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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DORIS J. WHITE,	)	No. EDCV 14-2592-AS
	)	
Plaintiff,	)	<b>MEMORANDUM OPINION AND</b>
v.	)	<b>ORDER OF REMAND</b>
	)	
CAROLYN W. COLVIN,	)	
Acting Commissioner of Social	)	
Security Administration,	)	
	)	
Defendant.	)	
	)	

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

**I. PROCEEDINGS**

On April 5, 2011, Plaintiff Doris J. White ("Plaintiff") applied for a period of disability and disability insurance benefits based on a disabling condition which had rendered her unable to work since June 1, 2010. (A.R. at 169-70). The Administrative Law Judge

1 ("ALJ"), Charles E. Stevenson, examined the records and heard  
2 testimony from Plaintiff, medical expert Arnold Ostrow, and  
3 vocational expert ("V.E.") Kelly Winn-Boaitey, on May 8, 2013. (A.R.  
4 at 23-41). On May 24, 2013, the ALJ denied Plaintiff benefits in a  
5 written decision. (A.R. at 12-18). The Appeals Council denied  
6 review of the ALJ's decision. (A.R. at 1-3).

7  
8 On December 19, 2014, Plaintiff filed a Complaint pursuant to  
9 42 U.S.C. § 405(g) alleging that the Social Security Administration  
10 erred in denying her disability benefits. (Docket Entry No. 1). On  
11 April 29, 2015, Defendant filed an Answer to the Complaint, (Docket  
12 Entry No. 14), and the Certified Administrative Record ("A.R."),  
13 (Docket Entry No. 15). The parties have consented to proceed before  
14 a United States Magistrate Judge. (Docket Entry Nos. 11, 12). On  
15 August 18, 2015, the parties filed a Joint Stipulation ("Joint  
16 Stip.") setting forth their respective positions on Plaintiff's  
17 claim. (Docket Entry No. 19).

## 18 19 **II. SUMMARY OF TESTIMONY AND ALJ'S DECISION**

20  
21 At the May 8, 2013, hearing, Plaintiff testified that in June  
22 2010 she stopped working with her husband in a home-based  
23 metalworking shop because of "fumes and the metal dust," and "the  
24 bending over and sitting a long time." (A.R. at 29-31). Her duties  
25 in the shop included "[s]ome paperwork," paying "maybe five" bills  
26 for the business every month, and operating a drill press for a  
27 maximum of three hours per day. (A.R. at 30-31). Plaintiff also  
28 testified that she was sometimes paid for working forty hours without

1 working forty hours because her husband "was trying to help [her] get  
2 [her] Social Security up, so when [she] retired [she would] have  
3 enough money, because [she] was mostly a housewife." (A.R. at 32).  
4 Plaintiff also said that she was generally paid when the business had  
5 available money and not based on the work that she performed. (A.R.  
6 at 33). She testified that, in her current condition, she would be  
7 unable to do 30 or 40 hours of paperwork per week for her husband's  
8 business, but she also stated that she had not done that much  
9 paperwork in the past and had "never worked a full eight hour shift  
10 with him." (A.R. at 37).

11  
12 Plaintiff testified that her breathing problems prevented her  
13 from working with her husband and that her back began to hurt when  
14 she sat too long. (A.R. at 34). She further testified that she  
15 usually sat in a recliner during the day and could sit somewhere that  
16 was "soft" and had back support, (A.R. at 34-35), but she could not  
17 work in an office without experiencing back and shoulder pain, even  
18 if periods of sitting were interspersed with periods of standing.  
19 (A.R. at 35-36). She also testified that she was supposed to use a  
20 nebulizer four times daily, with each use taking ten minutes. (A.R.  
21 at 36).

22  
23 The V.E. testified that, if Plaintiff's past work could be  
24 characterized as substantial gainful activity ("SGA"), her position  
25 was best characterized as that of an administrative clerk. (A.R. at  
26 38). Although the Dictionary of Occupational Titles characterized  
27 that occupation as light work, the V.E. stated that, because  
28 Plaintiff had lifted up to 30 pounds of files when working with her

1 husband, her position could be characterized as "medium work" as it  
2 was actually performed. (A.R. at 38). The ALJ asked the V.E.  
3 whether Plaintiff's past work could be performed by an individual  
4 with the following limitations: able to lift and carry twenty pounds  
5 occasionally and ten pounds frequently; able to stand and walk six  
6 hours per day; able to sit six hours per day; unable to reach above  
7 her shoulders; unable to operate foot pedals; able to bend, stoop,  
8 crawl, and climb stairs occasionally; unable to climb ladders, ropes,  
9 and scaffolding; and unable to work around unprotected heights,  
10 concentrated fumes, odors, dust, gases, extreme temperatures, or  
11 extreme changes in temperature. (A.R. at 39). The V.E. stated that  
12 that individual could perform Plaintiff's past work as defined in the  
13 Dictionary of Occupational Titles but not as Plaintiff actually  
14 performed it. (A.R. at 39). The V.E. also opined that that  
15 occupation would likely not accommodate regular unscheduled breaks  
16 totaling four hours during the work week. (A.R. at 40). Plaintiff's  
17 attorney commented that Plaintiff's past work should not be  
18 considered SGA at all. (A.R. at 39).

19  
20 The ALJ applied the five-step process to the evaluation of the  
21 record in Plaintiff's case. (A.R. at 12-14). At step one, the ALJ  
22 determined that Plaintiff had not engaged in substantial gainful  
23 activity after the alleged onset date. (A.R. at 14). At step two,  
24 the ALJ found that Plaintiff had severe impairments including chronic  
25 obstructive pulmonary disease, idiopathic neuropathy, lumbo-sacral  
26 degenerative disc disease with L5-S1 radiculopathy, asthma,  
27 peripheral vascular disease, osteoarthritis of the right shoulder,  
28 and cervical degenerative discogenic disease. (A.R. at 14). At step

1 three, the ALJ found that Plaintiff's impairments did not meet or  
2 equal a listing found in 20 C.F.R. Part 404, Subpart P, Appendix 1.  
3 (A.R. at 15). The ALJ noted particularly that the criteria for "all  
4 of the musculoskeletal and respiratory listings" were unmet. (A.R.  
5 at 15).

6  
7 Before proceeding to step four, the ALJ found that Plaintiff had  
8 the RFC to perform light work as defined in 20 CFR section  
9 404.1567(b) with additional limitations consistent with those posed  
10 in his hypothetical to the V.E.<sup>1</sup> (A.R. at 15). The ALJ stated that  
11 Plaintiff's impairments could be expected to cause her symptoms, but  
12 her statements about the "intensity, persistence and limiting effects  
13 of [her] symptoms [were] not entirely credible for the reasons  
14 explained in this decision." (A.R. at 16). In assessing Plaintiff's  
15 RFC, the ALJ gave "greatest weight" to the testimony of the medical  
16 expert, and also gave "significant weight" to the opinions of a  
17 consultative examining physician and a non-examining state agency  
18 physician. (A.R. at 16-17).

19  
20 At step four, the ALJ determined that Plaintiff possessed the  
21 RFC to return to her past relevant work as an administrative clerk as  
22 that occupation is generally performed in the national economy.  
23 (A.R. at 17). The ALJ rejected the assertion that Plaintiff had no

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24 <sup>1</sup> Specifically, the ALJ's decision stated that Plaintiff "is precluded  
25 from overhead reaching with the upper extremities; she is precluded  
26 from operating foot pedals with the lower extremities; she is limited  
27 to occasional bending, stooping, crawling, and climbing stairs; she  
28 is precluded from climbing ladders, ropes or scaffolds or working at  
unprotected heights; she is precluded from working around  
concentrated fumes, odors, dusts, gasses, extremes of temperature  
(hot or cold) and extreme temperature changes." (A.R. at 15).

1 past relevant work, ruling that Plaintiff could not simultaneously  
2 report full-time work for purposes of qualifying for Social Security  
3 benefits while also denying that she had engaged in past relevant  
4 work. (A.R. at 17-18).

5  
6 The ALJ accordingly determined that Plaintiff was not disabled  
7 within the meaning of 42 U.S.C. sections 416(i) and 423(d).

8  
9 **III. STANDARD OF REVIEW**

10  
11 This court reviews the Administration's decision to determine if  
12 the decision is free of legal error and supported by substantial  
13 evidence. See Brewes v. Commissioner of Social Sec. Admin., 682 F.3d  
14 1157, 1161 (9th Cir. 2012). "Substantial evidence" is more than a  
15 mere scintilla, but less than a preponderance. Garrison v. Colvin,  
16 759 F.3d 995, 1009 (9th Cir. 2014). To determine whether substantial  
17 evidence supports a finding, "a court must consider the record as a  
18 whole, weighing both evidence that supports and evidence that  
19 detracts from the [Commissioner's] conclusion." Aukland v.  
20 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (internal quotation  
21 omitted). As a result, "[i]f the evidence can reasonably support  
22 either affirming or reversing the ALJ's conclusion, [a court] may not  
23 substitute [its] judgment for that of the ALJ." Robbins v. Soc. Sec.  
24 Admin., 466 F.3d 880, 882 (9th Cir. 2006).

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3 **IV. PLAINTIFF'S CONTENTIONS**

4 Plaintiff contends that the ALJ: (1) improperly rejected her  
5 testimony as not credible; and (2) incorrectly developed and  
6 considered the vocational issues at Step 4 of the five-step process.  
(Joint Stip. at 3).

7  
8 **V. DISCUSSION**

9  
10 After reviewing the record, the Court finds that Plaintiff's  
11 first claim warrants remand for further consideration. Because  
12 remand is appropriate on the issue of whether the ALJ improperly  
13 rejected Plaintiff's testimony as not credible, the Court declines to  
14 consider the remaining issues.

15  
16 **A. The ALJ Erred in Rejecting Plaintiff's Testimony as Not Credible**

17  
18 A claimant initially must produce objective medical evidence  
19 establishing a medical impairment reasonably likely to be the cause  
20 of the subjective symptoms. Smolen v. Chater, 80 F.3d 1273, 1281  
21 (9th Cir. 1996); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir.  
22 1991). Once a claimant produces objective medical evidence of an  
23 underlying impairment that could reasonably be expected to produce  
24 the pain or other symptoms alleged, and there is no evidence of  
25 malingering, the ALJ may reject the claimant's testimony regarding  
26 the severity of his pain and symptoms only by articulating specific,  
27 clear and convincing reasons for doing so. Brown-Hunter v. Colvin,  
28 \_\_\_ F.3d \_\_\_, 2015 WL 6684997 at \*5 (9th Cir. 2015) (citing

1 Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir. 2007)); see  
2 also Smolen v. Chater, supra; Reddick v. Chater, 157 F.3d 715, 722  
3 (9th Cir. 1998); Light v. Social Sec. Admin., 119 F.3d 789, 792 (9th  
4 Cir. 1997).

5  
6 Plaintiff asserts that the ALJ improperly rejected her testimony  
7 as not credible and failed to identify evidence that supported this  
8 finding. (Joint Stip. at 3-8). Defendant asserts that the ALJ  
9 properly rejected Plaintiff's testimony in light of: (1) the opinions  
10 of the medical expert, consultative examining physician, and non-  
11 examining state agency physician; (2) inconsistencies between  
12 Plaintiff's alleged limitations and several of her self-reported  
13 activities; and (3) Plaintiff's inconsistent statements regarding her  
14 past work. (Joint Stip. at 8-14).

15  
16 The ALJ found Plaintiff's testimony regarding the intensity,  
17 persistence and limiting effects of her symptoms not entirely  
18 credible in the following excerpt:

19  
20 The claimant alleges that her ability to work is limited by  
21 COPD, emphysema, asthma, bronchitis, arthritis, and muscle  
22 cramps. The claimant reports that she suffers from joint  
23 pain in her shoulders, back, hips and left knee, and she  
experiences muscle cramps when walking too far. She also  
alleges that she experiences shortness of breath.

24 After careful consideration of the evidence, the  
25 undersigned finds that the claimant's medically  
26 determinable impairments could reasonably be expected to  
27 cause the alleged symptoms; however, the claimant's  
28 statements concerning the intensity, persistence and  
limiting effects of these symptoms are not entirely  
credible for the reasons explained in this decision.



1 The objective medical evidence clearly supports a finding  
2 of COPD and asthma, as well as mild degenerative disc  
3 disease and mild arthritic changes affecting the claimant's  
4 cervical and lumbo-sacral spine. There is also some  
evidence of mild degenerative changes to the right  
shoulder, and some report of idiopathic neuropathy.

5 The claimant reports that she is able to lift a gallon of  
6 milk, and she can carrying [sic] about 10 pounds of  
7 groceries from the car to the house, two or three times per  
8 day. The claimant is able to drive a vehicle, and she  
9 sleeps about eight hours, with a one-hour nap mid-day. The  
10 claimant's treating physician reports that the claimant has  
11 "restricted" ability to stand, walk, lift, carry, handle  
objects, and travel, but he does not offer an opinion  
regarding her specific limitations and the extent of her  
residual functional capacity. The claimant testified that  
she stopped smoking in late 2011.

12 (A.R. at 16 (citations omitted)).  
13

14 The ALJ's opinion then reviews and evaluates the opinions of the  
15 medical expert, consultative examining physician, and non-examining  
16 state agency physician, and concludes:  
17

18 Based on a review of all available evidence, including the  
19 claimant's testimony, the medical records, and the medical  
20 opinions of the consultative examiner, state agency medical  
21 consultant, and impartial medical expert, the undersigned  
22 is persuaded that the claimant is capable of performing  
light exertional work, with the additional restrictions  
described above.

23 (A.R. at 17).  
24

25 The ALJ's opinion does not explicitly identify the ALJ's reasons  
26 for discrediting Plaintiff's testimony. The ALJ's opinion therefore  
27 fails to provide "specific, clear and convincing reasons" for  
28 rejecting Plaintiff's testimony about the intensity, persistence, and

1 limiting effects of her symptoms. See Brown-Hunter, \_\_ F.3d \_\_, 2015  
2 WL 6684997 at \*5-\*6 (rejecting ALJ's credibility determination where  
3 ALJ "did not specifically identify . . . inconsistencies; she simply  
4 stated her non-credibility conclusion and then summarized the medical  
5 evidence supporting her RFC determination"). See also Burch v.  
6 Barnhart, 400 F.3d 676, 681 (9th Cir. 2005) ("lack of medical  
7 evidence" can be "a factor" in rejecting credibility, but cannot  
8 "form the sole basis").

9  
10 Defendant argues that the Court may affirm the ALJ's partial  
11 rejection of Plaintiff's testimony based on: (1) inconsistencies  
12 between Plaintiff's testimony and the objective medical evidence,  
13 including the opinions of the medical expert, consultative examining  
14 physician, and non-examining state agency physician;  
15 (2) inconsistencies between Plaintiff's limitations and several of  
16 her self-reported activities; and (3) Plaintiff's inconsistent  
17 statements regarding the nature of her past work. (Joint Stip. at 8-  
18 14). However, the Court cannot affirm an ALJ's decision based upon  
19 inconsistencies in testimony or medical evidence that the ALJ did not  
20 specifically identify in support of his decision. As the Ninth  
21 Circuit noted in Burrell v. Colvin, 775 F.3d 1133 (9th Cir. 2014):

22  
23 "We are constrained to review the reasons the ALJ asserts."  
24 Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003). Our  
25 decisions make clear that we may not take a general finding  
26 – an unspecified conflict between Claimant's testimony  
27 about daily activities and her reports to doctors – and  
28 comb the administrative record to find specific conflicts.  
"General findings are insufficient; rather, the ALJ must  
identify what testimony is not credible and what evidence  
undermines the claimant's complaints." Lester v. Chater, 81  
F.3d 821, 834 (9th Cir. 1995). "To support a lack of

1 credibility finding, the ALJ was required to point to  
2 specific facts in the record...." Vasquez v. Astrue, 572  
3 F.3d 586, 592 (9th Cir. 2009) (emphasis added) (internal  
4 quotation marks omitted). Here, the ALJ stated only – in  
5 passing and in a different section than the credibility  
6 determination – that Claimant's self-reports were  
7 inconsistent in some unspecified way with her testimony at  
8 the hearing. That finding is insufficient to meet "our  
9 requirements of specificity." Connett, 340 F.3d at 873.  
10 [. . . .]

11 The government argues that Claimant's testimony that she  
12 has, on average, one or two headaches a week conflicts with  
13 the medical record. As an initial matter, the ALJ never  
14 connected the medical record to Claimant's testimony about  
15 her headaches. Although the ALJ made findings [. . . .]  
16 concerning Claimant's treatment for headaches, he never  
17 stated that he rested his adverse credibility determination  
18 on those findings. For that reason alone, we reject the  
19 government's argument that the history of treatment for  
20 headaches is a specific, clear, and convincing reason to  
21 support the credibility finding.

22 Burrell, 775 F.3d at 1138-39. See also Connett, 340 F.3d at 874  
23 ("Because the ALJ did not assert specific facts or reasons to reject  
24 Connett's testimony . . . we must reverse the district court on this  
25 issue."); Brown-Hunter, \_\_ F.3d \_\_, 2015 WL 6684997 at \*6 ("Because  
26 the ALJ failed to identify the testimony she found not credible, she  
27 did not link that testimony to the particular parts of the record  
28 supporting her non-credibility determination. This was legal  
error."); Pinto v. Massanari, 249 F.3d 840, 847 (9th Cir. 2001)  
(court "cannot affirm the decision of an agency on a ground that the  
agency did not invoke in making its decision").

29 Here, although the ALJ summarized Plaintiff's testimony about  
30 her daily activities and the available medical evidence, he did not  
31 clearly identify the evidence that supported his credibility finding.

1 The ALJ noted that Plaintiff's inconsistent statements about her work  
2 history were "self-serving" and "unsustainable," and he did not "find  
3 [Plaintiff's] statements in this regard to be credible or legally  
4 tenable." (A.R. at 17). However, these findings were made in a  
5 different, subsequent section of the ALJ's order, and the ALJ did not  
6 state that he rested the challenged adverse credibility determination  
7 on these findings. As a result, the ALJ's conclusion that  
8 Plaintiff's statements were "not entirely credible" is not adequately  
9 supported and does not provide the specificity required by case law.

10  
11 **B. The ALJ's Error Was Not Harmless**

12  
13 "[H]armless error principles apply in the Social Security . . .  
14 context." Molina v. Astrue, 674 F.3d 1104, 1115 (9th Cir. 2012)  
15 (citing Stout v. Comm'r Soc. Sec. Admin., 454 F.3d 1050, 1054 (9th  
16 Cir. 2006)). Generally, "an ALJ's error is harmless where it is  
17 'inconsequential to the ultimate nondisability determination.'" Id.  
18 (citing Carmickle v. Comm'r Soc. Sec. Admin., 466 F.3d 880, 885 (9th  
19 Cir. 2006)).

20  
21 The Court cannot conclude that the ALJ's errors were harmless.  
22 Plaintiff's credibility was directly relevant to assessing her  
23 limitations and, in turn, her RFC. A claimant's RFC "may be the most  
24 critical finding contributing to the final . . . decision about  
25 disability." See McCawley v. Astrue, 423 F. App'x 687, 689 (9th Cir.  
26 2011) (quoting SSR 96-5p). Here, Plaintiff's RFC was central to the  
27 ALJ's determination that she could return to his prior work. (A.R.  
28 at 17-18). Because the Court cannot determine that the ALJ's errors

1 are "inconsequential to the ultimate disability determination," the  
2 errors cannot be deemed harmless. See Carmickle, 466 F.3d at 885.

3  
4 **C. Remand Is Warranted**

5  
6 The decision whether to remand for further proceedings or order  
7 an immediate award of benefits is within the district court's  
8 discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000).  
9 Where no useful purpose would be served by further administrative  
10 proceedings, or where the record has been fully developed, it is  
11 appropriate to exercise this discretion to direct an immediate award  
12 of benefits. Id. at 1179 ("[T]he decision of whether to remand for  
13 further proceedings turns upon the likely utility of such  
14 proceedings."). However, where the circumstances of the case suggest  
15 that further administrative review could remedy the Commissioner's  
16 errors, remand is appropriate. McLeod v. Astrue, 640 F.3d 881, 888  
17 (9th Cir. 2011); Harman, 211 F.3d at 1179-81.

18  
19 Here, the Court remands primarily because it cannot effectively  
20 review the ALJ's opinion, and further review might remedy this  
21 problem. The record also does not establish that Plaintiff's  
22 testimony should necessarily have been credited or that the ALJ would  
23 necessarily be required to find Plaintiff disabled if Plaintiff's  
24 testimony were credited. Remand is therefore appropriate.

25  
26 The Court has not reached any other issue raised by Plaintiff  
27 except insofar as to determine that reversal with a directive for the  
28 immediate payment of benefits would be inappropriate at this time.

1 Accordingly, the Court declines to rule on Plaintiff's claims that  
2 the ALJ's incorrectly developed and considered the vocational issues  
3 at Step 4 of the five-step process. Because this matter is being  
4 remanded for further consideration, this issue should also be  
5 considered on remand, if necessary.  
6

7 **VI. CONCLUSION**  
8

9 For the foregoing reasons, the decision of the Administrative  
10 Law Judge is VACATED, and the matter is REMANDED, without benefits,  
11 for further proceedings pursuant to Sentence 4 of 42 U.S.C. § 405(g).  
12

13 LET JUDGMENT BE ENTERED ACCORDINGLY.  
14

15 Dated: December 14, 2015

16 \_\_\_\_\_/s/\_\_\_\_\_  
17 ALKA SAGAR  
18 UNITED STATES MAGISTRATE JUDGE  
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