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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LEWIS KAPLANSKI,	)	Case No. CV 11-10644-PA (PJW)
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
COMMISSIONER OF THE	)	
SOCIAL SECURITY ADMINISTRATION,	)	
	)	
Defendant.	)	

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I. INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying his application for Supplemental Security Income ("SSI") and Disability Insurance Benefits ("DIB"). He claims that the Administrative Law Judge ("ALJ") erred when she rejected the treating psychiatrist's opinion that he was disabled and accepted the reviewing psychiatrist's opinion that he was not. For the reasons discussed below, the decision is reversed and the case is remanded for further consideration.

II. SUMMARY OF PROCEEDINGS

In March 2009, Plaintiff applied for SSI and DIB, alleging that he was disabled as of May 2005, due to bipolar disorder and

1 depression. (Administrative Record ("AR") 131-35, 148.) His  
2 applications were denied initially and on reconsideration. (AR 77,  
3 78, 79, 80, 83-99.) He then requested and was granted a hearing  
4 before an ALJ. (AR 42-43.) On June 14, 2010, he appeared with  
5 counsel for the hearing. (AR 47-73.) On June 30, 2010, the ALJ  
6 issued a decision denying benefits. (AR 19-28.) Plaintiff appealed  
7 to the Appeals Council, which denied review. (AR 1-6.) This action  
8 followed.

### 9 III. ANALYSIS

10 Plaintiff contends that the ALJ erred when he rejected the  
11 opinion of the treating psychiatrist that Plaintiff's bipolar disorder  
12 prevented him from working and accepted, instead, the opinion of the  
13 reviewing psychiatrist that it did not. (AR 26-27.) For the  
14 following reasons, the Court concludes that the ALJ erred.

15 "By rule, the [Agency] favors the opinion of a treating physician  
16 over non-treating physicians." *Orn v. Astrue*, 495 F.3d 625, 631 (9th  
17 Cir. 2007); *see also Morgan v. Comm'r*, 169 F.3d 595, 600 (9th Cir.  
18 1999) (explaining that a treating physician's opinion "is given  
19 deference because 'he is employed to cure and has a greater  
20 opportunity to know and observe the patient as an individual'"  
21 (quoting *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9th Cir. 1987))). For  
22 that reason, generally speaking, a treating physician's opinion that  
23 is well-supported and not inconsistent with other substantial evidence  
24 in the record will be given controlling weight. *Orn*, 495 F.3d at 631.

25 That being said, however, an ALJ is not required to simply accept  
26 a treating doctor's opinion. Where, as here, the opinion is  
27 contradicted by another doctor's opinion, the ALJ is empowered to  
28 reject it for specific and legitimate reasons that are supported by

1 substantial evidence in the record. See *Thomas v. Barnhart*, 278 F.3d  
2 947, 957 (9th Cir. 2002) (quoting *Magallanes v. Bowen*, 881 F.2d 747,  
3 751 (9th Cir. 1989)); *Morgan*, 169 F.3d at 600.

4 Psychiatrist Vy Doan treated Plaintiff from July 2005 through  
5 September 2010. (AR 229-328, 359-62.) Throughout this period, Dr.  
6 Doan consistently diagnosed him with bipolar disorder and treated him  
7 with psychotropic medication. (AR 229, 278, 288, 328, 360-61.) Dr.  
8 Doan prepared three evaluations in connection with Plaintiff's  
9 application for benefits. In each, he opined that Plaintiff's  
10 condition would interfere with his ability to function in the  
11 workplace. (AR 326-28, 356-57, 359-62.) For example, in September  
12 2010, Dr. Doan concluded that Plaintiff would be required to miss more  
13 than three days of work each month and that he would often experience  
14 difficulty concentrating at work and completing tasks. (AR 362.)

15 The ALJ rejected Dr. Doan's opinion because it was on a check-  
16 the-box form. (AR 26.) Though the Court would agree that, generally  
17 speaking, this is a legitimate reason for rejecting a doctor's  
18 opinion, see, e.g., *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996)  
19 (approving of ALJ's discounting of doctor's opinion because, among  
20 other things, it was contained in a check-the-box form and did not  
21 include an explanation for the opinion), the ALJ's reliance on that  
22 reason in this case was a mistake. In the first place, only one of  
23 Dr. Doan's three opinions was on a check-the-box form. (AR 356-57.)  
24 The other two were presented on forms that required Dr. Doan to  
25 explain the reasons for his views. (AR 326-28, 359-62.) Second, even  
26 assuming that Dr. Doan's opinions were contained on check-the-box  
27 forms, that would not be a sufficient reason for discounting them in  
28 this case because the reviewing psychiatrist's opinion--that the ALJ

1 relied on in lieu of Dr. Doan's opinion-- was also contained on a  
2 check-the-box form. (AR 329-44.) Fundamental notions of due process  
3 require that, if an ALJ is going to reject the treating doctor's  
4 opinion because it is on a check-the-box form, she has to apply this  
5 same rule to the reviewing doctor's opinion; she cannot accept a  
6 check-the-box opinion that supports her decision and reject the ones  
7 that do not.<sup>1</sup>

8 The ALJ also rejected Dr. Doan's opinion because it was not well  
9 supported. (AR 26.) In the ALJ's view, Dr. Doan's records did not  
10 reveal "the sort of clinical abnormalities one would expect if the  
11 claimant were actually as limited as assessed . . . ." (AR 26.)  
12 Plaintiff argues that the ALJ was applying her own medical expertise  
13 in reaching this conclusion. (Joint Stip. at 10-11.) The Agency  
14 disagrees. It argues that the ALJ was legitimately questioning Dr.  
15 Doan's opinion because it was not supported by his treatment notes,  
16 citing *Connett v. Barnhart*, 340 F.3d 871, 875 (9th Cir. 2003). Again,  
17 the Court sides with Plaintiff.

18 The Court is unclear as to what clinical abnormalities were  
19 missing from Dr. Doan's records and what the basis was for the ALJ's  
20 finding that they were missing. The record reveals that, beginning in  
21 July 2005, Dr. Doan treated Plaintiff for bipolar disorder, seeing him  
22 on average every two or three months. (AR 229-328.) During this  
23

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24 <sup>1</sup> The ALJ also relied on reviewing psychiatrist R.E. Brooks'  
25 "opinion." (AR 26-27, 351.) This opinion is contained on a single  
26 sheet, which appears to have been filled out almost completely by a  
27 social security employee, requesting Dr. Brooks to "Please affirm."  
28 (AR 351.) Dr. Brooks then apparently inserted the words, "Evidence  
reviewed, assessment affirmed - Dr. Brooks, 08/05/09." (AR 351.)  
This opinion, assuming that that is what it is, is obviously  
significantly less valuable than a check-the-box opinion.

1 period, Dr. Doan recorded various observations about Plaintiff's  
2 condition and his treatment. At times, Dr. Doan noted that Plaintiff  
3 showed improvement; at times he noted that Plaintiff did not. At the  
4 end of that five-year period, Dr. Doan repeated his initial diagnosis  
5 of bipolar disorder and offered his opinion as to how this disorder  
6 would impact Plaintiff's ability to function, particularly in the  
7 workplace. (AR 359-62.)

8 The ALJ--without citation to any authority or any medical  
9 testimony--concluded that Dr. Doan's notations were not consistent  
10 with what she would expect to see if Plaintiff truly suffered from  
11 bipolar disorder. (AR 26.) This is not a legitimate basis for  
12 questioning Dr. Doan's opinion. Though the Court would agree that  
13 there are some medical conditions, for example, a broken bone, that  
14 fall within the realm of common sense and shared experience among lay  
15 people, like judges, who could fairly predict what should be found in  
16 a medical record, bipolar disorder does not appear to the Court to be  
17 one of those conditions. The Court cannot say with any certainty what  
18 one should expect to see in a psychiatrist's chart notes for a patient  
19 with bipolar disorder. As such, the Court rejects the ALJ's second  
20 reason for discounting Dr. Doan's opinion.<sup>2</sup>

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21  
22 <sup>2</sup> From the tenor of the ALJ's decision, it is clear that she has  
23 extensive experience in social security cases in general and in cases  
24 involving psychiatric impairments specifically. Thus, the Court  
25 assumes that she has seen numerous applications where the claimant  
26 suffered from bipolar disorder and, having reviewed the medical  
27 records in those cases, has an understanding of what is typically  
28 found in the chart notes of a bipolar patient. Assuming this is true,  
however, the ALJ is still not allowed to use her background and  
experience to find that the treating psychiatrist's chart notes in  
this case do not contain the type of clinical abnormalities typically  
found in a bipolar patient's medical records.

1 Finally, the ALJ noted that Dr. Doan failed to provide an  
2 explanation for the disconnect between what the ALJ expected would be  
3 in the chart notes and what she actually found in the chart notes.  
4 (AR 26.) This finding is rejected for two reasons. First, as  
5 explained above, the ALJ did not provide any basis for her conclusion  
6 that something was missing from the chart notes. Second, one of Dr.  
7 Doan's reports is missing two of five pages. (AR 326-28.) This  
8 report, which is contained on a "Mental Disorder Questionnaire Form,"  
9 contains Dr. Doan's most extensive explanations for his opinion. (AR  
10 327-28.) (In fact, Plaintiff argues in the brief that the missing  
11 pages reveal the basis for Dr. Doan's opinion. (Joint Stip. at 8-9,  
12 fn. 4.)) It is not clear why the pages did not make it into the  
13 record. But, regardless, the Court cannot affirm the ALJ's finding  
14 that Dr. Doan's opinion should be disregarded because it was not  
15 explained where it is clear that a significant part of Dr. Doan's  
16 explanation was left out of the record.

17 In sum, the ALJ erred in accepting the reviewing psychiatrists'  
18 opinions that Plaintiff was not impaired by his bipolar disorder over  
19 the treating psychiatrist's opinion that he was. On remand, the  
20 parties should obtain a copy of Dr. Doan's report and include it in  
21 the record. Thereafter, the ALJ should reassess the psychiatrists'  
22 opinions. If she determines that check-the-box opinions should be  
23 rejected for that reason alone, she should reject all check-the-box  
24 opinions for that reason. Finally, if the ALJ believes that Dr.  
25 Doan's records are inconsistent with his opinion in that they do not  
26 contain the clinical abnormalities typically found in the medical  
27 records of a patient suffering from bipolar disorder, she should  
28 explain what is missing and the basis for her finding that it is

1 missing. Presumably, this will require the testimony of a medical  
2 expert.

3 IV. CONCLUSION

4 For these reasons, the Agency's decision is reversed and the case  
5 is remanded for further consideration.<sup>3</sup>

6 IT IS SO ORDERED.

7 DATED: October 25, 2012

8 *Patrick J. Walsh*

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PATRICK J. WALSH  
UNITED STATES MAGISTRATE JUDGE

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<sup>3</sup> The Court has considered Plaintiff's request that the case be  
27 remanded for an award of benefits and finds that this relief is not  
28 warranted here because it is not clear whether Plaintiff is entitled  
to benefits.