

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 ALICIA A. JONES,

12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL,¹ Acting
15 Commissioner of Social Security,

16 Defendant.
17

Case No. CV 16-3053 JC

MEMORANDUM OPINION AND
ORDER OF REMAND

18 **I. SUMMARY**

19 On May 3, 2016, plaintiff Alicia A. Jones filed a Complaint seeking review
20 of the Commissioner of Social Security's denial of plaintiff's application for
21 benefits. The parties have consented to proceed before the undersigned United
22 States Magistrate Judge.

23 This matter is before the Court on the parties' cross motions for summary
24 judgment, respectively ("Plaintiff's Motion") and ("Defendant's Motion")
25 (collectively "Motions"). The Court has taken the Motions under submission
26

27
28 ¹Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill is hereby substituted as the defendant in this action.

1 without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; May 4, 2016 Case
2 Management Order ¶ 5.

3 Based on the record as a whole and the applicable law, the decision of the
4 Commissioner is REVERSED AND REMANDED for further proceedings
5 consistent with this Memorandum Opinion and Order of Remand.

6 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**
7 **DECISION**

8 On January 24, 2013, plaintiff filed an application for Disability Insurance
9 Benefits alleging disability beginning on February 13, 2012, due to myofascial
10 syndrome thoracic spine, and carpal tunnel syndrome in both hands.
11 (Administrative Record (“AR”) 23, 164, 184). The Administrative Law Judge
12 (“ALJ”) examined the medical record and heard testimony from plaintiff (who was
13 represented by counsel) and a vocational expert on July 1, 2014. (AR 36-69).

14 On September 16, 2014, the ALJ determined that plaintiff was not disabled
15 through the date of the decision. (AR 23). Specifically, the ALJ found:

16 (1) plaintiff suffered from the following severe impairments: musculoligamentous
17 strain of the cervicothoracic region, cervical and lumbar spine degenerative disc
18 disease, left lateral elbow epicondylitis, tendinitis/tenosynovitis of the wrists, and
19 status post left knee “meniscal tear” with a history of partial medial meniscectomy
20 surgery (AR 25); (2) plaintiff’s impairments, considered singly or in combination,
21 did not meet or medically equal a listed impairment (AR 26); (3) plaintiff
22 essentially retained the residual functional capacity to perform medium work (20
23 C.F.R. § 404.1567(c)) with additional limitations² (AR 27); and (4) plaintiff was
24

25
26 ²The ALJ determined that plaintiff could (i) lift and carry 50 pounds occasionally and 25
27 pounds frequently; (ii) stand and walk or sit for six hours of an eight hour day; and
28 (iii) frequently reach, handle, climb, bend, balance, stoop, kneel, crouch, and crawl. (AR 27); see
also 20 C.F.R. § 404.1567(c) (“Medium work involves lifting no more than 50 pounds at a time
with frequent lifting or carrying of objects weighing up to 25 pounds.”).

1 capable of performing her past relevant work as a data entry clerk, file clerk,
2 cashier, receptionist, cashier-checker, and secretary (AR 29-30).

3 On March 9, 2016, the Appeals Council denied plaintiff's application for
4 review. (AR 1).

5 **III. APPLICABLE LEGAL STANDARDS**

6 **A. Administrative Evaluation of Disability Claims**

7 To qualify for disability benefits, a claimant must show that he or she is
8 unable "to engage in any substantial gainful activity by reason of any medically
9 determinable physical or mental impairment which can be expected to result in
10 death or which has lasted or can be expected to last for a continuous period of not
11 less than 12 months." Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012)
12 (quoting 42 U.S.C. § 423(d)(1)(A)) (internal quotation marks omitted). To be
13 considered disabled, a claimant must have an impairment of such severity that he
14 or she is incapable of performing work the claimant previously performed ("past
15 relevant work") as well as any other "work which exists in the national economy."
16 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)).

17 To assess whether a claimant is disabled, an ALJ is required to use the five-
18 step sequential evaluation process set forth in Social Security regulations. See
19 Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th
20 Cir. 2006) (citations omitted) (describing five-step sequential evaluation process)
21 (citing, in part, 20 C.F.R. § 404.1520). The claimant has the burden of proof at
22 steps one through four – *i.e.*, determination of whether the claimant was engaging
23 in substantial gainful activity (step 1), has a sufficiently severe impairment (step
24 2), has an impairment or combination of impairments that meets or equals a listing
25 in 20 C.F.R. Part 404, Subpart P, Appendix 1 (step 3), and retains the residual
26 functional capacity to perform past relevant work (step 4). Burch v. Barnhart, 400
27 F.3d 676, 679 (9th Cir. 2005) (citation omitted). The Commissioner has the

28 ///

1 burden of proof at step five – *i.e.*, establishing that the claimant could perform
2 other work in the national economy. Id.

3 **B. Federal Court Review of Social Security Disability Decisions**

4 A federal court may set aside a denial of benefits only when the
5 Commissioner’s “final decision” was “based on legal error or not supported by
6 substantial evidence in the record.” 42 U.S.C. § 405(g); Trevizo v. Berryhill, 871
7 F.3d 664, 674 (9th Cir. 2017) (citation and quotation marks omitted). The
8 standard of review in disability cases is “highly deferential.” Rounds v.
9 Commissioner of Social Security Administration, 807 F.3d 996, 1002 (9th Cir.
10 2015) (citation and quotation marks omitted). Thus, an ALJ’s decision must be
11 upheld if the evidence could reasonably support either affirming or reversing the
12 decision. Trevizo, 871 F.3d at 674-75 (citations omitted). Even when an ALJ’s
13 decision contains error, it must be affirmed if the error was harmless. Treichler v.
14 Commissioner of Social Security Administration, 775 F.3d 1090, 1099 (9th Cir.
15 2014).

16 While an ALJ’s decision need not be drafted with “ideal clarity,” at a
17 minimum it must describe the ALJ’s reasoning with sufficient specificity and
18 clarity to “allow[] for meaningful review.” Brown-Hunter v. Colvin, 806 F.3d
19 487, 492 (9th Cir. 2015) (citations and internal quotation marks omitted); see
20 generally 42 U.S.C. § 405(b)(1) (“ALJ’s unfavorable decision must, among other
21 things, “set[] forth a discussion of the evidence” and state “the reason or reasons
22 upon which it is based”); Securities and Exchange Commission v. Chenery Corp.,
23 332 U.S. 194, 196-97 (1947) (administrative agency’s determination must be set
24 forth with clarity and specificity). Federal courts review only the reasoning the
25 ALJ provided, and may not affirm the ALJ’s decision “on a ground upon which
26 [the ALJ] did not rely.” Trevizo, 871 F.3d at 675 (citations omitted).

27 A reviewing court may not conclude that an error was harmless based on
28 independent findings gleaned from the administrative record. Brown-Hunter, 806

1 F.3d at 492 (citations omitted). When a reviewing court cannot confidently
2 conclude that an error was harmless, a remand for additional investigation or
3 explanation is generally appropriate. See Marsh v. Colvin, 792 F.3d 1170, 1173
4 (9th Cir. 2015) (citations omitted).

5 **C. Evaluation of Subjective Symptoms in Disability Claims**

6 When determining disability, an ALJ is required to consider a claimant’s
7 impairment-related pain and other subjective symptoms at each step of the
8 sequential evaluation process. 20 C.F.R. § 404.1529(a), (d). Accordingly, when a
9 claimant presents “objective medical evidence of an underlying impairment which
10 might reasonably produce the pain or other symptoms [the claimant] alleged,” the
11 ALJ is required to determine the extent to which the claimant’s statements
12 regarding the intensity, persistence, and limiting effects of his or her symptoms
13 (“subjective statements” or “subjective complaints”) are consistent with the record
14 evidence as a whole and, consequently, whether any of the individual’s symptom-
15 related functional limitations and restrictions are likely to reduce the claimant’s
16 capacity to perform work-related activities. 20 C.F.R. § 404.1529(a); Social
17 Security Ruling (“SSR”) 16-3p, 2017 WL 5180304, at *4-*10; SSR 96-7p, 1996
18 WL 374186, at *1-*5.³ When an individual’s subjective statements are

19
20 ³Social Security Rulings reflect the Social Security Administration’s (“SSA”) official
21 interpretation of pertinent statutes, regulations, and policies. 20 C.F.R. § 402.35(b)(1). Although
22 they “do not carry the ‘force of law,’” Social Security Rulings “are binding on all components of
23 the . . . Administration[,]” and are entitled to deference if they are “consistent with the Social
24 Security Act and regulations.” 20 C.F.R. § 402.35(b)(1); Bray v. Commissioner of Social
25 Security Administration, 554 F.3d 1219, 1224 (9th Cir. 2009) (citations and quotation marks
26 omitted); see also Heckler v. Edwards, 465 U.S. 870, 873 n.3 (1984) (discussing weight and
27 function of Social Security rulings). Social Security Ruling 16-3p superseded SSR 96-7p and, in
28 part, eliminated use of the term “credibility” from SSA “sub-regulatory policy[.]” in order to
“clarify that subjective symptom evaluation is not an examination of an individual’s [overall
character or truthfulness] . . . [and] more closely follow [SSA] regulatory language regarding
symptom evaluation.” See SSR 16-3p, 2017 WL 5180304, at *1-*2, *10-*11. The SSA recently
republished SSR 16-3p making no change to the substantive policy interpretation regarding

(continued...)

1 inconsistent with other evidence in the record, an ALJ may give less weight to
2 such statements and, in turn, find that the individual’s symptoms are less likely to
3 reduce the claimant’s capacity to perform work-related activities. See SSR 16-3p,
4 2017 WL 5180304, at *8; SSR 96-7p, 1996 WL 374186, at *1-*3. In such cases,
5 when there is no affirmative finding of malingering, an ALJ may “reject” or give
6 less weight to the individual’s subjective statements “only by providing specific,
7 clear, and convincing reasons for doing so.” Brown-Hunter, 806 F.3d at 488-89.⁴
8 An ALJ’s decision “must contain specific reasons” supported by substantial
9 evidence in the record for giving less weight to a claimant’s statements. SSR 16-
10 3p, 2017 WL 5180304, at *10; SSR 96-7p, 1996 WL 374186, at *2, *4. An ALJ
11 must clearly identify each statement given less weight and the particular evidence
12 in the record which supports doing so. Treichler, 775 F.3d at 1103 (citation
13 omitted). This requirement is very difficult to satisfy. See Trevizo, 871 F.3d at
14 678 (“The clear and convincing standard is the most demanding required in Social
15 Security cases.”) (citation and quotation marks omitted).

16 ///

17 _____
18 ³(...continued)

19 evaluation of a claimant’s subjective complaints, but clarifying that the SSA would apply SSR
20 16-3p only “[when making] determinations and decisions on or after March 28, 2016[.]” and that
21 federal courts should apply “the rules [regarding subjective symptom evaluation] that were in
22 effect at the time” an ALJ’s decision being reviewed became final. SSR 16-3p, 2017 WL
23 5180304, at *1, *13 n.27. Such language suggests that SSR 16-3p is not retroactive where, like
24 here, the ALJ issued the decision and the Appeals Council denied review before SSR 16-3p was
25 “applicable” on March 28, 2016. Nonetheless, the issue of retroactivity need not be resolved
26 here since neither party contends that SSR 16-3p should apply in this case, and the ALJ’s
27 evaluation of plaintiff’s subjective complaints fails to pass muster whether SSR 16-3p or its
28 predecessor, SSR 96-7p, governs.

26 ⁴It appears to the Court, based upon its research of the origins of the requirement that
27 there be “specific, clear and convincing” reasons to reject or give less weight to an individual’s
28 subjective statements absent an affirmative finding of malingering, that such standard of proof
remains applicable irrespective of whether SSR 96-7p or SSR 16-3p governs. See Trevizo, 871
F.3d at 678-79 & n.5 (citations omitted).

1 When an ALJ fails properly to discuss a claimant’s subjective complaints,
2 the error may not be considered harmless “unless [the Court] can confidently
3 conclude that no reasonable ALJ, when fully crediting the testimony, could have
4 reached a different disability determination.” Stout, 454 F.3d at 1056.

5 **IV. DISCUSSION**

6 Here, the ALJ’s decision contains little reference to plaintiff’s subjective
7 complaints and no discussion explaining the specific reasons why the ALJ rejected
8 such complaints. At most, the ALJ stated that he “considered all symptoms and
9 the extent to which these symptoms can reasonably be accepted as consistent [with
10 the record],” set forth the boilerplate description of the “two-step process” used for
11 “considering the [plaintiff’s] symptoms” – which he acknowledged required a
12 finding as to the credibility of the claimant’s subjective complaints to the extent
13 they were not supported by the objective medical evidence – and then simply
14 discussed the medical evidence supporting his residual functional capacity
15 determination, including referring to certain complaints made by plaintiff to
16 physicians and objective medical findings that did not support such complaints.
17 (AR 27-29). The omission from the ALJ’s decision of any specific evaluation of
18 plaintiff’s subjective complaints prevents the Court from conducting a meaningful
19 review. Cf., e.g., Brown-Hunter, 806 F.3d at 489 (“[A]n ALJ does not provide
20 specific, clear, and convincing reasons for rejecting a claimant’s testimony by
21 simply reciting the medical evidence in support of his or her residual functional
22 capacity determination.”); see generally Treichler, 775 F.3d at 1103 (“Although
23 the ALJ’s analysis need not be extensive, the ALJ must provide some reasoning in
24 order for us to meaningfully determine whether the ALJ’s conclusions were
25 supported by substantial evidence.”) (citation omitted); Bray v. Commissioner of
26 Social Security Administration, 554 F.3d 1219, 1226 (9th Cir. 2009) (“meaningful
27 review of an administrative decision requires access to the facts and reasons
28 supporting that decision”). Further, to the extent the ALJ’s juxtaposition of

1 plaintiff's complaints to physicians against the objective findings of such
2 physicians which did not support such complaints could be construed as an
3 implicit finding that the ALJ rejected plaintiff's subjective complaints because
4 they were not supported by objective evidence, such reason, by itself, would be
5 insufficient. See Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991) (en banc)
6 (“[O]nce the claimant produces objective medical evidence of an underlying
7 impairment, an [ALJ] may not reject a claimant’s subjective complaints based
8 solely on a lack of objective medical evidence to fully corroborate the alleged
9 severity of pain.”) (citation omitted); see also SSR 16-3p, 2017 WL
10 5180304, at *5 (“[W]e will not disregard an individual’s statements about the
11 intensity, persistence, and limiting effects of symptoms solely because the
12 objective medical evidence does not substantiate the degree of impairment-related
13 symptoms alleged by the individual.”); SSR 96-7p, 1996 WL 374186, at *6
14 (“[A]llegations concerning the intensity and persistence of pain or other symptoms
15 may not be disregarded solely because they are not substantiated by objective
16 medical evidence.”); cf. Burrell v. Colvin, 775 F.3d 1133, 1138 (9th Cir. 2014)
17 (ALJ’s identification of conflict between claimant’s hearing testimony and other
18 statements made “in passing” and “in a different section than the credibility
19 determination” insufficient to meet “requirements of specificity”) (citation
20 omitted).

21 As defendant suggests, the ALJ might have been able to provide sufficiently
22 specific reasons for giving less weight to plaintiff’s subjective statements.
23 (Defendant’s Motion at 3-5). Since the ALJ did not do so in his decision,
24 however, this Court may not affirm the ALJ’s non-disability determination on such
25 grounds. See Trevizo, 871 F.3d at 675 (citations omitted); see also Brown-Hunter,
26 806 F.3d at 492 (“A clear statement of the agency’s reasoning is necessary because
27 [courts] can affirm the agency’s decision to deny benefits only on the grounds
28 invoked by the agency.”) (citation omitted).

1 The Court cannot conclude that the ALJ’s error was harmless, especially
2 considering that the ALJ’s residual functional capacity assessment apparently does
3 not account for many significant functional limitations reflected in plaintiff’s
4 subjective complaints. (Compare AR 27 [ALJ’s assessment that plaintiff had the
5 residual functional capacity to “lift and carry 50 pounds occasionally and 25
6 pounds frequently”] with AR 48 [hearing testimony suggesting that plaintiff is
7 unable to lift even “half a gallon”]); see generally Brown-Hunter, 806 F.3d at 492
8 (ALJ’s failure to specify reasons for finding claimant testimony not credible “will
9 usually not be harmless [error]”).

10 Accordingly, a remand is warranted to permit the ALJ to provide a
11 sufficiently specific evaluation of plaintiff’s subjective complaints.

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **V. CONCLUSION⁵**

2 For the foregoing reasons, the decision of the Commissioner of Social
3 Security is reversed in part, and this matter is remanded for further administrative
4 action consistent with this Opinion.⁶

5 LET JUDGMENT BE ENTERED ACCORDINGLY.

6 DATED: December 21, 2017

7 _____
 /s/

8 Honorable Jacqueline Chooljian
9 UNITED STATES MAGISTRATE JUDGE

10
11
12
13
14
15
16 _____
17 ⁵The Court need not, and has not adjudicated plaintiff’s other challenges to the ALJ’s
18 decision, except insofar as to determine that a reversal and remand for immediate payment of
19 benefits would not be appropriate. On remand, however, the Commissioner may wish to reassess
20 the medical opinion evidence. For example, the ALJ’s decision currently does not reflect
21 whether the ALJ accurately considered the implications medical findings drawn from workers’
22 compensation opinions may have for purposes of plaintiff’s Social Security disability case. (AR
23 27-29); see, e.g., Booth v. Barnhart, 181 F. Supp. 2d 1099, 1106 (C.D. Cal. 2002) (Social
24 Security decisions must reflect that the ALJ properly considered and accounted for pertinent
25 differences between statutory schemes applicable in California workers’ compensation cases vs.
26 federal Social Security cases).

27 ⁶When a court reverses an administrative determination, “the proper course, except in rare
28 circumstances, is to remand to the agency for additional investigation or explanation.”
29 Immigration & Naturalization Service v. Ventura, 537 U.S. 12, 16 (2002) (citations and
30 quotations omitted). Remand is proper where, as here, “additional proceedings can remedy
31 defects in the original administrative proceeding. . . .” Garrison v. Colvin, 759 F.3d 995, 1019
32 (9th Cir. 2014) (citation and internal quotation marks omitted); see also Connett v. Barnhart, 340
33 F.3d 871, 876 (9th Cir. 2003) (remand is an option where the ALJ stated invalid reasons for
34 rejecting a claimant’s excess pain testimony).