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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

| | | |
|----------------------------------|---|---------------------|
| BARBARA COLQUITT, |) | No. EDCV 09-2099-RC |
| |) | |
| Plaintiff, |) | |
| |) | OPINION AND ORDER |
| v. |) | |
| |) | |
| MICHAEL J. ASTRUE, |) | |
| Commissioner of Social Security, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

Plaintiff Barbara Colquitt filed a complaint on November 19, 2009, seeking review of the Commissioner's decision denying her applications for disability benefits. On April 16, 2010, the Commissioner answered the complaint, and the parties filed a joint stipulation on May 25, 2010.

BACKGROUND

On February 6, 2007, plaintiff, who was born on December 17, 1948, applied for disability benefits under Title II of the Social Security Act ("Act"), 42 U.S.C. § 423, and the Supplemental Security Income program ("SSI") of Title XVI of the Act, claiming an inability to work since August 12, 2006,¹ due to cardiovascular disease,

¹ The plaintiff claims in her SSI application that her disability began on August 12, 2006, A.R. 163; however, she

1 diabetes and depression. A.R. 47-54, 60, 163-66. The plaintiff's
2 applications were initially denied on August 23, 2007, and were denied
3 again on January 24, 2008, following reconsideration. A.R. 31-35, 38-
4 43. The plaintiff then requested an administrative hearing, which was
5 held before Administrative Law Judge Michael D. Radensky ("the ALJ")
6 on April 29, 2009. A.R. 44, 167-92. On July 20, 2009, the ALJ issued
7 a decision finding plaintiff is not disabled. A.R. 7-15. The
8 plaintiff appealed this decision to the Appeals Council, which denied
9 review on September 25, 2009. A.R. 4-6, 26.

10 11 DISCUSSION

12 I

13 The Court, pursuant to 42 U.S.C. § 405(g), has the authority to
14 review the decision denying plaintiff disability benefits to determine
15 if his findings are supported by substantial evidence and whether the
16 Commissioner used the proper legal standards in reaching his decision.
17 Vasquez v. Astrue, 572 F.3d 586, 591 (9th Cir. 2009); Vernoff v.
18 Astrue, 568 F.3d 1102, 1105 (9th Cir. 2009).

19
20 The claimant is "disabled" for the purpose of receiving benefits
21 under the Act if she is unable to engage in any substantial gainful
22 activity due to an impairment which has lasted, or is expected to
23 last, for a continuous period of at least twelve months. 42 U.S.C.
24 §§ 423(d)(1)(A), 1382c(a)(3)(A); 20 C.F.R. §§ 404.1505(a), 416.905(a).

25
26 _____
27 claims in her Title II application that she became unable to work
28 on September 1, 2006. A.R. 47. In 2006, plaintiff was granted a
closed period of disability benefits for her heart problems and
diabetes. A.R. 14, 176-77.

1 "The claimant bears the burden of establishing a prima facie case of
2 disability." Roberts v. Shalala, 66 F.3d 179, 182 (9th Cir. 1995),
3 cert. denied, 517 U.S. 1122 (1996); Smolen v. Chater, 80 F.3d 1273,
4 1289 (9th Cir. 1996).

5
6 The Commissioner has promulgated regulations establishing a five-
7 step sequential evaluation process for the ALJ to follow in a
8 disability case. 20 C.F.R. §§ 404.1520, 416.920. In the **First Step**,
9 the ALJ must determine whether the claimant is currently engaged in
10 substantial gainful activity. 20 C.F.R. §§ 404.1520(b), 416.920(b).
11 If not, in the **Second Step**, the ALJ must determine whether the
12 claimant has a severe impairment or combination of impairments
13 significantly limiting her from performing basic work activities. 20
14 C.F.R. §§ 404.1520(c), 416.920(c). If so, in the **Third Step**, the ALJ
15 must determine whether the claimant has an impairment or combination
16 of impairments that meets or equals the requirements of the Listing of
17 Impairments ("Listing"), 20 C.F.R. § 404, Subpart P, App. 1. 20
18 C.F.R. §§ 404.1520(d), 416.920(d). If not, in the **Fourth Step**, the
19 ALJ must determine whether the claimant has sufficient residual
20 functional capacity despite the impairment or various limitations to
21 perform her past work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If not,
22 in **Step Five**, the burden shifts to the Commissioner to show the
23 claimant can perform other work that exists in significant numbers in
24 the national economy. 20 C.F.R. §§ 404.1520(g), 416.920(g).

25
26 Applying the five-step sequential evaluation process, the ALJ
27 found plaintiff has not engaged in substantial gainful activity since
28 her alleged onset date, and regarding plaintiff's Title II claim, the

1 ALJ found plaintiff meets the insured status requirements through
2 March 31, 2011. A.R. 12. (Step One). The ALJ then found plaintiff
3 has the following severe impairments: "coronary artery disease,
4 diabetes mellitus, hypertension, GED [gastroesophageal reflux
5 disease], and mild obesity" (Step Two); however, she does not have an
6 impairment or combination of impairments that meets or equals a listed
7 impairment. (Step Three). Finally, the ALJ determined plaintiff can
8 perform her past relevant work as a telemarketer and group home
9 manager; therefore, she is not disabled. (Step Four).

11 II

12 A claimant's residual functional capacity ("RFC") is what she can
13 still do despite her physical, mental, nonexertional, and other
14 limitations. Mayes v. Massanari, 276 F.3d 453, 460 (9th Cir. 2001);
15 see also Valentine v. Comm'r, Soc. Sec. Admin., 574 F.3d 685, 689 (9th
16 Cir. 2009) (RFC is "a summary of what the claimant is capable of doing
17 (for example, how much weight he can lift)."). Here, the ALJ found
18 plaintiff has the RFC to perform the full range of light work.² A.R.
19 13. However, plaintiff contends the ALJ's decision is not supported

21 ² Under Social Security regulations, "[l]ight work involves
22 lifting no more than 20 pounds at a time with frequent lifting or
23 carrying of objects weighing up to 10 pounds. Even though the
24 weight lifted may be very little, a job is in this category when
25 it requires a good deal of walking or standing, or when it
26 involves sitting most of the time with some pushing and pulling
27 of arm or leg controls. To be considered capable of performing a
28 full or wide range of light work, [the claimant] must have the
ability to do substantially all of these activities." 20 C.F.R.
§§ 404.1567(b), 416.967(b). "[T]he full range of light work
requires standing or walking for up to two-thirds of the
workday." Gallant v. Heckler, 753 F.2d 1450, 1454 n.1 (9th Cir.
1984); SSR 83-10, 1983 WL 31251, *6.

1 by substantial evidence because he erroneously determined she was not
2 an entirely credible witness and failed to properly consider the
3 opinions of her treating physician.
4

5 The plaintiff testified at the administrative hearing that she is
6 unable to work due to cardiovascular disease, uncontrolled diabetes,
7 and because she is weak and cannot deal with a lot of frustration.
8 A.R. 173, 178, 186-87. She also stated she has heart palpitations and
9 chest pains, gets anxious, and has to rest if she does too much. A.R.
10 175-76. Further, plaintiff reported her right leg goes numb and gives
11 out on her sometimes due to her diabetes. A.R. 178. The plaintiff
12 testified she can sit for at least 30 minutes before she has to get up
13 and walk for 5 minutes due to her leg problems, and can stand for
14 approximately 5 minutes before getting dizzy and having to sit down
15 for approximately 30 minutes. A.R. 179-80. The plaintiff stated she
16 cannot work an 8-hour day, but only three-and-a-half or four hours
17 before she needs to lie down for about three hours. A.R. 180-81. She
18 can walk approximately half a block before needing to rest for 5-15
19 minutes, and she cannot climb stairs. A.R. 79, 185.
20

21 Once a claimant has presented objective evidence that she suffers
22 from an impairment that could cause pain or other nonexertional
23 limitations,³ the ALJ may not discredit the claimant's testimony
24 "solely because the degree of pain alleged by the claimant is not
25

26 ³ "While most cases discuss excess pain testimony rather
27 than excess symptom testimony, rules developed to assure proper
28 consideration of excess pain apply equally to other medically
related symptoms." Swenson v. Sullivan, 876 F.2d 683, 687-88
(9th Cir. 1989).

1 supported by objective medical evidence." Bunnell v. Sullivan, 947
2 F.2d 341, 347 (9th Cir. 1991) (en banc); Moisa v. Barnhart, 367 F.3d
3 882, 885 (9th Cir. 2004). Thus, if the ALJ finds the claimant's
4 subjective complaints are not credible, he "must provide specific,
5 cogent reasons for the disbelief.'" Greger v. Barnhart, 464 F.3d 968,
6 972 (9th Cir. 2006) (citations omitted); Orn v. Astrue, 495 F.3d 625,
7 635 (9th Cir. 2007). "Factors that an ALJ may consider in weighing a
8 claimant's credibility include reputation for truthfulness,
9 inconsistencies in testimony or between testimony and conduct, daily
10 activities, and 'unexplained, or inadequately explained, failure to
11 seek treatment or follow a prescribed course of treatment.'" Orn, 495
12 F.3d at 636 (citations omitted); Thomas v. Barnhart, 278 F.3d 947,
13 958-59 (9th Cir. 2002). Furthermore, if there is medical evidence
14 establishing an objective basis for some degree of pain and related
15 symptoms, and no evidence affirmatively suggesting that the claimant
16 is malingering, the ALJ's reasons for rejecting the claimant's
17 testimony must be "clear and convincing." Morgan v. Comm'r of the
18 Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999); Vasquez, 572 F.3d
19 at 591.

20
21 Here, the ALJ found plaintiff's "statements concerning the
22 intensity, persistence and limiting effects of [her] symptoms are not
23 credible to the extent they are inconsistent" with her RFC because she
24 "cooks, drives, attends church regularly, reads the bible daily, and
25 goes for walks with her grandchildren." A.R. 14. However, because
26 "many home activities are not easily transferable to what may be the
27 more grueling environment of the workplace, where it might be
28 impossible to periodically rest or take medication[,]" Fair v. Bowen,

1 885 F.2d 597, 603 (9th Cir. 1989), in order to make an adverse
2 credibility determination based on a claimant's daily activities, the
3 ALJ must make a specific finding that the claimant "is able to spend
4 a *substantial part* of [her] day engaged in pursuits involving the
5 performance of physical functions that are transferable to a work
6 setting. . . ." Vertigan v. Halter, 260 F.3d 1044, 1049 (9th Cir.
7 2001) (quoting Morgan, 169 F.3d at 600; emphasis in original); see
8 also Gonzalez v. Sullivan, 914 F.2d 1197, 1201 (9th Cir. 1990) (If
9 daily activity evidence is used to rebut claims of nonexertional
10 limitations, the ALJ must find "the ability to perform those daily
11 activities translate[s] into the ability to perform appropriate
12 work."). Here, the ALJ did not specifically find that plaintiff
13 spends a substantial part of her day engaged in activities that are
14 transferrable to work, and plaintiff's testimony about her daily
15 activities shows such activities are quite limited. For instance,
16 plaintiff's cooking involves making "oatmeal, wheat toast, orange
17 juice, bake[d] chicken, sandwiches, fried fish, [and boiled] mixed
18 vegetable[s][,]" A.R. 75, 184, and, although she can drive, she does
19 not drive and her daughters take her where she needs to go. A.R. 184.
20 Additionally, plaintiff testified that her daughters help her do the
21 laundry and go grocery shopping, and she sometimes goes "for a walk
22 with [her] grandkids to the pool and stuff like that." A.R. 77, 185-
23 86. Plaintiff reads her Bible daily for about an hour a day, but
24 cannot read more because she gets frustrated and anxious and loses
25 focus, and she attends church almost every Sunday, but she is unable
26 to attend Bible study or take her grandchildren to the movies. Ibid.
27 These limited daily activities do not support a negative credibility
28 determination. See Benecke v. Barnhart, 379 F.3d 587, 594 (9th Cir.

1 2004) (ALJ erred in relying on claimant's daily activities to
2 discredit her pain testimony when such activities were "quite limited
3 and carried out with difficulty"); Vertigan, 260 F.3d at 1049-50
4 (claimant's ability to go grocery shopping with assistance, walk an
5 hour in the malls, get together with friends, play cards, swim, watch
6 television, read, take physical therapy, and exercise at home did not
7 constitute a clear and convincing reason for rejecting her pain
8 testimony); Cooper v. Bowen, 815 F.2d 557, 561 (9th Cir. 1987)
9 ("[E]vidence that [plaintiff] could assist with some household chores
10 was not determinative of disability. 'Disability does not mean that a
11 claimant must vegetate in a dark room excluded from all forms of human
12 and social activity.'" (citation omitted)).

13
14 The ALJ also rejected plaintiff's testimony as contrary to the
15 medical record. A.R. 14. However, "[i]t is improper as a matter of
16 law to discredit excess pain testimony solely on the ground that it is
17 not fully corroborated by objective medical findings." Cotton v.
18 Bowen, 799 F.2d 1403, 1407 (9th Cir. 1986); Lingenfelter v. Astrue,
19 504 F.3d 1028, 1036 (9th Cir. 2007).

20
21 For these reasons, the ALJ's discounting of plaintiff's
22 credibility was improper, and "his findings were unsupported by
23 substantial evidence based on the record as a whole." Reddick v.
24 Chater, 157 F.3d 715, 724 (9th Cir. 1998). "Because the ALJ did not
25 provide clear and convincing reasons for excluding claimant's pain and
26 symptoms from his assessment of claimant's RFC, substantial evidence
27 does not support the assessment." Lingenfelter, 504 F.3d at 1040.
28 Nor does substantial evidence support the ALJ's Step Four

1 determination that plaintiff can perform her past relevant work, which
2 was based on his erroneous RFC assessment. Stout v. Comm'r, Soc. Sec.
3 Admin., 454 F.3d 1050, 1056-57 (9th Cir. 2006); Moisa, 367 F.3d at
4 886.

5
6 **III**

7 When the Commissioner's decision is not supported by substantial
8 evidence, the Court has authority to affirm, modify, or reverse the
9 Commissioner's decision "with or without remanding the cause for
10 rehearing." 42 U.S.C. § 405(g); McCartey v. Massanari, 298 F.3d 1072,
11 1076 (9th Cir. 2002). "Remand for further administrative proceedings
12 is appropriate if enhancement of the record would be useful."
13 Benecke, 379 F.3d at 593. Since there are "insufficient findings as
14 to whether [plaintiff's] testimony should be credited as true," remand
15 is the appropriate remedy. Connett v. Barnhart, 340 F.3d 871, 876
16 (9th Cir. 2003); Bunnell v. Barnhart, 336 F.3d 1112, 1116 (9th Cir.
17 2003).

18
19 **ORDER**

20 IT IS ORDERED that: (1) plaintiff's request for relief is granted
21 and defendant's request for relief is denied; and (2) the
22 Commissioner's decision is reversed, and the action is remanded to the
23 Social Security Administration for further proceedings consistent with
24 this Opinion and Order, pursuant to sentence four of 42 U.S.C.
25 § 405(g), and Judgment shall be entered accordingly.

26 DATE: November 15, 2010

/S/ ROSALYN M. CHAPMAN
ROSALYN M. CHAPMAN
UNITED STATES MAGISTRATE JUDGE