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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JESUS FERNANDO MUNOZ,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. CV 15-00261 (GJS)

MEMORANDUM OPINION AND
ORDER

I. PROCEEDINGS

Plaintiff Jesus Fernando Munoz (“Plaintiff”) filed a complaint seeking review of the Commissioner’s denial of his application for Supplemental Security Income (“SSI”). The parties filed consents to proceed before the undersigned United States Magistrate Judge, and motions addressing disputed issues in the case (Memorandum in Support of Plaintiff’s Complaint (“Plaintiff’s Memo”), Defendant’s Memorandum in Support of Defendant’s Answer (“Defendant’s Memo”), and Plaintiff’s Reply to Defendant’s Memorandum in Support of Defendant’s Answer (“Reply”). The Court has taken the motions under submission without oral argument.

1 **II. BACKGROUND**

2 Plaintiff applied for SSI on March 16, 2011, alleging disability since January
3 11, 2011, due to diabetes, arthritis, lower extremity pain, depression, insomnia, and
4 cholesterol problems. (Administrative Record (“AR”) 148-54, 193). Following
5 the denial of his application initially and on reconsideration, an Administrative
6 Law Judge (“ALJ”) held a hearing at Plaintiff’s request. (AR 43-68).

7 On August 29, 2013, the ALJ issued a decision applying the five-step
8 sequential evaluation process to find Plaintiff not disabled. (AR 18-31); *see* 20
9 C.F.R. § 416.920(b)-(g)(1).¹ The ALJ determined that Plaintiff had not engaged in
10 substantial gainful activity since the application date, and that Plaintiff suffers from
11 the severe impairments of non-insulin dependent diabetes mellitus with
12 neuropathy and retinopathy, and depression. (AR 20). The ALJ found that
13 Plaintiff’s conditions did not meet or equal any of the impairments listed in
14 Appendix 1 of the regulations. (AR 20). The ALJ assessed Plaintiff with the
15 residual functional capacity (“RFC”) to perform light, unskilled work (20 C.F.R. §
16 416.967(b)), with the following limitations: standing and walking 2 hours in an 8-
17 hour workday; sitting 6 hours in an 8-hour workday, with the need to get up and
18 move around every hour for 5 to 10 minutes; occasional pushing/pulling with the
19 bilateral upper extremities; occasional climbing of ramps and stairs; occasional

20 ¹ To decide if a claimant is entitled to benefits, an ALJ conducts a five-step
21 inquiry. 20 C.F.R. § 416.920. The steps are as follows: (1) Is the claimant
22 presently engaged in substantial gainful activity? If so, the claimant is found not
23 disabled. If not, proceed to step two; (2) Is the claimant’s impairment severe? If
24 not, the claimant is found not disabled. If so, proceed to step three; (3) Does the
25 claimant’s impairment meet or equal the requirements of any impairment listed at
26 20 C.F.R. Part 404, Subpart P, Appendix 1? If so, the claimant is found disabled.
27 If not, proceed to step four; (4) Is the claimant capable of performing her past
28 work? If so, the claimant is found not disabled. If not, proceed to step five; (5) Is
the claimant able to do any other work? If not, the claimant is found disabled. If
so, the claimant is found not disabled. 20 C.F.R. § 416.920(b)-(g)(1).

1 balancing, stooping, bending, kneeling, crouching, and crawling; and no climbing
2 of ladders, ropes or scaffolds. (AR 22, 29). The ALJ also found that Plaintiff is
3 able to perform simple, repetitive tasks and can understand, remember and carry
4 out simple instructions, but must work in a low stress environment (i.e., occasional
5 changes in the work setting with occasional interaction with supervisors,
6 coworkers, and the general public). (AR 22). The ALJ determined that Plaintiff is
7 unable to perform his past relevant work, but is capable of making a successful
8 adjustment to other work that exists in significant numbers in the economy. (AR
9 29-31). Therefore, the ALJ concluded that Plaintiff was not disabled at any time
10 since the filing date of Plaintiff's application. (AR 31).

11 On January 13, 2015, Plaintiff filed a complaint before this Court seeking
12 review of the ALJ's decision denying benefits. Plaintiff raises the following
13 arguments: (1) the ALJ erred in determining Plaintiff's RFC; (2) the ALJ erred in
14 finding Plaintiff can perform other work; and (3) the ALJ failed to provide
15 adequate reasons for discrediting Plaintiff's subjective complaints. (Plaintiff's
16 Memo; Reply). The Commissioner asserts that the ALJ's decision should be
17 affirmed. (Defendant's Memo).

18 III. STANDARD OF REVIEW

19 Under 42 U.S.C. § 405(g), the Court reviews the Administration's decision
20 to determine if: (1) the Administration's findings are supported by substantial
21 evidence; and (2) the Administration used correct legal standards. *See Carmickle*
22 *v. Commissioner*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d
23 1071, 1074 (9th Cir. 2007). Substantial evidence is "such relevant evidence as a
24 reasonable mind might accept as adequate to support a conclusion." *Richardson v.*
25 *Perales*, 402 U.S. 389, 401, 91 S. Ct. 1420, 28 L.Ed.2d 842 (1971) (citation and
26 quotations omitted); *see also Hoopai*, 499 F.3d at 1074.

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IV. DISCUSSION

A. Plaintiff's RFC

Plaintiff contends, *inter alia*, that the ALJ erred in assessing Plaintiff's RFC by failing to adequately account for opinion of the consultative examining psychiatrist, William Goldsmith, M.D. (Plaintiff's Memo at 1-2; Reply at 1-2). As discussed below, the Court agrees.

A claimant's RFC is the most a claimant can still do despite his limitations. *Smolen v. Chater*, 80 F.3d 1273, 1291 (9th Cir. 1996) (citing 20 C.F.R. § 404.1545(a)). In assessing a claimant's RFC, the ALJ must consider all of the relevant evidence in the record. *See* 20 C.F.R. § 416.945(a)(2), (3). If an RFC assessment conflicts with an opinion from a medical source, the ALJ "must explain why the opinion was not adopted." Social Security Ruling ("SSR") 96-8p; *see also Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (explaining that an ALJ is not required to discuss all the evidence presented, but must explain the rejection of uncontroverted medical evidence, as well as significant probative evidence).

Dr. Goldsmith conducted a complete psychiatric evaluation of Plaintiff in July 2011, and diagnosed Plaintiff with a physical condition affecting psychological function and depression, NOS. (AR 462-66). Dr. Goldsmith assessed Plaintiff as "moderately impaired" in the ability to understand, remember and carry out simple 1-to 2-step job instructions, follow detailed and complex instructions, relate and interact with supervisors, coworkers, and the public, associate with day-to-day work activity, including attendance and safety, and adapt to the stresses common to a normal work environment. (AR 465-66). Dr. Goldsmith further found that Plaintiff's ability to maintain concentration and attention, persistence and pace was "slightly impaired," and that Plaintiff's abilities to maintain regular attendance in the work place and perform work activities on a consistent basis without special or additional supervision was "intact." (AR 466).

1 In the decision, although the ALJ stated that he gave Dr. Goldsmith's
2 opinion "great weight," the ALJ inaccurately summarized Dr. Goldsmith's
3 findings. Rather than acknowledging Dr. Goldsmith's opinion that Plaintiff was
4 "moderately impaired" in several areas of functioning (i.e., understanding,
5 remembering and carrying out simple 1-to 2-step job instructions, following
6 detailed and complex instructions, relating and interacting with supervisors,
7 coworkers, and the public, associating with day-to-day work activity, including
8 attendance and safety, and adapting to the stresses common to a normal work
9 environment), the ALJ incorrectly described Dr. Goldsmith's findings as only
10 "slight" limitations. (AR 28-29). Given the ALJ's misinterpretation of the
11 evidence, the ALJ failed to adequately explain how Dr. Goldsmith's opinion of
12 moderate limitations in functioning was consistent with the RFC for light,
13 unskilled work. In particular, the ALJ did not discuss whether Plaintiff's moderate
14 impairments in understanding, remembering and carrying out simple 1-to 2-step
15 job instructions, and associating with day-to-day work activity, including
16 attendance and safety, conflicts with the RFC for simple, repetitive tasks, and the
17 ability to understand, remember, and carry out simple instructions. (AR 22, 29).
18 This omission is significant, as "unskilled work" involves understanding, carrying
19 out and remembering simple instructions and dealing with changes in a routine
20 work setting on a sustained basis. *See* SSR 85-15. "A substantial loss of ability to
21 meet any of these basic work-related activities would severely limit the potential
22 occupational base." *Id.* Thus, the ALJ's assessment of Plaintiff's RFC is not
23 supported by substantial evidence. *See* SSR 96-8p; *see also Vincent*, 739 F.2d at
24 1394-95.

25 The Commissioner asserts that the ALJ properly concluded that Dr.
26 Goldsmith's opinion supported the ALJ's RFC assessment based on the
27 unremarkable findings on examination. (Defendant's Memo at 3). The
28 Commissioner notes that Plaintiff did not have disabling cognitive impairments or

1 problems with concentration and memory, was capable of performing activities of
2 daily living independently, maintaining regular work attendance, and performing
3 work activities on a consistent basis, without special or additional supervision.
4 (Defendant’s Memo at 2-3). The Commissioner’s argument is not persuasive
5 given the ALJ’s error in failing to properly analyze Dr. Goldsmith’s findings of
6 moderate functional limitations. (AR 465-66); *see* SSR 96-8p; *Vincent*, 739 F.2d
7 at 1394-95. While the ALJ may have believed that findings of moderate functional
8 limitations were not supported by Dr. Goldsmith’s own examination, he was
9 required to explain as much, setting out a summary of the inconsistent findings and
10 the conflicting evidence. *See Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir.
11 1998); *Regennitter v. Comm’r of Soc. Sec. Admin.*, 166 F.3d 1294, 1298-99 (9th
12 Cir. 1999) (the opinion of an examining doctor “can be rejected only for specific
13 and legitimate reasons that are supported by substantial evidence in the record.”).
14 Here, the ALJ failed to provide any reasons for rejecting Dr. Goldsmith’s opinion
15 and the Court will not speculate as to what proper reason the ALJ may have
16 provided.²

17 ² The Court notes that at the administrative hearing, Plaintiff’s attorney
18 asked the vocational expert (“VE”) to consider a person with Plaintiff’s
19 background and the RFC assessed by the ALJ, with a moderate limitation in the
20 ability to understand, remember and carry out simple, 1 to 2 step job instructions.
21 (AR 66). Plaintiff’s attorney defined “moderate limitation” as a 20 percent
22 limitation. (AR 66). The VE testified that an inability to “take” 1 to 2 step
23 instructions for 20 percent of the day would not preclude the performance of the
24 other work identified by the VE. (AR 67). However, it is unclear from the VE’s
25 testimony whether in addition to the 20 percent limitation in the ability to “take”
26 instructions, the VE’s answer also encompassed moderate limitations in the
27 abilities to “remember” and “carry out” 1 to 2 step instructions. (AR 66-67). It is
28 also unclear from the record whether Dr. Goldsmith’s opinion of a moderate
impairment equates to a 20 percent limitation in functioning, as described by
Plaintiff’s attorney. (AR 465). But even if the ALJ’s error is considered harmless
with respect to Dr. Goldsmith’s finding of a moderate limitation in the ability to
understand, remember, and carry out simple, one to two step job instructions, the

1 **CONCLUSION AND ORDER**

2 The decision whether to remand for further proceedings or order an
3 immediate award of benefits is within the district court’s discretion. *Harman v.*
4 *Apfel*, 211 F.3d 1172, 1175-78 (9th Cir. 2000). When no useful purpose would be
5 served by further administrative proceedings, or where the record has been fully
6 developed, it is appropriate to exercise this discretion to direct an immediate award
7 of benefits. *Id.* at 1179 (“the decision of whether to remand for further
8 proceedings turns upon the likely utility of such proceedings”). But when there are
9 outstanding issues that must be resolved before a determination of disability can be
10 made, and it is not clear from the record the ALJ would be required to find the
11 claimant disabled if all the evidence were properly evaluated, remand is
12 appropriate. *Id.*

13 The Court finds that remand is appropriate because the circumstances of this
14 case suggest that further administrative review could remedy the ALJ’s errors. *See*
15 *INS v. Ventura*, 537 U.S. 12, 16, 123 S. Ct. 353 (2002) (upon reversal of an
16 administrative determination, the proper course is remand for additional agency
17 investigation or explanation, “except in rare circumstances”); *Harman*, 211 F.3d at
18 1180-81.

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24 VE was never asked to consider Dr. Goldsmith’s additional finding that Plaintiff
25 has a moderate limitation in the ability to associate with the day-to-day work
26 activities, including “attendance and safety.” (AR 466). As the ability to meet the
27 demands of unskilled light work requires that a person perform activities on a
28 sustained basis, the Court cannot find that the ALJ’s consideration of Dr.
Goldsmith’s opinion was harmless error. *See* SSR 85-15.

1 IT IS THEREFORE ORDERED that Judgment be entered reversing the
2 Commissioner's decision and remanding this matter for further administrative
3 proceedings consistent with this Memorandum Opinion and Order.³

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5 DATED: October 14, 2015



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7 GAIL J. STANDISH
8 UNITED STATES MAGISTRATE JUDGE
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26 _____
27 ³ The Court has not reached any other issue raised by Plaintiff except insofar
28 as to determine that reversal with a directive for the immediate payment of benefits
would not be appropriate at this time.