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

RICHARD CARTER,
Plaintiff,

v.

MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,
Defendant.

Case No. ED CV 12-0317 JCG

**MEMORANDUM OPINION AND
ORDER**

Richard Carter (“Plaintiff”) challenges the Social Security Commissioner’s decision denying his application for disability benefits. Specifically, Plaintiff contends that the Administrative Law Judge (“ALJ”) improperly rejected the opinion of his treating physician, Dr. Mark Peterson. (Joint Stip. at 3-8.) The Court agrees with Plaintiff for the reasons discussed below.

A. The ALJ Failed to Provide Specific and Legitimate Reasons for Rejecting Dr. Peterson’s Treating Opinion

“As a general rule, more weight should be given to the opinion of a treating source than to the opinion of doctors who do not treat the claimant.” *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). This is so because a treating physician “is

1 employed to cure and has a greater opportunity to know and observe the patient as
2 an individual.” *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9th Cir. 1987).

3 Where the “treating doctor’s opinion is contradicted by another doctor, the
4 [ALJ] may not reject this opinion without providing specific and legitimate reasons
5 supported by substantial evidence in the record[.]” *Lester*, 81 F.3d at 830 (internal
6 quotation marks and citation omitted). The ALJ can meet the requisite specific and
7 legitimate standard “by setting out a detailed and thorough summary of the facts and
8 conflicting clinical evidence, stating his interpretation thereof, and making findings.”
9 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (internal quotation marks
10 and citation omitted).

11 Here, the ALJ gave four reasons for discrediting Dr. Peterson’s treating
12 opinion. The Court discusses – and rejects – each in turn.

13 First, the ALJ found that Dr. Peterson’s opinion was “not supported by any
14 objective evidence.” (Administrative Record (“AR”) at 54). Though this can be a
15 valid reason for rejecting a treating opinion, *Burkhart v. Bowen*, 856 F.2d 1335,
16 1339-40 (9th Cir. 1988), a brief review of the record reveals at least some support
17 for Dr. Peterson’s findings.

18 For instance, numerous physicians have diagnosed Plaintiff with bipolar
19 disorder. (*See* AR at 218 (July 17, 2007 prison medical record indicating diagnosis
20 of “Bipolar I Disorder”), AR at 241 (April 28, 2009 case analysis by Dr. Haroun
21 noting that Plaintiff “takes [A]bili[f]y and Vistaril for bipolar [disorder]”), AR at 312
22 (June 30, 2009 diagnosis by Dr. Peterson).) Similarly, multiple sources corroborate
23 Dr. Peterson’s conclusion that Plaintiff’s poor memory and concentration are a result
24 of head trauma from a 1991 motorcycle accident. (*See* AR at 210 (Dr. Nigbor
25 indicating that the “[m]ost reasonable explanation for [Plaintiff’s difficulties with
26 concentration] is . . . head trauma”), AR at 215 (Dr. Benson noting that Plaintiff’s
27 psychotic disorder is due to “[h]ead [i]njury” from a motorcycle accident).)

28 Notably, the ALJ failed to mention these portions of the record, and thus erred in

1 rejecting Dr. Peterson’s opinion as unsupported by objective evidence. *See Gallant*
2 *v. Heckler*, 753 F.2d 1450, 1455-56 (9th Cir. 1984) (the ALJ must not “reach a
3 conclusion first, and then attempt to justify it by ignoring competent evidence in the
4 record that suggests an opposite result”).

5 Second, the ALJ noted that Dr. Peterson’s opinion was presented via a
6 “checklist style form” that included “only conclusions regarding functional
7 limitations without any [supporting] rationale.” (AR at 55). But to reject a treating
8 physician’s opinion as conclusory, the ALJ must also determine that the opinion is
9 unsupported by the record. *See Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d
10 1190, 1195 (9th Cir. 2004) (an ALJ may reject treating opinions that are
11 “conclusory, brief, *and* unsupported” (emphasis added)). As discussed above, Dr.
12 Peterson’s opinions are not without support, and thus they cannot be rejected as
13 conclusory.

14 Third, the ALJ found “nothing in the medical treatment records to suggest that
15 any treating source considered whether [Plaintiff’s] subjective symptoms may have
16 been motivated . . . by secondary gain.” (AR at 54.) This assertion, however, could
17 be invoked against any treating physician supportive of their patient’s claim for
18 disability benefits. *Sinohui v. Astrue*, 2011 WL 1042333, at *13 (C.D. Cal. Mar. 18,
19 2011). Further, the “primary function of medical records is to promote
20 communication and recordkeeping for health care personnel-not to provide evidence
21 for disability determinations.” *Orn v. Astrue*, 495 F.3d 625, 634 (9th Cir. 2007). In
22 light of this purpose, then, it is unreasonable to expect medical opinions to routinely
23 discuss a patient’s motivations or other issues irrelevant to diagnosis and treatment.
24 Thus, here too, the ALJ lacked a valid reason for rejecting Dr. Peterson’s opinion.

25 Fourth, the ALJ found that Dr. Peterson’s opinion was offered “as an
26 accommodation to [Plaintiff].” (AR at 54.) The Ninth Circuit, however, has
27 expressly rejected such reasoning in discrediting a treating physician’s opinion,
28 holding that “[t]he purpose for which medical reports are obtained does not provide

1 a legitimate basis for rejecting them.” *Lester*, 81 F.3d at 832. Once again, then, the
2 ALJ lacked adequate grounds to reject Dr. Peterson’s opinions.

3 Accordingly, for the reasons stated above, the ALJ improperly discredited the
4 treating opinion of Dr. Peterson. The Court thus determines that the ALJ's decision
5 is not supported by substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59
6 (9th Cir. 2001).

7 B. Remand is Warranted

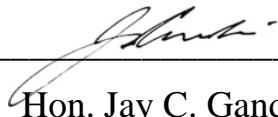
8 With error established, this Court has discretion to remand or reverse and
9 award benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). Where no
10 useful purpose would be served by further proceedings, or where the record has been
11 fully developed, it is appropriate to exercise this discretion to direct an immediate
12 award of benefits. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004).
13 But where there are outstanding issues that must be resolved before a determination
14 can be made, or it is not clear from the record that the ALJ would be required to find
15 plaintiff disabled if all the evidence were properly evaluated, remand is appropriate.
16 *See id.* at 594.

17 Here, in light of the ALJ’s error, Dr. Peterson’s credibility must be properly
18 assessed. Therefore, on remand, the ALJ shall reevaluate the opinions of Dr.
19 Peterson and either credit them as true, or provide valid reasons for any portion that
20 is rejected.

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1 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered
2 **REVERSING** the decision of the Commissioner denying benefits and
3 **REMANDING** the matter for further administrative action consistent with this
4 decision.^{1/}

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6 Dated: November 27, 2012

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10 Hon. Jay C. Gandhi
11 United States Magistrate Judge
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27 ^{1/} In light of the Court’s remand instructions, it is unnecessary to address
28 Plaintiff’s remaining contentions. (See Joint Stip. at 11-13, 15-17, 17-19, 20-23, 27-31.)