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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 JANICE ELAINE MOSELEY,
12 Plaintiff,
13 v.
14 CAROLYN W. COLVIN,
15 ACTING COMMISSIONER OF
16 SOCIAL SECURITY
ADMINISTRATION,^{1/}
17 Defendant.
18

Case No. ED CV 13-0282 JCG

**MEMORANDUM OPINION AND
ORDER**

19 Janice Elaine Moseley (“Plaintiff”) challenges the Social Security
20 Commissioner’s (“Defendant”) decision denying her application for disability
21 benefits. Specifically, Plaintiff contends that the Administrative Law Judge (“ALJ”)
22 improperly rejected her credibility. (Joint Stip. at 12-16, 20-21.) The Court agrees
23 with Plaintiff for the reasons discussed below.

24 A. The ALJ Failed to Provide Clear and Convincing Reasons for Rejecting
25 Plaintiff’s Credibility
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28 ^{1/} Carolyn W. Colvin is substituted as the proper defendant herein. *See* Fed. R. Civ. P. 25(d).

1 An ALJ may reject a claimant's credibility "only upon (1) finding evidence of
2 malingering, or (2) expressing clear and convincing reasons for doing so." *Benton v.*
3 *Barnhart*, 331 F.3d 1030, 1040 (9th Cir. 2003). "General findings are insufficient;
4 rather, the ALJ must identify what testimony is not credible and what evidence
5 undermines the claimant's complaints." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir.
6 1995).

7 Here, the ALJ provided five reasons in support of her credibility
8 determination. The Court discusses, and rejects, each in turn.

9 First, the ALJ found that the severity of Plaintiff's symptoms is "greater than
10 expected in light of the medical evidence." (Administrative Record ("AR") at 16.)
11 However, an ALJ "may not reject a claimant's subjective complaints based solely on
12 a lack of objective medical evidence to fully corroborate the alleged severity of
13 pain." *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991); *Gamer v. Sec'y of*
14 *Health & Human Servs.*, 815 F.2d 1275, 1279 (9th Cir. 1987); *Summers v. Bowen*,
15 813 F.2d 241, 242 (9th Cir. 1987) (per curiam). Thus, as to this ground, the ALJ's
16 credibility determination is inadequate.

17 Second the ALJ found that Plaintiff's symptoms were "unusual [] and [] not
18 typical for [her] impairments." (AR at 62.) However, an "ALJ "must not succumb
19 to the temptation to play doctor and make [her] own independent medical findings."
20 *Banks v. Barnhart*, 434 F.Supp.2d 800, 805 (C.D. Cal. 2006) (quoting *Rohan v.*
21 *Chater*, 98 F.3d 966, 970 (7th Cir. 1996); see *Penny v. Sullivan*, 2 F.3d 953, 958 (9th
22 Cir. 1993); *Nelson v. Heckler*, 712 F.2d 346, 348 (8th Cir. 1983) (per curiam) ("[T]o
23 attempt to evaluate disability without personal examination of the individual and
24 without evaluation of the disability as it relates to the particular person is medical
25 sophistry at its best.") (citation omitted)). As such, the ALJ's unsupported medical
26 conclusion is insufficient to reject Plaintiff's credibility.

27 Third, the ALJ found that Plaintiff made "contradictory statements." (AR at
28 63.) This reason is belied by the record. For instance, the ALJ noted that Plaintiff

1 testified that “her headaches lasted all day,” while her July 9, 2009 *Headache*
2 *Questionnaire* indicates that “they lasted only an hour or two.” (*Id.* at 63, 157.)
3 However, the ALJ misquoted Plaintiff’s testimony and misconstrued her *Headache*
4 *Questionnaire*. See *Reddick v. Chater*, 157 F.3d 715, 723 (9th Cir. 1998) (finding
5 error where ALJ’s “paraphrasing of record material [was] not entirely accurate
6 regarding the content or tone of the record.”) Plaintiff did not testify that her
7 headaches lasted all day, but rather, that she gets headaches “three times a day, three
8 days a week.” (AR at 30.) Neither did Plaintiff state in her *Headache Questionnaire*
9 that her headaches lasted only an hour or two. (See *id.* at 157.) Indeed, when asked
10 “How long do your headaches last?” Plaintiff answered “almost all day sometime
11 then sometime a couple of hours.” (*Id.*) Plaintiff was later asked “How long after
12 your headache are you able to resume normal activities?” There, she replied “about
13 1 to 2 hours.” (*Id.*) It appears as though the ALJ conflated the two questions. The
14 Court, for its part, finds no inconsistency between Plaintiff’s answers and her
15 testimony at the hearing.

16 Next, the ALJ noted that Plaintiff “claimed she had carpal tunnel syndrome,
17 however, the records reveal no finding of carpal tunnel. (*Id.* at 63.) While
18 testifying, Plaintiff stated the she had been diagnosed with carpal tunnel “A while
19 back, a while back, a while back.” Here, Plaintiff’s medical records date back only
20 as far as two and a half years. (See AR at 188.) If Plaintiff was diagnosed with
21 carpal tunnel syndrome prior thereto, her statements were not necessarily
22 inconsistent. Further, that Plaintiff would not have included the older record seems
23 reasonable under the circumstances, as it would have been redundant. Plaintiff
24 submitted evidence of another impairment, medical epicondylitis, that causes the
25 same symptoms as carpal tunnel. (See AR at 263, 271, 273, 280, 287.) Thus, as to
26 this ground, the ALJ’s credibility determination was erroneous.

27 Fourth, the ALJ found that Plaintiff’s daily activities “could not be objectively
28 verified.” (AR at 63.) However, the ALJ’s “standard imposes an extremely heavy,

1 and unwarranted burden on Plaintiff.” *Bernal v. Astrue*, 2011 WL 1790052, at *6
2 (C.D. Cal. May 9, 2011) (citations omitted); *see also Haller v. Astrue*, 2008 WL
3 4291448, at *5 (E.D. Cal. Sept. 18, 2008) (rejecting ALJ’s credibility determination
4 based on his finding that claimant’s “limited daily activities . . . could not be
5 objectively verified with any reasonable degree of certainty.”) (citations omitted).
6 Social Security regulations make clear that a claimant’s statements about daily
7 activities will be evaluated in relation to the objective medical record. *See* 20 C.F.R.
8 § 404.1529(c)(4) (amended in other sections). “The ALJ cites no authority
9 suggesting that a claimant is required to offer objective verification, to a reasonable
10 degree of certainty, regarding his activities of daily living.” *Haller*, 2008 WL
11 4291448, at *5; *see also Lester*, 81 F.3d at 834 (“General findings are insufficient;
12 rather, the ALJ must identify what testimony is not credible and what evidence
13 undermines the claimant’s complaints.”). As to this ground, the ALJ improperly
14 rejected Plaintiff’s credibility by imposing a heightened standard.

15 Fifth, the ALJ found that “Plaintiff provided very brief responses to direct
16 questions.” The Court disagrees. After reviewing the hearing transcript, the Court
17 finds that Plaintiff’s answers were responsive, respectful, and of reasonable length.
18 (*See* AR at 42.) Therefore, the ALJ’s credibility finding is insufficient.

19 B. Remand is Warranted

20 With error established, this Court has discretion to remand or reverse and
21 award benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). Where no
22 useful purpose would be served by further proceedings, or where the record has been
23 fully developed, it is appropriate to exercise this discretion to direct an immediate
24 award of benefits. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004).
25 But where there are outstanding issues that must be resolved before a determination
26 can be made, or it is not clear from the record that the ALJ would be required to find
27 plaintiff disabled if all the evidence were properly evaluated, remand is appropriate.
28 *See id.* at 594.

1 Here, there are outstanding issues which must be resolved before a final
2 determination can be made. On remand, the ALJ shall reconsider Plaintiff's
3 subjective complaints and the resulting functional limitations, and either credit
4 Plaintiff's testimony or provide clear and convincing reasons supported by
5 substantial evidence for rejecting them. He shall also resolve all ambiguity in the
6 record.

7 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered
8 **REVERSING** the decision of the Commissioner denying benefits and
9 **REMANDING** the matter for further administrative action consistent with this
10 decision.^{1/}

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12 Dated: November 12, 2013

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16 Hon. Jay C. Gandhi
17 United States Magistrate Judge
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