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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

ANGELA VENISE BOLES,)	Case No. CV 18-8196-AS
)	
Plaintiff,)	MEMORANDUM OPINION AND
)	
vs.)	ORDER OF REMAND
)	
ANDREW SAUL,)	
Commissioner of the Social)	
Security Administration, ¹)	
)	
Defendant.)	
)	
_____)	

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

¹ Andrew Saul is now the Commissioner of the Social Security Administration and is substituted in for Acting Commissioner Nancy A. Berryhill in this case. See Fed.R.Civ.P. 25(d).

1 since January 31, 2014, the alleged onset date. (AR 17). At step two,
2 the ALJ determined that Plaintiff had the following severe combination
3 of impairments: major depressive disorder with anxiety; history of retinal
4 detachment, status-post surgical repair (left eye); knee effusion
5 (left); obesity; and mild degenerative disc disease of the cervical
6 spine. (AR 17-18).² At step three, the ALJ determined that Plaintiff did
7 not have an impairment or combination of impairments that met or
8 medically equaled the severity of any of the Listings enumerated in the
9 regulations.³ (AR 18-19).

10
11 The ALJ then determined that Plaintiff had the residual functional
12 capacity ("RFC")⁴ to perform light work⁵ with the following limitations:
13 can never climb ladders, ropes or scaffolds; can no more than
14 occasionally perform all other postural activities; can never work
15 around unprotected heights or moving mechanical parts; and limited to
16 simple routine tasks but not at production-rate pace. (AR 20-25). At
17 step four, the ALJ determined that Plaintiff was not able to perform any
18 past relevant work. (AR 25-26). At step five, the ALJ, relying on the
19 testimony of the VE, found that Plaintiff could perform jobs existing in

20
21 ² The ALJ found that Plaintiff's impairment of high myopia of
22 the right eye was non-severe. (AR 18).

23 ³ The ALJ specifically considered whether Plaintiff's
24 impairments met the following listings: 1.02 (major dysfunction of joint
25 due to any cause), 1.04 (disorders of the spine), 12.04 (depressive
26 bipolar and related disorders), and 12.06 (obsessive compulsive
27 disorder). (AR 18-19).

28 ⁴ A Residual Functional Capacity is what a claimant can still do
despite existing exertional and nonexertional limitations. See 20
C.F.R. § 404.1545(a)(1).

⁵ "Light work involves lifting no more than 20 pounds at a time
with frequent lifting or carrying of objects weighing up to 10 pounds."
20 C.F.R. § 404.1567(b).

1 significant numbers in the national economy. (AR 26-27). Accordingly,
2 the ALJ determined that Plaintiff was not under a disability as defined
3 by the Social Security Act, from January 31, 2014, through the date of
4 the decision. (AR 27).

5
6 The Appeals Council denied Plaintiff request for review of the
7 ALJ's decision. (See AR 1-5). Plaintiff now seeks judicial review of
8 the ALJ's decision, which stands as the final decision of the
9 Commissioner. 42 U.S.C. §§ 405(g), 1383(c).

10
11 **STANDARD OF REVIEW**
12

13 This Court reviews the Administration's decision to determine if
14 it is free of legal error and supported by substantial evidence. See
15 Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial
16 evidence" is more than a mere scintilla, but less than a preponderance.
17 Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). To determine
18 whether substantial evidence supports a finding, "a court must consider
19 the record as a whole, weighing both evidence that supports and evidence
20 that detracts from the [Commissioner's] conclusion." Aukland v.
21 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001)(internal quotation
22 omitted). As a result, "[i]f the evidence can support either affirming
23 or reversing the ALJ's conclusion, [a court] may not substitute [its]
24 judgment for that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d
25 880, 882 (9th Cir. 2006).
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3 **PLAINTIFF'S CONTENTIONS**

4 Plaintiff alleges the ALJ erred in: (1) finding that Plaintiff
5 could perform the occupation of mail clerk; (2) finding that Plaintiff
6 could perform the occupation of garment folder; and (3) failing to
7 properly evaluate the opinion of treating psychiatrist, Dr. Hernandez.
8 (See Joint Stip. at 4-6, 10-21, 24-25).

9 **DISCUSSION**

10
11 After consideration of the record as a whole, the Court finds that
12 Plaintiff's third claim of error warrants a remand for further
13 consideration. Since the Court is remanding the matter based on
14 Plaintiff's third claim of error, the Court will not address Plaintiff's
15 first and second claims of error.

16
17 **A. The ALJ Failed to Properly Assess a Portion of the Opinion of**
18 **Treating Psychiatrist, Fabian Hernandez, D.O.**

19
20 Plaintiff asserts that the ALJ failed to provide any reason, or
21 even specific and legitimate reasons, for rejecting the opinion of
22 treating psychiatrist, Dr. Hernandez, concerning Plaintiff's moderate
23 limitation in the ability to make judgments on simple work-related
24 decisions. (See Joint Stip. at 17-21). Defendant asserts that the ALJ
25 properly evaluated Dr. Hernandez's opinion in assessing Plaintiff's RFC.
26 (See Joint Stip. at 21-24).

1 An ALJ must take into account all medical opinions of record. 20
2 C.F.R. § 404.1527(b). Although a treating physician's opinion is
3 generally afforded the greatest weight in disability cases, it is not
4 binding on an ALJ with respect to the existence of an impairment or the
5 ultimate determination of disability. Batson v. Comm'r of Soc. Sec.
6 Admin., 359 F.3d 1190, 1195 (9th Cir. 2004); Magallanes v. Bowen, 881
7 F.2d 747, 751 (9th Cir. 1989). The weight given a treating physician's
8 opinion depends on whether it is supported by sufficient medical data
9 and is consistent with other evidence in the record. 20 C.F.R. §§
10 404.1527(b)-(d), 416.927(b)-(d). "Generally, a treating physician's
11 opinion carries more weight than an examining physician's, and an
12 examining physician's opinion carries more weight than a reviewing
13 physician's." Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir.
14 2001); see also Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir. 1995).

15
16 If a treating or examining doctor's opinion is not contradicted by
17 another doctor, the ALJ can reject the opinion only for "clear and
18 convincing reasons." Carmickle v. Commissioner, 533 F.3d 1155, 1164
19 (9th Cir. 2008); Lester v. Chater, 81 F.3d at 830 (9th Cir. 1995). If
20 the treating or examining doctor's opinion is contradicted by another
21 doctor, the ALJ must provide "specific and legitimate reasons" for
22 rejecting the opinion. Orn v. Astrue, 495 F.3d 625, 632 (9th Cir.
23 2007); Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998); Lester v.
24 Chater, supra.

25
26 Fabian Hernandez, D.O., a psychiatrist at the Los Angeles County
27 Department of Mental Health, treated Plaintiff from July 16, 2015 to
28

1 approximately November 10, 2016. (See AR 847, 747, 752-53, 756-57, 760-
2 63, 770-71, 78-79, 786-87, 792-93, 795-96, 801-02, 829-30).

3
4 Dr. Hernandez prepared a "Medical Source Statement of Ability to
5 Do Work-Activities (Mental)" dated October 26, 2016. (See AR 848-50).
6 Dr. Hernandez opined, inter alia, that Plaintiff has moderate
7 limitations ("There is more than a slight limitation in this area but
8 the individual is still able to function satisfactorily.") in the **[t]he**
9 **ability to make judgments on simple work-related decisions** and in
10 understanding and remembering complex instructions, and that Plaintiff
11 has marked limitations ("There is a serious limitation in this area.
12 There is a substantial loss in the ability to effectively function.")
13 in carrying out complex instructions and in "[t]he ability to make
14 judgments on complex work-related decisions." (AR 848, bolded for
15 emphasis).

16
17 The ALJ addressed Dr. Hernandez's opinion as follows:

18
19 With respect to the claimant's ability to perform the
20 mental aspects of work, I give great weight to the October
21 2016 opinion of Fabian Hernandez, D.O., the claimant's
22 psychiatrist, that she had moderate limitations in the
23 ability to make judgments on simple work-related decisions
24 and to understand and remember complex instructions, and
25 marked limitations in the ability to carry out complex
26 instruction and make judgments on complex work-related
27 decisions (Exhibit 17F). The doctor has seen the claimant
28 approximately every two months since July 2015, and his

1 assessment is consistent with the treatment records (Exhibit
2 16 F, p. 114; 20F; see Exhibit 16F, pp. 37, 45, 53, 59, 62,
3 68, 96).

4
5 Dr. Hernandez's opinion is also generally consistent
6 with, but more restrictive than, those of the state agency
7 medical consultant and the consultative psychiatrist, to
8 which I also give great weight, as they are largely
9 consistent with and supported by the clinical findings. . .

10
11 (AR 23-24).

12 Since the ALJ did not find that Dr. Hernandez's opinion about
13 Plaintiff's moderate limitation in "[t]he ability to make judgments on
14 simple work-related decisions" was *contradicted* by another physician's
15 opinion, the issue is whether the ALJ provided "clear and convincing"
16 reasons for discrediting Dr. Hernandez's opinions. See Trevizo v.
17 Berryhill, 871 F.3d 664, 675 (9th Cir. 2017)("To reject the [the]
18 uncontradicted opinion of a treating or examining doctor, an ALJ must
19 state clear and convincing reasons that are supported by substantial
20 evidence."; citation omitted).

21
22 Although the ALJ claimed to give "great weight" to Dr. Hernandez's
23 opinion, the ALJ appears not to have taken into account Dr. Hernandez's
24 opinion that Plaintiff had a moderate limitation in her ability to make
25 judgments on simple work-related decisions -- a limitation which on
26 November 18, 2014 both Daniel Hoffman, M.D. and Jene E. Verchick, Psy.D.
27 also found (see AR 657 ["The ability to understand, remember, and carry
28 out instructions are affected by the impairment as follows: . . . Make

1 judgments on simple work-related decisions - Moderate Impairment.", 659
2 [same]) -- when determining Plaintiff's RFC (see AR 20-25). See Walton
3 v. Colvin, 2015 WL 3649678, *21-*22 (D. Nev. June 11, 2015)(ALJ erred
4 in failing to properly reject or provide any reasons for rejecting the
5 treating physician's opinion, in part, that the plaintiff had a moderate
6 limitation in the ability to make judgments on simple work-related
7 decisions); Lescoe v. Astrue, 2013 WL 100169, *2 (C.D. Cal. Jan. 8,
8 2013)(ALJ erred in failing to address the examining physician's
9 uncontradicted finding that the plaintiff had a marked limitation in the
10 ability to make judgments on simple work-related decisions); see also
11 Richardson v. Colvin, 2016 WL 4487823, *5 (C.D. Cal. Aug. 23, 2016)(ALJ
12 erred in accepting an examining physician's opinion that the claimant
13 had a moderate limitation in the ability to respond appropriately to
14 usual work situations and changes in a routine work setting but not
15 incorporating that limitation into the RFC); Sinohui v. Astrue, 2011 WL
16 1042333, *14 (C.D. Cal. March 18, 2011)("In excluding from his RFC
17 determination [the physician]'s opinions that Plaintiff was moderately
18 limited in his ability to understand and remember detailed instructions,
19 in the ability to carry out detailed instructions, and in the ability
20 to interact appropriately with the general public, the ALJ implicitly
21 rejected those opinions without providing any reason for doing so. This
22 constitutes error.").⁶

24
25 ⁶ Although Defendant attempts to justify the ALJ's decision based
26 on the ALJ's consideration of the evidence in the record and on the
27 ALJ's reliance on the opinions of the examining psychiatrist and non-
28 examining State Agency reviewing physicians (see Joint Stip. at 23), the
Court will not consider reasons for rejecting Dr. Hernandez's opinion
that were not given by the ALJ in the decision. See Pinto v. Massanari,
249 F.3d 840, 847-48 (9th Cir. 2001); SEC v. Chenery Corp., 332 US 194,
196 (1947).

1 Here, the ALJ failed to provide any reasons, let alone "clear and
2 convincing" reasons, for rejecting Dr. Hernandez's opinion about
3 Plaintiff's moderate limitation in her ability to make judgments on
4 simple work-related decisions.

5
6 Contrary to Defendant's assertion (see Joint Stip. at 23-24), the
7 ALJ's failure to properly reject Dr. Hernandez's opinion concerning
8 Plaintiff's moderate limitation in her ability to make judgments on
9 simple work-related decisions was not harmless error. Since the ALJ did
10 not provide reasons for rejecting that portion of Dr. Hernandez's
11 opinion, the ALJ's error cannot be deemed "inconsequential to the
12 ultimate nondisability determination." See Stout v. Comm'r Soc. Sec.
13 Admin., 454 F.3d 1050, 1055 (9th Cir. 2006); Carmickle v. Comm'r Soc.
14 Sec. Admin., 533 F.3d 1155, 1162 (9th Cir. 2008).

15
16 **B. Remand Is Warranted**

17
18 The decision whether to remand for further proceedings or order an
19 immediate award of benefits is within the district court's discretion.
20 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no
21 useful purpose would be served by further administrative proceedings,
22 or where the record has been fully developed, it is appropriate to
23 exercise this discretion to direct an immediate award of benefits. Id.
24 at 1179 ("[T]he decision of whether to remand for further proceedings
25 turns upon the likely utility of such proceedings."). However, where,
26 as here, the circumstances of the case suggest that further
27 administrative review could remedy the Commissioner's errors, remand is
28

1 appropriate. McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011);
2 Harman v. Apfel, 211 F.3d at 1179-81.

3
4 A remand is appropriate where, as here, the ALJ finds a physician's
5 opinion credible but then fails to include or address material aspects
6 of that opinion in the RFC determination. See Bagby v. Commissioner,
7 606 Fed. Appx, 888, 890 (9th Cir. 2015). Because outstanding issues
8 must be resolved before a determination of disability can be made, and
9 "when the record as a whole creates serious doubt as to whether the
10 [Plaintiff] is, in fact, disabled within the meaning of the Social
11 Security Act," further administrative proceedings would serve a useful
12 purpose and remedy defects. Burrell v. Colvin, 775 F.3d 1133, 1141 (9th
13 Cir. 2014)(citations omitted).⁷

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24 ⁷ The Court has not reached any other issue raised by Plaintiff
25 except to determine that reversal with a directive for the immediate
26 payment of benefits would not be appropriate at this time.
27 "[E]valuation of the record as a whole creates serious doubt that
28 Plaintiff is in fact disabled." See Garrison v. Colvin, 759 F.3d 995,
1021 (2014). Accordingly, the Court declines to rule on Plaintiff's
claims regarding the ALJ's errors in finding that Plaintiff could
perform the occupation of mail clerk and garment folder (see Joint Stip.
at 4-6, 10-17). Because this matter is being remanded for further
consideration, these issues should also be considered on remand.

ORDER

For the foregoing reasons, the decision of the Commissioner is reversed, and the matter is remanded for further proceedings pursuant to Sentence 4 of 42 U.S.C. § 405(g).

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: August 21, 2019

_____/s/_____
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE