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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 DAVID RUIZ,

12 Plaintiff,

13 v.

14 CAROLYN W. COLVIN,
15 Commissioner of Social Security,

16 Defendant.
17

NO. EDCV 12-1628 AGR

MEMORANDUM OPINION AND
ORDER

18 David Ruiz filed this action on October 3, 2012. (Dkt. No. 3.) Pursuant to
19 28 U.S.C. § 636(c), the parties consented to proceed before the magistrate judge
20 on October 29 and November 7, 2012. (Dkt. Nos. 8-9.) On April 23, 2013, the
21 parties filed a Joint Stipulation ("JS") that addressed the disputed issue. The
22 court has taken the matter under submission without oral argument.

23 Having reviewed the entire file, the court reverses the decision of the
24 Commissioner and remands for proceedings consistent with this opinion.
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1 I.

2 **PROCEDURAL BACKGROUND**

3 On May 25, 2010, Ruiz filed applications for disability insurance benefits
4 and supplemental security income benefits. Administrative Record (“AR”) 22.
5 Both applications alleged an onset date of December 15, 2008. The applications
6 were denied initially and upon reconsideration. *Id.* Ruiz requested a hearing. On
7 January 12, 2012, an Administrative Law Judge (“ALJ”) conducted a hearing at
8 which Ruiz and a vocational expert (“VE”) testified. AR 66-90. On March 13,
9 2012, the ALJ issued a decision denying benefits. AR 19-36. On July 25, 2012,
10 the Appeals Council denied the request for review. AR 1-5. This action followed.

11 II.

12 **STANDARD OF REVIEW**

13 Pursuant to 42 U.S.C. § 405(g), this Court reviews the Commissioner’s
14 decision to deny benefits. The decision will be disturbed only if it is not supported
15 by substantial evidence, or if it is based upon the application of improper legal
16 standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995); *Drouin v.*
17 *Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

18 “Substantial evidence” means “more than a mere scintilla but less than a
19 preponderance – it is such relevant evidence that a reasonable mind might
20 accept as adequate to support the conclusion.” *Moncada*, 60 F.3d at 523. In
21 determining whether substantial evidence exists to support the Commissioner’s
22 decision, the Court examines the administrative record as a whole, considering
23 adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the
24 evidence is susceptible to more than one rational interpretation, the Court must
25 defer to the Commissioner’s decision. *Moncada*, 60 F.3d at 523.

1 III.

2 **DISCUSSION**

3 **A. Disability**

4 A person qualifies as disabled, and thereby eligible for such benefits, “only
5 if his physical or mental impairment or impairments are of such severity that he is
6 not only unable to do his previous work but cannot, considering his age,
7 education, and work experience, engage in any other kind of substantial gainful
8 work which exists in the national economy.” *Barnhart v. Thomas*, 540 U.S. 20,
9 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003).

10 **B. The ALJ’s Findings**

11 The ALJ found that Ruiz met the insured status requirements through
12 September 30, 2012. AR 24. He had the severe impairments of seizure disorder
13 and schizoaffective disorder. *Id.*

14 Ruiz had the residual functional capacity (“RFC”) to perform medium work.
15 He “can lift and/or carry 50 pounds occasionally and 25 pounds frequently. He
16 can stand and/or walk for six hours out of an eight-hour workday with regular
17 breaks. He can sit for six hours out of an eight-hour workday with regular breaks.
18 He is unlimited with respect to pushing and/or pulling, other than as indicated for
19 lifting and/or carrying. He should avoid concentrated exposure to hazards. He is
20 limited to work involving simple and repetitive tasks. He is limited to work
21 involving no more than occasional contact with coworkers and no contact with the
22 public.” AR 27. Although Ruiz is unable to perform any past relevant work, there
23 are jobs that exist in significant numbers in the national economy that he can
24 perform, such as industrial cleaner, production worker and packer. AR 34-35.

25 **C. Treating Physicians**

26 Ruiz argues that the ALJ did not provide specific and legitimate reasons for
27 discounting his treating physicians’ opinions concerning seizure disorders and
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1 schizoaffective disorder.¹

2 An opinion of a treating physician is given more weight than the opinions of
3 non-treating physicians. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). To
4 reject an uncontradicted opinion of a treating physician, an ALJ must state clear
5 and convincing reasons that are supported by substantial evidence. *Bayliss v.*
6 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). When a treating physician’s
7 opinion is contradicted by another doctor, “the ALJ may not reject this opinion
8 without providing specific and legitimate reasons supported by substantial
9 evidence in the record. This can be done by setting out a detailed and thorough
10 summary of the facts and conflicting clinical evidence, stating his interpretation
11 thereof, and making findings.” *Orn*, 495 F.3d at 632 (citations and quotation
12 marks omitted). “When there is conflicting medical evidence, the Secretary must
13 determine credibility and resolve the conflict.” *Thomas v. Barnhart*, 278 F.3d 947,
14 956-57 (9th Cir. 2002) (citation and quotation marks omitted).

15 An examining physician’s opinion constitutes substantial evidence when it
16 is based on independent clinical findings. *Orn*, 495 F.3d at 632.

17 “The opinion of a nonexamining physician cannot by itself constitute
18 substantial evidence that justifies the rejection of the opinion of either an
19 examining physician or a treating physician.” *Ryan v. Comm’r*, 528 F.3d 1194,
20 1202 (9th Cir. 2008) (citation omitted) (emphasis omitted). However, a
21 non-examining physician’s opinion may serve as substantial evidence when it is
22 supported by other evidence in the record and is consistent with it. *Andrews v.*
23 *Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

24 The ALJ interpreted the treating records as indicating that Ruiz does not
25 have seizures on a regular basis, and that his seizures are well controlled when
26 he is compliant with his medications. AR 28-29.

27 ¹ Ruiz’s argument that the ALJ gave no weight to the treating records is
28 rejected. The ALJ considered, discussed and relied on the treating records.

1 The ALJ's findings are supported by substantial evidence. In June 2009, it
2 was noted Ruiz "has been well-controlled on Dilantin for a long period of time."
3 AR 28, 263. Ruiz had a seizure episode in December 2008 when he was off
4 Dilantin. AR 29, 622. Ruiz cites a medical record dated January 29, 2012, which
5 states that his seizure was "uncontrolled as of 11/08" when his phenytoin
6 (Dilantin) levels were low. JS at 6 (citing AR 275). However, this record is
7 consistent with the ALJ's findings. On June 6, 2010, it was noted Ruiz had run
8 out of Dilantin for 5 days. AR 600. In April 2011, Ruiz had stopped taking
9 medications for four to five months. AR 29, 661. Although Ruiz argues he had a
10 seizure in July 2010 when his Dilantin was at a therapeutic level² (AR 340), the
11 ALJ considered those records. AR 30. The ALJ did not err.

12 However, the ALJ did not articulate specific and legitimate reasons for
13 discounting the treating medical records as to Ruiz's mental health. The ALJ
14 gave great weight to Dr. Goldman, the examining psychologist. In June 2010, Dr.
15 Goldman assessed malingering and personality disorder NOS with antisocial
16 features. Dr. Goldman stated that Ruiz's functional limitations could not be
17 accurately assessed due to malingering. AR 282.

18 The ALJ also gave great weight to the state agency consultants. Although
19 the ALJ described the consultants' RFC assessments as "nonpublic simple and
20 repetitive tasks," AR 33, both consultants limited Ruiz to "simple one to two step
21 tasks." AR 473, 639.

22 The distinction between simple repetitive tasks and simple one to two step
23 tasks is material. Under the DOT, the General Educational Development ("GED")
24 Scale measures "those aspects of education (formal and informal) which are
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26 ² Ruiz also cites AR 456 to document a seizure in August 2010. However,
27 Ruiz was admitted on a 5150 hold for a suicide attempt. AR 421. Ruiz notes that
28 he reported a seizure in November 2010, but there is no record of his Dilantin
level. AR 519. As of April 2011, Ruiz reported not taking his medications for four
to five months. AR 661.

1 required of the worker for satisfactory job performance.” DOT, Appendix C,
2 Section III, 1991 WL 688702 (1991). The GED Scale is composed of three
3 divisions: Reasoning Development, Mathematical Development, and Language
4 Development. *Id.* Reasoning Development Level One requires a person to
5 “[a]pply commonsense understanding to carry out simple one- or two-step
6 instructions. Deal with standardized situations with occasional or no variables in
7 or from these situations encountered on the job.” *Id.* Reasoning Development
8 Level Two requires a person to “[a]pply commonsense understanding to carry out
9 detailed but uninvolved written or oral instructions. Deal with problems involving a
10 few concrete variables in or from standardized situations.” *Id.*

11 The vocational expert listed three representative jobs. Two of the three
12 jobs, industrial cleaner and production worker, require Reasoning Level Two. A
13 limitation to simple one and two step tasks is inconsistent with Reasoning Level
14 Two. *See Cardoza v. Astrue*, 2011 U.S. Dist. LEXIS 33821, at *5-*6 (C.D. Cal.
15 2011) (collecting cases); *see also Pouria v. Astrue*, 2012 U.S. Dist. LEXIS 76692,
16 *5 (C.D. Cal. June 1, 2012). The limitation to one- and two-step instructions
17 parallels the language contained in the description of Reasoning Level One, as
18 distinguished from Reasoning Level Two. *See Coleman*, 2011 U.S. Dist LEXIS
19 33821 at *14. “Level 2 reasoning jobs may be simple, but they are not limited to
20 one- or two-step instructions. The restriction to jobs involving no more than two-
21 step instructions is what distinguishes Level 1 reasoning from Level 2 reasoning.”
22 *Grigsby v. Astrue*, 2010 U.S. Dist. LEXIS 5465, *6 (C.D. Cal. 2010).

23 The third job listed by the vocational expert requires Reasoning Level One,
24 but is described as a bag loader of ordnance.³ The ALJ detailed the 5150 holds
25 on Ruiz during the period August 2010-January 2012. AR 31-32. None of the
26 treating records suggested malingering. As the ALJ noted, Ruiz was diagnosed

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28 ³ This job is listed under occupations in fabrication of ammunition,
fireworks, explosives and related products. (DOT 737.687-014.)

1 with schizoaffective disorder. AR 24. As the ALJ further noted, the treating
2 records indicate that Ruiz was at these times confused (“claimant stated that he
3 was trying to have a beer with his dead brother”), violent, paranoid and subject to
4 auditory hallucinations, suicidal thoughts and illogical thought processes. Ruiz’s
5 Global Assessment of Functioning (GAF) scores ranged from 15-62 during this
6 period, which covers a significant time span. AR 31-32. It would not appear that
7 such an individual would be capable of work in industries involving ordnance,
8 ammunition, fireworks or explosives. The ALJ’s RFC assessment
9 understandably found that Ruiz should avoid exposure to hazards. AR 27.

10 Given the frequency of 5150 holds, on remand the ALJ should assess
11 whether the claimant has the ability to work on a sustained basis. *Reddick v.*
12 *Chater*, 157 F.3d 715, 724 (9th Cir. 1998); 20 C.F.R. § 404.1512(a).
13 “[O]ccasional symptom-free periods – and even the sporadic ability to work – are
14 not inconsistent with disability.” *Lester v. Chater*, 81 F.3d 821, 833 (9th Cir.
15 1995).

16 **IV.**
17 **ORDER**

18 IT IS HEREBY ORDERED that the decision of the Commissioner is
19 reversed and remanded for proceedings consistent with this opinion.

20 IT IS FURTHER ORDERED that the Clerk serve copies of this Order and
21 the Judgment herein on all parties or their counsel.

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24 DATED: July 26, 2013



ALICIA G. ROSENBERG
United States Magistrate Judge