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

RICARDO A.,¹

Plaintiff,

v.

ANDREW M. SAUL, Commissioner of
Social Security,

Defendant.

Case No. CV 18-08142-RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff Ricardo A. (“Plaintiff”) challenges the Commissioner’s denial of his 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 May 29, 2015, Plaintiff applied for DIB alleging disability beginning October 30, 2014. (Administrative Record (“AR”) 50-52.) His application was

¹ Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 denied on November 23, 2015. (AR 68.) Plaintiff filed a written request for hearing,
2 and a hearing was held on September 14, 2017. (AR 31, 120.) Represented by
3 counsel, Plaintiff appeared and testified, along with an impartial vocational expert.
4 (AR 33-49.) On October 18, 2017, the Administrative Law Judge (“ALJ”) found that
5 Plaintiff had not been under a disability, pursuant to the Social Security Act,² from
6 October 30, 2014 through the date of decision. (AR 26.) The ALJ’s decision became
7 the Commissioner’s final decision when the Appeals Council denied Plaintiff’s
8 request for review. (AR 1.) Plaintiff filed this action on September 20, 2018. (Dkt.
9 No. 1.)

10 The ALJ followed a five-step sequential evaluation process to assess whether
11 Plaintiff was disabled under the Social Security Act. *See Lester v. Chater*, 81 F.3d
12 821, 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not
13 engaged in substantial gainful activity since October 30, 2014, the alleged onset date
14 (“AOD”). (AR 20.) At **step two**, the ALJ found that Plaintiff has the following
15 severe impairments: degenerative disc disease; scoliosis; osteoarthritis of the knees;
16 left shoulder arthritis; left thumb osteoarthritis; obesity; diabetes mellitus;
17 hypertension; hyperlipidemia; atrial fibrillation; and congestive heart failure, status
18 post surgical aortic valve replacement. (*Id.*) At **step three**, the ALJ found that
19 Plaintiff “does not have an impairment or combination of impairments that meets or
20 medically equals the severity of one of the listed impairments in 20 CFR Part 404,
21 Subpart P, Appendix 1.” (AR 21.)

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

24 [L]ift and carry and push and pull 10 pounds occasionally and 10
25 pounds frequently; can stand and/or walk for 2 hours in an 8-hour day

26 ² Persons are “disabled” for purposes of receiving Social Security benefits if they are
27 unable to engage in any substantial gainful activity owing to a physical or mental
28 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 and sit for 6 hours in an 8-hour day; never climb ladders, ropes, and
2 scaffolds; occasionally climb ramps and stairs; and occasionally
balance, stoop, kneel, crouch, and crawl.

3 (*Id.*)

4 At **step four**, the ALJ found that Plaintiff was capable of performing past
5 relevant work as a mutual fund investment representative, and thus the ALJ did not
6 continue to step five. (AR 25.) Accordingly, the ALJ determined that Plaintiff has
7 not been under a disability from the AOD through the date of decision. (AR 26.)

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 the
23 Secretary's conclusion." *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001)
24 (citations and internal quotation marks omitted). "Where evidence is susceptible to
25 more than one rational interpretation, the ALJ's decision should be upheld." *Ryan*
26 *v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing *Burch v.*
27 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); see *Robbins*, 466 F.3d at 882 ("If the
28

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

6 **IV. DISCUSSION**

7 Plaintiff raises a single issue for review: whether the ALJ properly considered
8 Plaintiff’s testimony. (See Joint Submission (“JS”) 4.) For the reasons below, the
9 Court agrees with Plaintiff and remands the matter for further proceedings.

10 **A. The ALJ’s Credibility Determination Is Not Supported By**
11 **Substantial Evidence**

12 Plaintiff argues that the ALJ failed to provide legally sufficient reasons for
13 rejecting his subjective testimony. (See JS 4-11.) The Commissioner contends that
14 the ALJ properly evaluated Plaintiff’s testimony. (See JS 12-17.)

15 **1. Plaintiff’s Testimony**

16 Plaintiff testified that he had his aortic valve replaced in August 2016. (AR
17 35.) He was advised by his doctor to exercise on a treadmill for his heart. (AR 36.)
18 Plaintiff explained that he gets tired, and after about 10 minutes, he needs to take a
19 break. (*Id.*) Plaintiff sometimes walks between 20 and 45 minutes by walking in
20 intervals. (*Id.*) He stated that sometimes it takes him two hours to complete 45
21 minutes of walking. (*Id.*)

22 Plaintiff lives alone in a small first-floor apartment. (AR 37.) A maid cleans
23 his apartment once a week. (*Id.*) When Plaintiff has a good day, he prepares one
24 meal that lasts for three or four days. (*Id.*)

25 Plaintiff drove to the hearing. (*Id.*) He explained that he has bad days and
26 good days, and on bad days, he cannot drive. (*Id.*)

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1 Plaintiff stated that he spends his time trying to read or doing something
2 productive. (AR 39.) He goes to the library one to three times a week to attend a
3 support group for people who are lonely. (AR 39-40.)

4 Plaintiff stopped working in January 2015 because he injured his knee while
5 working as a security guard. (AR 40.) His knee no longer causes him problems
6 because he lost some weight and went to therapy. (*Id.*)

7 Plaintiff testified that he can no longer work now due to fatigue caused by his
8 heart. (AR 41.) Plaintiff also has dizziness, loss of concentration, and inability to
9 focus. (*Id.*; AR 42.)

10 Plaintiff sometimes gets tired while sitting. (AR 42.) He then needs to stand
11 or lie down. (*Id.*) On a bad day, after doing something for 30 to 40 minutes, Plaintiff
12 needs to lie down for 20 or 30 minutes. (*Id.*) Plaintiff has two to four bad days each
13 week. (*Id.*)

14 **2. Applicable Legal Standards**

15 “In assessing the credibility of a claimant’s testimony regarding subjective
16 pain or the intensity of symptoms, the ALJ engages in a two-step analysis.” *Molina*
17 *v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citing *Vasquez v. Astrue*, 572 F.3d
18 586, 591 (9th Cir. 2009)). “First, the ALJ must determine whether the claimant has
19 presented objective medical evidence of an underlying impairment which could
20 reasonably be expected to produce the pain or other symptoms alleged.” *Treichler v.*
21 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (quoting
22 *Lingenfelter*, 504 F.3d at 1036) (internal quotation marks omitted). If so, and if the
23 ALJ does not find evidence of malingering, the ALJ must provide specific, clear and
24 convincing reasons for rejecting a claimant’s testimony regarding the severity of his
25 symptoms. *Id.* The ALJ must identify what testimony was found not credible and
26 explain what evidence undermines that testimony. *Holohan v. Massanari*, 246 F.3d
27 1195, 1208 (9th Cir. 2001). “General findings are insufficient.” *Lester*, 81 F.3d at
28 834.

1 **3. Discussion**

2 “After careful consideration of the evidence,” the ALJ found that Plaintiff’s
3 “severe impairments can reasonably be expected to cause some functional
4 limitations,” but found that “the extent of the alleged symptoms and functional
5 restrictions are not entirely consistent with the medical evidence and other evidence
6 in the record.” (AR 22.) The ALJ relied on the following reasons: (1) conservative
7 treatment; (2) activities of daily living; and (3) lack of objective medical evidence to
8 support the alleged severity of symptoms. (See AR 22-24.) No malingering
9 allegation was made, and therefore, the ALJ’s reasons must be “clear and
10 convincing.”

11 **a. Reason No. 1: Conservative Treatment**

12 An ALJ may discount a claimant’s testimony based on routine and
13 conservative treatment. See *Parra v. Astrue*, 481 F.3d 742, 750-51 (9th Cir. 2007)
14 (“[E]vidence of ‘conservative treatment’ is sufficient to discount a claimant’s
15 testimony regarding severity of an impairment.”); see also *Meanel v. Apfel*, 172 F.3d
16 1111, 1114 (9th Cir. 1999) (rejecting a plaintiff’s complaint “that she experienced
17 pain approaching the highest level imaginable” as “inconsistent with the ‘minimal,
18 conservative treatment’ that she received”).

19 Here, the ALJ observed that “only conservative treatment has been used to
20 treat [Plaintiff’s] knees,” consisting of medications, hot/cold therapy, chiropractic
21 care, acupuncture, and physical therapy. (AR 22.) However, this conservative
22 treatment relates only to Plaintiff’s knees, and this evidence is in fact consistent with
23 Plaintiff’s testimony that his knee no longer causes him problems after he lost weight
24 and went to therapy. (AR 40.) At the hearing, Plaintiff testified that it is primarily
25 his fatigue due to his heart issues, his dizziness, and his inability to focus that prevent
26 him from working. (AR 41.) The evidence of conservative treatment and
27 improvement with respect to Plaintiff’s knees is not a legitimate reason to discredit
28 Plaintiff’s subjective complaints about other symptoms and limitations.

1 The ALJ also noted Plaintiff's other treatment history in passing while
2 summarizing the medical records. (See AR 23-24.) Specifically, the ALJ noted
3 Plaintiff's "conservative management" of his back, left shoulder, and left thumb
4 conditions; "well-controlled" diabetes mellitus; "well-maintained" hypertension and
5 hyperlipidemia; and "stable" congestive heart failure. (*Id.*) But the ALJ did not
6 connect any evidence to Plaintiff's symptoms or testimony. The ALJ must explain
7 which symptoms are inconsistent with the evidence of record and must explain how
8 his evaluation of the symptoms led to that conclusion. See SSR 16-3p, 2016 WL
9 1119029, at *8 (S.S.A. Mar. 16, 2016); *Holohan*, 246 F.3d at 1208 ("[T]he ALJ must
10 specifically identify the testimony she or he finds not to be credible and must explain
11 what evidence undermines the testimony."). The determination must contain specific
12 reasons for the weight given to the individual's symptoms and must clearly articulate
13 how the ALJ evaluated the claimant's symptoms. 2016 WL 1119029, at *9; see
14 *Lester*, 81 F.3d at 834 ("General findings are insufficient.").

15 The Court finds that this reason is not a clear and convincing reason, supported
16 by substantial evidence, to discount Plaintiff's subjective testimony.

17 **b. Reason No. 2: Activities of Daily Living**

18 Inconsistencies between symptom allegations and daily activities may act as a
19 clear and convincing reason to discount a claimant's credibility. See *Tommasetti v.*
20 *Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008); *Bunnell v. Sullivan*, 947 F.2d 341, 346
21 (9th Cir. 1991). But a claimant need not be utterly incapacitated to obtain benefits.
22 *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). "If a claimant is able to spend a
23 substantial part of his day engaged in pursuits involving the performance of physical
24 functions that are transferable to a work setting, a specific finding as to this fact may
25 be sufficient to discredit a claimant's allegations." *Morgan v. Comm'r of Soc. Sec.*
26 *Admin.*, 169 F.3d 595, 600 (9th Cir. 1999); accord *Vertigan v. Halter*, 260 F.3d 1044,
27 1050 (9th Cir. 2001).

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1 The ALJ found that Plaintiff’s activities of daily living “appear compatible
2 with the ability to sustain the work activities within the confines of the [RFC].” (AR
3 25.) The ALJ noted Plaintiff’s regular exercise with breaks, ability to live alone and
4 care for himself, ability to prepare meals, ability to drive, and participation in support
5 groups. (*Id.*)

6 The fact that Plaintiff performs some daily activities does not detract from his
7 overall credibility, as the record does not show that this consumes a substantial part
8 of Plaintiff’s day. Plaintiff stated that on a good day, he prepares one meal that lasts
9 for three or four days. (AR 37.) It is not clear that Plaintiff’s occasional meal
10 preparation requires a substantial amount of time or effort, and the ALJ failed to
11 explain how this translates into an ability to perform regularly in the workplace. *See*
12 *Orn*, 495 F.3d at 639 (stating that an ALJ erred in rejecting a claimant’s testimony
13 due to daily activities that were “so undemanding that they cannot be said to bear a
14 meaningful relationship to the activities of the workplace”). Similarly, the ALJ failed
15 to explain how Plaintiff’s ability to live alone, drive on good days, and participate in
16 a support group translates to a work setting or is otherwise inconsistent with his
17 alleged limitations. *See Lanway v. Colvin*, No. C13-5155BHS, 2014 WL 989256, at
18 *8 (W.D. Wash. Mar. 13, 2014) (claimant “has no problems with personal care, . . .
19 prepares simple meals, . . . drives, does laundry, and handles his own finances,” but
20 the ALJ erred in failing to discuss transferability or contradictions with other
21 testimony); *cf. Karie K. v. Comm’r of Soc. Sec.*, No. 6:17-CV-01024-AA, 2018 WL
22 3613993, at *6 (D. Or. July 27, 2018) (finding that a claimant’s participation in
23 activities that included social events, groups, and yoga was a clear and convincing
24 reason to discredit her testimony because the ALJ “determine[d] that plaintiff’s
25 allegations about concentration difficulties and brain fog were inconsistent with her
26 stated abilit[ies]”).

27 Further, the mere ability to perform some tasks is not necessarily indicative of
28 an ability to perform work activities because “many home activities are not easily

1 transferable to what may be the more grueling environment of the workplace, where
2 it might be impossible to periodically rest or take medication.” *Fair*, 885 F.2d at 603;
3 *cf. Molina*, 674 F.3d at 1112-13 (the ALJ may discredit a claimant who “participat[es]
4 in everyday activities indicating capacities that are transferable to a work setting”).
5 The critical difference between home activities “and activities in a full-time job are
6 that a person has more flexibility in scheduling the former . . . , can get help from
7 other persons . . . , and is not held to a minimum standard of performance, as she
8 would be by an employer.” *Bjornson v. Astrue*, 671 F.3d 640, 647 (7th Cir. 2012)
9 (cited with approval in *Garrison v. Colvin*, 759 F.3d 995, 1016 (9th Cir. 2014)).
10 Here, Plaintiff testified that on bad days, he needs to take breaks every 30 to 40
11 minutes to lie down for up to a half hour. (AR 42.) Plaintiff’s bad days occur two to
12 four days a week. (*Id.*)

13 With respect to Plaintiff’s exercise, Plaintiff testified that he walks on a
14 treadmill at the advice of his doctor. (AR 36.) Plaintiff explained that he takes a
15 break from walking after about 10 minutes, and it can take him two hours to complete
16 45 minutes of walking. (*Id.*) The ALJ again does not explain how this translates into
17 an ability to perform regularly in the workplace. Additionally, some activities “are
18 not necessarily transferable to the work setting with regard to the impact of pain”
19 because “[a] patient may do these activities *despite* pain for therapeutic reasons, but
20 that does not mean she could concentrate on work despite the pain or could engage
21 in similar activity for a longer period given the pain involved.” *Vertigan*, 260 F.3d
22 at 1050.

23 In sum, the Court finds that this reason is not a clear and convincing reason,
24 supported by substantial evidence, to discount Plaintiff’s credibility.

25 **c. Reason No. 3: Lack of Supporting Objective Medical**
26 **Evidence**

27 The remaining reason for discounting Plaintiff’s subjective testimony—lack
28 of supporting objective evidence—cannot form the sole basis for discounting

1 symptom testimony. *See Burch*, 400 F.3d at 681 (“Although lack of medical
2 evidence cannot form the sole basis for discounting pain testimony, it is a factor that
3 the ALJ can consider in his credibility analysis.”); *Light v. Soc. Sec. Admin.*, 119 F.3d
4 789, 792 (9th Cir. 1997) (“[A] finding that the claimant lacks credibility cannot be
5 premised wholly on a lack of medical support for the severity of his pain.”).

6 The ALJ did not give clear and convincing reasons, supported by substantial
7 evidence, for discounting Plaintiff’s credibility. Accordingly, remand is warranted
8 on this issue.

9 **B. Remand For Further Administrative Proceedings**

10 Because further administrative review could remedy the ALJ’s errors, remand
11 for further administrative proceedings, rather than an award of benefits, is warranted
12 here. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015) (remanding for
13 an award of benefits is appropriate in rare circumstances). Before ordering remand
14 for an award of benefits, three requirements must be met: (1) the Court must conclude
15 that the ALJ failed to provide legally sufficient reasons for rejecting evidence; (2) the
16 Court must conclude that the record has been fully developed and further
17 administrative proceedings would serve no useful purpose; and (3) the Court must
18 conclude that if the improperly discredited evidence were credited as true, the ALJ
19 would be required to find the claimant disabled on remand. *Id.* (citations omitted).
20 Even if all three requirements are met, the Court retains flexibility to remand for
21 further proceedings “when the record as a whole creates serious doubt as to whether
22 the claimant is, in fact, disabled within the meaning of the Social Security Act.” *Id.*
23 (citation omitted).

24 Here, remand for further administrative proceedings is appropriate. The Court
25 finds that the ALJ failed to provide clear and convincing reasons supported by
26 substantial evidence to discount Plaintiff’s subjective testimony. On remand, the
27 ALJ shall reassess Plaintiff’s subjective allegations. The ALJ shall then reassess
28 Plaintiff’s RFC in light of the reassessment of Plaintiff’s subjective allegations and

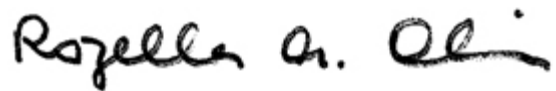
1 proceed through step four and step five to determine what work, if any, Plaintiff is
2 capable of performing.

3 **V. CONCLUSION**

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

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

9
10 DATED: August 22, 2019



11 ROZELLA A. OLIVER
12 UNITED STATES MAGISTRATE JUDGE

13
14 **NOTICE**

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