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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JAMES ANTHONY VASQUEZ,	)	NO. ED CV 12-1302-E
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM OPINION</b>
	)	
CAROLYN W. COLVIN, COMMISSIONER	)	<b>AND ORDER OF REMAND</b>
OF SOCIAL SECURITY,	)	
	)	
Defendant.	)	
	)	
_____	)	

Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS  
HEREBY ORDERED that Plaintiff's and Defendant's motions for summary  
judgment are denied and this matter is remanded for further  
administrative action consistent with this Opinion.

**PROCEEDINGS**

Plaintiff filed a complaint on August 9, 2012, seeking review of  
the Commissioner's denial of benefits. The parties filed a consent to  
proceed before a United States Magistrate Judge on January 9, 2013.

1 Plaintiff filed a motion for summary judgment on May 3, 2013.<sup>1</sup>  
2 Defendant filed a motion for summary judgment on May 29, 2013. The  
3 Court has taken the motions under submission without oral argument.  
4 See L.R. 7-15; Minute Order, filed January 4, 2013.

5  
6 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**  
7

8 Plaintiff, a former mechanic and sales representative, asserts  
9 disability since October 31, 2008, based primarily on alleged pain in  
10 his hip, back and knee (Administrative Record ("A.R.") 34-66, 135-37,  
11 154-60, 162-64). Plaintiff asserted in written reports and testified  
12 at an administrative hearing that he suffers from pain of disabling  
13 severity (A.R. 34-66, 154, 160, 162).

14  
15 An Administrative Law Judge ("ALJ") found Plaintiff has severe  
16 impairments including "degenerative disc disease of the lumbar spine  
17 . . . post surgical repair of right hip injury; status post gun shot  
18 to right knee; and morbid obesity" (A.R. 20). However, the ALJ also  
19 found Plaintiff not disabled (A.R. 20-24). In so finding, the ALJ  
20 deemed Plaintiff's assertions of disabling pain not credible (A.R.  
21 22). The Appeals Council denied review (A.R. 1-3).

22 ///

23  
24 <sup>1</sup> Plaintiff's motion violates this Court's January 4,  
25 2013 Minute Order ("No papers filed in support of or in  
26 opposition to any motion for summary judgment shall exceed ten  
27 (10) pages in length"). Counsel for Plaintiff shall heed the  
28 Court's orders in the future. The Court previously admonished  
this same attorney for violation of this same type of order. See  
Gordon v. Astrue, CV 12-2301-E. If this attorney's violations  
persist, the Court may accompany future admonishments with  
monetary sanctions.



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

14  
15 In the present case, the only mention of Plaintiff's credibility  
16 is found in section 5 of the ALJ's decision. Therein, the ALJ  
17 concludes:

18  
19 After careful consideration of the evidence, the undersigned  
20 finds that the claimant's medically determinable impairments  
21 could reasonably be expected to cause the alleged symptoms;

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22  
23 <sup>2</sup> 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           however, the claimant's statements concerning the intensity,  
2           persistence and limiting effects of these symptoms are not  
3           credible to the extent they are inconsistent with the above  
4           residual functional capacity assessment (A.R. 22).

5  
6           Immediately preceding this conclusion, the ALJ summarizes  
7           Plaintiff's testimony (A.R. 21-22). Immediately following this  
8           conclusion, the ALJ summarizes the medical evidence (A.R. 22).  
9           Nowhere in section 5 (or anywhere else in the decision), does the ALJ  
10          state any specific reasons for her credibility conclusion. The ALJ  
11          thereby erred. Id.; see Spytek v. Astrue, 2010 WL 3584549, at \*5  
12          (W.D. Wash. Aug. 12, 2010), adopted, 2010 WL 3584546 (W.D. Wash.  
13          Sept. 10, 2010) (ALJ erred by stating in a conclusory fashion that the  
14          claimant's "statements concerning the intensity, persistence, and  
15          limiting effects of those symptoms were not credible to the extent  
16          they were inconsistent with the ALJ's residual functional capacity  
17          finding," although the ALJ implied that the claimant's statements were  
18          "not substantiated by objective medical evidence"<sup>3</sup>); see also Gonzalez  
19          v. Sullivan, 914 F.2d 1197, 1201 (9th Cir. 1990) ("We are wary of  
20          speculating about the basis of the ALJ's conclusion . . ."); Lewin v.  
21          Schweiker, 654 F.2d 631, 634-35 (9th Cir. 1981) (ALJ's decision should  
22          include a statement of the subordinate factual foundations on which  
23          the ALJ's ultimate factual conclusions are based, so that a reviewing

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25                   <sup>3</sup>       An ALJ may not rely exclusively on the objective  
26                   medical evidence in rejecting a claimant's credibility. Varney  
27                   v. Secretary, 846 F.2d at 584; Cotton v. Bowen, 799 F.2d 1403,  
28                   1407 (9th Cir. 1986); see also Burch v. Barnhart, 400 F.3d 676,  
                  681 (9th Cir. 2005) ("lack of medical evidence" can be "a factor"  
                  in rejecting credibility, but cannot "form the sole basis").

1 court may know the basis for the decision); Coronado v. Astrue, 2011  
2 WL 3348066, at \*8 (E.D. Cal. Aug. 2, 2011) (where the reasons for the  
3 ALJ's credibility determination were uncertain, and the determination  
4 overlapped and blended with the ALJ's discussion of the medical  
5 record, remand was appropriate).

6  
7 Defendant invites the Court to infer that the ALJ based her  
8 credibility determination on an array of considerations: "the lack of  
9 significant clinical findings, inconsistencies between Plaintiff's  
10 claimed limitations and objective medical findings, the receipt of  
11 unemployment benefits, . . . activities of daily living," Plaintiff's  
12 report that he "was not taking pain medication," and Plaintiff's  
13 admission that he "did not walk or exercise" despite living behind a  
14 junior high school track (Defendant's motion 2, 6-7).<sup>4</sup> The Court must  
15 decline Defendant's invitation. The ALJ's decision does not  
16 specifically identify any of these considerations as the reason or  
17 reasons for the ALJ's credibility determination. The ALJ's decision  
18 mentions some of these considerations, but does not expressly base the  
19 credibility determination on any of them. Consequently, the Court  
20 cannot affirm the credibility determination on the basis of any of  
21 these considerations. See Pinto v. Massanari, 249 F.3d 840, 847 (9th  
22 Cir. 2001) (court "cannot affirm the decision of an agency on a ground  
23 that the agency did not invoke in making its decision"); Watts v.  
24 Astrue, 2012 WL 2577525, at \*8-9 (E.D. Cal. July 3, 2012) (remand  
25 required where ALJ's decision discussed the evidence potentially

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27 <sup>4</sup> Defendant also argues that the ALJ had exclusive,  
28 "direct access" to unspecified "physical and linguistic clues  
helpful in judging credibility" (Defendant's motion at 7-8).

1 bearing on the claimant's credibility, but "provide[d] no discussion  
2 how this evidence impacted the ALJ's view of Plaintiff's  
3 credibility").

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5 **II. Remand is Appropriate.**

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

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