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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Wyatt Dennis Logan,

No. CV-16-08296-PCT-ESW

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Plaintiff,

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v.

ORDER

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Acting Commissioner of the Social Security
Administration,

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Defendant.

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Pending before the Court is Wyatt Dennis Logan’s (“Plaintiff”) appeal of the Social Security Administration’s (“Social Security”) denial of his applications for disability insurance benefits and supplemental security income. The Court has jurisdiction to decide Plaintiff’s appeal pursuant to 42 U.S.C. §§ 405(g), 1383(c). Under 42 U.S.C. § 405(g), the Court has the power to enter, based upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the case for a rehearing. Both parties have consented to the exercise of U.S. Magistrate Judge jurisdiction. (Doc. 17).

1 After reviewing the Administrative Record (“A.R.”) and the parties’ briefing
2 (Docs. 16, 18, 19), the Court finds that the Administrative Law Judge’s (“ALJ”) decision
3 is supported by substantial evidence and is free of harmful legal error. The decision is
4 therefore affirmed.

5 I. LEGAL STANDARDS

6 A. Disability Analysis: Five-Step Evaluation

7 The Social Security Act (the “Act”) provides for disability insurance benefits to
8 those who have contributed to the Social Security program and who suffer from a
9 physical or mental disability. 42 U.S.C. § 423(a)(1). To be eligible for benefits based
10 on an alleged disability, the claimant must show that he or she suffers from a medically
11 determinable physical or mental impairment that prohibits him or her from engaging in
12 any substantial gainful activity. 42 U.S.C. § 423(d)(1)(A). The claimant must also show
13 that the impairment is expected to cause death or last for a continuous period of at least
14 12 months. *Id.*

15 To decide if a claimant is entitled to Social Security benefits, an ALJ conducts an
16 analysis consisting of five questions, which are considered in sequential steps. 20 C.F.R.
17 § 404.1520(a). The claimant has the burden of proof regarding the first four steps:¹

18 **Step One:** Is the claimant engaged in “substantial gainful
19 activity”? If so, the analysis ends and disability benefits are
denied. Otherwise, the ALJ proceeds to step two.

20 **Step Two:** Does the claimant have a medically severe
21 impairment or combination of impairments? A severe
22 impairment is one which significantly limits the claimant’s
23 physical or mental ability to do basic work activities. 20
24 C.F.R. § 404.1520(c). If the claimant does not have a severe
impairment or combination of impairments, disability benefits
are denied at this step. Otherwise, the ALJ proceeds to step
three.

25 **Step Three:** Is the impairment equivalent to one of a number
26 of listed impairments that the Commissioner acknowledges
27 are so severe as to preclude substantial gainful activity? 20

28 ¹ *Parra v. Astrue*, 481 F.3d 742,746 (9th Cir. 2007).

1 C.F.R. § 404.1520(d). If the impairment meets or equals one
2 of the listed impairments, the claimant is conclusively
3 presumed to be disabled. If the impairment is not one that is
4 presumed to be disabling, the ALJ proceeds to the fourth step
5 of the analysis.

6 **Step Four:** Does the impairment prevent the claimant from
7 performing work which the claimant performed in the past?
8 If not, the claimant is “not disabled” and disability benefits
9 are denied without continuing the analysis. 20 C.F.R. §
10 404.1520(f). Otherwise, the ALJ proceeds to the last step.

11 If the analysis proceeds to the final question, the burden of proof shifts to the
12 Commissioner:²

13 **Step Five:** Can the claimant perform other work in the
14 national economy in light of his or her age, education, and
15 work experience? The claimant is entitled to disability
16 benefits only if he or she is unable to perform other work. 20
17 C.F.R. § 404.1520(g). Social Security is responsible for
18 providing evidence that demonstrates that other work exists in
19 significant numbers in the national economy that the claimant
20 can do, given the claimant’s residual functional capacity, age,
21 education, and work experience. *Id.*

22 **B. Standard of Review Applicable to ALJ’s Determination**

23 The Court must affirm an ALJ’s decision if it is supported by substantial evidence
24 and is based on correct legal standards. *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir.
25 2012); *Marcia v. Sullivan*, 900 F.2d 172, 174 (9th Cir. 1990). Although “substantial
26 evidence” is less than a preponderance, it is more than a “mere scintilla.” *Richardson v.*
27 *Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison v. NLRB*, 305 U.S. 197,
28 229 (1938)). It means such relevant evidence as a reasonable mind might accept as
adequate to support a conclusion. *Id.*

In determining whether substantial evidence supports the ALJ’s decision, the
Court considers the record as a whole, weighing both the evidence that supports and
detracts from the ALJ’s conclusions. *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir.

² *Parra*, 481 F.3d at 746.

1 1998); *Tylitzki v. Shalala*, 999 F.2d 1411, 1413 (9th Cir. 1993). If there is sufficient
2 evidence to support the ALJ’s determination, the Court cannot substitute its own
3 determination. *See Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th
4 Cir.1999) (“Where the evidence is susceptible to more than one rational interpretation, it
5 is the ALJ’s conclusion that must be upheld.”); *Magallanes v. Bowen*, 881 F.2d 747, 750
6 (9th Cir. 1989). This is because the ALJ, not the Court, is responsible for resolving
7 conflicts, ambiguity, and determining credibility. *Magallanes*, 881 F.2d at 750; *see also*
8 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

9 The Court must also consider the harmless error doctrine when reviewing an
10 ALJ’s decision. This doctrine provides that an ALJ’s decision need not be remanded or
11 reversed if it is clear from the record that the error is “inconsequential to the ultimate
12 nondisability determination.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008)
13 (citations omitted); *Molina*, 674 F.3d at 1115 (an error is harmless so long as there
14 remains substantial evidence supporting the ALJ’s decision and the error “does not
15 negate the validity of the ALJ’s ultimate conclusion.”) (citations omitted).

16 **II. PLAINTIFF’S APPEAL**

17 **A. Procedural Background**

18 Plaintiff, who was born in 1970, has been employed as a trucking supervisor and
19 tank truck driver. (A.R. 76, 1407). In 2010, Plaintiff filed an application for disability
20 insurance benefits. (A.R. 202-03). Plaintiff’s application alleged that on March 10,
21 2010, he became unable to work due to (i) “[n]europathy, heart, diabetes, arthritis, knee,
22 back, hips,” carpal tunnel, neuralgia paraesthetica, high blood pressure, and spinostenosis.
23 (A.R. 76). Social Security denied the application on October 20, 2010. (A.R. 115-18).
24 In July 2011, upon Plaintiff’s request for reconsideration, Social Security affirmed the
25 denial of benefits. (A.R. 120-23). Plaintiff sought further review by an ALJ, who
26 conducted a hearing in October 2012. (A.R. 36-74, 124-25).

27 In his December 12, 2012 decision, the ALJ found that Plaintiff is not disabled
28 within the meaning of the Social Security Act. (A.R. 18-29). The Appeals Council

1 denied Plaintiff's request for review, making the ALJ's decision the final decision of the
2 Social Security Commissioner. (A.R. 1-4, 13-14). In April 2014, Plaintiff filed a
3 Complaint requesting judicial review and reversal of the ALJ's decision. (Case No.
4 CV14-08061, Doc. 1). The parties filed a Stipulated Motion to Remand, which the Court
5 granted. (*Id.*, Docs. 27, 28).

6 Upon remand, an ALJ held a second administrative hearing. (A.R. 1387-1415).
7 As explained in a October 19, 2016 decision, the ALJ did not find that Plaintiff was
8 disabled during the relevant period. (A.R. 1365-78). Plaintiff filed this action on
9 December 19, 2016 seeking review of the decision.

10 **B. The ALJ's Application of the Five-Step Disability Analysis**

11 The ALJ completed all five steps of the disability analysis before finding that
12 Plaintiff is not entitled to disability benefits.

13 **1. Step One: Engagement in "Substantial Gainful Activity"**

14 The ALJ determined that Plaintiff has not engaged in substantial gainful activity
15 since March 10, 2010, the alleged disability onset date, through December 31, 2015, the
16 date last insured. (A.R. 1367). Neither party disputes this determination.

17 **2. Step Two: Presence of Medically Severe Impairment/Combination 18 of Impairments**

19 The ALJ found that Plaintiff has the following severe impairments: obesity,
20 diabetes, lumbar degenerative disc disease with December 2015 laminectomy, history of
21 reactive arthritis, coronary artery disease with history of stent placement, mood disorder,
22 dysthymia, marijuana abuse, adjustment disorder with anxiety and depressed mood, and
23 intermittent explosive disorder. (A.R. 1367). This determination is undisputed.

24 **3. Step Three: Presence of Listed Impairment(s)**

25 The ALJ found that Plaintiff does not have an impairment or combination of
26 impairments that meets or medically equals an impairment listed in 20 C.F.R. Part 404,
27 Subpart P, Appendix 1 of the Social Security regulations. (A.R. 1368-69). Neither party
28 challenges the ALJ's determination at this step.

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4. Step Four: Capacity to Perform Past Relevant Work

The ALJ found that Plaintiff retained the residual functional capacity (“RFC”) to perform sedentary work as defined in 20 C.F.R. § 404.1567(b), except that Plaintiff can never climb ladders, ropes, or scaffolds; occasionally climb ramps or stairs, balance, stoop, crouch, kneel, and crawl; occasionally be exposed to non-weather related extreme cold and extreme heat, and excessive vibration; occasionally be exposed to dangerous machinery with moving, mechanical parts; and occasionally be exposed to unprotected heights that are high or exposed. The claimant needs work with only occasional interaction with co-workers and supervisors. He can work in the vicinity of others but not in tandem with co-workers. Public interaction must be brief and casual (such as a parking lot cashier serving one customer at a time). He cannot do sales work with the public.

(A.R. 1369-70). Based on the assessed RFC and the testimony of a Vocational Expert (“VE”), the ALJ concluded that Plaintiff is not capable of performing his past relevant work. (A.R. 1376). Plaintiff argues that the ALJ improperly weighed the evidence in assessing Plaintiff’s RFC, but the parties do not dispute the ALJ’s determination at Step Four that Plaintiff is unable to perform his past relevant work.

5. Step Five: Capacity to Perform Other Work

At the administrative hearing, the VE testified that based on Plaintiff’s RFC, Plaintiff would be able to perform the requirements of representative occupations such as motor vehicle dispatcher, “marker in merchandise markers,” and routing clerk. (A.R. 1408-09). The ALJ found that the VE’s testimony was consistent with the information in the Dictionary of Occupational Titles and that the jobs identified by the VE existed in significant numbers in the national economy. (A.R. 1377). After considering the VE’s testimony, Plaintiff’s age, education, work experience, and RFC, the ALJ determined that Plaintiff can make a successful adjustment to other work and is therefore not disabled. (*Id.*). Plaintiff asserts that due to restrictions not accounted for in the ALJ’s RFC assessment, he is unable to engage in any work.

1 **C. Opinions of Chad Hartley, M.D.**

2 In weighing medical source opinions in Social Security cases, there are three
3 categories of physicians: (i) treating physicians, who actually treat the claimant; (2)
4 examining physicians, who examine but do not treat the claimant; and (3) non-examining
5 physicians, who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821,
6 830 (9th Cir. 1995). An ALJ must provide clear and convincing reasons that are
7 supported by substantial evidence for rejecting the uncontradicted opinion of a treating or
8 examining doctor. *Id.* at 830-31; *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir.
9 2005). An ALJ cannot reject a treating or examining physician’s opinion in favor of
10 another physician’s opinion without first providing specific and legitimate reasons that
11 are supported by substantial evidence. *Bayliss*, 427 F.3d at 1216; 20 C.F.R. §
12 404.1527(c)(4) (an ALJ must consider whether an opinion is consistent with the record as
13 a whole); *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002); *Tommasetti*, 533 F.3d
14 at 1041 (finding it not improper for an ALJ to reject a treating physician’s opinion that is
15 inconsistent with the record).

16 In a summary report, Chad Hartley, M.D. stated that Plaintiff “has difficulty with
17 standing, sitting, walking, or lifting for any significant period of time.” (A.R. 2304). The
18 ALJ gave this statement little weight. (A.R. 1374). The ALJ first noted that the
19 “statements were made at least six months after the date last insured.” (*Id.*). This is an
20 invalid reason for discounting Dr. Hartley’s statement. Ninth Circuit case law provides
21 that “medical evaluations made after the expiration of a claimant’s insured status are
22 relevant to an evaluation of the pre-expiration condition.” *Smith v. Bowen*, 849 F.2d
23 1222, 1225 (9th Cir. 1988) (citing cases from the Eighth, Eleventh, Fourth, Second, and
24 Seventh Circuits); *see also Lingenfelter v. Astrue*, 504 F.3d 1028, 1033 n.3 (9th Cir.
25 2007) (noting that medical reports made after the plaintiff’s disability insurance lapsed
26 were relevant and were properly considered by the ALJ and the Appeals Council
27 under *Smith*). Moreover, the most recent medical records are the most probative in cases
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1 where the claimant's condition is or may be progressively deteriorating.³ *Stone v.*
2 *Heckler*, 761 F.2d 530, 532 (9th Cir. 1985) (holding that earlier medical evaluations do
3 not constitute substantial evidence for rejecting treating physician's subsequent and more
4 current opinion when claimant's condition is degenerative); *Magallanes v. Bowen*, 881
5 F.2d 747, 755 (9th Cir. 1989) ("Where a claimant's condition becomes progressively
6 worse, medical reports from an early phase of the disease are likely to be less probative
7 than later reports."); *see also Young v. Heckler*, 803 F.2d 963, 968 (9th Cir.
8 1986) ("Where claimant's medical condition is progressively deteriorating, the most
9 recent medical report is the most probative."). The Court finds that the ALJ's first reason
10 for discounting Dr. Hartley's statements is legally invalid.

11 Next, the ALJ concluded that the "statements are not supported by the above-
12 discussed objective evidence originating from the relevant period." (A.R. 1374). The
13 ALJ, however, does not explain the reasons for reaching this conclusion. *See Brown-*
14 *Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015) (explaining that the Court cannot
15 "speculate as to the grounds for the ALJ's conclusions"); *see also Orn v. Astrue*, 495 F.3d
16 625, 632 (9th Cir. 2007) ("The ALJ must do more than offer his conclusions. He must
17 set forth his own interpretations and explain why they, rather than the doctors', are
18 correct.") (citation omitted); *Regennitter v. Comm'r of Soc. Sec. Admin*, 166 F.3d 1294,
19 1299 (9th Cir. 1999) ("[C]onclusory reasons will not justify an ALJ's rejection of a
20 medical opinion."). The ALJ's decision does not discuss a December 11, 2015 magnetic
21 resonance imaging ("MRI") report that states: "Areas of central stenosis at L4-5 and L5-
22 S1. This is most significant at L4-5. This level most likely accounts for the patient's
23 symptomatology." (A.R. 1776). Nor does the decision discuss a July 6, 2016 MRI that
24 found postsurgical scarring in the paraspinal musculature and subcutaneous soft tissues
25 posterior to the spine and "disc protrusion at L4-L5 [that] causes relatively severe spinal

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28 ³ The record contains evidence that Plaintiff's condition has deteriorated. For instance, an August 2015 medical record states that Plaintiff presented with an increase in frequency and intensity of pain. (A.R. 2290)

1 stenosis and apparent compression of the passing nerve roots.”⁴ (A.R. 2305). To
2 reiterate, the mere fact that this record is after Plaintiff’s date last insured does not in
3 itself render the record irrelevant to the disability determination. *Smith*, 849 F.2d at 1225.
4 The Court does not find that the ALJ’s second reason for assigning little weight to Dr.
5 Hartley’s statement is sufficiently specific.

6 The ALJ also found that Dr. Hartley’s statements are not consistent with
7 Plaintiff’s “physically demanding activities.” (A.R. 1374). The ALJ explained that
8 “[a]ctivities such as hiking, weight lifting, yard work, repair work, using a treadmill, and
9 shopping suggest substantial abilities to walk, stand, lift, bend, and twist, while activities
10 such as college attendance, riding a motorcycle, driving, and church attendance suggest
11 substantial capacity to sit.” (*Id.*). The ALJ’s decision does not adequately explain how
12 Plaintiff’s daily activities translate to the ability to sustain competitive employment
13 on a full-time basis. *See Garrison v. Colvin*, 759 F.3d 995, 1016 (9th Cir. 2014)
14 (stating that the Ninth Circuit has “repeatedly warned that ALJs must be especially
15 cautious in concluding that daily activities are inconsistent with testimony about pain,
16 because impairments that would unquestionably preclude work and all the pressures of a
17 workplace environment will often be consistent with doing more than merely resting in
18 bed all day”). “[D]isability claimants should not be penalized for attempting to lead
19 normal lives in the face of their limitations.” *Reddick*, 157 F.3d at 722. The Court
20 finds that the ALJ’s third reason for discounting Dr. Hartley’s statement is not
21 sufficiently specific.

22 The ALJ also gave Dr. Hartley’s statement little weight because the statement is
23 “vague, lacking a specific degree of ‘difficulty.’” (A.R. 1374). The ALJ also noted the
24 ambiguous nature of Dr. Hartley’s statement that Plaintiff had been “unable to work,”
25 acknowledging that it may be considered a medical opinion that “appears [to be] based
26 primarily on the claimant’s subjective complaints.” (A.R. 1374). Plaintiff correctly

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28 ⁴ Plaintiff had a L5 microdiscectomy on December 25, 2015, prior to Plaintiff’s
last date insured. (A.R. 2303)

1 asserts (Doc. 16 at 16) that an ALJ has a duty to develop the record when there is
2 “ambiguous evidence or when the record is insufficient to allow for proper evaluation of
3 the evidence.” *Mayes v. Massanari*, 276 F.3d 453, 459-460 (9th Cir. 2001); *see also*
4 *Armstrong v. Comm’r of Soc. Sec. Admin.*, 160 F.3d 587, 589 (9th Cir. 1998) (“[T]he
5 ALJ has a duty to assist in developing the record.”); *see also Sims v. Apfel*, 530 U.S. 103,
6 110-11 (2000) (“Social Security proceedings are inquisitorial rather than adversarial. It is
7 the ALJ’s duty to investigate the facts and develop the arguments both for and against
8 granting benefits . . .”). Dr. Hartley began treating Plaintiff in 2013, approximately one
9 year before he wrote his summary report. (A.R. 2303). Given this treating relationship
10 and the recency of Dr. Hartley’s report, the Court finds that the ALJ failed to fully and
11 fairly develop the record after acknowledging the ambiguities in the report. *Cf. Brown v.*
12 *Berryhill*, 697 F. App’x 548, 549 (9th Cir. 2017) (“Because the record evidence was not
13 ambiguous and the record was sufficient to allow for proper evaluation of the evidence,
14 the ALJ was not required to re-contact Brown’s doctors or further develop the record.”).
15 As explained in Section II(E) below, the Court will remand the case for further
16 proceedings.

17 **D. Plaintiff’s Symptom Testimony**

18 When evaluating the credibility of a plaintiff’s testimony regarding subjective pain
19 or symptoms, the ALJ must engage in a two-step analysis. *Vasquez v. Astrue*, 572 F.3d
20 586, 591 (9th Cir. 2009). In the first step, the ALJ must determine whether the claimant
21 has presented objective medical evidence of an underlying impairment “which could
22 reasonably be expected to produce the pain or other symptoms alleged.” *Lingenfelter v.*
23 *Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007). The plaintiff does not have to show that the
24 impairment could reasonably be expected to cause the severity of the symptoms. Rather,
25 a plaintiff must only show that it could have caused some degree of the symptoms.
26 *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996).

27 If a plaintiff meets the first step, and there is no affirmative evidence of
28 malingering, the ALJ can only reject a plaintiff’s testimony about the severity of his or

1 her symptoms by offering specific, clear, and convincing reasons. *Lingenfelter*, 504 F.3d
2 at 1036. The ALJ cannot rely on general findings. The ALJ must identify specifically
3 what testimony is not credible and what evidence undermines the plaintiff’s complaints.
4 *Berry v. Astrue*, 622 F.3d 1228, 1234 (9th Cir. 2010). In weighing a plaintiff’s
5 credibility, the ALJ can consider many factors including: a plaintiff’s reputation for
6 truthfulness, prior inconsistent statements concerning the symptoms, unexplained or
7 inadequately explained failure to seek treatment, and the plaintiff’s daily activities.
8 *Smolen*, 80 F.3d at 1284; *see also* 20 C.F.R. § 404.1529(c)(4) (Social Security must
9 consider whether there are conflicts between a claimant’s statements and the rest of the
10 evidence).

11 Here, the ALJ found that Plaintiff’s medically determinable impairments could
12 reasonably be expected to cause his alleged symptoms, but concluded that Plaintiff’s
13 “statements concerning the intensity, persistence, and limiting effects of these symptoms
14 are not entirely credible for the reasons explained in this decision.” (A.R. 1370). In the
15 section of the Opening Brief challenging the ALJ’s credibility assessment, Plaintiff states
16 that his arguments challenging the ALJ’s assessment of Dr. Hartley’s report are “also
17 attacks on the ALJ’s credibility finding, but Plaintiff addresses in this section of the brief
18 only one additional fact with respect to that finding: Plaintiff’s exemplary work history.”
19 (Doc. 16 at 21).

20 Plaintiff asserts that his “lengthy work history is a factor that lends to his
21 credibility, not detracts from it, particularly because the ALJ cited the fact that Plaintiff
22 had paid off his home, and the fact that he received private disability payments as reasons
23 to find Plaintiff as less credible.” (*Id.* at 23). The ALJ’s decision, however, indicates that
24 the ALJ did review Plaintiff’s earning record. (A.R. 1365) (“The claimant’s earnings
25 record shows that the claimant has acquired sufficient quarters of coverage to remain
26 insured through December 31, 2015.”). Further, an ALJ is not required to discuss every
27 piece of evidence in the record. *Howard v. Barnhart*, 341 F.3d 1006, 1012 (9th Cir.
28 2003). While a claimant’s work history *may* be deemed probative of credibility, a strong

1 work history does not require an ALJ to credit a plaintiff's symptom testimony. The
2 Court does not find that the ALJ's failure to engage in a more extensive discussion of
3 Plaintiff's work history is harmful error. Yet as the Court is remanding the case for
4 further proceedings and the issuance of a new decision, the ALJ shall specifically explain
5 in the decision the ALJ's findings with respect to how Plaintiff's work history impacts
6 the credibility assessment.

7 In addition, the Court finds that the ALJ's credibility assessment does not
8 adequately explain how Plaintiff's reported activities translate to the ability to maintain
9 fulltime employment. (A.R. 1370-71). For instance, although Plaintiff reported being a
10 "baseball assistant," the record does not reflect what that entails. (A.R. 2180). The ALJ
11 did not inquire into the extent of Plaintiff's daily activities at the administrative hearing.
12 (A.R. 1471-1508). An ALJ's speculation does not constitute substantial evidence. *See*
13 *Edlund v. Massanari*, 253 F.3d 1152, 1159 (9th Cir. 2001) (explains that an ALJ's
14 "concerns and speculation" that a claimant's mental impairments were caused by drug or
15 alcohol abuse "do not amount to substantial evidence").

16 The ALJ also rejected Plaintiff's symptom testimony on the ground that the
17 medical evidence does not support Plaintiff's "contentions of disabling pain and
18 extremely limited standing and walking." (A.R. 1371). Although the lack of medical
19 evidence cannot form the sole basis for discounting pain testimony, it is a factor that the
20 ALJ can consider in his or her credibility analysis. *See* 20 C.F.R. § 404.1529(c)(2);
21 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *Burch v. Barnhart*, 400 F.3d 676
22 (9th Cir. 2005); *see also Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161
23 (9th Cir. 2008) ("Contradiction with the medical record is a sufficient basis for rejecting
24 the claimant's subjective testimony."). The Court does not find that the ALJ's decision
25 sufficiently explains how the medical evidence contradicts Plaintiff's symptom
26 testimony.

1 **E. The Court will Remand the Matter for Further Proceedings**

2 Ninth Circuit jurisprudence “requires remand for further proceedings in all but the
3 rarest cases.” *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1101 n.5 (9th Cir.
4 2014). The Ninth Circuit, however, has adopted a test to determine when a case should
5 be remanded for payment of benefits in cases where an ALJ has improperly rejected
6 claimant testimony or medical opinion evidence. *Id.* at 1100-01; *Garrison*, 759 F.3d at
7 1020. This test is commonly referred to as the “credit-as-true” rule, which consists of the
8 following three factors:

- 9 1. Has the ALJ failed to provide legally sufficient reasons for
10 rejecting evidence, whether claimant testimony or medical
11 opinion? *Treichler*, 775 F.3d at 1100-01.
- 12 2. Has the record been fully developed, are there outstanding
13 issues that must be resolved before a disability
14 determination can be made, or would further administrative
15 proceedings be useful? *Id.* at 1101. To clarify this factor,
16 the Ninth Circuit has stated that “[w]here there is
17 conflicting evidence, and not all essential factual issues
18 have been resolved, a remand for an award of benefits is
19 inappropriate.” *Id.*
- 20 3. If the improperly discredited evidence were credited as true,
21 would the ALJ be required to find the claimant disabled on
22 remand? *Id.*; *Garrison*, 759 F.3d at 1020.

23 Where a court has found that a claimant has failed to satisfy one of the factors of
24 the credit-as-true rule, the court does not need to address the remaining factors.
25 *Treichler*, 775 F.3d at 1107 (declining to address final step of the rule after determining
26 that the claimant has failed to satisfy the second step). Moreover, even if all three factors
27 are met, a court retains the discretion to remand a case for additional evidence or to
28 award benefits. *Id.* at 1101-02. A court may remand for further proceedings “when the
record as a whole creates serious doubt as to whether the claimant is, in fact, disabled
within the meaning of the Social Security Act.” *Garrison*, 759 F.3d at 1021. In
Treichler, the Ninth Circuit noted that “[w]here an ALJ makes a legal error, but the

1 record is uncertain and ambiguous, the proper approach is to remand the case to the
2 agency.” 775 F.3d at 1105.

3 As explained, the Court finds that the ALJ failed to develop the record with
4 respect to the ambiguities in Dr. Hartley’s report. In addition, the Court finds that the
5 ALJ’s decision does not sufficiently explain why the ALJ found Plaintiff’s symptom
6 testimony not credible. Because not all factual issues have been resolved, the Court finds
7 that it is appropriate to remand the case for further proceedings.

8 **III. CONCLUSION**

9 Based on the foregoing,

10 **IT IS ORDERED** reversing the decision of the Commissioner of Social Security
11 and remanding for further administrative proceedings. The ALJ shall issue a new
12 decision in accordance with this Order and applicable law. The Clerk of Court is
13 directed to enter judgment accordingly.

14 Dated this 13th day of February, 2018.

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17 Eileen S. Willett
18 United States Magistrate Judge
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