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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 DENNY J. HAYLEY,) NO. ED CV 12-651-E
12)
13 Plaintiff,)
14)
15 v.) MEMORANDUM OPINION
16)
17 MICHAEL J. ASTRUE, COMMISSIONER) AND ORDER OF REMAND
18 OF SOCIAL SECURITY,)
19)
20 Defendant.)
21)
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23)
24)
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19 Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS
20 HEREBY ORDERED that Plaintiff's and Defendant's motions for summary
21 judgment are denied and this matter is remanded for further
22 administrative action consistent with this Opinion.
23

24 PROCEEDINGS
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26 Plaintiff filed a complaint on May 2, 2012, seeking review of the
27 Commissioner's denial of benefits. The parties filed a consent to
28 proceed before a United States Magistrate Judge on May 22, 2012.

1 Plaintiff filed a motion for summary judgment on September 17, 2012.
2 Defendant filed a motion for summary judgment on October 17, 2012.
3 The Court has taken the motions under submission without oral
4 argument. See L.R. 7-15; "Order," filed May 3, 2012.
5

6 **BACKGROUND**

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8 Plaintiff asserts disability based primarily on alleged
9 psychiatric impairments (Administrative Record ("A.R.") 32-1006). At
10 an administrative hearing, Plaintiff testified he currently suffers
11 from psychiatric symptoms of allegedly disabling severity (A.R. 38,
12 53-54, 58-59). Plaintiff also testified he previously engaged in
13 substance abuse, but claimed he had ceased using methamphetamine three
14 months before the hearing and had ceased drinking alcohol longer ago
15 than that (A.R. 36, 40, 44-45).
16

17 An Administrative Law Judge ("ALJ") found that Plaintiff has
18 severe impairments including "affective mood disorder," "posttraumatic
19 stress disorder" and "substance abuse" (A.R. 18). The ALJ determined
20 that these impairments disable Plaintiff, but deemed Plaintiff's
21 substance abuse to be a "factor material to the determination of
22 disability," within the meaning of 20 C.F.R. § 404.1535 (A.R. 18-25).
23 The ALJ assessed a residual functional capacity for a limited range of
24 light work (A.R. 20). The ALJ stated:
25

26 If the claimant stopped the substance abuse, the undersigned
27 finds that the claimant's medically determinable impairments
28 could reasonably be expected to produce the alleged

1 symptoms; however, the claimant's statements concerning the
2 intensity, persistence and limiting effects of these
3 symptoms are not credible to the extent they are
4 inconsistent with the residual functional capacity
5 assessment for the reasons explained below.

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7 (A.R. 21). The ALJ denied disability benefits. Id. The Appeals
8 Council denied review (A.R. 2-4).

9 10 **STANDARD OF REVIEW**

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12 Under 42 U.S.C. section 405(g), this Court reviews the
13 Administration's decision to determine if: (1) the Administration's
14 findings are supported by substantial evidence; and (2) the
15 Administration used correct legal standards. See Carmickle v.
16 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
17 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is "such
18 relevant evidence as a reasonable mind might accept as adequate to
19 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401
20 (1971) (citation and quotations omitted); see Widmark v. Barnhart,
21 454 F.3d 1063, 1067 (9th Cir. 2006).

22 23 **DISCUSSION**

24
25 Plaintiff's motion asserts that the ALJ found Plaintiff's
26 testimony regarding the allegedly disabling severity of his current
27 symptoms not credible, and did so without stating sufficient
28 supporting reasons. Defendant's motion asserts that "[t]he ALJ found

1 Plaintiff's symptom testimony credible, but only to the extent that it
2 reflected Plaintiff's symptoms while he abused substances"
3 (Defendant's motion at 3). Although the Court is not confident that
4 either party correctly has interpreted the ALJ's decision, remand is
5 required for the reasons discussed below.

6
7 Assuming the truth of Plaintiff's testimony that he ceased
8 abusing substances months prior to the hearing,¹ if the assertion in
9 Defendant's motion is correct, then the assertion in Plaintiff's
10 motion is also correct and the administrative decision cannot stand.
11 In other words, assuming Plaintiff ceased abusing substances three
12 months or more prior to the hearing, if the ALJ actually found that
13 Plaintiff experienced symptoms of disabling severity only "while he
14 abused substances," then the ALJ necessarily found not credible
15 Plaintiff's hearing testimony regarding the current severity of his
16 symptoms. And, under these assumptions, Plaintiff would be correct in
17 asserting that the ALJ did not state sufficient reasons for this
18 credibility determination.

19
20 Where, as here, the ALJ finds "medically determinable impairments
21 [which] could reasonably be expected to produce the alleged symptoms"
22 (A.R. 21), the ALJ may not discount the claimant's testimony regarding
23 the severity of the symptoms without making "specific, cogent"
24 findings, supported in the record, to justify discounting such
25 testimony. Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995); see

26
27 ¹ Neither party directly contests this assumption. As
28 discussed infra, varying interpretations of the ALJ's decision
are conceivable.

1 Rashad v. Sullivan, 903 F.2d 1229, 1231 (9th Cir. 1990); Varney v.
2 Secretary, 846 F.2d 581, 584 (9th Cir. 1988).² Generalized,
3 conclusory findings do not suffice. See Moisa v. Barnhart, 367 F.3d
4 882, 885 (9th Cir. 2004) (the ALJ's credibility findings "must be
5 sufficiently specific to allow a reviewing court to conclude the ALJ
6 rejected the claimant's testimony on permissible grounds and did not
7 arbitrarily discredit the claimant's testimony") (internal citations
8 and quotations omitted); Holohan v. Massanari, 246 F.3d 1195, 1208
9 (9th Cir. 2001) (the ALJ must "specifically identify the testimony
10 [the ALJ] finds not to be credible and must explain what evidence
11 undermines the testimony"); Smolen v. Chater, 80 F.3d 1273, 1284 (9th
12 Cir. 1996) ("The ALJ must state specifically which symptom testimony
13 is not credible and what facts in the record lead to that
14 conclusion."); see also Social Security Ruling 96-7p.

15
16 In the present case, the ALJ's decision promises "reasons
17 explained below" for the determination that Plaintiff's symptom
18 testimony is "not credible to the extent . . . inconsistent with the
19 residual functional capacity assessment" (A.R. 21). "[B]elow" this
20 determination in the ALJ's decision, however, is merely a discussion
21 of the medical evidence (A.R. 21-23). The absence of fully

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23 ² In the absence of evidence of "malingering," most
24 recent Ninth Circuit cases have applied the "clear and
25 convincing" standard. See, e.g., Molina v. Astrue, 674 F.3d 1104
26 (9th Cir. 2012); Taylor v. Commissioner of Social Security
27 Admin., 659 F.3d 1228, 1234 (9th Cir. 2011); Valentine v.
28 Commissioner, 574 F.3d 685, 693 (9th Cir. 2009); Ballard v.
Apfel, 2000 WL 1899797, at *2 n.1 (C.D. Cal. Dec. 19, 2000)
(collecting cases). In the present case, the ALJ's findings are
insufficient under either standard, so the distinction between
the two standards (if any) is academic.

1 corroborative medical evidence cannot form the sole basis for
2 rejecting the credibility of a claimant's subjective complaints. See
3 Varney v. Secretary, 846 F.2d at 584; Cotton v. Bowen, 799 F.2d 1403,
4 1407 (9th Cir. 1986); see also Burch v. Barnhart, 400 F.3d 676, 681
5 (9th Cir. 2005) ("lack of medical evidence" can be "a factor" in
6 rejecting credibility, but cannot "form the sole basis"). Hence, it
7 appears that the ALJ did not state sufficient reasons for the ALJ's
8 credibility determination.

9
10 Thus far, this Court's opinion has proceeded on the assumption
11 that the ALJ found not entirely credible Plaintiff's hearing testimony
12 regarding the severity of Plaintiff's current symptoms. Some parts of
13 the ALJ's decision support this assumption. For example, the ALJ's
14 decision expressly states that "the claimant's statements concerning
15 the intensity, persistence and limiting effects of the symptoms are
16 not credible to the extent they are inconsistent with the residual
17 functional capacity assessment . . ." (A.R. 21). Elsewhere, the ALJ's
18 decision phrases the "residual functional capacity assessment" in the
19 present tense, i.e., "mentally, [Plaintiff] can perform simple
20 repetitive non-public tasks with only non-intense interaction with
21 coworkers and supervisors" (A.R. 20) (emphasis added).

22
23 Yet, other parts of the ALJ's decision might support a contrary
24 interpretation of the ALJ's credibility determination. These parts of
25 the decision suggest that the ALJ believed Plaintiff's testimony
26 regarding the severity of Plaintiff's current symptoms, but also
27 believed that those symptoms were of disabling severity only because
28 of Plaintiff's ongoing substance abuse. Under this interpretation,

1 the only testimony the ALJ would have found not credible would have
2 been Plaintiff's testimony that he had ceased abusing substances
3 months before the hearing. This interpretation finds support in the
4 repeated phrasing in the ALJ's decision, "if the claimant stopped the
5 substance abuse . . ." (A.R. 19-21, 24-25). This repeated phrasing
6 appears to imply a belief that Plaintiff had not yet stopped his
7 substance abuse.³ The ALJ's decision also states that Plaintiff "has
8 . . . severe . . . substance abuse," not that Plaintiff has a history
9 of severe substance abuse (A.R. 18) (emphasis added). Further,
10 medical expert Dr. Glassmire (whose testimony the ALJ appears to
11 adopt) testified that "the symptoms [Plaintiff] has are much worse
12 because of the substance use" (A.R. 52-53) (emphasis added).

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14 On the third hand, a different analysis of the credibility issues
15 is also conceivable. An ALJ could believe all of Plaintiff's
16 testimony and yet deny disability benefits. An ALJ could believe:
17 (1) Plaintiff ceased abusing substances months before the hearing; and
18 (2) as of the time of the hearing, Plaintiff still was suffering
19 symptoms of disabling severity; but (3) Plaintiff did not satisfy the
20 twelve month requirement⁴ because his symptoms would be expected to
21 diminish materially in the near future, as the residual effects of
22 long-term substance abuse continued to dissipate. There appears to be

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24 ³ And yet, the ALJ's decision states elsewhere that
25 Plaintiff "is credible concerning the following symptoms and
26 limitations: he has the same limitations after he is clean from
methamphetamine and marijuana for 3 months" (A.R. 19).

27 ⁴ See Barnhart v. Walton, 535 U.S. 212, 217-22 (2002)
28 (successful disability claimant's inability to engage in
substantial gainful activity must last, or be expected to last,
for at least twelve months).

1 scant support in the ALJ's decision for this conceivable analysis,
2 however. In particular, this analysis appears irreconcilable with the
3 statement in the ALJ's decision that Plaintiff's claimed symptoms "are
4 not credible to the extent they are inconsistent with the residual
5 functional capacity assessment . . ." (A.R. 21) (emphasis added).
6 Elsewhere, the ALJ's decision does say that "the undersigned finds
7 that the claimant is credible concerning the following symptoms and
8 limitations: he has the same limitations after he is clean from
9 methamphetamine and marijuana for 3 months" (A.R. 19). In context,
10 however, the phrase "same limitations" may not mean "same degree of
11 limitations on Plaintiff's ability to function." The phrase used may
12 mean only that Plaintiff has the same types of limitations. Two
13 sentences later, the ALJ's decision states, "Absent the substance
14 abuse, he would not meet a Listing" (A.R. 19). Most significantly, if
15 the ALJ had found Plaintiff's testimony entirely credible, presumably
16 the ALJ would have omitted any finding that the testimony was "not
17 credible" (A.R. 21).

18
19 In any event, the evident ambiguity of the ALJ's decision itself
20 requires remand for clarification. See, e.g., Coronado v. Astrue,
21 2011 WL 3348066, at *8 (E.D. Cal. Aug. 2, 2011) (where ALJ's decision
22 was ambiguous in addressing the claimant's credibility, and where the
23 credibility determination overlapped and blended with the ALJ's
24 discussion of the medical record, remand was appropriate); Rodriguez
25 v. Astrue, 2011 WL 1103119, at *9 (E.D. Cal. March 22, 2011) ("remand
26 for further proceedings is proper due to the ambiguity of the ALJ's
27 decision"); see also Lewin v. Schweiker, 654 F.2d 631, 634-35 (9th
28 Cir. 1981) (Administration must include an explanatory statement of

1 the subordinate factual findings on which its ultimate conclusions are
2 based, so that a reviewing court may know the basis for the decision).

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4 Because the circumstances of the case suggest that the further
5 administrative review could clarify the ambiguities in the ALJ's
6 decision and otherwise remedy the errors discussed herein, remand is
7 appropriate. McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011); see
8 Connett v. Barnhart, 340 F.3d 871, 876 (9th Cir. 2003) ("Connett")
9 (remand is an option where the ALJ fails to state sufficient reasons
10 for rejecting a claimant's excess symptom testimony); but see Orn v.
11 Astrue, 495 F.3d 625, 640 (9th Cir. 2007) (appearing, confusingly, to
12 cite Connett for the proposition that "[w]hen an ALJ's reasons for
13 rejecting the claimant's testimony are legally insufficient and it is
14 clear from the record that the ALJ would be required to determine the
15 claimant disabled if he had credited the claimant's testimony, we
16 remand for a calculation of benefits") (quotations omitted); see also
17 Vasquez v. Astrue, 572 F.3d 586, 600-01 (9th Cir. 2009) (agreeing that
18 a court need not "credit as true" improperly rejected claimant
19 testimony where there are outstanding issues that must be resolved
20 before a proper disability determination can be made); see generally
21 INS v. Ventura, 537 U.S. 12, 16 (2002) (upon reversal of an
22 administrative determination, the proper course is remand for
23 additional agency investigation or explanation, except in rare
24 circumstances).

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1 **CONCLUSION**

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3 For all of the foregoing reasons, Plaintiff's and Defendant's

4 motions for summary judgment are denied and this matter is remanded

5 for further administrative action consistent with this Opinion.

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7 LET JUDGMENT BE ENTERED ACCORDINGLY.

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9 DATED: October 26, 2012.

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12 _____/S/_____
CHARLES F. EICK
13 UNITED STATES MAGISTRATE JUDGE

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