

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 01, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NATHAN K.,

Plaintiff,

-vs-

MARTIN O'MALLEY, Commissioner of
Social Security,¹

Defendant.

No. 4:23-CV-5098-WFN

ORDER GRANTING
PLAINTIFF'S MOTION

ECF Nos. 8, 12

Pending before the Court are Plaintiff's Motion for Summary Judgment and the Commissioner's Motion for Summary Judgment. ECF Nos. 8, 12. Attorney Chad Hatfield represents Nathan K. (Plaintiff); Special Assistant United States Attorney Thomas E. Chandler represents the Commissioner of Social Security (Defendant). After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Plaintiff's motion, **DENIES** Defendant's motion, and **REMANDS** the matter for further proceedings under sentence four of 42 U.S.C. § 405(g).

JURISDICTION

Plaintiff filed an application for benefits on November 9, 2020, alleging disability since January 1, 2019. The applications were denied initially and upon reconsideration. Administrative Law Judge (ALJ) Jesse Shumway held a hearing on May 18, 2022, and issued an unfavorable decision on June 13, 2022. Tr. 24-39. The Appeals Council denied

¹ This action was originally filed against Kilolo Kijakazi in her capacity as the acting Commissioner of Social Security. Martin O'Malley is substituted as the defendant because he is now the Commissioner of Social Security. *See* Fed. R. Civ. P. 25(d).

1 review on May 5, 2023. Tr. 1-6. Plaintiff appealed this final decision of the Commissioner
2 on July 10, 2023. ECF No. 1.

3 **STANDARD OF REVIEW**

4 The ALJ is responsible for determining credibility, resolving conflicts in medical
5 testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.
6 1995). The ALJ's determinations of law are reviewed *de novo*, with deference to a
7 reasonable interpretation of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087
8 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by
9 substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097
10 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less
11 than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant
12 evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson*
13 *v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S.
14 197, 229 (1938)). If the evidence is susceptible to more than one rational interpretation, the
15 Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1098; *Morgan*
16 *v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence
17 supports the administrative findings, or if conflicting evidence supports a finding of either
18 disability or non-disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812
19 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision supported by substantial
20 evidence will be set aside if the proper legal standards were not applied in weighing the
21 evidence and making the decision. *Brawner v. Sec'y of Health and Human Services*, 839
22 F.2d 432, 433 (9th Cir. 1988).

23 **SEQUENTIAL EVALUATION PROCESS**

24 The Commissioner has established a five-step sequential evaluation process for
25 determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); *Bowen v.*
26 *Yuckert*, 482 U.S. 137, 140-42 (1987). In steps one through four, the claimant bears the
27 burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d at 1098-1099. This
28 burden is met once a claimant establishes that a physical or mental impairment prevents the

1 claimant from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4).
2 If a claimant cannot perform past relevant work, the ALJ proceeds to step five, and the
3 burden shifts to the Commissioner to show (1) the claimant can make an adjustment to other
4 work and (2) the claimant can perform other work that exists in significant numbers in the
5 national economy. *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012). If a claimant cannot
6 make an adjustment to other work in the national economy, the claimant will be found
7 disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

8 ADMINISTRATIVE FINDINGS

9 On June 13, 2022, the ALJ issued a decision finding Plaintiff was not disabled as
10 defined in the Social Security Act. Tr. 24-39.

11 At step one, the ALJ found Plaintiff had not engaged in substantial gainful activity
12 since November 9, 2020, the application date. Tr. 26.

13 At step two, the ALJ determined Plaintiff had the following severe impairments:
14 bipolar disorder, attention deficit hyperactivity disorder (ADHD), generalized anxiety
15 disorder, panic disorder, and polysubstance use disorder. Tr. 26.

16 At step three, the ALJ found these impairments did not meet or equal the requirements
17 of a listed impairment. Tr. 27.

18 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and determined
19 Plaintiff could perform a full range of work at all exertional levels subject to the following
20 non-exertional limitations: he would be limited to simple, routine tasks; he could have only
21 occasional, superficial contact with the public; and he would need a routine, predictable
22 work environment with clear, employer-set goals and expectations and no more than
23 occasional changes. Tr. 32.

24 At step four, the ALJ expedited the inquiry into Plaintiff's past relevant work. Tr. 37.

25 At step five, the ALJ found there are jobs that exist in significant numbers in the
26 national economy that Plaintiff can perform. Tr. 38.

27 The ALJ thus concluded Plaintiff has not been disabled since the alleged onset date
28 through the date of the decision. Tr. 39

1 **ISSUES**

2 The question presented is whether substantial evidence supports the ALJ's decision
3 denying benefits and, if so, whether that decision is based on proper legal standards.

4 Plaintiff raises the following issues for review: (A) whether the ALJ properly
5 evaluated the medical opinion evidence; (B) whether the ALJ properly evaluated Plaintiff's
6 subjective complaints; (C) whether the ALJ erred at step three; and (D) whether the ALJ
7 erred at step five. ECF No. 8 at 5.

8 **DISCUSSION**

9 **A. Medical Opinions**

10 Under regulations applicable to this case, the ALJ is required to articulate the
11 persuasiveness of each medical opinion, specifically with respect to whether the opinions
12 are supported and consistent with the record. 20 C.F.R. § 416.920c(a)-(c). An ALJ's
13 consistency and supportability findings must be supported by substantial evidence. *See*
14 *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022). Plaintiff argues the ALJ misevaluated
15 two medical opinions. ECF No. 8 at 8. The Court discusses each in turn.

16 **1. Rebecca Beutler, EDD.**

17 As relevant here, Dr. Beutler, Plaintiff's treating clinician, opined in both 2020 and
18 2022 that Plaintiff, among other things, was severely limited in completing a normal
19 workday and workweek without interruptions from psychologically based symptoms. Tr.
20 787, 1011. The ALJ found Dr. Beutler's opinions unpersuasive. Tr. 36.

21 The ALJ first discounted the opinions as overly reliant on Plaintiff's subjective
22 complaints. On this record, the ALJ erred by discounting the opinions on this ground. *See*
23 *Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017) ("The report of a psychiatrist should
24 not be rejected simply because of the relative imprecision of the psychiatric methodology.
25 Psychiatric evaluations may appear subjective, especially compared to evaluation in other
26 medical fields. Diagnoses will always depend in part on the patient's self-report, as well as
27 on the clinician's observations of the patient. But such is the nature of psychiatry. Thus, the
28 rule allowing an ALJ to reject opinions based on self-reports does not apply in the same

1 manner to opinions regarding mental illness.") (cleaned up); *Lebus v. Harris*, 526 F. Supp.
2 56, 60 (N.D. Cal. 1981) ("Courts have recognized that a psychiatric impairment is not as
3 readily amenable to substantiation by objective laboratory testing as is a medical impairment
4 and that consequently, the diagnostic techniques employed in the field of psychiatry may be
5 somewhat less tangible than those in the field of medicine. In general, mental disorders
6 cannot be ascertained and verified as are most physical illnesses, for the mind cannot be
7 probed by mechanical devices in order to obtain objective clinical manifestations of mental
8 illness."). Further, the record indicates Dr. Beutler's opinions were based on clinical
9 observations and does not indicate the doctor found Plaintiff to be untruthful. Therefore,
10 this is no evidentiary basis for rejecting the opinions. *Cf. Ryan v. Comm'r of Soc. Sec.*, 528
11 F.3d 1194, 1199–200 (9th Cir. 2008) (noting an ALJ does not validly reject a doctor's
12 opinion "by questioning the credibility of the patient's complaints where the doctor does not
13 discredit those complaints and supports his ultimate opinion with his own observations").
14 The ALJ thus erred by discounting the opinions on this ground.

15 Next, the ALJ discounted the opinions on the ground "much more detailed psychiatric
16 treatment notes found elsewhere in the medical evidence of record provide a more reliable
17 picture of the claimant's mental functioning without substance use." Tr. 37. In support, the
18 ALJ cited to a 124-page exhibit (treatment notes from 2019 through 2021) and a 17-page
19 exhibit (treatment notes from August 2020). As an initial matter, an ALJ may not reject a
20 medical opinion "with boilerplate language that fails to offer a substantive basis for" the
21 ALJ's conclusion. *Garrison v. Colvin*, 759 F.3d 995, 1012-13 (9th Cir. 2014) (citing *Nguyen*
22 *v. Chater*, 100 F.3d 1462, 1464 (9th Cir. 1996) ("[A]n ALJ errs when he rejects a medical
23 opinion or assigns it little weight while doing nothing more than ignoring it, asserting
24 without explanation that another medical opinion is more persuasive, or criticizing it with
25 boilerplate language that fails to offer a substantive basis for his conclusion.")). Further, an
26 ALJ's rejection of a clinician's opinion on the ground that it is contrary to unelaborated
27 evidence in the record is "broad and vague," and fails "to specify why the ALJ felt the
28 [clinician's] opinion was flawed." *McAllister v. Sullivan*, 888 F.2d 599, 602 (9th Cir. 1989);

1 *see also Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (rather than merely stating
2 their conclusions, ALJs "must set forth [their] own interpretations and explain why they,
3 rather than the doctors', are correct") (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th
4 Cir. 1988)). The reviewing court need not comb the administrative record to find specific
5 conflicts. *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014). The ALJ thus erred by
6 discounting the opinions on this ground.

7 Finally, the ALJ discounted the August 2020 opinion on the ground it was "of limited
8 relevance [*sic*] the period at issue in this decision, starting on the application date of
9 November 9, 2020." Tr. 36. This finding is unsustainable. The Ninth Circuit has held that
10 "[m]edical opinions that predate the alleged onset of disability" – as opposed to the
11 *application date* – "are of limited relevance," noting that such limited relevance is
12 particularly true where, unlike here, disability is allegedly caused by a discrete event."
13 *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1165 (9th Cir. 2008); *see also*,
14 *e.g.*, *Henderson v. Comm'r of Soc. Sec. Admin.*, 2018 WL 2102401, at *9 (D. Or. May 4,
15 2018) ("While the date of the opinion may be one factor the ALJ can consider in giving an
16 opinion more or less weight, a medical opinion is not insignificant or not probative merely
17 because it is rendered prior to an alleged onset date, particularly in cases where the claimant
18 suffers from an ongoing impairment."). Here, the record reflects that Plaintiff's
19 psychological impairments neither began at the time of the application date nor were caused
20 by a discrete event. In cases concerning long-lasting mental impairments, as here, an ALJ
21 must evaluate the medical evidence "with an understanding of the patient's overall well-
22 being and the nature of [his] symptoms." *Attmore v. Colvin*, 827 F.3d 872, 877 (9th Cir.
23 2016). Dr. Beutler's August 2020 opinion thus is relevant to the longitudinal understanding
24 of Plaintiff's symptoms.² Further, in tension with the ALJ's finding, the ALJ *credited* other
25

26 ² *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir. 1995), on which the Commissioner relies,
27 *see* ECF No. 12 at 7, is plainly inapposite. Johnson "injured her lower back" – a discrete
28 event – and one of her doctors offered a "retrospective" opinion dated six years after the

1 medical evidence predating the application date, as discussed above. *See* Tr. 37. The ALJ
2 thus erred by discounting the opinions on this ground.

3 The ALJ accordingly erred by discounting Dr. Beutler's opinions.

4 **2. David Morgan, Ph.D.**

5 Dr. Morgan examined Plaintiff on July 23, 2020, conducting a clinical interview and
6 performing a mental status examination. Tr. 285-90. Dr. Morgan assessed the overall
7 severity of Plaintiff's impairments as "marked" and opined Plaintiff had a series of marked
8 limitations, including in his ability to complete a normal workday and workweek without
9 interruptions from psychologically based symptoms. Tr. 287. The ALJ found Dr. Morgan's
10 opinion unpersuasive. Tr. 36.

11 The ALJ first discounted the opinion as unsupported by "contemporaneous objective
12 findings." Tr. 36. On this record, the ALJ erred by discounting the opinion on this ground,
13 for the same reasons discussed above. *See Buck*, 869 F.3d at 1049; *Lebus*, 526 F. Supp.
14 at 60.

15 The ALJ next discounted the opinion as inconsistent with unspecified
16 "high-functioning activities of daily living," citing to numerous pages in the record. Tr. 36.
17 On its own view of the record citations provided by the ALJ, the Court fails to discern how
18 the activities described therein undermine the doctor's opined limitations. The ALJ thus
19 erred by discounting the opinion on this ground.

20 Finally, the ALJ discounted the opinion, rendered several months prior to the
21 application date, as "of limited relevance to the period at issue in this decision." Tr. 36. For
22 the same reasons discussed above, the ALJ erred by discounting the opinion on this ground.

23 _____
24 expiration of Johnson's disability insurance and eleven years after Johnson's injury. 60 F.3d
25 at 1432. The Ninth Circuit concluded the ALJ properly discounted this opinion as "not
26 substantiated by medical evidence relevant to the period in question." *Id.* at 1433. By
27 contrast, Dr. Beutler's August 2020 opinion, rendered a few months prior to the application
28 date, neither addressed a discrete event nor was retrospective in nature.

1 The ALJ accordingly erred by discounting Dr. Morgan's opinion.

2 **B. Subjective Complaints**

3 Plaintiff contends the ALJ erred by not properly assessing Plaintiff's symptom
4 complaints. ECF No. 8 at 18-20. Where, as here, the ALJ determines a claimant has
5 presented objective medical evidence establishing underlying impairments that could cause
6 the symptoms alleged, and there is no affirmative evidence of malingering, the ALJ can only
7 discount the claimant's testimony as to symptom severity by providing "specific, clear, and
8 convincing" reasons supported by substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664,
9 678 (9th Cir. 2017). The Court concludes the ALJ failed to offer clear and convincing
10 reasons to discount Plaintiff's testimony.

11 The ALJ first discounted Plaintiff's testimony as inconsistent with the medical
12 evidence, to include Plaintiff's response to and course of treatment. Tr. 33-35. However,
13 because the ALJ erred in evaluating the opinions of Dr. Beutler and Dr. Morgan, and
14 necessarily failed to properly evaluate the medical evidence, as discussed above, this is not
15 a valid ground to discount Plaintiff's testimony.

16 The ALJ next discounted Plaintiff's testimony as inconsistent with his activities.
17 Tr. 33-34. In support, the ALJ noted Plaintiff reported "caring for pets, preparing simple
18 meals, going out alone, riding the bus, shopping in stores and via computer, and going to
19 church regularly." Tr. 34. However, Plaintiff's activities are neither inconsistent with nor a
20 valid reason to discount his allegations. *See Diedrich v. Berryhill*, 874 F.3d 634, 643 (9th
21 Cir. 2017) ("House chores, cooking simple meals, self-grooming, paying bills, writing
22 checks, and caring for a cat in one's own home, as well as occasional shopping outside the
23 home, are not similar to typical work responsibilities."); *Vertigan v. Halter*, 260 F.3d 1044,
24 1050 (9th Cir. 2001) ("This court has repeatedly asserted that the mere fact that a plaintiff
25 has carried on certain daily activities, such as grocery shopping, driving a car, or limited
26 walking for exercise, does not in any way detract from her credibility as to her overall
27 disability. One does not need to be 'utterly incapacitated' in order to be disabled.") (quoting
28 *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)); *Reddick*, 157 F.3d at 722 ("Several courts,

1 including this one, have recognized that disability claimants should not be penalized for
2 attempting to lead normal lives in the face of their limitations."); *Cooper v. Bowen*, 815 F.2d
3 557, 561 (9th Cir. 1987) (noting that a disability claimant need not "vegetate in a dark room"
4 in order to be deemed eligible for benefits). Similarly, Plaintiff's activities do not "meet the
5 threshold for transferable work skills." *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007)
6 (citing *Fair*, 885 F.2d at 603). The ALJ thus erred by discounting Plaintiff's testimony on
7 this ground.

8 Finally, the ALJ discounted Plaintiff's testimony as inconsistent with his job-seeking
9 efforts and work attempts. Tr. 35. These are insufficient reasons to discount Plaintiff's
10 testimony. *Cf. Lingenfelter v. Astrue*, 504 F.3d 1028, 1039 (9th Cir. 2007) ("[I]f working
11 for almost nine months is not evidence that a disability benefit recipient is no longer
12 disabled, then a nine week unsuccessful work attempt is surely not a clear and convincing
13 reason for finding that a claimant is not credible regarding the severity of his impairments.").

14 The ALJ accordingly erred by discounting Plaintiff's testimony.

15 **SCOPE OF REMAND**

16 This case must be remanded because the ALJ harmfully misevaluated the medical
17 evidence and Plaintiff's testimony. Plaintiff contends the Court should remand for an
18 immediate award of benefits. ECF No. 8 at 21. Such a remand should be granted only in a
19 rare case and this is not such a case. The medical evidence and Plaintiff's testimony must
20 be reweighed and this is a function the Court cannot perform in the first instance on appeal.
21 Further proceedings are thus not only helpful but necessary. *See Brown-Hunter v. Colvin*,
22 806 F.3d 487, 495 (9th Cir. 2015) (noting a remand for an immediate award of benefits is
23 an "extreme remedy," appropriate "only in 'rare circumstances'") (quoting *Treichler v.*
24 *Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014)).

25 Because the ALJ misevaluated the medical evidence and Plaintiff's testimony, the
26 ALJ will necessarily need to reassess the step three finding – which was based on the ALJ's
27 assessment of both the medical evidence and Plaintiff's testimony – and determine whether
28 the RFC needs to be adjusted. For this reason, the Court need not reach Plaintiff's remaining

1 assignments of error. *See PDK Labs. Inc. v. DEA*, 362 F.3d 786, 799 (D.C. Cir. 2004) ("[I]f
2 it is not necessary to decide more, it is necessary not to decide more.") (Roberts, J.,
3 concurring in part and concurring in the judgment).

4 On remand, the ALJ shall reevaluate the opinions of Dr. Beutler and Dr. Morgan,
5 reassess Plaintiff's testimony, reevaluate Plaintiff's claims at step three, redetermine the RFC
6 as needed, and proceed to the remaining steps as appropriate.

7 **CONCLUSION**

8 Having reviewed the record and the ALJ's findings, the Commissioner's final decision
9 is **REVERSED** and this case is **REMANDED** for further proceedings under sentence four
10 of 42 U.S.C. § 405(g). Accordingly,

11 **IT IS ORDERED** that:

12 1. Plaintiff's Motion for Summary Judgment, filed November 14, 2023, **ECF No. 8**,
13 is **GRANTED**.

14 2. Defendant's Motion for Summary Judgment, filed February 12, 2024, **ECF**
15 **No. 12**, is **DENIED**.

16 The District Court Executive is directed to file this Order and provide a copy to
17 counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and the file shall
18 be **CLOSED**.

19 **DATED** this 1st day of May, 2024.

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21 _____
22 WM. FREMMING NIELSEN
23 SENIOR UNITED STATES DISTRICT JUDGE

24 05-01-24