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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARY E. BROWN,)	No. CV 17-2738-AS
)	
Plaintiff,)	MEMORANDUM OPINION
v.)	AND ORDER OF REMAND
)	
NANCY A. BERRYHILL,)	
Acting Commissioner of Social)	
Security,)	
)	
Defendant.)	
)	

Pursuant to Sentence 4 of 42 U.S.C. § 405(g), IT IS HEREBY ORDERED that this matter is remanded for further administrative action consistent with this Opinion.

I. PROCEEDINGS

On April 10, 2017, Plaintiff filed a Complaint seeking review of the denial of her applications for Disability Insurance Benefits and Supplemental Security Income. (Docket Entry No. 1). The parties have consented to proceed before the undersigned United States

1 Magistrate Judge. (Docket Entry Nos. 13-14). On September 5, 2017,
2 Defendant filed an Answer along with the Administrative Record
3 ("AR"). (Docket Entry Nos. 15-16). On December 6, 2017, the parties
4 filed a Joint Stipulation ("Joint Stip."), setting forth their
5 respective positions regarding Plaintiff's claims. (Docket Entry No.
6 19).

7
8 The Court has taken this matter under submission without oral
9 argument. See C.D. Cal. L.R. 7-15.

10 11 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

12
13 On July 22, 2013, Plaintiff, formerly employed as a nurse's aide
14 and a food service worker (AR 159, 175-76), filed applications for
15 Disability Insurance Benefits and Supplemental Security Income,
16 alleging a disability onset date of May 17, 2013. (AR 134, 136).
17 The Commissioner denied Plaintiff's applications on January 15, 2014.
18 (AR 91-96).

19
20 On July 6, 2015, Plaintiff, represented by counsel, testified at
21 a hearing before Administrative Law Judge ("ALJ") Sally Reason. (AR
22 34-53). The ALJ also heard testimony from vocational expert ("VE")
23 June Hagen. (See AR 53-56).

24
25 On August 10, 2015, the ALJ denied Plaintiff's
26 applications. (See AR 13-24). Applying the five-step sequential
27 process, the ALJ found at step one that Plaintiff has not engaged in
28 substantial gainful activity since May 17, 2013, the alleged onset

1 date. (AR 15). At step two, the ALJ found that Plaintiff's history
2 of back strain and major depressive disorder are a severe
3 impairments.¹ (AR 15). At step three, the ALJ determined that
4 Plaintiff does not have an impairment or combination of impairments
5 that meet or medically equal the severity of any of the listings
6 enumerated in the regulations. (AR 16). The ALJ determined that
7 Plaintiff has the Residual Functional Capacity ("RFC")² to perform
8 medium work³ with the following limitations: "occasionally stoop and
9 climb; and limited to frequent contact with the public, coworkers,
10 and supervisors." (AR 17). At step four, the ALJ found that
11 Plaintiff is unable to perform her past relevant work as a "CNA/nurse
12 aide." (AR 22). At step five, the ALJ, relying on the VE's hearing
13 testimony, found that Plaintiff, with her age, education, work
14 experience and RFC, could perform the following representative jobs
15 existing in significant numbers in the national economy: "Cook
16 Helper" (Dictionary of Occupational Titles ("DOT") 317.687-010) and
17 "Hand Packager" (DOT 920.587-018). (AR 24). Accordingly, the ALJ
18 determined that Plaintiff was not under a disability as defined by
19 the Social Security Act, from May 17, 2013, through the date of the
20 decision. (Id.).

22
23 ¹ The ALJ found Plaintiff's history of left plantar
24 fasciitis, atypical chest pain, and hyperthyroidism to be non-severe.
(AR 16).

25 ² A Residual Functional Capacity is what a claimant can still
26 do despite existing exertional and nonexertional limitations. See 20
C.F.R. § 404.1545(a)(1).

27 ³ "Medium work involves lifting no more than 50 pounds at a
28 time with frequent lifting or carrying of objects weighing up to 25
pounds." 20 C.F.R. §§ 404.1567(c), 416.967(c).

1 The Appeals Council denied Plaintiff's request for review on
2 February 9, 2017. (AR 1-3). Plaintiff now seeks judicial review of
3 the ALJ's decision, which stands as the final decision of the
4 Commissioner. 42 U.S.C. §§ 405(g), 1383(c).

6 III. STANDARD OF REVIEW

8 This Court reviews the Administration's decision to determine if
9 it is free of legal error and supported by substantial evidence. See
10 Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial
11 evidence" is more than a mere scintilla, but less than a
12 preponderance. Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir.
13 2014). To determine whether substantial evidence supports a finding,
14 "a court must consider the record as a whole, weighing both evidence
15 that supports and evidence that detracts from the [Commissioner's]
16 conclusion." Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir.
17 2001) (internal quotation omitted). As a result, "[i]f the evidence
18 can support either affirming or reversing the ALJ's conclusion, [a
19 court] may not substitute [its] judgment for that of the ALJ."
20 Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).

22 IV. DISCUSSION

24 Plaintiff contends that the ALJ erred in "silently" rejecting
25 limitations opined by non-examining state agency consultant Douglas
26 Robbins, Ph.D., by failing to discuss Dr. Robbins's opinion. (Joint
27 Stip. at 4-7, 10-11). After consideration of the parties' arguments
28

1 and the record as a whole, the Court finds that Plaintiff's claim
2 warrants remand for further consideration.

3
4 **A. The ALJ Failed To Consider Dr. Robbins's Opinion**

5
6 The Commissioner's Regulations provide that ALJs "are not
7 required to adopt" agency medical consultants' opinions, "but they
8 must consider this evidence . . . because [the Administration's]
9 Federal or State agency medical or psychological consultants are
10 highly qualified and experts in Social Security disability
11 evaluation." 20 C.F.R. § 404.1513a(b)(1); see also Social Security
12 Ruling 96-6p, 1996 WL 374180 (July 2, 1996) (an ALJ may not ignore
13 the opinions of a consultative examiner, and must explain the weight
14 accorded to such opinions in their decision); 20 C.F.R. §§
15 404.1527(e), 416.927(e).

16
17 Dr. Robbins reviewed Plaintiff's medical records and opined, on
18 November 8, 2013, that Plaintiff is "[n]ot significantly limited" in
19 her ability to understand, remember and carry out "very short and
20 simple instructions," and she "is able to understand, remember, and
21 follow simple 1-2 step procedures." (AR 68, 83). Dr. Robbins stated
22 that Plaintiff is "[m]oderately limited" in her ability to
23 understand, remember and carry out "detailed instructions." (AR 68,
24 83). He further opined that Plaintiff "is able to maintain
25 attention/concentration for 2 hr periods to complete simple tasks"
26 and "would be able to work an 8-hr day utilizing all regularly
27 afforded breaks/rest periods." (AR 68-69, 83). He also stated that
28 Plaintiff is "[m]oderately limited" in her ability to interact

1 appropriately with the general public, but she "can tolerate
2 infrequent/casual interactions with co-workers, supervisors, and the
3 public." (AR 69, 84). He noted that Plaintiff's "[s]upervisory
4 environment should be of a supportive nature." (AR 69, 84).

5
6 In her decision, the ALJ failed to mention or address Dr.
7 Robbins's psychological assessment. The ALJ's RFC did not include
8 any mental or social limitations other than "frequent contact with
9 the public, coworkers, and supervisors." (AR 17). Moreover, the ALJ
10 gave "little weight" to the only other mental assessment in the
11 record, that of psychiatric consultative examiner Gurmanjot Bhullar,
12 M.D., (AR 22), who found no mental or social limitations. (AR 421-
13 22).

14
15 Defendant contends that the ALJ did not "reject" Dr. Robbins's
16 opinion, in part because the opinion "does not preclude complex work,
17 but rather notes moderate limitations in that area and affirms that
18 Plaintiff can do simple work." (Joint Stip. at 9). Defendant
19 further claims that Dr. Robbins's opinion is consistent with the jobs
20 that the ALJ found Plaintiff capable of performing. (Id. at 9-10).
21 Therefore, Defendant asserts that the ALJ's failure to address the
22 opinion is not reversible error. (Id.).

23
24 The Court disagrees. Dr. Robbins effectively limited Plaintiff
25 to "simple 1-2 step procedures."⁴ (AR 68, 83). Both of the jobs
26

27 ⁴ Specifically, when asked to "[e]xplain in narrative form the
28 presence and degree of specific understanding and memory capacities
and/or limitations," Dr. Robbins wrote that Plaintiff "is able to

1 that the ALJ found Plaintiff capable of performing - "Cook Helper"
2 (DOT 317.687-010) and "Hand Packager" (DOT 920.587-018) - require
3 Level 2 reasoning, which entails "[a]pply[ing] commonsense
4 understanding to carry out detailed but uninvolved written or oral
5 instructions." DOT 317.687-010, 920.587-018 (emphasis added). In
6 Rounds v. Comm'r of Soc. Sec. Admin., 807 F.3d 996, 1003 (9th Cir.
7 2015), the Ninth Circuit held that a limitation to "one- and two-step
8 tasks" conflicts with the demands of Level Two reasoning.⁵ The Ninth
9 Circuit noted that this conflict "is brought into relief by the close
10 similarity between [a limitation to one- and two-step tasks] and
11 Level One reasoning," which "requires a person to apply 'commonsense
12 understanding to carry out simple one- or two-step instructions.'" Id.
13

14
15 Accordingly, the ALJ erred in failing to address or otherwise
16 account for Dr. Robbins's opinion, including the limitation to
17 "simple 1-2 step procedures," and such error was not harmless.⁶ See,
18 understand, remember, and follow simple 1-2 step procedures." (AR
19 68, 83).

20 ⁵ This is distinct from a limitation to "simple tasks." Courts
21 have found that a person who is limited merely to "simple tasks" can
22 perform jobs that require Level 2 reasoning. See, e.g., Abrew v.
23 Astrue, 303 F. App'x 567, 569 (9th Cir. 2008) (finding "no conflict
24 between the ALJ's step five determination that [the claimant] could
25 complete only simple tasks and the [VE's] testimony that [the
26 claimant] could do jobs that [require] 'Reasoning Level 2'"); Meissl
27 v. Barnhart, 403 F. Supp. 2d 981, 984 (C.D. Cal. 2005) (finding that
28 plaintiff's ability to perform "simple tasks . . . that had some
element of repetitiveness to them" indicated a reasoning level of 2).

⁶ Dr. Robbins's assessment of Plaintiff's social limitations
also differs from the RFC, as Defendant acknowledges. (See Joint
Stip. at 9). Dr. Robbins opined that Plaintiff "can tolerate
infrequent/casual interactions with co-workers, supervisors, and the

1 e.g., Cardoza v. Astrue, 2011 WL 1211469, at *1 (C.D. Cal. Mar. 29,
2 2011) (finding that the ALJ erred "because he failed to explain why
3 he implicitly rejected the opinion of . . . one of the State agency
4 medical and psychological consultants, that plaintiff's mental
5 impairment limited her to performing one and two-step repetitive work
6 tasks"); Garcia v. Colvin, 2016 WL 6304626, at *6 (C.D. Cal. Oct. 27,
7 2016) ("[T]he ALJ's simple, repetitive tasks RFC limitation is . . .
8 plainly inconsistent with [the state agency reviewing psychologist's]
9 'easy 1, 2 step directions' limitation which the ALJ decision never
10 mentions. The ALJ necessarily rejected the latter limitation without
11 any explanation as required by Social Security regulations."); Wilson
12 v. Colvin, 2017 WL 1861839, at *6 (N.D. Cal. May 9, 2017) ("Following
13 Rounds, a number of district courts in this Circuit have reversed ALJ
14 decisions imposing a 'simple, repetitive tasks' RFC limit where the
15 ALJs fail to address and distinguish conclusions by doctors that
16 claimants can perform one-and-two step instructions." (collecting
17 cases)).

18
19 **B. Remand Is Warranted**

20
21 The decision whether to remand for further proceedings or order
22 an immediate award of benefits is within the district court's

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24 public," and the "[s]upervisory environment should be of a supportive
25 nature." (AR 69, 84 (emphasis added)). The ALJ found only that
26 Plaintiff is "limited to frequent contact with the public, coworkers,
27 and supervisors." (AR 17 (emphasis added)). The jobs of "Cook
28 Helper" and "Hand Packager" require a level of interaction that is
"not significant," (DOT 317.687-010, 920.587-018), but it is unclear
whether the nature of that interaction would conflict with Dr.
Robbins's assessment.

1 discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000).
2 Where no useful purpose would be served by further administrative
3 proceedings, or where the record has been fully developed, it is
4 appropriate to exercise this discretion to direct an immediate award
5 of benefits. Id. at 1179 (“[T]he decision of whether to remand for
6 further proceedings turns upon the likely utility of such
7 proceedings.”). However, where, as here, the circumstances of the
8 case suggest that further administrative review could remedy the
9 Commissioner’s errors, remand is appropriate. McLeod v. Astrue, 640
10 F.3d 881, 888 (9th Cir. 2011); Harman, 211 F.3d at 1179-81.

11
12 Since the ALJ failed to specifically address or otherwise
13 account for Dr. Robbins’s opinion, it is unclear whether the ALJ
14 properly considered the opinion in assessing Plaintiff’s RFC. Even
15 if the ALJ properly credits or takes Dr. Robbins’s opinion into
16 account, the record does not affirmatively establish that Plaintiff
17 is disabled. The Court remands for further proceedings so that the
18 ALJ can consider Dr. Robbins’s opinion, as well as address and
19 resolve any other issues, as necessary.

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V. ORDER

For the foregoing reasons, the decision of the Administrative Law Judge is VACATED, and the matter is REMANDED, without benefits, for further proceedings pursuant to Sentence 4 of 42 U.S.C. § 405(g).

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: February 7, 2018

/s/
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE