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

FRANK T. LOPEZ,  
  
Plaintiff,  
  
v.  
  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
  
Defendant.

Case No. CV 16-09666 AFM

**MEMORANDUM OPINION AND  
ORDER REVERSING DECISION  
OF THE COMMISSIONER AND  
REMANDING FOR FURTHER  
ADMINISTRATIVE  
PROCEEDINGS**

Plaintiff seeks review of the Commissioner’s final decision denying his applications for disability insurance benefits and supplemental security income. In accordance with the Court’s case management order, the parties have filed memorandum briefs addressing the merits of the disputed issues. This matter now is ready for decision.

**BACKGROUND**

On February 27, 2013, Plaintiff applied for disability insurance benefits and supplemental security income. Plaintiff’s claim was denied initially and on reconsideration. A hearing was then held before an Administrative Law Judge (“ALJ”) with Plaintiff, his attorney, and a vocational expert (“VE”) present.

1 (Administrative Record (“AR”) 36-52.) On August 5, 2015, the ALJ entered a  
2 decision determining Plaintiff’s residual functional capacity (“RFC”) of medium  
3 work with limitations to frequent overhead reaching with the left arm. (AR 22-35.)  
4 The VE testified that a person with the RFC could perform Plaintiff’s past work as  
5 a combination medical assistant and x-ray technician, both light vocations. (AR 48-  
6 51.) The ALJ adopted this vocational finding and concluded that Plaintiff could  
7 perform his past work. (AR 30.) The Appeals Council denied review. (AR 1-7.)  
8 Plaintiff filed his Complaint in the present case on December 31, 2016.

9  
10 **DISPUTED ISSUE**

11 Whether the ALJ properly assessed Plaintiff’s subjective symptom testimony.  
12

13 **STANDARD OF REVIEW**

14 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s decision to  
15 determine whether the Commissioner’s findings are supported by substantial  
16 evidence and whether the proper legal standards were applied. *See Treichler v.*  
17 *Commissioner of Social Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014).  
18 Substantial evidence means “more than a mere scintilla” but less than a  
19 preponderance. *See Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Lingenfelter*  
20 *v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). Substantial evidence is “such  
21 relevant evidence as a reasonable mind might accept as adequate to support a  
22 conclusion.” *Richardson*, 402 U.S. at 401. Where evidence is susceptible of more  
23 than one rational interpretation, the Commissioner’s decision must be upheld. *See*  
24 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).  
25

26 **DISCUSSION**

27 Where, as in this case, the claimant has produced objective medical evidence  
28 of an impairment which could reasonably be expected to produce some degree of

1 pain and/or other symptoms, and the record is devoid of any affirmative evidence of  
2 malingering, the ALJ may reject the claimant’s testimony regarding the severity of  
3 the claimant’s pain and/or other symptoms only if the ALJ makes specific findings  
4 stating clear and convincing reasons for doing so. *See Cotton v. Bowen*, 799 F.2d  
5 1403, 1407 (9th Cir. 1986); *see also Bunnell v. Sullivan*, 947 F.2d 341, 343 (9th  
6 Cir. 1991) (en banc). “A finding that a claimant’s testimony is not credible ‘must  
7 be sufficiently specific to allow a reviewing court to conclude the adjudicator  
8 rejected the claimant’s testimony on permissible grounds and did not arbitrarily  
9 discredit a claimant’s testimony regarding pain.’” *Brown-Hunter v. Colvin*, 806  
10 F.3d 487, 493 (9th Cir. 2015) (quoting *Bunnell*, 947 F.2d at 345-46). “The clear  
11 and convincing standard is the most demanding required in Social Security cases.”  
12 *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014).

13 Plaintiff here testified at the hearing about the nature and extent of his  
14 condition. (AR 39-48.) The ALJ’s credibility determination is found at AR 30:

15  
16 The undersigned has further considered the claimant’s allegations of a  
17 disabling condition and finds them to be partially credible. The  
18 medical records do not support the severity of the symptoms.  
19 Moreover, although the claimant has had a history of work related  
20 accident and motor vehicle accident, these incidents occurred several  
21 years ago. Additionally, the claimant testified at the hearing that he is  
22 capable of performing household chores such as cleaning, grocery  
23 shopping, cooking and doing laundry. Moreover, he testified that he is  
24 able to stand for as long as he wants but experiences some swelling of  
25 the ankles afterwards. He further testified that he walks about 1.5  
26 miles every day.

25 The Court reads the decision as setting forth three reasons in support of the  
26 partial credibility finding. First, the ALJ referred to the fact that Plaintiff had motor  
27 vehicle and work accidents that occurred several years ago. (AR 30.) However, the  
28 ALJ gave no explanation how that affected the believability of Plaintiff’s testimony

1 or what aspect of the testimony was found not credible due to the prior accidents.  
2 In particular, the ALJ did not describe how the timing of those accidents is  
3 inconsistent with specific symptom claims made by Plaintiff or how they  
4 correspond to Plaintiff's ability to obtain and maintain employment. Thus, the  
5 ALJ's brief mention of Plaintiff's prior accidents happening several years ago does  
6 not provide a valid basis for the partial credibility finding. *See Lester v. Chater*, 81  
7 F.3d 821, 834 (9th Cir. 1995) ("General findings are insufficient; rather, the ALJ  
8 must identify what testimony is not credible and what evidence undermines the  
9 claimant's complaints"); *Brown-Hunter*, 806 F.3d at 493-94 (generalized adverse  
10 credibility findings are insufficient).

11 Second, the ALJ cited to Plaintiff's activities of daily living. (AR 30.) The  
12 Ninth Circuit has "repeatedly warned that ALJs must be especially cautious in  
13 concluding that daily activities are inconsistent with testimony about pain, because  
14 impairments that would unquestionably preclude work and all the pressures of a  
15 workplace environment will often be consistent with doing more than merely  
16 resting in bed all day." *Garrison*, 759 F.3d at 1016. As the Ninth Circuit has  
17 further stated, "the mere fact that a plaintiff has carried on certain daily activities,  
18 such as grocery shopping, driving a car, or limited walking for exercise, does not in  
19 any way detract from her credibility as to her overall disability." *Vertigan v.*  
20 *Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001). In this case, the ALJ did what the  
21 Ninth Circuit cautioned against: referring to Plaintiff's daily activities and  
22 apparently concluding that they were partially inconsistent with Plaintiff's claimed  
23 disability. The ALJ's decision identifies Plaintiff's ability to do household chores  
24 (specifically "cleaning, grocery shopping and doing laundry"), to stand for as long  
25 as he wants, and to walk 1.5 miles per day. (AR 30.) However, the ALJ did not  
26 describe how those activities are inconsistent with specific symptom claims made  
27 by Plaintiff. Nor does the decision explain how Plaintiff's activities permit him to  
28 obtain and maintain a job. Citing plaintiff's ability to perform basic activities

1 without explaining how these activities are inconsistent with plaintiff's complaints  
2 is legally insufficient. *See Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014)  
3 ("the ALJ did not elaborate on *which* daily activities conflicted with *which* part of  
4 Claimant's testimony"); *Lester*, 81 F.3d at 834. As a result of this lack of  
5 specificity, the decision's reference to Plaintiff's daily activities is an inadequate  
6 basis for the ALJ's credibility determination. *See Brown-Hunter*, 806 F.3d at 493-  
7 94.

8 Third, the ALJ found that Plaintiff's allegations regarding the severity of his  
9 symptoms and limitations were greater than what the objective medical evidence  
10 shows. (AR 30.) Because the ALJ's prior two reasons are insufficient, this  
11 remaining reason cannot be legally sufficient by itself to support the adverse  
12 credibility determination. *See Robbins v. Social Sec. Admin.*, 466 F.3d 880, 884  
13 (9th Cir. 2006) (where ALJ's initial reason for adverse credibility determination  
14 was legally insufficient, his sole remaining reason premised on lack of medical  
15 support for claimant's testimony was legally insufficient); *Light v. Social Sec.*  
16 *Admin.*, 119 F.3d 789, 792 (9th Cir. 1997) ("[A] finding that the claimant lacks  
17 credibility cannot be premised wholly on a lack of medical support for the severity  
18 of his pain."). Lack of objective medical evidence may be a factor an ALJ can  
19 consider in his credibility analysis, but it cannot form the sole basis for a credibility  
20 determination. *See Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005)  
21 ("Although lack of medical evidence cannot form the sole basis for discounting  
22 pain testimony, it is a factor that the ALJ can consider in his credibility analysis.").

23 Finally, to the extent the Commissioner refers to other purported reasons of  
24 the ALJ that are not found in the decision (or relies on facts and evidence beyond  
25 that discussed in connection with the ALJ's credibility assessment), those reasons  
26 cannot be used by the Court to support the otherwise inadequate credibility  
27 determination. *See Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003) ("We  
28 are constrained to review the reasons the ALJ asserts."); *Brown-Hunter*, 806 F.3d at

1 494 (finding error in district court’s reliance on inconsistencies in claimant’s  
2 testimony that were identified by the ALJ’s decision).

3 In sum, reversal is warranted based on the errors in the ALJ’s credibility  
4 determination.

5  
6 **REMAND FOR FURTHER ADMINISTRATIVE PROCEEDINGS**

7 Ninth Circuit case law “precludes a district court from remanding a case for  
8 an award of benefits unless certain prerequisites are met.” *Dominguez v. Colvin*,  
9 808 F.3d 403, 407 (9th Cir. 2016) (citations omitted). “The district court must first  
10 determine that the ALJ made a legal error, such as failing to provide legally  
11 sufficient reasons for rejecting evidence. . . . If the court finds such an error, it must  
12 next review the record as a whole and determine whether it is fully developed, is  
13 free from conflicts and ambiguities, and all essential factual issues have been  
14 resolved.” *Id.* (citation and internal quotation marks omitted).

15 Although the Court has found error as discussed above, the record on the  
16 whole is not fully developed, and factual issues remain outstanding. The issues  
17 concerning Plaintiff’s alleged disability “should be resolved through further  
18 proceedings on an open record before a proper disability determination can be made  
19 by the ALJ in the first instance.” *See Brown-Hunter*, 806 F.3d at 496; *see also*  
20 *Treichler*, 775 F.3d at 1101 (remand for award of benefits is inappropriate where  
21 “there is conflicting evidence, and not all essential factual issues have been  
22 resolved”) (citation omitted); *Strauss v. Commissioner of the Social Sec. Admin.*,  
23 635 F.3d 1135, 1138 (9th Cir. 2011) (same where the record does not clearly  
24 demonstrate the claimant is disabled within the meaning of the Social Security Act).

25 Therefore, based on its review and consideration of the entire record, the  
26 Court has concluded on balance that a remand for further administrative  
27 proceedings pursuant to sentence four of 42 U.S.C. § 405(g) is warranted here. It is  
28 not the Court’s intent to limit the scope of the remand.

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**ORDER**

IT IS ORDERED that Judgment be entered reversing the decision of the Commissioner of Social Security and remanding this matter for further administrative proceedings.

DATED: January 30, 2018



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ALEXANDER F. MacKINNON  
UNITED STATES MAGISTRATE JUDGE