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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICKELLA MARTIN,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. CV 16-1368-KK

MEMORANDUM AND ORDER

Plaintiff Mickella Martin (“Plaintiff”) seeks review of the final decision of the Commissioner of the Social Security Administration (“Commissioner” or “Agency”) denying her application for Title XVI Supplemental Security Income (“SSI”). The parties have consented to the jurisdiction of the undersigned United States Magistrate Judge, pursuant to 28 U.S.C. § 636(c). For the reasons stated below, the Commissioner’s decision is REVERSED and this action is REMANDED for further proceedings consistent with this Order.

I.

PROCEDURAL HISTORY

On August 4, 2011, Plaintiff filed an application for SSI, alleging a disability onset date of June 18, 2011. Administrative Record (“AR”) at 137-43. Plaintiff’s application was denied initially on November 16, 2011, and upon reconsideration

1 on March 14, 2013. Id. at 66-79, 80-96, 97-100, 103-07. On April 5, 2013, Plaintiff
2 requested a hearing before an Administrative Law Judge (“ALJ”). Id. at 110. On
3 April 22, 2014, Plaintiff appeared with counsel and testified at a hearing before the
4 assigned ALJ. Id. at 29-50. A vocational expert (“VE”) also testified at the
5 hearing. Id. at 47-49. On June 16, 2014, the ALJ issued a decision denying
6 Plaintiff’s application for SSI. Id. at 15-28.

7 On August 7, 2014, Plaintiff filed a request to the Agency’s Appeals Council
8 to review the ALJ’s decision. Id. at 10-12. On January 12, 2016, the Appeals
9 Council denied Plaintiff’s request for review. Id. at 1-6.

10 On February 26, 2016, Plaintiff filed the instant action. ECF Docket No.
11 (“Dkt.”) 1, Compl. This matter is before the Court on the Parties’ Joint
12 Stipulation (“JS”), filed January 9, 2017. Dkt. 19, JS.

13 II.

14 PLAINTIFF’S BACKGROUND

15 Plaintiff was born on May 27, 1975, and her alleged disability onset date is
16 June 18, 2011. AR at 137. She was thirty-six years old on the alleged disability
17 onset date and thirty-eight years old at the time of the hearing before the ALJ. Id.
18 at 85, 204. Plaintiff has a high school education and no documented work
19 experience. Id. at 226. Plaintiff alleges disability based on mental illness, morbid
20 obesity, depression, lower back pain, knee pain, ankle pain, and arthritis in hands
21 and knees. Id. at 66, 80.

22 III.

23 STANDARD FOR EVALUATING DISABILITY

24 To qualify for SSI, a claimant must demonstrate a medically determinable
25 physical or mental impairment that prevents her from engaging in substantial
26 gainful activity, and that is expected to result in death or to last for a continuous
27 period of at least twelve months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir.
28 1998). The impairment must render the claimant incapable of performing the work

1 she previously performed and incapable of performing any other substantial gainful
2 employment that exists in the national economy. Tackett v. Apfel, 180 F.3d 1094,
3 1098 (9th Cir. 1999).

4 To decide if a claimant is disabled, and therefore entitled to benefits, an ALJ
5 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are:

- 6 1. Is the claimant presently engaged in substantial gainful activity? If so, the
7 claimant is found not disabled. If not, proceed to step two.
- 8 2. Is the claimant's impairment severe? If not, the claimant is found not
9 disabled. If so, proceed to step three.
- 10 3. Does the claimant's impairment meet or equal one of the specific
11 impairments described in 20 C.F.R. Part 404, Subpart P, Appendix 1? If so,
12 the claimant is found disabled. If not, proceed to step four.¹
- 13 4. Is the claimant capable of performing work she has done in the past? If so,
14 the claimant is found not disabled. If not, proceed to step five.
- 15 5. Is the claimant able to do any other work? If not, the claimant is found
16 disabled. If so, the claimant is found not disabled.

17 See Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d 949,
18 953-54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b)-(g)(1), 416.920(b)-(g)(1).

19 The claimant has the burden of proof at steps one through four, and the
20 Commissioner has the burden of proof at step five. Bustamante, 262 F.3d at 953-
21 54. Additionally, the ALJ has an affirmative duty to assist the claimant in
22 developing the record at every step of the inquiry. Id. at 954. If, at step four, the
23 claimant meets her burden of establishing an inability to perform past work, the
24 Commissioner must show that the claimant can perform some other work that
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26 ¹ “Between steps three and four, the ALJ must, as an intermediate step, assess
27 the claimant's [residual functional capacity],” or ability to work after accounting
28 for her verifiable impairments. Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d
1219, 1222-23 (9th Cir. 2009) (citing 20 C.F.R. § 416.920(e)). In determining a
claimant's residual functional capacity, an ALJ must consider all relevant evidence
in the record. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006).

1 exists in “significant numbers” in the national economy, taking into account the
2 claimant’s residual functional capacity (“RFC”), age, education, and work
3 experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721; 20 C.F.R.
4 §§ 404.1520(g)(1), 416.920(g)(1).

5 **IV.**

6 **THE ALJ’S DECISION**

7 **A. STEP ONE**

8 At step one, the ALJ found Plaintiff has not engaged “in substantial gainful
9 activity since July 29, 2011, the application date.” AR at 20.

10 **B. STEP TWO**

11 At step two, the ALJ found Plaintiff “ha[d] the following severe
12 impairments: obesity; and depression and learning disorder, not otherwise
13 specified.” Id.

14 **C. STEP THREE**

15 At step three, the ALJ found Plaintiff does “not have an impairment or
16 combination of impairments that meets or medically equals the severity of one of
17 the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.” Id.

18 **D. RFC DETERMINATION**

19 The ALJ found Plaintiff had the following RFC:

20 “to perform sedentary work as defined in 20 CFR 416.967(a) except:
21 stand 2 hours of an 8 hour day; sit 6 hours of an 8 hour day;
22 occasionally bend/stoop; lift 5 pounds frequently; 10 pounds
23 occasionally; simple, routine, tasks.”

24 Id. at 21.

25 **E. STEP FOUR**

26 At step four, the ALJ found Plaintiff “has no past relevant work.” Id. at 23.

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1 **F. STEP FIVE**

2 At step five, the ALJ found “[c]onsidering the claimant’s age, education,
3 work experience, and residual functional capacity, there are jobs that exist in
4 significant numbers in the national economy that [Plaintiff] can perform.” Id. The
5 ALJ therefore concluded Plaintiff was not disabled. Id. at 23-24.

6 **V.**

7 **PLAINTIFF’S CLAIMS**

8 Plaintiff presents four disputed issues: (1) whether the ALJ erred when he
9 failed to consider application of Listing 12.05C based on Plaintiff’s poor memory
10 IQ score; (2) whether the ALJ erred when he failed to resolve conflicts between the
11 DOT and the VE’s identified jobs for Plaintiff; (3) whether the ALJ’s credibility
12 assessment is supported by substantial evidence; and (4) whether the ALJ
13 committed reversible error in his assessment of Dr. Kubo’s medical opinions.

14 The Court finds the fourth issue dispositive of this matter and thus declines
15 to address the remaining issues. See Hiler v. Astrue, 687 F.3d 1208, 1212 (9th Cir.
16 2012) (“Because we remand the case to the ALJ for the reasons stated, we decline
17 to reach [Plaintiff’s] alternative ground for remand.”).

18 **VI.**

19 **STANDARD OF REVIEW**

20 Pursuant to 42 U.S.C. § 405(g), a district court may review the
21 Commissioner’s decision to deny benefits. The ALJ’s findings and decision should
22 be upheld if they are free of legal error and supported by substantial evidence based
23 on the record as a whole. Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420,
24 28 L. Ed. 2d 842 (1971); Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007).

25 “Substantial evidence” is evidence that a reasonable person might accept as
26 adequate to support a conclusion. Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th
27 Cir. 2007). It is more than a scintilla but less than a preponderance. Id. To
28 determine whether substantial evidence supports a finding, the reviewing court

1 “must review the administrative record as a whole, weighing both the evidence that
2 supports and the evidence that detracts from the Commissioner’s conclusion.”
3 Reddick, 157 F.3d at 720 (citation omitted); see also Hill v. Astrue, 698 F.3d 1153,
4 1159 (9th Cir. 2012) (stating that a reviewing court “may not affirm simply by
5 isolating a ‘specific quantum of supporting evidence’”) (citation omitted). “If the
6 evidence can reasonably support either affirming or reversing,” the reviewing court
7 “may not substitute its judgment” for that of the Commissioner. Reddick, 157
8 F.3d at 720-21; see also Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012)
9 (“Even when the evidence is susceptible to more than one rational interpretation,
10 we must uphold the ALJ’s findings if they are supported by inferences reasonably
11 drawn from the record.”).

12 The Court may review only the reasons stated by the ALJ in his decision
13 “and may not affirm the ALJ on a ground upon which he did not rely.” Orn v.
14 Astrue, 495 F.3d 625, 630 (9th Cir. 2007). If the ALJ erred, the error may only be
15 considered harmless if it is “clear from the record” that the error was
16 “inconsequential to the ultimate nondisability determination.” Robbins, 466 F.3d
17 at 885 (citation omitted).

18 VII.

19 DISCUSSION

20 **THE ALJ ERRED WHEN HE FAILED TO PROPERLY CONSIDER** 21 **MEDICAL EVIDENCE BY PLAINTIFF’S TREATING PHYSICIAN** 22 **REGARDING UPPER EXTREMITIES LIMITATIONS**

23 **A. RELEVANT FACTS**

24 Dr. Koji Kubo, a family practitioner, is one of Plaintiff’s treating physicians.
25 AR at 423-50. In 2014, Dr. Kubo filled out a medical questionnaire where he noted
26 Plaintiff suffers from moderate limitations in both of her upper extremities due to
27 bilateral carpal tunnel syndrome. Id. at 423. Specifically, Dr. Kubo noted Plaintiff
28 suffers from “numbness in hands,” which prevents her from being able “to

1 perform duties that require manipulation with hands.” Id. Dr. Kubo further noted
2 that Plaintiff has been experiencing these symptoms for the last three years. Id. at
3 425. He opined that these limitations would “disrupt a regular job schedule with
4 low physical demands” “continuously [and] every day.” Id.

5 **B. APPLICABLE LAW**

6 “There are three types of medical opinions in social security cases: those
7 from treating physicians, examining physicians, and non-examining physicians.”
8 Valentine v. Comm’r Soc. Sec. Admin., 574 F.3d 685, 692 (9th Cir. 2009); see also
9 20 C.F.R. §§ 404.1502, 404.1527. “As a general rule, more weight should be given
10 to the opinion of a treating source than to the opinion of doctors who do not treat
11 the claimant.” Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995); Garrison v.
12 Colvin, 759 F.3d 995, 1012 (9th Cir. 2014) (citing Ryan v. Comm’r of Soc. Sec., 528
13 F.3d 1194, 1198 (9th Cir. 2008)); Turner v. Comm’r of Soc. Sec., 613 F.3d 1217,
14 1222 (9th Cir. 2010).

15 “[T]he ALJ may only reject a treating or examining physician’s
16 uncontradicted medical opinion based on clear and convincing reasons.”
17 Carmickle v. Comm’r, Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008)
18 (citation and internal quotation marks omitted); Widmark v. Barnhart, 454 F.3d
19 1063, 1066 (9th Cir. 2006). “Where such an opinion is contradicted, however, it
20 may be rejected for specific and legitimate reasons that are supported by substantial
21 evidence in the record.” Carmickle, 533 F.3d at 1164 (citation and internal
22 quotation marks omitted); Ryan, 528 F.3d at 1198; Ghanim v. Colvin, 763 F.3d
23 1154, 1160-61 (9th Cir. 2014); Garrison, 759 F.3d at 1012. The ALJ can meet the
24 requisite specific and legitimate standard “by setting out a detailed and thorough
25 summary of the facts and conflicting clinical evidence, stating [her or] his
26 interpretation thereof, and making findings.” Reddick, 157 F.3d at 725. The ALJ
27 “must set forth his own interpretations and explain why they, rather than the
28 [treating or examining] doctors’, are correct.” Id.

1 While an ALJ is not required to discuss all the evidence presented, he must
2 explain the rejection of uncontroverted medical evidence, as well as significant
3 probative evidence. Vincent v. Heckler, 739 F.2d 1393, 1394-95 (9th Cir. 1984)
4 (citation omitted). Moreover, an ALJ must consider all of the relevant evidence in
5 the record and may not point to only those portions of the records that bolster his
6 findings. See, e.g., Holohan v. Massanari, 246 F.3d 1195, 1207-08 (9th Cir. 2001)
7 (holding an ALJ cannot selectively rely on some entries in plaintiff's records while
8 ignoring others). Lastly, while an ALJ is "not bound by an expert medical opinion
9 on the ultimate question of disability," if the ALJ rejects an expert medical
10 opinion's ultimate finding on disability, he "must provide 'specific and legitimate'
11 reasons for rejecting the opinion." Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th
12 Cir. 2008) (quoting Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir. 1995), as
13 amended (Apr. 9, 1996)). An ALJ is not precluded from relying upon a physician's
14 medical findings, even if he refuses to accept the physician's ultimate finding on
15 disability. See, e.g., Magallanes v. Bowen, 881 F.2d 747, 754 (9th Cir. 1989).

16 C. ANALYSIS

17 Here, the ALJ erred when he failed to properly consider Dr. Kubo's medical
18 conclusion that Plaintiff was limited in the use of her upper extremities because of
19 numbness and pain in her hands. The ALJ reasoned Dr. Kubo's opinion deserved
20 little weight because "the restrictions in [Dr. Kubo's opinion] are largely
21 unsupported by objective findings in medical records." AR at 22. Furthermore,
22 the ALJ noted "Dr. Kubo himself notes that the restrictions provided were based
23 mostly on [Plaintiff's] subjective reports," but "the objective evidence provides
24 good reasons for questioning the reliability of [Plaintiff's] subjective complaints."

25 Id.

26 Despite the ALJ's conclusion, there is evidence throughout the record that
27 indicates Plaintiff has a history of pain and numbness in her hands for which she
28 has been frequently treated over the past few years. Medical records further

1 document Plaintiff's diagnoses of both arthritis in the hands and carpal tunnel
2 syndrome. For example, in June 2010, Dr. Tammy P. Cheng noted Plaintiff has
3 been suffering from "bilateral hand tingling." AR at 330. She additionally noted
4 Plaintiff's bilateral hand x-rays present indications of "a possible erosion," and that
5 she would consider starting Plaintiff on a "disease-modifying agent for rheumatoid
6 arthritis." Id. Additionally, in September 2011, Dr. Sonia G. Martin completed a
7 Disability Determination Report in which she reported Plaintiff having "arthritis in
8 her hands." Id. at 258. Furthermore, in October 2011, Dr. Shahrzad Sodagar-
9 Marvasti noted Plaintiff suffers from pain and arthritis in her hands. Id. at 266.
10 Lastly, in February 2013, Dr. Sohail K. Arfa noted Plaintiff complained of
11 "occasional to frequent numbness on both hands," which "[a]t times . . . makes it
12 difficult for [Plaintiff] to sleep at night." Id. at 281. Dr. Arfa also noted Plaintiff's
13 "[h]andgrip strength was decreased bilaterally" and that she "may have early
14 element of carpal tunnel syndrome." Id. at 284. Dr. Arfa ultimately concluded
15 Plaintiff was "[l]imited to frequently for gross movements" of the hands. Id. at
16 285.

17 In light of Plaintiff's consistent complaints of pain in her hands and the
18 objective medical evidence supporting an arthritis of the hands and carpal tunnel
19 diagnosis, the ALJ erred when he chose to give Dr. Kubo's medical opinion
20 regarding upper extremities limitations little weight. See Orn v. Astrue, 495 F.3d
21 625, 631 (9th Cir. 2007) (noting factors relevant to evaluating any medical opinion
22 can include "the amount of relevant evidence that supports the opinion" and "the
23 consistency of the medical opinion with the record as a whole"). While the ALJ
24 may properly disregard a treating physician's opinion, he may only do so by
25 "setting forth 'specific, legitimate reasons . . . based on substantial evidence' . . .
26 supported by a detailed summary of the facts and conflicting clinical evidence,
27 along with a reasoned interpretation thereof." Rodriguez v. Bowen, 876 F.2d 759,
28 762 (9th Cir. 1989) (quoting Cotton v. Bowen, 799 F.2d 1403, 1408 (9th Cir.

1 1986)). In this case, the ALJ erred when he failed to consider the medical evidence
2 documenting Plaintiff's upper extremity pain, diagnoses, and resulting limitations
3 before rejecting Dr. Kubo's medical opinion. Moreover, while Dr. Kubo may not
4 have conducted his own objective tests before coming to his conclusion, the record
5 as a whole provides evidence that supports his findings. See AR at 258, 266, 281,
6 284, 330.

7 Significantly, the ALJ failed to include *any* limitation regarding Plaintiff's
8 upper extremities in the RFC determination or in the hypothetical he posed to the
9 VE. See AR at 21, 47-48. By omitting any consideration of Plaintiff's arthritis of
10 the hands and carpal tunnel syndrome, the ALJ did not account for the handling
11 limitations recognized by Dr. Kubo and Plaintiff's other treating and examining
12 physicians. This is particularly concerning in light of the fact that the jobs the VE
13 considered for Plaintiff – Final Assembler, DOT 713.687-018, and Order Clerk,
14 DOT 209.567-014 – are sedentary positions that may require abilities like “manual
15 dexterity,” “control precision,” “finger dexterity,” and “wrist-finger speed.”
16 See Dictionary of Occupational Titles, Assemblers and Fabricators; Order Clerks.
17 While the Court does not express any opinion as to whether Plaintiff is in fact
18 disabled², the ALJ could not properly come to his conclusion without first
19 considering any possible upper extremities limitations, which appear to have
20 factual support throughout the record.

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26 ² The Court notes, for example, Dr. John Carroll's opinion that “Plaintiff
27 would be able to do a job full time with low physical demands” and that “if
28 [Plaintiff] were to receive social security disability, this would actually further
worsen her health both mentally and physically, and could be one of the worst
things possible for her.” AR at 421.

VIII.
RELIEF

A. APPLICABLE LAW

“When an ALJ’s denial of benefits is not supported by the record, the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation.” Hill, 698 F.3d at 1162 (citation omitted). “We may exercise our discretion and direct an award of benefits where no useful purpose would be served by further administrative proceedings and the record has been thoroughly developed.” Id. (citation omitted). “Remand for further proceedings is appropriate where there are outstanding issues that must be resolved before a determination can be made, and it is not clear from the record that the ALJ would be required to find the claimant disabled if all the evidence were properly evaluated.” Id. (citations omitted); see also Reddick, 157 F.3d at 729 (“We do not remand this case for further proceedings because it is clear from the administrative record that Claimant is entitled to benefits.”).

B. ANALYSIS

In this case, the record has not been fully developed. The ALJ must consider Dr. Kubo’s medical opinions in light of the additional medical evidence throughout the record, which indicates Plaintiff suffers from pain and numbness in her hands and has been diagnosed with arthritis of the hands and carpal tunnel syndrome. See AR at 258, 266, 281, 284, 330. Accordingly, remand for further proceedings is appropriate.

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IX.

CONCLUSION

For the foregoing reasons, IT IS ORDERED that judgment be entered REVERSING the decision of the Commissioner and REMANDING this action for further proceedings consistent with this Order. IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order and the Judgment on counsel for both parties.

Dated: February 15, 2017



HONORABLE KENLY KIYA KATO
United States Magistrate Judge