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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

BRADLEY J. SULLIVAN,)	Case No. EDCV 16-1716 AS
)	
Plaintiff,)	MEMORANDUM OPINION AND
v.)	ORDER OF REMAND
)	
NANCY A. BERRYHILL, ¹)	
Acting Commissioner of Social)	
Security,)	
)	
Defendant.)	
)	

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.

PROCEEDINGS

On August 8, 2016, Bradley J. Sullivan ("Plaintiff") filed a Complaint pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3) seeking

¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security and is substituted for Acting Commissioner Carolyn W. Colvin as the defendant in this suit. See 42 U.S.C. § 205(g).

1 review of the Commissioner's denial of Plaintiff's application for
2 Disability Insurance Benefits. (Docket Entry No. 1). On January
3 24, 2017, Defendant filed an Answer to the Complaint and the
4 Certified Administrative Record ("AR"). (Docket Entry Nos. 21-22).
5 The parties have consented to proceed before a United States
6 Magistrate Judge. (Docket Entry Nos. 14, 16). On April 17, 2017,
7 the parties filed a Joint Stipulation ("Joint Stip."), setting forth
8 their respective positions on Plaintiff's claim. (Docket Entry No.
9 23).

10
11 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
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13 On December 12, 2012, Plaintiff, formerly employed as a
14 chiropractor, (see AR 34-35), filed an application for Disability
15 Insurance Benefits, alleging disability beginning on June 1, 2008.
16 (AR 162-63). On February 3, 2015, the Administrative Law Judge
17 ("ALJ"), Mark B. Greenberg, heard testimony from Plaintiff, medical
18 expert John Morse, and vocational expert Luis Mas. (AR 25-55). On
19 March 24, 2015, the ALJ denied Plaintiff's application in a written
20 decision. (See AR 9-20).
21

22 The ALJ applied the five-step process in evaluating Plaintiff's
23 case. At step one, the ALJ determined that Plaintiff had not
24 engaged in substantial gainful activity between the alleged onset
25 date of June 1, 2008, and the date last insured of March 31, 2014.
26 (AR 11). At step two, the ALJ found that, through the date last
27 insured, Plaintiff had the following severe impairments: diabetes
28 mellitus, hepatitis, kidney disease, degenerative disc

1 disease/degenerative joint disease, obstructive sleep apnea,
2 neuropathy, obesity, depression, and anxiety. (AR 11-12). At step
3 three, the ALJ determined that Plaintiff's impairments or
4 combination of impairments did not meet or equal a Listing found in
5 20 C.F.R. Part 404, Subpart P, Appendix 1. (AR 12-13).

6
7 Before proceeding to step four, the ALJ found that Plaintiff
8 had the residual functional capacity ("RFC")² to do light work³, with
9 the following exceptions: he can frequently climb ramps and stairs;
10 occasionally climb ladders, ropes, or scaffolds; perform all other
11 postural activities on a frequent basis; and is limited to semi-
12 skilled work⁴, with no ability for fast-paced work. (AR 13-18).

13
14 At step four, the ALJ determined that Plaintiff was not able to
15 perform his past relevant work as a chiropractor. (AR 18). At step
16 five, the ALJ found that, considering Plaintiff's age, education,

17 ² A Residual Functional Capacity is what a claimant can still
18 do despite existing exertional and nonexertional limitations. See
19 20 C.F.R. § 404.1545(a)(1).

20 ³ "Light work involves lifting no more than 20 pounds at a time
21 with frequent lifting or carrying of objects weighing up to 10
pounds." 20 C.F.R. § 404.1567(b).

22 ⁴ "Semi-skilled work is work which needs some skills but does
23 not require doing the more complex work duties. Semi-skilled jobs
24 may require alertness and close attention to watching machine
25 processes; or inspecting, testing or otherwise looking for
26 irregularities; or tending or guarding equipment, property,
27 materials, or persons against loss, damage or injury; or other types
28 of activities which are similarly less complex than skilled work,
but more complex than unskilled work. A job may be classified as
semi-skilled where coordination and dexterity are necessary, as when
hands or feet must be moved quickly to do repetitive tasks." 20
C.F.R. § 404.1568.

1 work experience, and RFC, there were jobs existing in significant
2 numbers in the national economy that Plaintiff could perform,
3 including management aide in social services (DOT 195.367-014),
4 general office clerk (DOT 219.362-010), and office assistant (DOT
5 235.462-010). (AR 19-20). Consequently, the ALJ concluded that
6 Plaintiff was not disabled within the meaning of the Social Security
7 Act. (AR 20).

8
9 Plaintiff requested that the Appeals Council review the ALJ's
10 Decision, which was denied on July 11, 2016. (AR 1-5). The ALJ's
11 Decision then became the final decision of the Commissioner,
12 allowing this Court to review the decision. See 42 U.S.C. §§
13 405(g), 1383(c).

14
15 **STANDARD OF REVIEW**

16
17 The Court reviews the ALJ's decision to determine if it is free
18 of legal error and supported by substantial evidence. See Brewes v.
19 Comm'r of Soc. Sec. Admin., 682 F.3d 1157, 1161 (9th Cir. 2012).
20 "Substantial evidence" is more than a mere scintilla, but less than
21 a preponderance. Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir.
22 2014). To determine whether substantial evidence supports a
23 finding, "a court must consider the record as a whole, weighing both
24 evidence that supports and evidence that detracts from the
25 [Commissioner's] conclusion." Aukland v. Massanari, 257 F.3d 1033,
26 1035 (9th Cir. 2001). As a result, "[i]f the evidence can
27 reasonably support either affirming or reversing the ALJ's
28 conclusion, [a court] may not substitute [its] judgment for that of

1 the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir.
2 2006).

3
4 **PLAINTIFF'S CONTENTION**

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6 Plaintiff contends that the ALJ failed to properly consider the
7 opinion of psychiatric consultative examiner, Dr. Tanya Scurry,
8 regarding the limitations caused by Plaintiff's mental impairments.
9 (See Joint Stip. at 3-5, 12).

10
11 **DISCUSSION**

12
13 After reviewing the record, the Court finds that the ALJ did
14 not give clear and convincing reasons for rejecting Dr. Scurry's
15 opinion. The Court therefore remands for further consideration.

16
17 **A. The ALJ Failed To Provide Clear And Convincing Reasons For**
18 **Rejecting The Opinion Of Dr. Scurry**

19
20 Plaintiff contends that the ALJ failed to provide specific and
21 legitimate reasons for rejecting consultative examiner Dr. Scurry's
22 opinion, because "the ALJ failed to identify any evidence whatsoever
23 that would cast doubt on Dr. Scurry's findings, nor did he identify
24 any other records that would support less-than-moderate limitations
25 in the work-related abilities in question." (Joint Stip. at 3-5).

1 Defendant asserts that the ALJ properly gave "not great weight"⁵
2 to Dr. Scurry's opinion for the following reasons: (1) Dr. Scurry
3 did not review any of Plaintiff's medical records; (2) her opinion
4 was not supported by those records; and (3) her opinion was
5 inconsistent with Plaintiff's own statements about his condition.
6 (Joint Stip. at 5-12).

7
8 On May 4, 2013, Plaintiff underwent a Comprehensive Psychiatric
9 Evaluation by Tanya Scurry, MD. (See AR 409-16). Plaintiff's chief
10 complaints were poor concentration, anxiety, depression, and severe
11 fatigue. (AR 409). Dr. Scurry noted that Plaintiff's mood was
12 "depressed and rated at 4 to 6 out of 10." (AR 412). Dr. Scurry
13 diagnosed Plaintiff with mood disorder, secondary to a general
14 medical condition, and anxiety disorder, secondary to a general
15 medical condition. (AR 414). Dr. Scurry stated that she believed
16 "it would be difficult for [Plaintiff] to sustain gainful employment
17 at this time" based on his psychiatric presentation. (AR 415).
18 Based on the examination, Dr. Scurry opined that Plaintiff was
19 moderately limited in his ability to do detailed and complex
20 instructions; relate and interact with supervisors, coworkers, and
21 the public; maintain concentration, attention, persistence, and
22 pace; associate with day-to-day work activity, including attendance
23 and safety; accept instructions from supervisors; and maintain
24 regular attendance in the work place and perform work activities on

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27 ⁵ Although Defendant asserts the ALJ gave Dr. Scurry's opinion
28 some weight, the limitations that Dr. Scurry opined do not align
with Plaintiff's RFC. Accordingly, the ALJ gave Dr. Scurry's
opinion no weight. (Compare AR 415-16 with AR 13).

1 a consistent basis. (AR 415-16). Dr. Scurry opined that Plaintiff
2 was not limited in his ability to understand, remember, and carry
3 out simple one or two-step job instructions or perform work
4 activities without special or additional supervision. (AR 415-16).
5

6 "[T]he Commissioner must provide clear and convincing reasons
7 for rejecting the uncontradicted opinion of an examining physician.
8 . . . [T]he opinion of an examining doctor, even if contradicted by
9 another doctor, can only be rejected for specific and legitimate
10 reasons that are supported by substantial evidence in the record."
11 Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir. 1995) (citations and
12 internal quotation marks omitted). Because Dr. Scurry's opinion was
13 uncontradicted, the ALJ was required to give clear and convincing
14 reasons for rejecting her opinion. Id. The clear and convincing
15 standard is the most demanding standard required in Social Security
16 cases. See Moore v. Comm'r of Soc. Sec. Admin., 278 F.3d 920, 924
17 (9th Cir. 2002).
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20 The ALJ set forth the following two reasons for rejecting Dr.
21 Scurry's opinion: (1) "[t]here was no treatment records during the
22 adjudication period that supported such restrictive functional
23 limitations" regarding Plaintiff's mental health limitations; and
24 (2) "the claimant made no allegations regarding limitations in
25 social functioning or an inability to perform work related
26 activities because of his mental health issues for any other reason
27 other than his inability to concentrate." (AR 18).
28

1 As set forth below, the ALJ's boilerplate statement that Dr.
2 Scurry's opinion was not supported by the medical record and his
3 finding that Plaintiff himself did not mention social limitations in
4 connection with his disability claim did not constitute clear and
5 convincing reasons for rejecting the opinion.

6
7 The ALJ erred in rejecting Dr. Scurry's opinion because he
8 needed to provide further explanation to substantiate his finding
9 that no treatment records supported that opinion. "[A]n ALJ errs
10 when he rejects a medical opinion or assigns it little weight while
11 doing nothing more than ignoring it, asserting without explanation
12 that another medical opinion is more persuasive, or criticizing it
13 with boilerplate language that fails to offer a substantive basis
14 for his conclusion." Garrison v. Colvin, 759 F.3d 995, 1012-13 (9th
15 Cir. 2014). Here, the ALJ has pointed to no evidence from the
16 record to substantiate his finding that no treatment records
17 supported the moderate mental functional limitations opined by Dr.
18 Scurry. Merely stating that a medical opinion is not supported by
19 objective findings is not a sufficient reason to disregard that
20 opinion. Rodriguez v. Bowen, 876 F.2d 759, 763 (9th Cir. 1989).

21
22 Dr. Scurry conducted a Comprehensive Psychiatric Evaluation
23 that included clinical evidence that supported her opinion regarding
24 Plaintiff's limitations. (See AR 409-16). "Disability may be
25 proved by medically-acceptable clinical diagnoses, as well as by
26 objective laboratory findings." Day v. Weinberger, 522 F.2d 1154,
27 1156 (9th Cir. 1975); see 42 U.S.C. § 423(d)(3). Dr. Scurry's
28 evaluation included the diagnoses of mood disorder and anxiety

1 disorder, both secondary to a general medical condition. (AR 414).
2 These diagnoses were made after clinical tests were administered
3 pertaining to, in part, mood and affect, intellectual functioning,
4 and concentration and calculations. (See AR 409-16). Moreover, Dr.
5 Scurry's opinion aligns with the opinions of State agency doctors
6 Stephen Fair, Ph.D., and Peter Bradley, Ph.D. (See AR 60-67, 75-
7 83). Both Dr. Fair and Dr. Bradley found that Plaintiff has
8 moderate limitations in sustained concentration and persistence,
9 social interaction, and adaptation. (See AR 60-67, 75-83); see also
10 Lester, 81 F.3d at 832 (a similarity of conclusions between doctors
11 provides reason to credit the opinions as opposed to reject).
12 Accordingly, the ALJ's finding that treatment records did not
13 support Dr. Scurry's opinion is not a clear and convincing reason to
14 reject his opinion.⁶

15
16 The remaining reason the ALJ gave in his decision - that
17 Plaintiff did not mention limitations "in social functioning or an
18 inability to perform work related activities because of his mental
19 health issues . . . " - is not a clear and convincing reason to
20 reject Dr. Scurry's opinion. (AR 18). A claimant's failure to
21 mention a health condition does not permit the ALJ to infer that the
22 condition does not exist. Widmark v. Barnhart, 454 F.3d 1063, 1068
23 (9th Cir. 2006) (remanding ALJ's decision for rejecting physician's
24

25 ⁶ The Court will not consider reasons for rejecting a
26 physician's opinion that the ALJ did not provide in his Decision.
27 (See Joint Stip. at 7-8); see also Connett v. Barnhart, 340 F.3d
28 871, 874 (9th Cir. 2003) ("We are constrained to review the reasons
the ALJ asserts."; citing SEC v. Chenery Corp., 332 U.S. 194, 196
(1947) and Pinto v. Massanari, 249 F.3d 840, 847-48 (9th Cir.
2001)).

1 opinion who assessed functional limitations that claimant did not
2 mention in his benefits application or at the hearing); see also
3 Attia v. Astrue, No. 1:06CV00778 SMS, 2007 WL 2802006, at *26 (E.D.
4 Cal. Sept. 24, 2007) (plaintiff's failure to communicate a mental
5 health condition and related limitations to doctors treating him for
6 physical ailments was not a proper reason to reject a physician's
7 opinion). Here, while Plaintiff did not explicitly state that he
8 has social functioning limitations in his Application or at the
9 hearing, he did assert mental health concerns. (See AR 36, 232-37).
10 Accordingly, Plaintiff's failure to assert that he has social
11 functioning limitations was not a clear and convincing reason for
12 rejecting Dr. Scurry's opinion.

13

14 **B. Remand Is Warranted**

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16 The decision whether to remand for further proceedings or order
17 an immediate award of benefits is within the district court's
18 discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir.
19 2000). Where no useful purpose would be served by remand, or where
20 the record is fully developed, it is appropriate to direct an
21 immediate award of benefits. Id. at 1179 ("[T]he decision of
22 whether to remand for further proceedings turns upon the likely
23 utility of such proceedings."). However, where the circumstances of
24 the case suggest that further administrative review could remedy the
25 Commissioner's errors, remand is appropriate. McLeod v. Astrue, 640
26 F.3d 881, 888 (9th Cir. 2011); Harman, 211 F.3d at 1179-81.

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