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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL W.,¹
Plaintiff

v.

KILOLO KIJAKAJI, Acting
Commissioner of Social Security,
Defendant.

Case No. 2:21-cv-08100-GJS

**MEMORANDUM OPINION AND
ORDER**

I. PROCEDURAL HISTORY

Plaintiff Michael W. (“Plaintiff”) filed a complaint seeking review of the decision of the Commissioner of Social Security denying his application for Supplemental Security Income (“SSI”). The parties filed consents to proceed before the undersigned United States Magistrate Judge [Dkts. 4 and 12] and briefs [Dkts. 16 (“Pl. Br.”) & 17 (“Def. Br.”)] addressing disputed issues in the case. The matter is now ready for decision. For the reasons set forth below, the Court finds that this matter should be remanded.

¹ In the interest of privacy, this Order uses only the first name and the initial of the last name of the non-governmental party in this case.

1 **II. ADMINISTRATIVE DECISION UNDER REVIEW**

2 Plaintiff filed an application for SSI on April 3, 2019, alleging disability
3 beginning August 4, 2008. [Dkt. 15, Administrative Record (“AR”) 15, 158-65.]
4 Plaintiff’s application was denied at the initial level of review and on
5 reconsideration. [AR 15, 88-90, 95-99.] A telephone hearing was held before
6 Administrative Law Judge Paul Coulter (“the ALJ”) on December 15, 2020. [AR
7 15, 32-55.]

8 On January 8, 2021, the ALJ issued an unfavorable decision applying the
9 five-step sequential evaluation process for assessing disability. [AR 15-26.] *See* 20
10 C.F.R. § 416.920(b)-(g)(1). At step one, the ALJ determined that Plaintiff had not
11 engaged in substantial gainful activity since the filing date of his application, April
12 3, 2019. [AR 17.] At step two, the ALJ determined that Plaintiff has the following
13 severe impairments: diabetes mellitus; right shoulder rotator cuff injury, status post
14 dislocation and surgery; asthma; bipolar disorder; major depressive disorder; and
15 post-traumatic stress disorder (“PTSD”). [*Id.*] At step three, the ALJ determined
16 that Plaintiff does not have an impairment or combination of impairments that meets
17 or medically equals the severity of one of the impairments listed in Appendix I of
18 the Regulations. [AR 18.] *See* 20 C.F.R. Pt. 404, Subpt. P, App. 1. The ALJ found
19 that Plaintiff has the residual functional capacity (“RFC”) to perform light work, as
20 defined in 20 C.F.R. § 416.967(b), but Plaintiff is limited to: lifting, carrying,
21 pushing, and pulling 20 pounds occasionally and 10 pounds frequently; standing
22 and/or walking about 6 out of 8 hours; sitting about 6 out of 8 hours; pushing,
23 pulling and reaching on the right overhead occasionally; and engaging in postural
24 activities frequently. [AR 20.] In addition, Plaintiff can maintain attention and
25 concentration to perform non-complex routine tasks and work in an environment
26 with frequent changes to the work setting but should avoid crawling, ladders, ropes,
27 scaffolds, and concentrated exposure to respiratory irritants such as fumes, odors,
28 dust, and gases. [*Id.*] At step four, the ALJ determined that Plaintiff has no past

1 relevant work. [AR 24.] At step five, the ALJ found that Plaintiff could perform
2 other work that exists in significant numbers in the national economy, including
3 representative occupations such as Marker, Router, and Small Products Assembler I.
4 [AR 25.] Based on these findings, the ALJ concluded that Plaintiff has not been
5 disabled since the filing date of his application, April 3, 2019. [*Id.*]

6 The Appeals Council denied review of the ALJ’s decision on August 24,
7 2021. [AR 1-6.] This action followed.

8 Plaintiff raises the following issues challenging the ALJ’s findings and
9 determination of non-disability:

- 10 1. The ALJ failed to properly assess Plaintiff’s subjective testimony.
11 [Pl. Br. at 2-6.]
- 12 2. The ALJ failed to properly consider medical opinion evidence.
13 [Pl. Br. at 6-7.]

14 The Commissioner asserts that the ALJ’s decision is supported by substantial
15 evidence and should be affirmed. [Def. Br. at 1-9.]

17 III. GOVERNING STANDARD

18 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s decision to
19 determine if: (1) the Commissioner’s findings are supported by substantial
20 evidence; and (2) the Commissioner used correct legal standards. *See Carmickle v.*
21 *Comm’r Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Brewes v. Comm’r*
22 *Soc. Sec. Admin.*, 682 F.3d 1157, 1161 (9th Cir. 2012). “Substantial evidence ... is
23 ‘more than a mere scintilla’ ... [i]t means – and only means – ‘such relevant
24 evidence as a reasonable mind might accept as adequate to support a conclusion.’”
25 *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (citations omitted); *Gutierrez v.*
26 *Comm’r of Soc. Sec.*, 740 F.3d 519, 522 (9th Cir. 2014) (“[s]ubstantial evidence is
27 more than a mere scintilla but less than a preponderance”) (internal quotation marks
28 and citation omitted).

1 XVI: Evaluation of Symptoms in Disability Claims, SSR 16-3P, 2017 WL 5180304,
2 *4 (S.S.A. Oct. 25, 2017) (explaining that the ALJ must “evaluate the intensity and
3 persistence of [the] individual’s symptoms ... and determine the extent to which
4 [those] symptoms limit [his] ... ability to perform work-related activities”).

5 Here, Plaintiff testified that he had been suffering from depression since the
6 death of his infant son in 1993. [AR 39-41.] Plaintiff reported four suicide attempts
7 with hospitalizations. [AR 41-42.] Plaintiff stated that medication (Abilify and
8 Zoloft) helped his symptoms, but he still has thoughts of suicide. [AR 44, 49.]
9 Plaintiff also testified that the side effects from his medications include racing
10 thoughts, extreme drowsiness, inability to remain still, anxiety, nervousness, and
11 problems with zoning out and focusing. [AR 44-46, 48-49.] Plaintiff stated that he
12 needs to lie down or take naps two to three times a day. [AR 45-46.]

13 The ALJ offered only one reason for discounting Plaintiff’s subjective
14 symptom testimony—the lack of objective medical evidence. [AR 22-23.] The ALJ
15 stated that although Plaintiff’s mental impairments could reasonably be expected to
16 cause some of Plaintiff’s alleged symptoms, Plaintiff’s subjective complaints were
17 unsupported by the objective record. [AR 23 (“[a]lthough the evidence supports
18 functional limitations regarding concentrating, persisting, or maintaining pace and
19 adaption, the record does not reflect that such limitations would preclude all work”
20 and “[t]he undersigned finds that the claimant’s ongoing depression and post-
21 traumatic stress disorder (PTSD) warrant functional limitations, however, with
22 regard to work setting, the overall record does not support greater restriction than
23 captured in the above residual functional capacity”). While objective medical
24 evidence is a useful factor to consider in evaluating the intensity and persistence of
25 symptoms, the lack of corroborating medical evidence cannot provide the sole basis
26 for rejecting subjective symptom testimony. *See Trevizo v. Berryhill*, 871 F.3d 664,
27 679 (9th Cir. 2017) (“an ALJ ‘may not disregard [a claimant’s testimony] solely
28 because it is not substantiated affirmatively by objective medical evidence”)

1 (quoting *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006); *see also*
2 SSR 16-3p, 2017 WL 5180304 at *5 (“We will not evaluate an individual’s
3 symptoms based solely on objective medical evidence unless that objective medical
4 evidence supports a finding that the individual is disabled.”).

5 Defendant asserts that the ALJ discussed another valid reason for discounting
6 Plaintiff’s testimony—the record did not reflect Plaintiff’s complaints about the side
7 effects of medication. [Def. Br. at 4.] Defendant’s argument, however,
8 mischaracterizes the ALJ’s decision. *See Orn*, 495 F.3d at 630; *Connett v.*
9 *Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003) (error to affirm ALJ’s credibility
10 decision based on reasons not cited by the ALJ). The ALJ did not cite Plaintiff’s
11 failure to complain about medication side effects or suggest that Plaintiff’s
12 testimony was inconsistent with his reports to his doctors. Rather, the ALJ’s
13 analysis focused on the perceived inconsistency between Plaintiff’s reported side
14 effects and the objective medical evidence, which cannot form the sole basis for
15 discounting Plaintiff’s testimony. [AR 23 (“the record does not reflect this level of
16 medication side effect to warrant this level of limitation”).] *See Trevizo*, 871 F.3d at
17 679; *Robbins*, 466 F.3d at 883.

18 The Court is unable to conclude that the ALJ’s errors in evaluating Plaintiff’s
19 subjective complaints were “harmless” or “inconsequential to the ultimate non-
20 disability determination.” *Brown-Hunter*, 806 F.3d at 492.

21 Remand is appropriate, as the circumstances of this case suggest that further
22 administrative proceedings could remedy the ALJ’s errors. *See Dominguez v.*
23 *Colvin*, 808 F.3d 403, 407 (9th Cir. 2015) (“Unless the district court concludes that
24 further administrative proceedings would serve no useful purpose, it may not
25 remand with a direction to provide benefits.”); *Treichler v. Comm’r of Soc. Sec.*
26 *Admin.*, 775 F.3d 1090, 1101, n.5 (9th Cir. 2014) (remand for further administrative
27 proceedings is the proper remedy “in all but the rarest cases”); *Harman v. Apfel*, 211
28 F.3d 1172, 1180-81 (9th Cir. 2000) (remand for further proceedings rather than for

1 the immediate payment of benefits is appropriate where there are “sufficient
2 unanswered questions in the record”).

3 Having found that remand is warranted, the Court declines to address
4 Plaintiff’s remaining issue. *See Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir. 2012)
5 (“Because we remand the case to the ALJ for the reasons stated, we decline to reach
6 [plaintiff’s] alternative ground for remand.”).

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V. CONCLUSION

For all of the foregoing reasons, **IT IS ORDERED** that:

- (1) the decision of the Commissioner is REVERSED and this matter is REMANDED pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings consistent with this Memorandum Opinion and Order; and
- (2) Judgment be entered in favor of Plaintiff.

IT IS SO ORDERED.

DATED: January 23, 2023



GAIL J. STANDISH
UNITED STATES MAGISTRATE JUDGE