *id.*; *Smolen v. Chater*, 80 F.3d 1273, 1285
13 (9th Cir. 1996). The Commissioner must also consider whether a medical
14 opinion is supported by clinical findings and is contradicted by other
15 medical evidence of record. The Commissioner may reject the
16 uncontradicted opinion of a treating or examining medical professional
17 only for "clear and convincing" reasons supported by substantial
18 evidence in the record. See *Lester*, 81 F.3d at 831.

19 Although the ALJ discussed Dr. Pourrabbani's opinion, he did not
20 state what weight he was giving the opinion. (AR 13.) Instead, the ALJ
21 merely stated that he was adopting the opinion of the reviewing
22 physician. (AR 14.) The ALJ failed to give any specific reasons for
23 relying upon the state agency reviewing physician's report rather than
24 that of the examining physician, Dr. Pourrabbani, but merely stated that
25 the reviewing physician's report was "well-supported" by the medical
26 evidence. (AR 14.) This is insufficient to satisfy the ALJ's duty to
27 provide specific reasons for adopting or rejecting various medical
28 opinions. See *Embrey v. Bowen*, 849 F.2d 418, 421 (9th Cir. 1988) ("To

1 say that the medical opinions are not supported by sufficient objective
2 findings or are contrary to the preponderant conclusions mandated by the
3 objective findings does not achieve the level of specificity our prior
4 cases have required"); see also *McAllister v. Sullivan*, 888 F.2d
5 599, 602 (9th Cir. 1989) (an ALJ errs in providing "broad and vague"
6 reasons for rejecting a treating physician's opinion).

7 Nor can the Court say with confidence that this error was harmless.
8 See *Stout v. Commissioner*, 454 F.3d 1050, 1052 (9th Cir. 2006) (error is
9 not harmless unless the court "can confidently conclude that no
10 reasonable ALJ, when fully crediting the testimony, could have reached
11 a different disability determination"). Here, the ALJ based his
12 conclusion that Plaintiff could perform a significant number of jobs in
13 the economy, including electronics worker (DOT 726.687-010), garment
14 sorter (DOT 222.687-014), small items assembly (DOT 739.687-086), and
15 product inspector (DOT 734.687-042), on the testimony of the VE. (AR 16,
16 42-43.) However, neither the handling nor postural limitations found by
17 Dr. Pourrabbani were included in the hypothetical to the VE. (AR 42.)
18 Dr. Pourrabbani's limitation in the use of Plaintiff's left hand for
19 fine and gross manipulation is inconsistent with each of the jobs
20 identified by the VE because each requires frequent to constant
21 handling.

22 The Commissioner contends that the ALJ properly relied upon the
23 opinion of the state agency physician, rather than that of the examining
24 physician, because the state agency physician reviewed certain medical
25 records that were more recent than Dr. Pourrabbani's January 2007
26 examination of Plaintiff. (Joint Stip. 6.) However, the ALJ did not
27 specifically state this as a reason for adopting the state agency
28 reviewing physician's opinion over that of the examining physician. The

1 Court may review "only the reasons provided by the ALJ in the disability
2 determination and may not affirm the ALJ on a ground upon which he did
3 not rely." *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). In
4 addition, the Commissioner argues that the ALJ properly resolved any
5 possible conflicts between the opinions of Dr. Pourrabbani and the state
6 agency physician. (Joint Stip. 5.) However, contrary to the
7 Commissioner's contention, the ALJ never specifically stated that he was
8 resolving any conflicts between the two medical opinions. Rather, the
9 ALJ merely noted that he was relying upon the state agency physician's
10 opinion and never addressed the weight he was giving to Dr.
11 Pourrabbani's report. (AR 14.) Again, the Court can only review the
12 reasons specifically provided by the ALJ, not the post hoc
13 justifications posited by the Commissioner.

14
15 **IV. Conclusion**

16 For the reasons discussed above, the decision of the Social
17 Security Commissioner is REVERSED and the matter is REMANDED for further
18 proceedings consistent with this opinion.

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20 DATED: January 26, 2011

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MARC L. GOLDMAN
United States Magistrate Judge