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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

| | | |
|----------------------------------|---|----------------------------|
| CARMEN M. GUTIERREZ, |) | NO. CV 15-7421-E |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | MEMORANDUM OPINION |
| |) | |
| CAROLYN W. COLVIN, Acting |) | AND ORDER OF REMAND |
| Commissioner of Social Security, |) | |
| |) | |
| Defendant. |) | |
| |) | |

Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS
HEREBY ORDERED that Plaintiff's and Defendant's motions for summary
judgment are denied, and this matter is remanded for further
administrative action consistent with this Opinion.

PROCEEDINGS

Plaintiff filed a complaint on September 22, 2015, seeking review
of the Commissioner's denial of benefits. The parties consented to
proceed before a United States Magistrate Judge on January 20, 2016.
Plaintiff filed a motion for summary judgment on February 24, 2016.

1 Defendant filed a motion for summary judgment on April 27, 2016. The
2 Court has taken the motions under submission without oral argument.
3 See L.R. 7-15; "Order," filed September 23, 2015.

4
5 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
6

7 Plaintiff asserts disability since December 21, 2011, based on
8 multiple alleged physical impairments (Administrative Record ("A.R.")
9 189-95, 209). Dr. Ralph Steiger, an orthopedic surgeon who treated
10 Plaintiff for work-related injuries to her left knee and hands,
11 diagnosed, inter alia, overuse syndrome in both upper extremities, De
12 Quervain's tendinitis in the right wrist, carpal tunnel syndrome in
13 both wrists, status post surgery for "trigger fingers" of the left
14 second, third, and fourth digits, Dupuytren's contracture in the left
15 hand, medial and lateral epicondylitis in the right elbow, and cubital
16 tunnel syndrome in the right elbow (A.R. 1394, 1574; see also A.R.
17 900-01 (Dr. Steiger's diagnoses regarding Plaintiff's alleged knee
18 impairment of a contusion of the patella with articular cartilage
19 damage)). Dr. Steiger opined that Plaintiff could: (1) sit for 3-4
20 hours in an eight-hour workday and stand and/or walk for 3-4 hours in
21 an eight-hour workday; (2) lift or carry up to 10 pounds occasionally;
22 (3) grasp, turn and twist objects rarely with the left hand and
23 occasionally with the right hand; (4) rarely use her hands/fingers for
24 fine manipulation; and (5) occasionally use her arms for reaching
25 (A.R. 1571-72). Dr. Steiger opined that Plaintiff would likely be
26 absent from work two to three times per month due to her impairments
27 (A.R. 1573).

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1 An Administrative Law Judge ("ALJ") reviewed the record and heard
2 testimony from Plaintiff and a vocational expert (A.R. 17-1615). The
3 ALJ found Plaintiff suffers from the following severe impairments:
4 "history of torn meniscus, left knee, status post arthroscopy; mild
5 disc bulges, cervical spine, with history of radiculitis; mild
6 scoliosis with mild degenerative disc disease, lumbar spine; De
7 Quervain's tendinitis, bilaterally; and history of trigger fingers,
8 left hand, status post[] surgery" (A.R. 19).¹ Contrary to Dr.
9 Steiger's opinions, the ALJ concluded that Plaintiff retains the
10 residual functional capacity to perform a limited range of light work,
11 including Plaintiff's past relevant work as an optician (A.R. 21, 28

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19 ¹ The ALJ did not find carpal tunnel syndrome to be a
20 medically determinable impairment (A.R. 20). The ALJ stated that
21 Plaintiff had an "essentially normal neurological examination,"
22 with negative Tinel's sign on July 2, 2013, although Plaintiff's
23 treating physician, Dr. Steiger, reported positive Tinel's and
24 Phalen's testing just a few weeks later (A.R. 20 (citing A.R.
25 1392, 1420-23, 1574)). Treating records from Kaiser Permanente
26 show negative Phalen's testing and/or normal hand examinations
27 except for tenderness, and negative carpal tunnel syndrome tests
28 bilaterally on February 22, 2012, and for the left upper
extremity on April 10, 2012, and July 25, 2012 (A.R. 20-21
(citing A.R. 398, 528-29, 553, 605-09); compare A.R. 1420-23
(EMG/nerve conduction study from July 2, 2013 showing possible
right carpal tunnel syndrome)). The ALJ did not address Dr.
Steiger's diagnoses of Dupuytren's contracture of the left hand,
medial and lateral epicondylitis in the right elbow, or cubital
tunnel syndrome in the right elbow. Compare A.R. 20-21, 23-24
(ALJ's analysis) with A.R. 1574 (Dr. Steiger's diagnoses).

1 (adopting vocational expert testimony at A.R. 88-90)).² The ALJ gave
2 Dr. Steiger's opinions "little weight," stating: (1) Dr. Steiger
3 assertedly provided "diagnoses and clinical findings" which other
4 treating and/or examining sources reportedly had not provided and
5 which allegedly were not supported by the "longitudinal, objective
6 medical evidence"; and (2) Dr. Steiger allegedly provided no basis for
7 "many of the limitations given" (A.R. 27).

8
9 The Appeals Council considered additional evidence, but denied
10 review (A.R. 1-6).

11
12 **STANDARD OF REVIEW**

13
14 Under 42 U.S.C. section 405(g), this Court reviews the
15 Administration's decision to determine if: (1) the Administration's
16 findings are supported by substantial evidence; and (2) the
17 Administration used correct legal standards. See Carmickle v.
18 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
19 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner,

20
21 ² Specifically, the ALJ found Plaintiff could:

22 [L]ift and/or carry 20 pounds occasionally and 10
23 pounds frequently, stand and/or walk for a total of
24 four hours in an eight-hour workday with normal breaks,
25 and sit for a total of four hours in an eight-hour
26 workday with normal breaks, can handle and finger
27 frequently with both upper extremities, can perform
28 postural activities (*i.e.*, climbing, crouching,
crawling, stooping, balancing, and kneeling) no more
than occasionally, and can reach overhead no more than
occasionally.

(A.R. 21).

1 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such
2 relevant evidence as a reasonable mind might accept as adequate to
3 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401
4 (1971) (citation and quotations omitted); see also Widmark v.
5 Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

6
7 If the evidence can support either outcome, the court may
8 not substitute its judgment for that of the ALJ. But the
9 Commissioner's decision cannot be affirmed simply by
10 isolating a specific quantum of supporting evidence.
11 Rather, a court must consider the record as a whole,
12 weighing both evidence that supports and evidence that
13 detracts from the [administrative] conclusion.

14
15 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and
16 quotations omitted).

17
18 Where, as here, the Appeals Council considered additional
19 evidence but denied review, the additional evidence becomes part of
20 the record for purposes of the Court's analysis. See Brewes v.
21 Commissioner, 682 F.3d at 1163 ("[W]hen the Appeals Council considers
22 new evidence in deciding whether to review a decision of the ALJ, that
23 evidence becomes part of the administrative record, which the district
24 court must consider when reviewing the Commissioner's final decision
25 for substantial evidence"; expressly adopting Ramirez v. Shalala, 8
26 F.3d 1449, 1452 (9th Cir. 1993)); Taylor v. Commissioner, 659 F.3d
27 1228, 1231 (2011) (courts may consider evidence presented for the
28 first time to the Appeals Council "to determine whether, in light of

1 the record as a whole, the ALJ's decision was supported by substantial
2 evidence and was free of legal error"); Penny v. Sullivan, 2 F.3d 953,
3 957 n.7 (9th Cir. 1993) ("the Appeals Council considered this
4 information and it became part of the record we are required to review
5 as a whole"); see generally 20 C.F.R. §§ 404.970(b), 416.1470(b).

7 DISCUSSION

9 I. The ALJ Failed to State Sufficient Reasons for Rejecting Dr. 10 Steiger's Opinions.

11
12 A treating physician's opinions "must be given substantial
13 weight." Embrey v. Bowen, 849 F.2d 418, 422 (9th Cir. 1988); see
14 Rodriguez v. Bowen, 876 F.2d 759, 762 (9th Cir. 1989) ("the ALJ must
15 give sufficient weight to the subjective aspects of a doctor's
16 opinion. . . . This is especially true when the opinion is that of a
17 treating physician") (citation omitted); see also Garrison v. Colvin,
18 759 F.3d 995, 1012 (9th Cir. 2014) (discussing deference owed to the
19 opinions of treating and examining physicians). Even where the
20 treating physician's opinions are contradicted, as here, "if the ALJ
21 wishes to disregard the opinion[s] of the treating physician he . . .
22 must make findings setting forth specific, legitimate reasons for
23 doing so that are based on substantial evidence in the record."
24 Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987) (citation,
25 quotations and brackets omitted); see Rodriguez v. Bowen, 876 F.2d at
26 762 ("The ALJ may disregard the treating physician's opinion, but only
27 by setting forth specific, legitimate reasons for doing so, and this
28 decision must itself be based on substantial evidence") (citation and

1 quotations omitted).

2
3 The reasons the ALJ stated for rejecting Dr. Steiger's opinions
4 do not comport with these authorities. First, the ALJ's statement
5 that Dr. Steiger's diagnoses and clinical findings purportedly are
6 "not corroborated by other treating and/or examining sources" fails to
7 reflect the record accurately. The ALJ failed to acknowledge that Dr.
8 Steiger's opinions were based at least in part on a neurologist's
9 July 2, 2013 EMG/nerve conduction studies of Plaintiff's upper
10 extremities finding "possible" right carpal tunnel syndrome. See A.R.
11 20-21 (ALJ purporting to describe these studies as "essentially
12 normal"); see also A.R. 1578 (Dr. Steiger referencing neurologist's
13 studies in his September 2013 evaluation). The neurologist stated
14 that "all subtests to detect mild right carpal tunnel syndrome were
15 within normal limits, except that median motor conduction to abductor
16 pollicis brevis was slower to abductor pollicis brevis than to second
17 lumbrical," which "sometimes" can be the only sign of carpal tunnel
18 syndrome called "lumbrical sparing" (A.R. 1422-23). The neurologist
19 recommended clinical correlation (A.R. 1423). To the extent the other
20 medical sources made diagnoses or clinical findings contrary to Dr.
21 Steiger's diagnoses and findings, such contradiction triggers rather
22 than satisfies the requirement of stating "specific, legitimate
23 reasons." See, e.g., Valentine v. Commissioner, 574 F.3d 685, 692
24 (9th Cir. 2007); Orn v. Astrue, 495 F.3d 625, 631-33 (9th Cir. 2007).

25
26 Second, the ALJ's statement that Dr. Steiger's opinions were "not
27 substantially support[ed]" by the "longitudinal, objective medical
28 evidence" is impermissibly vague and unspecific. See, e.g., Kinzer v.

1 Colvin, 567 Fed. App'x 529, 530 (9th Cir. 2014) (ALJ's statements that
2 treating physicians' opinions "contrasted sharply with the other
3 evidence of record" and were "not well supported by the . . . other
4 objective findings in the case record" held insufficient); McAllister
5 v. Sullivan, 888 F.2d 599, 602 (9th Cir. 1989) ("broad and vague"
6 reasons for rejecting treating physician's opinions do not suffice);
7 Embrey v. Bowen, 849 F.2d at 421 ("To say that the medical opinions
8 are not supported by sufficient objective findings or are contrary to
9 the preponderant conclusions mandated by the objective findings does
10 not achieve the level of specificity our prior cases have required.
11 . . ."); compare Wilson v. Colvin, 583 Fed. App'x 649, 651 (9th Cir.
12 2014) (upholding rejection of treating physician's opinion where the
13 ALJ determined that it was not corroborated by any other medical
14 opinion, was inconsistent with the rest of the record, and relied
15 heavily on the claimant's own subjective statements which the ALJ
16 found incredible).

17
18 Third, the ALJ's only other stated reason, i.e., that Dr. Steiger
19 assertedly provided "no basis for many of the limitations given," is
20 factually unsupported and otherwise insufficient (A.R. 27). Dr.
21 Steiger cited ten specific clinical findings on examination of
22 Plaintiff as evidence to support the opinions (A.R. 1574). In any
23 event, if the ALJ thought that Dr. Steiger should more fully explain
24 the bases for the limitations Dr. Steiger found to exist, the ALJ
25 should have developed the record further on this subject. See
26 generally Brown v. Heckler, 713 F.2d 441, 443 (9th Cir. 1983) ("[T]he
27 ALJ has a special duty to fully and fairly develop the record to
28 assure the claimant's interests are considered. This duty exists even

1 when the claimant is represented by counsel.") (internal citation
2 omitted); see also Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir.
3 1996) ("If the ALJ thought he needed to know the basis of Dr.
4 Hoeflich's opinions in order to evaluate them, he had a duty to
5 conduct an appropriate inquiry, for example, by subpoenaing the
6 physicians or submitting further questions to them. He could also
7 have continued the hearing to augment the record.") (citations
8 omitted).

9
10 In light of the vocational expert's testimony, the Court cannot
11 find harmless the ALJ's failure to state sufficient reasons for
12 rejecting Dr. Steiger's opinions. An error "is harmless where it is
13 inconsequential to the ultimate nondisability determination." Molina
14 v. Astrue, 674 F.3d 1104, 1115 (9th Cir. 2012) (citations and
15 quotations omitted). The vocational expert testified that if a person
16 were limited to less than frequent handling or reaching, such person:
17 (1) could not perform Plaintiff's past relevant work; and (2) could
18 not perform sedentary work (A.R. 91, 93, 96). Additionally, according
19 to the vocational expert, if a person were absent from work two to
20 three days per month, such absenteeism alone would preclude the
21 performance of any job (A.R. 96).

22
23 **II. Remand for Further Administrative Proceedings is Appropriate.**

24
25 Remand is appropriate because the circumstances of this case
26 suggest that further administrative review could remedy the ALJ's
27 errors. McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2010); see also
28 INS v. Ventura, 537 U.S. 12, 16 (2002) (upon reversal of an

1 administrative determination, the proper course is remand for
2 additional agency investigation or explanation, except in rare
3 circumstances); Dominquez v. Colvin, 808 F.3d 403, 407 (9th Cir. 2015)
4 (“Unless the district court concludes that further administrative
5 proceedings would serve no useful purpose, it may not remand with a
6 direction to provide benefits”); Treichler v. Commissioner, 775 F.3d
7 1090, 1101 n.5 (9th Cir. 2014) (remand for further administrative
8 proceedings is the proper remedy “in all but the rarest cases”);
9 Garrison v. Colvin, 759 F.3d at 1020 (court will credit-as-true
10 medical opinion evidence only where, inter alia, “the record has been
11 fully developed and further administrative proceedings would serve no
12 useful purpose”); Harman v. Apfel, 211 F.3d 1172, 1180-81 (9th Cir.),
13 cert. denied, 531 U.S. 1038 (2000) (remand for further proceedings
14 rather than for the immediate payment of benefits is appropriate where
15 there are “sufficient unanswered questions in the record”). There
16 remain significant unanswered questions in the present record. For
17 example, it is not clear on the present record whether the ALJ would
18 be required to find Plaintiff disabled for the entire claimed period
19 of disability even if Dr. Steiger’s opinion were fully credited. See
20 Luna v. Astrue, 623 F.3d 1032, 1035 (9th Cir. 2010).³

21
22 ³ Plaintiff’s alleged onset date is December 21, 2011
23 (A.R. 195). Dr. Steiger opined that Plaintiff’s limitations,
24 which Dr. Steiger based on Plaintiff’s upper extremity
25 impairments, have existed since December 23, 2010 (A.R. 1573-74).
26 As the ALJ noted, however, Plaintiff was able to work in 2011 and
27 stopped working in 2011 due to her knee injury, so the date in
28 Dr. Steiger’s opinion may be a “clerical error” (A.R. 24). Dr.
Steiger elsewhere indicated Plaintiff’s limitations do not apply
“as far back as 12-21-11” (A.R. 1573).

Plaintiff testified that she stopped work due to her knee

(continued...)

