



1 Administrative Law Judge wrongly discounted the opinion of the consulting psychologist Dr.  
2 Townsend, who stated her opinion that Plaintiff might lack the consistency to complete a full day's  
3 work due to his symptoms, including anger and anxiety. [AR 31, referencing AR 670]. The  
4 Administrative Law Judge gave this opinion "little weight," stating three reasons: that it was the  
5 product of a one-time examination of Plaintiff; that it appeared to be inconsistent with her findings  
6 that were "generally benign," and that "they [sic] are not supported by the records of the claimant's  
7 extensive activities of daily living." [AR 32].

8           If the opinion of an examining physician is uncontroverted, the Administrative Law  
9 Judge must provide clear and convincing evidence before rejecting it. *Edlund v. Massanari*, 253  
10 F.3d 1152, 1157 (9<sup>th</sup> Cir. 2001); *Aukland v. Massanari*, 257 F.3d 1036 (9<sup>th</sup> Cir. July 23, 2001). Dr.  
11 Townsend's opinion was not controverted, but the reasons the Administrative Law Judge gave for  
12 disbelieving it do not meet this standard. The fact that the examination was a one-time affair means  
13 little in the context here. The purpose of having a consultation at all was to receive the insight from  
14 the consultant, and such consultations almost always are one-time situations. If the consultant's  
15 opinion had differed from that of a physician who had a long-term relationship with Plaintiff, then  
16 the fact that the consultant had seen Plaintiff only once would have been a distinguishing factor. *See*  
17 *Sprague v. Bowen* 812 F.2d 1226, 1230 (9<sup>th</sup> Cir. 1987); *Barker v. Shalala*, 40 F.3d 789, 794 (6<sup>th</sup> Cir.  
18 1994). But here the Administrative Law Judge was not contrasting the consultant's  
19 opinion with that of another physician; she simply was disagreeing with it on its own.  
20 In that circumstance, the fact that the examination was a one-time occurrence was not  
21 a basis for finding it wanting.

22           The second reason the Administrative Law Judge gave for discounting  
23 Dr. Townsend's opinion also was not clear and convincing. She said that the opinion  
24 appeared to be inconsistent with Dr. Townsend's findings that were "generally  
25 benign." A review of Dr. Townsend's report, however, does not show any "benign"  
26 findings as to Plaintiff's anger and anxiety, the attributes that Dr. Townsend identified  
27 as potentially making it difficult for Plaintiff to have the consistency to hold a full-  
28 time job. The findings that were "generally benign" were matters such as the clarity

1 of Plaintiff's speech and the fact that his intellectual level was average, things that had  
2 nothing to do with whether his anger and anxiety, resulting from his PTSD, might  
3 make it difficult for him to hold a full-time job.

4           The third reason the Administrative Law Judge gave was that Dr.  
5 Townsend's opinion was not supported by the records of Plaintiff's "extensive  
6 activities of daily living." She identified a number of activities of daily living  
7 elsewhere in her decision [AR 28], but there is no correlation between them and  
8 whether Plaintiff's anger and anxiety resulting from his PTSD would have made  
9 holding a full-time job difficult. She identified taking care of his son before and after  
10 school, preparing meals occasionally, walking his dog, helping to take care of his  
11 grandmother, doing laundry, vacuuming and taking out the trash, and having hobbies  
12 including snowboarding and camping. [*Id.*] It is hard to see how these activities are  
13 extensive, and even harder to see how engaging in most of them belies the opinion  
14 that Plaintiff would have had trouble managing his anger and anxiety in a work  
15 setting. Perhaps caring for his son or his grandmother might have been stressful, and  
16 the ability to do so might have shown the capacity to control his anger and anxiety.  
17 But there is no evidence of that, nor is it a necessary conclusion, and most of the other  
18 activities identified by the Administrative Law Judge were activities that seem  
19 designed to mitigate or relieve anger and stress. The Court cannot say that it is either  
20 clear or convincing that Plaintiff's activities were extensive, or that those activities  
21 made Dr. Townsend's opinion less persuasive.

22           Plaintiff also complains that the Administrative Law Judge wrongly  
23 rejected the information from the Veterans Administration as to Plaintiff's disability.  
24 In *McCartey v. Massanari*, 298 F.3d 1072 (9th Cir. 2002), the Court of Appeals held  
25 that an ALJ must consider a VA rating of disability when analyzing a veteran's claim  
26 for Social Security disability benefits. The Administrative Law Judge acknowledged  
27 this authority, but nevertheless did not accept it. [AR 32]. In doing so, the  
28 Administrative Law Judge committed error.

1           In *McCartey*, the Court held that an Administrative Law Judge “must  
2 ordinarily give great weight to a VA determination of disability . . . because of the  
3 marked similarity between these two federal disability programs.” 298 F.3d at 1076.  
4 The Court identified a number of the similarities, including the fact that “[t]he VA  
5 criteria for evaluating disability are very specific and translate easily into SSA’s  
6 disability framework.” *Id.* Still, the two programs are not *identical*, so “the ALJ may  
7 give less weight to a VA disability rating if he gives persuasive, specific, valid reasons  
8 for doing so that are supported by the record.” *Id.*, citing *Chambliss v. Massanari*,  
9 269 F.3d 520, 522 (5th Cir. 2001) (per curiam).

10           The Administrative Law Judge mis-applied this law. He noted that the  
11 VA had determined that Plaintiff had a 70 % disability rating related to his PTSD (but  
12 did not note that the VA gave Plaintiff an overall disability rating of 90 % [AR 857]).  
13 He did not agree with this rating, however, because it was inconsistent with Plaintiff’s  
14 activities “which were quite broad and extensive, including caring for his grandmother  
15 and teenager son” along with the additional information that Plaintiff was attending  
16 community college. [AR 32] The VA, however, took into account the fact that  
17 Plaintiff was attending community college [AR 856] so that, in fact, was not a  
18 distinguishing characteristic. Nor, as indicated earlier, were Plaintiff’s activities  
19 extensive or broad, and there is not any indication how caring for one’s son and  
20 helping to care for one’s grandmother is inconsistent with the VA rating. The  
21 Administrative law Judge thus did not give persuasive or valid reasons supported by  
22 the record for giving less weight to the VA rating. *McCartey, supra; cf. Valentine v.*  
23 *Commissioner of Social Security Administration*, 574 F.3d 685, 695 (9th Cir. 2009)  
24 (valid and persuasive reasons where the Administrative Law Judge had evidence that  
25 was not before the VA.)

26           Given the errors with respect to the mental impairments, the Court need  
27 not discuss the alleged errors with respect to the Administrative Law Judge’s  
28 assessment of the treating physician or his credibility analysis of Plaintiff and

1 Plaintiff's mother. The decision must be reversed. The record is fully developed —  
2 indeed, with Plaintiff's death, nothing more could be accomplished by further  
3 administrative proceedings. Accordingly, it is appropriate to remand the matter for  
4 an award of benefits. *McCartey, supra; Garrison v. Colvin*, 759 F.3d 995 (9th Cir.  
5 2014).

6 The Court notes that Plaintiff is survived not only by his mother, but also  
7 by his son. The Court leaves it to the Commissioner to make sure that the benefits  
8 that are owing are paid to the correct beneficiary.

9 The decision is reversed, and the matter is remanded to the Commissioner  
10 for the awarding of benefits.

11 IT IS SO ORDERED.

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14 Dated: December 29, 2014

  
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RALPH ZAREFSKY  
UNITED STATES MAGISTRATE JUDGE

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