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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT DURAN,)	Case No. CV 15-2801-PJW
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION AND ORDER
)	
CAROLYN W. COLVIN,)	
COMMISSIONER OF THE)	
SOCIAL SECURITY ADMINISTRATION,)	
)	
Defendant.)	

I. INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying his application for Disability Insurance benefits ("DIB"). He claims that the Administrative Law Judge ("ALJ") erred when he rejected the opinion of the agreed medical examiner in Plaintiff's worker's compensation case. For the following reasons, the Court concludes the ALJ erred and remands the case to the Agency for further proceedings.

II. SUMMARY OF PROCEEDINGS

In March 2012, Plaintiff applied for DIB, alleging that he had been disabled since February 2010, due to herniated discs, carpal tunnel syndrome, hypertension, and foot and hip problems.

1 (Administrative Record ("AR") 96, 110.) The Agency denied his
2 application initially and on reconsideration. Plaintiff then
3 requested and was granted a hearing before an ALJ. In June 2013, he
4 appeared with counsel at the hearing. (AR 57-75.) In August 2013,
5 the ALJ issued a decision denying benefits. (AR 13-20.) Plaintiff
6 appealed to the Appeals Council, which denied review. (AR 1-8.) He
7 then commenced the instant action.

8 III. ANALYSIS

9 A. The Agreed Medical Examiner's Opinion

10 In February 2010, Plaintiff was injured after his truck was rear-
11 ended. (AR 357.) In May 2011, he was examined by orthopedic surgeon
12 Israel Rottermann, the agreed medical examiner in Plaintiff's workers'
13 compensation case. (AR 356-68.) Dr. Rottermann noted Plaintiff's
14 complaints of pain and observed that he was wearing a knee brace. (AR
15 356, 360.) X-rays taken at the time of the examination showed some
16 bone spur formation in Plaintiff's cervical spine and AC joint,
17 narrowing of the L5-S1 disc, and degenerative changes of the knee.
18 (AR 363-64.) Dr. Rottermann diagnosed a history of lumbar, cervical,
19 and shoulder strain; bilateral knee complaints with torn meniscus;
20 improving bursitis of the hip; and tendinitis of the left elbow. (AR
21 366.) He recommended that additional MRIs be taken and, if indicated,
22 that surgery be performed on Plaintiff's shoulders and knees. (AR
23 366-67.)

24 Six months later, in November 2011, Dr. Rottermann examined
25 Plaintiff again. (AR 345-50.) Plaintiff reported that he continued
26 to experience pain, headaches, and depression. (AR 345-46.) MRIs
27 taken in September 2011 revealed rotator cuff tendinopathy and a
28 partial tear of the ACL in both knees; an EMG and nerve conduction

1 study from that month showed L5 radiculopathy. (AR 346, 348.) Dr.
2 Rottermann recommended pain management and epidural injections for
3 Plaintiff's spine and cortisone injections for his shoulders. (AR
4 349.)

5 In March 2012, Dr. Rottermann examined Plaintiff a third time.
6 (AR 333-39.) He noted that treating surgeon Dr. Rick Pospisil had
7 recommended a knee arthroscopy and that Plaintiff had undergone
8 additional MRIs and EMGs that showed the presence of carpal tunnel
9 syndrome. (AR 334.) Dr. Rottermann recommended continuing pain
10 management, including epidurals, bilateral knee surgery, and carpal
11 tunnel release. (AR 337.)

12 In August 2012, internist Rocely Ella-Tamayo examined Plaintiff.
13 (AR 257-61.) She did not review any of his medical records. (AR
14 257.) Dr. Ella-Tamayo noted that Plaintiff was "very rude and very
15 irritable during the evaluation." (AR 257.) She found that his gait
16 was slow but normal and observed that he did not use an assistive
17 device to ambulate. (AR 260.) She reported that Plaintiff alleged
18 that it was painful to flex his back and wrist and move his knees and
19 seemed to have difficulty in getting on and off the examination table.
20 (AR 260-61.) Although she did not make a finding about Plaintiff's
21 credibility, she evidently did not believe him as she did not credit
22 any of his complaints. She found that he could lift and carry up to
23 50 pounds occasionally and 25 pounds frequently, could stand and walk
24 for up to six hours in an eight-hour workday, and would have no other
25 functional limitations. (AR 261.)

26 In December 2012, Dr. Rottermann saw Plaintiff for an "orthopedic
27 agreed medical reevaluation." (AR 276-88.) Plaintiff complained of
28 anxiety, high blood pressure, stomach problems, and pain in his spine

1 (that was aggravated by activity), stomach, knees, and hips. (AR
2 277.) Dr. Rottermann noted that Plaintiff had elected not to have
3 surgery because of concerns about his heart.¹ (AR 278.) He found
4 that Plaintiff had tenderness, tightness, and discomfort in his
5 cervical spine and a limited range of motion in his cervical spine,
6 shoulders, and lumbar spine. (AR 280-81.) He also found that
7 Plaintiff's wrists and hands were positive for Phalen's test,
8 indicating that he had carpal tunnel syndrome. (AR 280.)

9 Dr. Rottermann concluded that Plaintiff would not be able to
10 return to his past work as a driver and would be restricted to "semi-
11 sedentary type work," with no prolonged standing or walking; no "heavy
12 lifting," squatting, or overhead activities; and no repetitive
13 bending, stooping, turning, tilting of the head and neck, power
14 gripping, or grasping.² (AR 286.)

15 The ALJ did not adopt the limitations found by Dr. Rottermann
16 but, instead, accorded the "most" weight to the opinion of Dr. Ella-
17 Tamayo. (AR 18.) Accordingly, the ALJ determined that Plaintiff
18 could perform a full range of medium work without limitation,
19 including his past work as a truck driver. (AR 17, 19.) Plaintiff
20 takes exception to this finding.

23 ¹ In February 2012, Dr. Pospisil noted that Plaintiff had
24 unstable blood pressure and, thus, required authorization to see a
cardiologist before undergoing surgery. (AR 152.)

25 ² Plaintiff observes that the Workers Compensation term "semi-
26 sedentary" means that an individual is restricted to working no more
27 than 50% of the time in a standing or walking position, "with a
28 minimum of demands for physical effort whether standing, walking, or
sitting." (Joint Stip. at 9 n.6, citing *Vasque v. Barnhart*, 2002 WL
1880743, at *7 (N.D. Cal. Aug. 13, 2002).)

1 It is the province of the ALJ to resolve conflicts in the medical
2 evidence. *Andrews v Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).
3 There are three types of doctors that supply that evidence: treating
4 doctors, examining doctors, and reviewing doctors. All things being
5 equal, treating doctors' opinions are entitled to the most weight
6 because they are hired to cure and have more opportunity to know and
7 observe the patient. *Id.* at 1041. Examining doctors are next on the
8 list, followed by reviewing doctors. *See Lester v. Chater*, 81 F.3d
9 821, 830-31 (9th Cir. 1995). ALJs, however, are not required to
10 merely accept the opinion of any doctor and, where the opinion is
11 contradicted, may reject it for specific and legitimate reasons that
12 are supported by substantial evidence in the record. *Id.* at 830.

13 The ALJ adopted Dr. Ella-Tamayo's opinion on the ground that it
14 was consistent with the "overall objective medical signs and
15 laboratory findings of a longitudinal nature[.]" (AR 18.) The ALJ
16 found that the evidence indicated Plaintiff's condition had improved
17 between May 2011 and the date of decision, contrary to Dr.
18 Rottermann's December 2012 opinion. (AR 16-19.) The ALJ also found
19 that "the various Worker's Compensation 'disability' assessments and
20 forms all lack estimation of onset and careful detail to the most
21 recent laboratory and test results and findings[] to satisfy the
22 durational requirements" for a disability finding. (AR 18.) For the
23 following reasons, the Court concludes that the ALJ erred in doing so.

24 As an initial matter, the Court notes the state agency reviewer's
25 assessment that Plaintiff's case was "very difficult . . . in that the
26 bulk of the retrospective record consists of conflicting medical legal
27 assessments and conflicting imaging studies." (AR 269.) In the run-
28 of-the-mill case presenting conflicting evidence, an ALJ is entitled

1 to rely on an examining doctor's opinion that is based on independent
2 clinical findings, such as that of Dr. Ella-Tamayo. See *Andrews*, 53
3 F.3d at 1041. The Court concludes here, however, that the ALJ's
4 rationale for relying on the consulting examiner's opinion was flawed
5 and mandates reversal.

6 First, all things being equal, the ALJ should have given more
7 weight to Dr. Rottermann's opinion, not Dr. Ella-Tamayo's. Dr.
8 Rottermann examined Plaintiff on four occasions over 19 months and
9 thus had more familiarity with the longitudinal record than Dr. Ella-
10 Tamayo, who examined Plaintiff once. Furthermore, Dr. Rottermann is
11 an orthopedic surgeon, which presumably is the relevant specialty for
12 Plaintiff's spine, shoulder, elbow, and knee complaints, whereas Dr.
13 Ella-Tamayo is an internist. Moreover, Dr. Ella-Tamayo did not review
14 any of Plaintiff's prior medical records and did not articulate any
15 basis for dismissing Plaintiff's complaints of pain and limitation.

16 Further, the ALJ's reasons for rejecting Dr. Rottermann's opinion
17 do not stand up to scrutiny. The ALJ questioned Dr. Rottermann's
18 opinion based on the fact that his "assessments and forms all lack
19 estimation of onset and careful detail to the most recent laboratory
20 and test results and findings[.]" (AR 18.) This was error. The
21 regulations do not require that a medical opinion include estimation
22 of onset to be considered valid. Even if they did, Dr. Rottermann's
23 May 2011 initial evaluation appears to contain both an estimation of
24 onset and references to then-current EMG, nerve conduction, MRI, and
25 X-ray results. (AR 357, 363-66.) In contrast, Dr. Ella-Tamayo's
26 opinion, which the ALJ did rely on, did not address the date of onset
27 or reference laboratory or test results. Assuming *arguendo* that Dr.
28 Rottermann's opinion failed to address the date of onset and

1 overlooked recent test results, it was error for the ALJ to reject his
2 opinion on grounds that apply equally, if not more so, to the
3 examining internist's opinion, which he did adopt. If the ALJ finds
4 it appropriate to discount medical opinions that lack consideration of
5 the onset date and fail to reference laboratory tests, he must apply
6 the rule to all similarly situated doctors in the case.

7 The ALJ found that Plaintiff's injuries from his accident had
8 improved based in part on his finding that the "DDS physicians" had
9 opined that they had. (AR 17, 19.) In fact, it was not a physician,
10 but an agency analyst who reached that conclusion. (AR 269-70.) The
11 ALJ's reliance on the analyst's opinion was in error. Furthermore,
12 although the ALJ correctly pointed to signs of medical improvement in
13 the record, such as a June 2011 examination by Dr. Aaron Coppelson--
14 who provided an electrodiagnostic consultation and found no focal
15 paresthesias or significant gait dysfunction (AR 473)--he neglected to
16 address other evidence that tended to show that there was less
17 improvement, such as reports from pain management specialist Nabil
18 Dahi. Dr. Dahi examined Plaintiff in June, July, and November 2011,
19 finding on each occasion that Plaintiff had limited range of motion
20 and tenderness in his spine. (AR 212-13, 219, 232-33.) The ALJ's
21 failure to address the evidence that undermined his decision was
22 error. See *Holohan v. Massanari*, 246 F.3d 1195, 1207 (9th Cir. 2001)
23 (holding ALJ's rejection of doctor's opinion not supported by
24 substantial evidence where ALJ selectively relied on records
25 indicating improvement and ignored others that showed "continued,

1 severe impairment"). For these reasons, the case is remanded for
2 further consideration.³

3 IV. CONCLUSION

4 For these reasons, the ALJ's decision is reversed and the case is
5 remanded for further consideration consistent with this Memorandum
6 Opinion and Order.

7 IT IS SO ORDERED.

8 Dated: September 13, 2016.

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12 PATRICK J. WALSH
13 UNITED STATES MAGISTRATE JUDGE
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24 ³ Plaintiff has requested that the case be remanded for an award
25 of benefits. The Court recognizes that it has the authority to do so
26 but finds that such relief is not warranted because it is not clear
27 that Plaintiff is disabled. See *Dominguez v. Colvin*, 808 F.3d 403,
28 407 (9th Cir. 2015), as amended (Feb. 5, 2016) ("Unless the district
court concludes that further administrative proceedings would serve no
useful purpose, it may not remand with a direction to provide
benefits.").