

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

JAMES F.C.,

Plaintiff,

v.

MARTIN J. O'MALLEY,¹
Acting Commissioner of Social
Security,
Defendant.

Case No. CV 8:23-1787 (RAO)

**MEMORANDUM OPINION
AND ORDER**

I. INTRODUCTION

Plaintiff James F.C.² (“Plaintiff”) challenges the Commissioner’s denial of his application for disability insurance benefits (“DIB”) and supplemental security income (“SSI”). For the reasons stated below, the decision of the Commissioner is **REVERSED**.

¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin J. O’Malley, the Commissioner of Social Security, is hereby substituted as the defendant.

² Plaintiff’s name is partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 **II. SUMMARY OF PROCEEDINGS**

2 Plaintiff applied for DIB on February 12, 2013, and for SSI on March 2, 2013,
3 alleging disability beginning January 1, 2007. (AR 174-78 (DIB), 183-91 (SSI).)
4 Plaintiff added checking accounts, income, and resources to his SSI application on
5 March 25, 2013. (AR 201-02.) His claims were denied initially on June 12, 2013,
6 and upon reconsideration on October 16, 2013. (See AR 46-65, 66-87.) Plaintiff
7 requested an administrative hearing before an administrative law judge (“ALJ”), and
8 the hearing was held on September 16, 2014. (See AR 24-45.)

9 The November 4, 2014, Decision

10 On November 4, 2014, the ALJ followed the familiar five-step sequential
11 evaluation process for determining disability and issued an unfavorable decision.
12 (See AR 8-23.) At **step one**, the ALJ found Plaintiff had not engaged in substantial
13 gainful activity since January 1, 2007, the alleged onset date. (AR 13.) At **step two**,
14 the ALJ determined that Plaintiff had one severe impairment: degenerative disc
15 disease of the lumbar spine with grade 1 spondylolisthesis at L4-5. (*Id.*) At **step**
16 **three**, the ALJ concluded that Plaintiff did not have an impairment or combination
17 thereof that meets the severity of the listed impairments in 20 C.F.R. Part 404,
18 Subpart P, Appendix 1. (AR 14.) The ALJ assessed that Plaintiff also had the
19 residual functional capacity (“RFC”) to perform less than a full range of light work
20 as defined in 20 C.F.R. §§ 404.1567(b) and 416.967(b): He can stand six hours in an
21 eight-hour day; stand or walk six hours in an eight-hour day with normal workday
22 breaks but he may be able to change positions briefly one to three minutes every
23 hour; occasionally lift 20 pounds and 10 pounds frequently; occasionally climb stairs,
24 bend, balance, stoop, kneel, crouch or crawl; and no climbing ladders, ropes or
25 scaffolds or working at unprotected heights. (AR 15.) At **step four**, the ALJ
26 concluded that Plaintiff could perform past relevant work as a sales representative in
27 financial services, which does not require the performance of work-related activities
28

1 precluded by his RFC. (AR 19.) The ALJ concluded Plaintiff was not under
2 disability. (*Id.*)

3 After the Appeals Council denied Plaintiff's request for review on September
4 5, 2019, (AR 1-6), Plaintiff filed suit asking the Court to reverse and remand the
5 matter. *See James C. v. Saul*, No. 19-2077 (C.D. Cal. Mar. 7, 2022). This Court
6 affirmed the Commissioner's decision. The Ninth Circuit vacated that decision and
7 remanded the matter in light of *Carr v. Saul*, 593 U.S. 83 (2021), which permits
8 claimants to challenge the propriety of an ALJ's appointment in federal court even if
9 they did not challenge it in administrative proceedings. The Appeals Council
10 remanded Plaintiff's case to a different ALJ because Plaintiff challenged the manner
11 in which the ALJ was appointed. (AR 598.)

12 The July 26, 2023, Decision

13 Another hearing at which an impartial vocational expert testified occurred on
14 April 25, 2023. (AR 509-55.) The Commissioner issued a partially favorable
15 decision on July 26, 2023. (*See* AR 485-508.)

16 At **step one**, the ALJ found Plaintiff had not engaged in substantial gainful
17 activity since January 1, 2007, the alleged onset date. (AR 491.) At **step two**, the
18 ALJ determined that Plaintiff had one severe impairment: disc disease of the lumbar
19 spine. (*Id.*) At **step three**, the ALJ concluded that Plaintiff did not have an
20 impairment or combination thereof that meets the severity of the listed impairments
21 in 20 C.F.R. Part 404, Subpart P, Appendix 1. (AR 493.) The ALJ assessed that
22 prior to January 1, 2022, the date Plaintiff became disabled, Plaintiff had the RFC to
23 perform less than a full range of light work as defined in 20 C.F.R. §§ 404.1567(b)
24 and 416.967(b): He can lift and carry 20 pounds occasionally and 10 pounds
25 frequently; can stand and walk for six hours in an eight-hour workday; can sit for six
26 hours in an eight-hour workday; cannot climb ladders, ropes or scaffolds; can
27 occasionally climb ramps and stairs; and can occasionally balance, stoop, kneel,
28 crouch, and crawl. (AR 493.) The ALJ determined Plaintiff's RFC was the same

1 post-January 1, 2022. (AR 496-97.) At **step four**, prior to January 1, 2022, the ALJ
2 concluded that Plaintiff could perform past relevant work as a loan officer and license
3 clerk (composite job), which does not require the performance of work-related
4 activities precluded by his RFC. (AR 496.) As of January 1, 2022, Plaintiff had no
5 past relevant work. (AR 498.) At **step five**, as of January 1, 2022, considering
6 Plaintiff’s age, education, work, experience, and RFC, no jobs exist in significant
7 numbers in the national economy that Plaintiff can perform. (*Id.*) Accordingly, the
8 ALJ concluded Plaintiff was not disabled prior to January 1, 2022, but then became
9 disabled on that date, and remains disabled. (*Id.*)

10 On September 25, 2023, Plaintiff filed suit in this Court challenging the
11 Commissioner’s decision. (Dkt. No. 1.) The parties filed their respective briefs for
12 the Court’s consideration. (*See generally* Dkt. Nos. 14 (“Pl. Brief”), 16 (“Comm’r
13 Brief”), 17 (“Pl. Reply”).)

14 15 **III. STANDARD OF REVIEW**

16 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s
17 decision to deny benefits. A court must affirm an ALJ’s findings of fact if they are
18 supported by substantial evidence, and if the proper legal standards were applied.
19 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “Substantial evidence .
20 . . is ‘more than a mere scintilla[,]’ . . . [which] means—and means only—‘such
21 relevant evidence as a reasonable mind might accept as adequate to support a
22 conclusion.’” *Biestek v. Berryhill*, 587 U.S. ___, 139 S. Ct. 1148, 1154, 203 L. Ed. 2d
23 504 (2019) (citations omitted); *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017).

24 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a
25 specific quantum of supporting evidence. Rather, a court must consider the record
26 as a whole, weighing both evidence that supports and evidence that detracts from the
27 Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001)
28 (citations and internal quotations omitted). “‘Where evidence is susceptible to more

1 than one rational interpretation,’ the ALJ’s decision should be upheld.” *Ryan v.*
2 *Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing *Burch v. Barnhart*,
3 400 F.3d 676, 679 (9th Cir. 2005)); *see also Robbins v. Soc. Sec. Admin.*, 466 F.3d
4 880, 882 (9th Cir. 2006) (“If the evidence can support either affirming or reversing
5 the ALJ’s conclusion, we may not substitute our judgment for that of the ALJ.”). The
6 Court may review only “the reasons provided by the ALJ in the disability
7 determination and may not affirm the ALJ on a ground upon which he did not rely.”
8 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340
9 F.3d 871, 874 (9th Cir. 2003)).

10 11 **IV. DISCUSSION**

12 Plaintiff raises three issues for review: (1) whether the ALJ applied the
13 appropriate standard for cases filed prior to March 2017; (2) whether a mental
14 impairment would preclude an SVP 6 reasoning level 4 job; (3) whether the ALJ
15 properly evaluated Plaintiff’s subjective symptom testimony. (Pl. Brief at 11-22.)
16 Because remand is warranted on the third issue alone, the Court declines to address
17 the first and second issues.

18 **A. Whether the ALJ properly evaluated Plaintiff’s symptom testimony**

19 Plaintiff argues the ALJ did not provide clear and convincing reasons to reject
20 Plaintiff’s symptom testimony. (Pl. Brief at 20.) The Commissioner argues the ALJ
21 properly discounted Plaintiff’s symptom testimony on the basis of objective medical
22 evidence, conflicting statements between Plaintiff’s statements and those of medical
23 sources, improvement with treatment, and noncompliance with treatment. (Comm’r
24 Brief at 8-14.) The Court agrees with Plaintiff.

25 **B. Plaintiff’s Symptom Testimony**

26 At the April 25, 2023 hearing, Plaintiff testified to having worked as a notary
27 and loan officer between 2005 and 2008. (*See* AR 524-28.) Those jobs required him
28 to sit at a table or in his car, sometimes traveling 125 miles away to an appointment.

1 (AR 528.) He stated that being in a car for that long became troublesome because of
2 pain and needing to get up every 45 minutes to stretch. (*Id.*) Those jobs did not
3 require heavy lifting. (AR 529.)

4 Between 2007 and 2012, Plaintiff searched for “sitting down jobs” where he
5 did not have to lift much and could work only for a couple of hours per day. (AR
6 534.) He testified he does not think he could have worked during that time period
7 because, starting in 2008, he experienced pain in his lower back. (AR 534-35.)
8 Plaintiff did not have medical coverage during that time and experienced difficulty
9 breathing and exerting himself. (AR 535.) He testified that when he got sick, he was
10 sick for a couple of weeks. (*Id.*) Plaintiff stated he had pain in the L5 lumbar region
11 that was worse than the pain in his neck, though the neck pain prohibited him from
12 using his upper extremities because it would cause headaches. (AR 535-36.)

13 Plaintiff testified he had was fired from a job sometime after 2007; he was sick
14 for two weeks and was fired upon his return. (AR 537.) He stopped working in his
15 traveling notary business because the driving became “too much” for him, and he
16 was taking strong painkillers. (*Id.*) Plaintiff testified that after moving boxes full of
17 books, his back started hurting badly. (*Id.*) He testified to going to Urgent Care,
18 which directed him to see a doctor. (AR 538.) Plaintiff denied having a concave
19 shoulder, but state that doctors may have noticed something that did not cause him
20 pain, and that one of his legs is shorter than the other. (*Id.*) Plaintiff experiences
21 pain in his hands—they get stiff and tingly, and while it does not affect his ability to
22 pick things up or grip, it makes it more difficult for him to tie things or move his
23 fingers. (AR 538-39.) He feels the maximum weight he can carry is about the weight
24 of a gallon of water; he began experiencing pain after holding up a gallon of water
25 for about six seconds. (AR 539-40.)

26 Between 2012 and 2016, Plaintiff searched for and obtained phone solicitation
27 jobs. They required a few hours per night, and his doctors had told him he should
28 not work more than 25 or 30 hours per week. (AR 531.)

1 Plaintiff testified all of his telecom jobs after 2012 were part-time, sitting down
2 jobs; he would have been unable to do those jobs full-time because he would need to
3 move around a lot and would have missed a lot of workdays. (AR 540.) Missing
4 work was one of the reasons he had been let go from prior employment. (*Id.*)
5 Plaintiff began using a walker in 2014. He has had two falls since getting the walker
6 and needs to use either the cane or the walker at all times. (AR 540-41.)

7 Plaintiff testified that his previous jobs have required attention to detail; that
8 he took oxycodone on an as-needed basis; and that he did not feel capable of paying
9 attention to detail when he was on oxycodone. (AR 542-43.) Plaintiff reported
10 having trouble concentrating and that it affects his sleep. (AR 543.) Plaintiff has
11 several inhalers, none of which use oxygen; his chronic obstructive pulmonary
12 disease prevents him from doing anything too strenuous. He experiences pain and
13 shortness of breath when walking. (*Id.*) Plaintiff testified to receiving treatment from
14 a pain management doctor, a psychologist, a psychiatrist, and a physical therapist.
15 (AR 544-45.)

16 **C. Applicable Law**

17 There is a two-step process for evaluating a claimant's testimony about the
18 severity and limiting effect of the claimant's symptoms. *Vasquez v. Astrue*, 572 F.3d
19 586, 591 (9th Cir. 2009). "First, the ALJ must determine whether the claimant has
20 presented objective medical evidence of an underlying impairment 'which could
21 reasonably be expected to produce the pain or other symptoms
22 alleged.'" *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir.
23 2007) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991) (en banc)).
24 Once satisfied, the ALJ must examine the entire case record, which includes the
25 claimant's own testimony, for evidence on the intensity, persistence, and limiting
26 effects of her symptoms. In evaluating the claimant's credibility, a court may
27 consider a multitude of factors, such as inconsistencies between the claimant's
28 statements, objective medical evidence, the claimant's daily activities, the claimant's

1 work record, and statements from healthcare providers or third parties about the
2 nature, severity, and effect of the symptoms. *Thomas v. Barnhart*, 278 F.3d 947,
3 958-59 (9th Cir. 2002). However, a lack of objective medical evidence substantiating
4 the claimant’s statements about her symptoms by itself is not grounds for discrediting
5 the claimant’s symptom testimony. *Id.*

6 **D. Analysis**

7 Here, the ALJ cited a lack of objective medical evidence as the sole reason for
8 discounting Plaintiff’s symptom testimony. (See AR 494-96.) Even assuming
9 *arguendo* there is a lack of objective medical evidence substantiating Plaintiff’s
10 testimony, the ALJ erred here because objective medical evidence alone cannot
11 discount that testimony. See *Bunnell*, 947 F.2d at 345.

12 The Court finds all of the Commissioner’s arguments unpersuasive. (See
13 Comm’r Brief at 9-13.) The Commissioner’s argument that the ALJ relied on
14 inconsistencies with medical evidence, as opposed to a lack thereof, is unpersuasive
15 because the relevant portion of the ALJ’s decision is a mere summary of clinical
16 findings that makes no connection to Plaintiff’s testimony. See *Brown-Hunter v.*
17 *Colvin*, 806 F.3d 487, 494 (9th Cir. 2015); *Morgan v. Comm’r of Soc. Sec. Admin.*,
18 169 F.3d 595, 599 (9th Cir. 1999). The Commissioner’s argument with respect to
19 Dr. Ali’s testimony and Plaintiff’s purported improvement with treatment, (Comm’r
20 Brief at 12-13), fails for the same reason. (See AR 494-95.) As to Plaintiff’s
21 purported noncompliance with treatment, (Comm’r Brief at 13), there is no indication
22 the ALJ considered this factor because it is not mentioned in his decision, and the
23 Court cannot affirm a decision on a ground upon which the ALJ did not rely. See
24 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing *Connett v.*
25 *Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)).

26 ///

27 ///

28 ///

1 **V. REMAND**

2 The Court recognizes Plaintiff has waited quite some time for a resolution to
3 this matter, (Pl. Brief at 22), but the circumstances of his case do not rise to a level
4 warranting remand for an award of benefits. *See Brown-Hunter*, 806 F.3d at 495.
5 Thus, the Court finds that remand for further administrative proceedings is
6 appropriate, as further administrative review could remedy the ALJ's errors. The
7 ALJ failed to provide specific, clear, and convincing reasons supported by
8 substantial evidence to discount Plaintiff's subjective symptom testimony. On
9 remand, the ALJ shall not only reassess Plaintiff's symptom testimony, but also Dr.
10 Van Dyke's and Dr. Hemphill's medical opinions and Plaintiff's mental limitations.
11 (*See* Pl. Brief at 11-17 (medical opinions), 17-19 (mental limitations); *see generally*
12 Pl. Reply.) The ALJ shall then reassess Plaintiff's RFC and proceed through step
13 four and, if necessary, step five to determine what work, if any, Plaintiff is capable
14 of performing.

15
16 **VI. CONCLUSION**

17 IT IS ORDERED that Judgment shall be entered **REVERSING** and
18 **REMANDING** the decision of the Commissioner denying his applications for DIB
19 and SSI.

20 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
21 Order and the Judgment on counsel for both parties.

22
23 DATED: April 30, 2024

_____/s/
ROZELLA A. OLIVER
UNITED STATES MAGISTRATE JUDGE

24
25
26
27 **NOTICE**

28 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,
LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**