

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROBERT ALLEN BUSH, JR.,	)	Case No. ED CV 10-1980-PJW
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
COMMISSIONER OF THE	)	
SOCIAL SECURITY ADMINISTRATION,	)	
	)	
Defendant.	)	

---

17 Before the Court is a relatively simple and straightforward case.  
18 As such, the Court will dispense with the usual verbiage of its Social  
19 Security opinions and cut right to the chase. Plaintiff testified  
20 that his back pain required him to lie down and take naps two to three  
21 times a day for hours at a time. (Administrative Record ("AR") 39-40  
22 43, 46-47.) Naturally, this precludes him from holding down a job.  
23 (AR 54-55.) The Administrative Law Judge ("ALJ") rejected Plaintiff's  
24 testimony with standard, boilerplate language:

25 After careful consideration of the evidence, the undersigned  
26 finds that the claimant's medically determinable impairments  
27 could reasonably be expected to cause the alleged symptoms;  
28 however, the claimant's statements concerning the intensity,

1 persistence and limiting effects of these symptoms are credible  
2 only to the extent that they are consistent with the above  
3 residual functional capacity assessment.

4 (AR 13.)

5 ALJs are precluded from rejecting a claimant's testimony based on  
6 generalized findings. See *Vazquez v. Astrue*, 572 F.3d 586, 592 (9th  
7 Cir. 2009) (holding ALJ's finding that applicant's claims were not  
8 credible because they were "not consistent with the objective medical  
9 evidence" was not specific enough to withstand scrutiny); see also  
10 *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995) ("General findings  
11 are insufficient; rather, the ALJ must identify what testimony is not  
12 credible and what evidence undermines the claimant's complaints.").  
13 As such, the ALJ's reliance on boilerplate language to discount  
14 Plaintiff's testimony constitutes error.

15 The Agency disagrees. It contends that the ALJ was only required  
16 to provide a specific reason for rejecting the claimant's testimony  
17 and, so long as there is substantial evidence supporting that reason,  
18 as it argues there is here, the Court must affirm the ALJ's decision.  
19 (Joint Stip. at 8-9.) It cites Social Security Ruling ("SSR") 96-7p  
20 in support of this position. (Joint Stip. at 9.)

21 The Court rejects this argument for several reasons. To begin  
22 with, the Agency has mischaracterized SSR 96-7p. Though that ruling  
23 talks about the necessity of setting forth specific reasons for  
24 discounting a claimant's claims of pain, it also makes clear that an  
25 ALJ may not disregard them solely because "they are not substantiated  
26 by objective medical evidence." SSR 96-7p. Second, Social Security  
27 Rulings are not binding on the courts, they are binding on the Agency.  
28 See *Bray v. Comm'r of Soc. Security*, 554 F.3d 1219, 1224 (9th Cir.

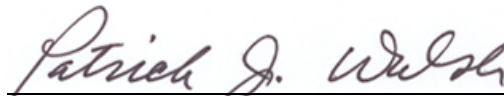
1 2009) (explaining that social security rulings are binding on Agency  
2 but do not carry the "force of law"). The controlling law in this  
3 circuit is established by case law. The controlling standard in this  
4 circuit is "specific, clear, and convincing reasons." See *Smolen v.*  
5 *Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996). The Agency's argument  
6 that "specific" is enough is rejected out of hand. Finally, even if  
7 SSR 96-7p was controlling and even if it could be interpreted to mean  
8 that an ALJ need only set forth specific reasons for rejecting  
9 Plaintiff's testimony, she failed to do so here. She set forth a  
10 general reason for rejecting his testimony, i.e., it was inconsistent  
11 with the ALJ's residual functional capacity assessment. (AR 13.)  
12 Thus, even under the Agency's own relaxed standard, the credibility  
13 finding does not pass muster. In the end, the Court concludes that  
14 the ALJ's credibility finding is defective because it is general, not  
15 specific, unclear, instead of clear, and wholly unconvincing.

16 The issue that remains is whether Plaintiff's testimony should be  
17 credited as true and the case remanded to the Agency for award of  
18 benefits. See, e.g., *Lingenfelter v. Astrue*, 504 F.3d 1028, 1041 (9th  
19 Cir. 2007). The Court finds that that result is warranted here. The  
20 ALJ found that Plaintiff's back disorder "could reasonably be expected  
21 to cause the alleged symptoms." (AR 11, 13.) The vocational expert  
22 testified that Plaintiff could not work if he had to lie down and take  
23 naps during the day. (AR 54-55.) Thus, the combination of  
24 Plaintiff's testimony and the expert's testimony establishes that  
25 Plaintiff is disabled and entitled to benefits. There is nothing more  
26 for the ALJ to do except to calculate the amount and award benefits.

1 For these reasons, the ALJ's decision is reversed and the case is  
2 remanded to the Agency for an award of benefits.

3 IT IS SO ORDERED.

4 DATED: November 28, 2011.

5  
6 

7  
8 

---

PATRICK J. WALSH  
UNITED STATES MAGISTRATE JUDGE