

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 QUINN VICTOR ROBERTSON,
12 Plaintiff,
13 v.
14 CAROLYN W. COLVIN, Acting
15 Commissioner of Social Security,
16 Defendant.
17

Case No. EDCV 15-2128 JC

MEMORANDUM OPINION AND
ORDER OF REMAND

18 **I. SUMMARY**

19 On October 15, 2015, Quinn Victor Robertson (“plaintiff”) filed a
20 Complaint seeking review of the Commissioner of Social Security’s denial of
21 plaintiff’s application for benefits. The parties have consented to proceed before
22 the undersigned United States Magistrate Judge.

23 This matter is before the Court on the parties’ cross motions for summary
24 judgment, respectively (“Plaintiff’s Motion”) and (“Defendant’s Motion”). The
25 Court has taken both motions under submission without oral argument. See Fed.
26 R. Civ. P. 78; L.R. 7-15; October 20, 2015 Case Management Order ¶ 5.

27 ///

28 ///

1 Based on the record as a whole and the applicable law, the decision of the
2 Commissioner is REVERSED AND REMANDED for further proceedings
3 consistent with this Memorandum Opinion and Order of Remand.

4 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**
5 **DECISION**

6 On March 22, 2012, plaintiff filed an application for Disability Insurance
7 Benefits alleging disability beginning on August 1, 2001 (“original onset date”)
8 due to severe neuralgia, spinal cord stimulator implant, emphysema, pain,
9 depression, severe lower abdominal neuralgia, medication psychosis and side
10 effects, impotency, stress, depression, and arthritis. (Administrative Record
11 (“AR”) 13, 146, 183).

12 The Administrative Law Judge (“ALJ”) examined the medical record and
13 heard testimony from plaintiff (who was represented by counsel) and a vocational
14 expert on December 9, 2013. (AR 27-55). At the administrative hearing,
15 plaintiff’s alleged onset date was amended to October 8, 2009 (“amended onset
16 date”). (AR 34, 51-52).

17 In an administrative decision dated March 25, 2014, the ALJ determined
18 that plaintiff was not disabled from the original onset date (*i.e.*, August 1, 2001)
19 through March 31, 2010 (*i.e.*, the “date last insured”). (AR 13-22). Specifically,
20 the ALJ found that through the date last insured: (1) plaintiff suffered from the
21 following severe impairments: bilateral inguinal hernia repair with secondary
22 pain, and erectile dysfunction (AR 15); (2) plaintiff’s impairments, considered
23 singly or in combination, did not meet or medically equal a listed impairment (AR
24 15-16); (3) plaintiff retained the residual functional capacity to perform the full
25 range of medium work (20 C.F.R. § 404.1567(c)) with no heavy lifting (AR 16);
26 (4) plaintiff was not capable of performing any past relevant work (AR 20);
27 (5) there are jobs that exist in significant numbers in the national economy that
28 plaintiff could perform, specifically Production Assembler, Bench Assembler, and

1 Electronics Worker (AR 21); and (6) plaintiff's medically determinable
2 impairments could reasonably be expected to cause the subjective symptoms
3 plaintiff alleged, but plaintiff's statements concerning the intensity, persistence,
4 and limiting effects of such subjective symptoms were not entirely credible (AR
5 17).

6 The Appeals Council denied plaintiff's application for review. (AR 2).

7 **III. APPLICABLE LEGAL STANDARDS**

8 **A. Sequential Evaluation Process**

9 To qualify for disability benefits, a claimant must show that the claimant is
10 unable "to engage in any substantial gainful activity by reason of any medically
11 determinable physical or mental impairment which can be expected to result in
12 death or which has lasted or can be expected to last for a continuous period of not
13 less than 12 months." Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012)
14 (quoting 42 U.S.C. § 423(d)(1)(A)) (internal quotation marks omitted). The
15 impairment must render the claimant incapable of performing the work the
16 claimant previously performed and incapable of performing any other substantial
17 gainful employment that exists in the national economy. Tackett v. Apfel, 180
18 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

19 In assessing whether a claimant is disabled, an ALJ is required to use the
20 following five-step sequential evaluation process:

- 21 (1) Is the claimant presently engaged in substantial gainful activity? If
22 so, the claimant is not disabled. If not, proceed to step two.
- 23 (2) Is the claimant's alleged impairment sufficiently severe to limit
24 the claimant's ability to work? If not, the claimant is not
25 disabled. If so, proceed to step three.
- 26 (3) Does the claimant's impairment, or combination of
27 impairments, meet or equal an impairment listed in 20 C.F.R.

28 ///

1 Part 404, Subpart P, Appendix 1? If so, the claimant is disabled. If
2 not, proceed to step four.

3 (4) Does the claimant possess the residual functional capacity to
4 perform claimant's past relevant work? If so, the claimant is
5 not disabled. If not, proceed to step five.

6 (5) Does the claimant's residual functional capacity, when
7 considered with the claimant's age, education, and work
8 experience, allow the claimant to adjust to other work that
9 exists in significant numbers in the national economy? If so,
10 the claimant is not disabled. If not, the claimant is disabled.

11 Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th
12 Cir. 2006) (citing 20 C.F.R. §§ 404.1520, 416.920).

13 The claimant has the burden of proof at steps one through four, and the
14 Commissioner has the burden of proof at step five. Burch v. Barnhart, 400 F.3d
15 676, 679 (9th Cir. 2005) (citation omitted).

16 **B. Standard of Review**

17 Pursuant to 42 U.S.C. section 405(g), a court may set aside a denial of
18 benefits only if it is not supported by substantial evidence or if it is based on legal
19 error. Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir.
20 2006) (citing Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457
21 (9th Cir. 1995)).

22 Substantial evidence is "such relevant evidence as a reasonable mind might
23 accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389,
24 401 (1971) (citations and quotations omitted). It is more than a mere scintilla but
25 less than a preponderance. Robbins, 466 F.3d at 882 (citing Young v. Sullivan,
26 911 F.2d 180, 183 (9th Cir. 1990)). To determine whether substantial evidence
27 supports a finding, a court must "consider the record as a whole, weighing both
28 evidence that supports and evidence that detracts from the [Commissioner's]

1 conclusion.”” Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001)
2 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). An ALJ’s decision
3 to deny benefits must be upheld if the evidence could reasonably support either
4 affirming or reversing the decision. Robbins, 466 F.3d at 882 (citing Flaten, 44
5 F.3d at 1457). Nonetheless, a court may not affirm “simply by isolating a ‘specific
6 quantum of supporting evidence.”” Robbins, 466 F.3d at 882 (citation omitted).
7 In addition, federal courts may review only the reasoning in the administrative
8 decision itself, and may affirm a denial of benefits only for the reasons upon which
9 the ALJ actually relied. Garrison v. Colvin, 759 F.3d 995, 1010 (9th Cir. 2014)
10 (citation omitted).

11 Even when an ALJ’s decision contains error, it must be affirmed if the error
12 was harmless. Treichler v. Commissioner of Social Security Administration, 775
13 F.3d 1090, 1099 (9th Cir. 2014). An ALJ’s error is harmless if (1) it was
14 inconsequential to the ultimate nondisability determination; or (2) despite the
15 error, the ALJ’s path may reasonably be discerned, even if the ALJ’s decision was
16 drafted with less than ideal clarity. Id. (citation and quotation marks omitted).

17 A reviewing court may not conclude that an error was harmless based on
18 independent findings gleaned from the administrative record. Brown-Hunter v.
19 Colvin, 806 F.3d 487, 492 (9th Cir. 2015) (citations omitted). Where a reviewing
20 court cannot confidently conclude that an error was harmless, a remand for
21 additional investigation or explanation is generally appropriate. See Marsh v.
22 Colvin, 792 F.3d 1170, 1173 (9th Cir. 2015) (citations omitted); Treichler, 775
23 F.3d at 1099-1102 (where agency errs in reaching decision to deny benefits and
24 error is not harmless, remand for additional investigation or explanation ordinarily
25 appropriate).

26 ///

27 ///

28 ///

1 **IV. DISCUSSION**

2 Plaintiff contends that the ALJ erred in evaluating the credibility of his
3 subjective complaints. (Plaintiff’s Motion at 4-12). The Court agrees. As the
4 Court cannot find the ALJ’s errors harmless, a remand is warranted.

5 **A. Pertinent Law**

6 When a claimant provides “objective medical evidence of an underlying
7 impairment which might reasonably produce the pain or other symptoms alleged,”
8 and there is no affirmative finding of malingering, the ALJ may discount the
9 credibility of the claimant’s subjective complaints only by “providing specific,
10 clear and convincing reasons for doing so.” Brown-Hunter, 806 F.3d at 488-89
11 (citation and internal quotation marks omitted). This requirement is very difficult
12 to meet. See Garrison, 759 F.3d at 1015 (citation omitted).

13 An ALJ’s credibility determination must be specific enough to permit a
14 reviewing court to conclude that the ALJ did not arbitrarily discredit the
15 claimant’s subjective complaints. Brown-Hunter, 806 F.3d at 493 (citation and
16 quotation marks omitted). Consequently, an ALJ must identify the specific
17 testimony he or she finds not credible, provide “clear and convincing reasons”
18 why that particular testimony lacks credibility, and identify the specific evidence
19 which undermines the claimant’s subjective complaints. See id. at 489, 493-94
20 (citation omitted). “General findings are insufficient[.]” Id. at 493 (citations and
21 quotation marks omitted). Nonetheless, if the ALJ’s interpretation of the
22 claimant’s testimony is reasonable and is supported by substantial evidence, it is
23 not the court’s role to second-guess it. See Thomas v. Barnhart, 278 F.3d 947, 959
24 (9th Cir. 2002); see also Greger v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006)
25 (Evaluation of a claimant’s credibility and resolution of conflicts in the testimony
26 are solely functions of the Commissioner.) (citation omitted).

27 ///

28 ///

1 **B. Analysis**

2 Here, none of the reasons the ALJ gave for discounting the credibility of
3 plaintiff's subjective complaints is legally sufficient.

4 First, the ALJ wrote that evidence that plaintiff continued to work until
5 2004 "indicate[d] that the [plaintiff's] daily activities have, at least at times, been
6 somewhat greater than the [plaintiff] has generally reported." (AR 16).

7 "Inconsistencies between a claimant's testimony and the claimant's reported
8 activities [may] provide a valid reason for an adverse credibility determination."

9 Burrell v. Colvin, 775 F.3d 1133, 1137-38 (9th Cir. 2014) (citation omitted).

10 Here, however, evidence that plaintiff worked "until 2004" is not inconsistent with
11 plaintiff's claim that he was disabled beginning on October 8, 2009 (*i.e.*, the
12 amended onset date), and thus not a clear and convincing reason for discrediting
13 plaintiff.¹ Even so, the ALJ did not specify *which* of plaintiff's specific subjective
14 complaints purportedly conflicted with *which* of plaintiff's daily activities related
15 to such work activity. A general finding that plaintiff's collective daily activities
16 are inconsistent with the alleged severity of some or all of plaintiff's subjective
17 complaints is not sufficiently specific to permit the Court to determine whether the
18 ALJ discounted plaintiff's credibility on permissible grounds. See, e.g., Brown-
19 Hunter, 806 F.3d at 494 (legal error where ALJ failed to link testimony found not
20 credible "to the particular parts of the record supporting [the ALJ's]
21 non-credibility determination") (citation omitted).

22
23
24 ¹The ALJ's assumption that August 1, 2001 was plaintiff's alleged disability onset date,
25 even though the original onset date was apparently amended at the hearing, calls into question the
26 validity of both the ALJ's evaluation of plaintiff's credibility and the ALJ's decision as a whole.
27 See Regennitter v. Commissioner, 166 F.3d 1294, 1297 (9th Cir. 1999) (A "specific finding" that
28 consists of an "inaccurate characterization of the evidence" cannot support an adverse credibility
determination); cf., e.g., Valenzuela v. Astrue, 247 Fed. Appx. 927, 929 (9th Cir. 2007) (finding
ALJ's credibility determination unsupported by substantial evidence where it was based in part
on "inaccurate characterization" of claimant's testimony).

1 Second, the ALJ also wrote that “[plaintiff] has not generally received the
2 type of medical treatment one would expect from a totally disabled individual[,]”
3 apparently because plaintiff was not treated for his “breathing problems” and back
4 pain “until after the date last insured.” (AR 17). An ALJ may properly discount a
5 plaintiff’s credibility based on an unexplained failure to seek or be prescribed a
6 course of treatment that was consistent with the alleged severity of the plaintiff’s
7 subjective symptoms. See Molina v. Astrue, 674 F.3d 1104, 1113 (9th Cir. 2012)
8 (citations omitted). Here, however, the ALJ did not find breathing problems and
9 back pain to be severe impairments during the relevant period (*i.e.*, through the
10 date last insured) (AR 15), and nothing in the ALJ’s decision otherwise suggests
11 that any failure to seek or obtain medical treatment would be a valid basis for
12 discrediting any of plaintiff’s other specific subjective complaints.

13 Third, it appears that the ALJ’s only other reason for discounting plaintiff’s
14 credibility was essentially a lack of objective medical evidence to verify the
15 alleged severity of plaintiff’s subjective complaints. (AR 17, 20). Nonetheless,
16 lack of objective medical evidence to support subjective symptom allegations
17 cannot form the sole basis for discounting a claimant’s testimony. See Burch, 400
18 F.3d at 681.

19 Finally, since the administrative decision does not address any of plaintiff’s
20 specific subjective complaints, and the ALJ’s general reasons for discrediting
21 plaintiff’s statements were not sufficiently specific, the Court is unable to conduct
22 a meaningful review of the ALJ’s credibility determination, and thus cannot
23 conclude that the ALJ’s errors were harmless. Cf., e.g., Brown-Hunter, 806 F.3d
24 487, 492 (9th Cir. 2015) (where ALJ fails to specify reasons for finding claimant
25 testimony not credible, “error will usually not be harmless”). This is especially
26 true since, at the hearing, the ALJ herself referred to plaintiff’s case as “a really
27 close call.” (AR 53).

28 ///

1 Accordingly, a remand is required to permit the ALJ to reassess plaintiff's
2 credibility.

3 **V. CONCLUSION²**

4 For the foregoing reasons, the decision of the Commissioner of Social
5 Security is reversed in part, and this matter is remanded for further administrative
6 action consistent with this Opinion.³

7 LET JUDGMENT BE ENTERED ACCORDINGLY.

8 DATED: July 29, 2016

9 _____
/s/

10 Honorable Jacqueline Chooljian
11 UNITED STATES MAGISTRATE JUDGE
12
13

14 ²The Court need not, and has not adjudicated plaintiff's other challenges to the ALJ's
15 decision, except insofar as to determine that a reversal and remand for immediate payment of
16 benefits would not be appropriate. On remand, however, the Commissioner may wish to
17 reevaluate the medical evidence and the ALJ's step five determination. First, it appears that the
18 ALJ's residual functional capacity assessment for plaintiff was based, in large part, on the ALJ's
19 own, lay interpretation of the medical records as a whole (including multiple medical opinions
20 from after the date last insured). (See AR 17-20); see Padilla v. Astrue, 541 F. Supp. 2d 1102,
21 1106 (C.D. Cal. 2008) (As a lay person, "an ALJ is 'simply not qualified to interpret raw medical
22 data in functional terms.'") (citations omitted); Tagger v. Astrue, 536 F. Supp. 2d 1170, 1181
23 (C.D. Cal. 2008) ("ALJ's determination or finding must be supported by medical evidence,
24 particularly the opinion of a treating or an examining physician.") (citations and internal
25 quotation marks omitted). In addition, the limitations and restrictions set out in the ALJ's
26 hypothetical question at the administrative hearing appear to be radically different than those in
27 the ALJ's residual functional capacity assessment in the decision. (Compare AR 16 with AR
28 49).

³When a court reverses an administrative determination, "the proper course, except in rare
circumstances, is to remand to the agency for additional investigation or explanation."
Immigration & Naturalization Service v. Ventura, 537 U.S. 12, 16 (2002) (citations and
quotations omitted). Remand is proper where, as here, "additional proceedings can remedy
defects in the original administrative proceeding. . ." Garrison, 759 F.3d at 1019 (citation and
internal quotation marks omitted); see also Connett v. Barnhart, 340 F.3d 871, 876 (9th Cir.
2003) (remand is an option where the ALJ stated invalid reasons for rejecting a claimant's excess
pain testimony).