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

DONNA CONSUELO WILKES,
Plaintiff,
v.
NANCY A. BERRYHILL, Deputy
Commissioner of Operations of Social
Security,
Defendant.

Case No. CV 17-08112-RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff Donna Consuelo Wilkes (“Plaintiff”) challenges the Commissioner’s denial of her application for a period of disability and disability insurance benefits (“DIB”). For the reasons stated below, the decision of the Commissioner is REVERSED and REMANDED.

II. PROCEEDINGS BELOW

On November 28, 2012, Plaintiff filed a Title II application for DIB alleging disability beginning April 15, 2011. (Administrative Record (“AR”) 92, 102.) Her application was denied initially on July 22, 2013, and upon reconsideration on October 28, 2013. (AR 117, 124.) On February 5, 2014, Plaintiff filed a written

1 request for hearing, and a hearing was held on April 26, 2016. (AR 36, 132.)
2 Represented by counsel, Plaintiff appeared and testified, along with an impartial
3 medical expert and an impartial vocational expert. (AR 38-75.) On August 3,
4 2016, the Administrative Law Judge (“ALJ”) found that Plaintiff had not been
5 under a disability, pursuant to the Social Security Act,¹ since January 11, 2012.
6 (AR 29.) The ALJ’s decision became the Commissioner’s final decision when the
7 Appeals Council denied Plaintiff’s request for review. (AR 1.) Plaintiff filed this
8 action on November 7, 2017. (Dkt. No. 1.)

9 The ALJ followed a five-step sequential evaluation process to assess whether
10 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,
11 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had engaged in
12 substantial gainful activity since October 20, 2014, and thus the ALJ addressed
13 Plaintiff’s requested closed period of disability, from January 11, 2012 through
14 October 1, 2014. (AR 22.) At **step two**, the ALJ found that Plaintiff had the
15 following severe impairments: attention deficit hyperactivity disorder;
16 posttraumatic stress disorder; anxiety disorder; and a history of substance abuse.
17 (AR 23.) At **step three**, the ALJ found that Plaintiff “did not have an impairment
18 or combination of impairments that met or medically equaled the severity of one of
19 the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.” (*Id.*)

20 Before proceeding to step four, the ALJ found that Plaintiff had the residual
21 functional capacity (“RFC”) to:

22 [P]erform a full range of work at all exertional levels but with the
23 following nonexertional limitations: no work involving more than
24 simple, routine work or more than occasional contact with coworkers
25 and the general public.

26 ¹ Persons are “disabled” for purposes of receiving Social Security benefits if they
27 are unable to engage in any substantial gainful activity owing to a physical or
28 mental impairment expected to result in death, or which has lasted or is expected to
last for a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

1 (AR 24.) At **step four**, based on Plaintiff’s RFC and the vocational expert’s
2 testimony, the ALJ found that Plaintiff was unable to perform any past relevant
3 work. (AR 28.) At step five, “[c]onsidering the claimant’s age, education, work
4 experience, and residual functional capacity,” the ALJ found that “there are jobs
5 that exist in significant numbers in the national economy that the claimant can
6 perform.” (*Id.*) Accordingly, the ALJ determined that Plaintiff has not been under
7 a disability from the AOD through the date of decision. (AR 29.)

8 **III. STANDARD OF REVIEW**

9 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s
10 decision to deny benefits. A court must affirm an ALJ’s findings of fact if they are
11 supported by substantial evidence and if the proper legal standards were applied.
12 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “‘Substantial evidence’
13 means more than a mere scintilla, but less than a preponderance; it is such relevant
14 evidence as a reasonable person might accept as adequate to support a conclusion.”
15 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*
16 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial
17 evidence requirement “by setting out a detailed and thorough summary of the facts
18 and conflicting clinical evidence, stating his interpretation thereof, and making
19 findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

20 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a
21 specific quantum of supporting evidence. Rather, a court must consider the record
22 as a whole, weighing both evidence that supports and evidence that detracts from
23 the Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir.
24 2001) (citations and internal quotation marks omitted). “‘Where evidence is
25 susceptible to more than one rational interpretation,’ the ALJ’s decision should be
26 upheld.” *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing
27 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see Robbins*, 466 F.3d at
28 882 (“If the evidence can support either affirming or reversing the ALJ’s

1 conclusion, we may not substitute our judgment for that of the ALJ.”). The Court
2 may review only “the reasons provided by the ALJ in the disability determination
3 and may not affirm the ALJ on a ground upon which he did not rely.” *Orn v.*
4 *Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d
5 871, 874 (9th Cir. 2003)).

6 **IV. DISCUSSION**

7 Plaintiff raises the following issues for review: (1) whether the ALJ properly
8 weighed and considered the medical opinions and medical evidence; (2) whether
9 the ALJ properly assessed Plaintiff’s credibility; and (3) whether the ALJ included
10 all relevant limitations in hypotheticals posed to the vocational expert. (See Joint
11 Stipulation (“JS”) 3.) For the reasons below, the Court agrees with Plaintiff
12 regarding the assessment of her testimony and remands on that ground.

13 **A. The ALJ Failed To Properly Evaluate Plaintiff’s Subjective** 14 **Testimony**

15 The ALJ stated that, when determining Plaintiff’s RFC, the ALJ “considered
16 all symptoms and the extent to which these symptoms can reasonably be accepted
17 as consistent with the objective medical evidence and other evidence,” including
18 opinion evidence. (AR 24.) The ALJ then recited the relevant and familiar two-
19 step analysis that an ALJ undertakes in assessing a claimant’s testimony regarding
20 subjective pain or the intensity of symptoms: (1) the ALJ must determine whether
21 there is an underlying impairment that could reasonably be expected to produce the
22 pain or other symptoms alleged; and (2) if so, the ALJ must “evaluate the intensity,
23 persistence, and limiting effects of [Plaintiff’s] symptoms to determine the extent to
24 which they limit [Plaintiff’s] functioning.” (*Id.*; see AR 26-27.) See *Treichler v.*
25 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (in assessing the
26 credibility of a claimant’s symptom testimony, “[f]irst, the ALJ must determine
27 whether the claimant has presented objective medical evidence of an underlying
28 impairment which could reasonably be expected to produce the pain or other

1 symptoms alleged”; if so, and if the ALJ does not find evidence of malingering, the
2 ALJ must provide “specific, clear and convincing reasons for rejecting a claimant’s
3 testimony regarding the severity of the claimant’s symptoms”).

4 After reciting this two-step analysis, the ALJ summarized some of Plaintiff’s
5 symptom testimony. (AR 24-25.) The ALJ also summarized the objective medical
6 evidence and medical opinions. (AR 25-28.) Then, “[a]fter careful consideration
7 of the evidence,” the ALJ found that Plaintiff’s “medically determinable
8 impairments could reasonably be expected to cause some of the alleged symptoms,”
9 but found that Plaintiff’s “statements concerning the intensity, persistence and
10 limiting effects of these symptoms are not entirely credible for the reasons
11 explained in this decision.” (AR 27.) However, this determination is little more
12 than a recitation of the ALJ’s duty to consider Plaintiff’s subjective symptom
13 testimony. *See* SSR 16-3p, 2016 WL 1119029, at *2 (S.S.A. Mar. 16, 2016) (“In
14 determining whether an individual is disabled, we consider all of the individual’s
15 symptoms, including pain, and the extent to which the symptoms can reasonably be
16 accepted as consistent with the objective medical and other evidence in the
17 individual’s record.”); *see also id.* at *9 (“In evaluating an individual’s symptoms,
18 it is not sufficient for our adjudicators to make a single, conclusory statement that
19 ‘the individual’s statements about his or her symptoms have been considered’ or
20 that ‘the statements about the individual’s symptoms are (or are not) supported or
21 consistent.’”).

22 The ALJ made no specific findings, nor did she connect the medical evidence
23 to any of Plaintiff’s symptoms or testimony. The ALJ must explain which
24 symptoms are inconsistent with the evidence of record and must explain how her
25 evaluation of the symptoms led to that conclusion. *See id.*, 2016 WL 1119029, at
26 *8; *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001) (“[T]he ALJ must
27 specifically identify the testimony she or he finds not to be credible and must
28 explain what evidence undermines the testimony.”). The determination must

1 contain specific reasons for the weight given to the individual’s symptoms and must
2 clearly articulate how the ALJ evaluated the claimant’s symptoms. SSR 16-3p,
3 2016 WL 1119029, at *9; *see Lester*, 81 F.3d at 834 (“General findings are
4 insufficient.”).

5 Accordingly, the Court concludes that the ALJ did not give clear and
6 convincing reasons, supported by substantial evidence, for discounting Plaintiff’s
7 subjective symptom testimony. Remand is therefore warranted on this issue.

8 **B. The Court Declines To Address Plaintiff’s Remaining Arguments**

9 Having found that remand is warranted, the Court declines to address
10 Plaintiff’s remaining arguments. *See Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir.
11 2012) (“Because we remand the case to the ALJ for the reasons stated, we decline
12 to reach [plaintiff’s] alternative ground for remand.”); *see also Augustine ex rel.*
13 *Ramirez v. Astrue*, 536 F. Supp. 2d 1147, 1153 n.7 (C.D. Cal. 2008) (“[The] Court
14 need not address the other claims plaintiff raises, none of which would provide
15 plaintiff with any further relief than granted, and all of which can be addressed on
16 remand.”).

17 **C. Remand For Further Administrative Proceedings**

18 Because further administrative review could remedy the ALJ’s errors,
19 remand for further administrative proceedings, rather than an award of benefits, is
20 warranted here. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015)
21 (remanding for an award of benefits is appropriate in rare circumstances). Before
22 ordering remand for an award of benefits, three requirements must be met: (1) the
23 Court must conclude that the ALJ failed to provide legally sufficient reasons for
24 rejecting evidence; (2) the Court must conclude that the record has been fully
25 developed and further administrative proceedings would serve no useful purpose;
26 and (3) the Court must conclude that if the improperly discredited evidence were
27 credited as true, the ALJ would be required to find the claimant disabled on
28 remand. *Id.* (citations omitted). Even if all three requirements are met, the Court

1 retains flexibility to remand for further proceedings “when the record as a whole
2 creates serious doubt as to whether the claimant is, in fact, disabled within the
3 meaning of the Social Security Act.” *Id.* (citation omitted).

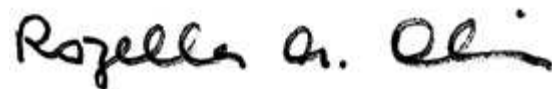
4 Here, remand for further administrative proceedings is appropriate. The
5 Court finds that the ALJ failed to provide clear and convincing reasons supported
6 by substantial evidence to discount Plaintiff’s subjective testimony. On remand,
7 the ALJ shall reassess Plaintiff’s subjective allegations. The ALJ shall then
8 reassess Plaintiff’s RFC and proceed through step four and step five, if necessary,
9 to determine what work, if any, Plaintiff is capable of performing.

10 **V. CONCLUSION**

11 IT IS ORDERED that Judgment shall be entered REVERSING the decision
12 of the Commissioner denying benefits, and REMANDING the matter for further
13 proceedings consistent with this Order.

14 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
15 Order and the Judgment on counsel for both parties.

16
17 DATED: August 3, 2018



18 ROZELLA A. OLIVER
19 UNITED STATES MAGISTRATE JUDGE

20 **NOTICE**

21 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,
22 LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**