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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Case No. 5:17-CV-00668 (VEB)

SHINEE MARIE ANDERSON,

Plaintiff,

vs.

NANCY BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

DECISION AND ORDER

I. INTRODUCTION

In September of 2011, Plaintiff Shinee Marie Anderson applied for Child’s Disability Insurance benefits and Supplement Security Income benefits under the Social Security Act. The Commissioner of Social Security denied the applications.

Plaintiff, by and through her attorneys, Law Offices of Lawrence D. Rohlfing, Denise Bourgeois Haley, Esq., of counsel, commenced this action seeking judicial

1 review of the Commissioner’s denial of benefits pursuant to 42 U.S.C. §§ 405 (g)
2 and 1383 (c)(3).

3 The parties consented to the jurisdiction of a United States Magistrate Judge.
4 (Docket No. 11, 12, 24). On January 5, 2018, this case was referred to the
5 undersigned pursuant to General Order 05-07. (Docket No. 23).

7 **II. BACKGROUND**

8 Plaintiff applied for benefits on September 23, 2011, alleging disability
9 beginning November 30, 1992. (T at 149-58).¹ The applications were denied
10 initially and on reconsideration. Plaintiff requested a hearing before an
11 Administrative Law Judge (“ALJ”).

12 On July 15, 2016, a hearing was held before ALJ Laura Fernandez. (T at 316).
13 Plaintiff appeared with her attorney and testified. (T at 325-47, 364-65). The ALJ
14 also received testimony from David Rinehart, a vocational expert (T at 365-71), Dr.
15 Michael Lace, a psychological expert (T at 320-25, 347-48, 360-64), and Cynthia
16 Bradley Cagnolatti, a lay witness (T at 348-60).

17 On August 29, 2016, the ALJ issued a written decision denying the
18 applications for benefits. (T at 295-315). The ALJ’s decision became the

19 ¹ Citations to (“T”) refer to the administrative record transcript at Docket No. 18.

1 Commissioner’s final decision on February 10, 2017, when the Appeals Council
2 denied Plaintiff’s request for review. (T at 278-82).

3 On April 7, 2017, Plaintiff, acting by and through her counsel, filed this action
4 seeking judicial review of the Commissioner’s denial of benefits. (Docket No. 1).
5 The Commissioner interposed an Answer on September 7, 2017. (Docket No. 17).
6 The parties filed a Joint Stipulation on February 15, 2018. (Docket No. 25).

7 After reviewing the pleadings, Joint Stipulation, and administrative record,
8 this Court finds that the Commissioner’s decision must be reversed and this case
9 remanded for further proceedings.

10 **III. DISCUSSION**

11 **A. Sequential Evaluation Process**

12 The Social Security Act (“the Act”) defines disability as the “inability to
13 engage in any substantial gainful activity by reason of any medically determinable
14 physical or mental impairment which can be expected to result in death or which has
15 lasted or can be expected to last for a continuous period of not less than twelve
16 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a
17 claimant shall be determined to be under a disability only if any impairments are of
18 such severity that he or she is not only unable to do previous work but cannot,
19 considering his or her age, education and work experiences, engage in any other

1 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),
2 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and
3 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

4 The Commissioner has established a five-step sequential evaluation process
5 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step
6 one determines if the person is engaged in substantial gainful activities. If so,
7 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the
8 decision maker proceeds to step two, which determines whether the claimant has a
9 medically severe impairment or combination of impairments. 20 C.F.R. §§
10 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

11 If the claimant does not have a severe impairment or combination of
12 impairments, the disability claim is denied. If the impairment is severe, the
13 evaluation proceeds to the third step, which compares the claimant's impairment(s)
14 with a number of listed impairments acknowledged by the Commissioner to be so
15 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),
16 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or
17 equals one of the listed impairments, the claimant is conclusively presumed to be
18 disabled. If the impairment is not one conclusively presumed to be disabling, the
19 evaluation proceeds to the fourth step, which determines whether the impairment

1 prevents the claimant from performing work which was performed in the past. If the
2 claimant is able to perform previous work, he or she is deemed not disabled. 20
3 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant’s residual
4 functional capacity (RFC) is considered. If the claimant cannot perform past relevant
5 work, the fifth and final step in the process determines whether he or she is able to
6 perform other work in the national economy in view of his or her residual functional
7 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
8 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

9 The initial burden of proof rests upon the claimant to establish a *prima facie*
10 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
11 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
12 is met once the claimant establishes that a mental or physical impairment prevents
13 the performance of previous work. The burden then shifts, at step five, to the
14 Commissioner to show that (1) plaintiff can perform other substantial gainful
15 activity and (2) a “significant number of jobs exist in the national economy” that the
16 claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

17 **B. Standard of Review**

18 Congress has provided a limited scope of judicial review of a Commissioner’s
19 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,
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1 made through an ALJ, when the determination is not based on legal error and is
2 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir.
3 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).

4 “The [Commissioner’s] determination that a plaintiff is not disabled will be
5 upheld if the findings of fact are supported by substantial evidence.” *Delgado v.*
6 *Heckler*, 722 F.2d 570, 572 (9th Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial
7 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119
8 n 10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d
9 599, 601-02 (9th Cir. 1989). Substantial evidence “means such evidence as a
10 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*
11 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch inferences and
12 conclusions as the [Commissioner] may reasonably draw from the evidence” will
13 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir. 1965). On review,
14 the Court considers the record as a whole, not just the evidence supporting the
15 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir.
16 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

17 It is the role of the Commissioner, not this Court, to resolve conflicts in
18 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
19 interpretation, the Court may not substitute its judgment for that of the

1 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th
2 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be
3 set aside if the proper legal standards were not applied in weighing the evidence and
4 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d
5 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the
6 administrative findings, or if there is conflicting evidence that will support a finding
7 of either disability or non-disability, the finding of the Commissioner is conclusive.
8 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

9 **C. Commissioner’s Decision**

10 The ALJ determined that Plaintiff had not attained the age of 22 as of
11 November 30, 1992, the alleged onset date, and had not engaged in substantial
12 gainful activity since that date. (T at 301). The ALJ found that Plaintiff’s bipolar
13 disorder, history of ADHD with associated conduct issues, and a learning disorder
14 were “severe” impairments under the Act. (Tr. 301).

15 However, the ALJ concluded that Plaintiff did not have an impairment or
16 combination of impairments that met or medically equaled one of the impairments
17 set forth in the Listings. (T at 301).

18 The ALJ determined that Plaintiff retained the residual functional capacity
19 (“RFC”) to perform a full range of work at all exertional levels, with the following

1 non-exertional limitations: simple, routine, repetitive tasks (but she can make work-
2 related decision); only incidental co-worker and public contact and only occasional
3 supervisory contact. (T at 303).

4 The ALJ noted that Plaintiff had no past relevant work. (T at 309).
5 Considering Plaintiff's age, education (limited), work experience (no past relevant
6 work), and residual functional capacity, the ALJ found that jobs exist in significant
7 numbers in the national economy that Plaintiff can perform. (T at 309).

8 Accordingly, the ALJ determined that Plaintiff was not disabled within the
9 meaning of the Social Security Act between November 30, 1992 (the alleged onset
10 date) and September 1, 2016 (the date of the decision) and was therefore not entitled
11 to benefits. (T at 310). As noted above, the ALJ's decision became the
12 Commissioner's final decision when the Appeals Council denied Plaintiff's request
13 for review. (T at 278-82).

14 **D. Disputed Issues**

15 As set forth in the Joint Stipulation (Docket No. 25), Plaintiff offers two (2)
16 main arguments in support of her claim that the Commissioner's decision should be
17 reversed. First, she challenges the ALJ's assessment of the medical opinion
18 evidence. Second, she argues that the ALJ did not properly consider lay witness
19 testimony. This Court will address both arguments in turn.

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2 **IV. ANALYSIS**

3 **A. Medical Opinion Evidence**

4 In disability proceedings, a treating physician’s opinion carries more weight
5 than an examining physician’s opinion, and an examining physician’s opinion is
6 given more weight than that of a non-examining physician. *Benecke v. Barnhart*,
7 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
8 1995). If the treating or examining physician’s opinions are not contradicted, they
9 can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If
10 contradicted, the opinion can only be rejected for “specific” and “legitimate” reasons
11 that are supported by substantial evidence in the record. *Andrews v. Shalala*, 53 F.3d
12 1035, 1043 (9th Cir. 1995).

13 The courts have recognized several types of evidence that may constitute a
14 specific, legitimate reason for discounting a treating or examining physician’s
15 medical opinion. For example, an opinion may be discounted if it is contradicted by
16 the medical evidence, inconsistent with a conservative treatment history, and/or is
17 based primarily upon the claimant’s subjective complaints, as opposed to clinical
18 findings and objective observations. *See Flaten v. Secretary of Health and Human*
19 *Servs.*, 44 F.3d 1453, 1463-64 (9th Cir. 1995).

1 An ALJ satisfies the “substantial evidence” requirement by “setting out a
2 detailed and thorough summary of the facts and conflicting clinical evidence, stating
3 his interpretation thereof, and making findings.” *Garrison v. Colvin*, 759 F.3d 995,
4 1012 (9th Cir. 2014)(quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)).
5 “The ALJ must do more than state conclusions. He must set forth his own
6 interpretations and explain why they, rather than the doctors’, are correct.” *Id.*

7 In this case, Dr. Michael Lace reviewed the record and testified as a medical
8 expert at the administrative hearing. Dr. Lace opined, *inter alia*, that Plaintiff was
9 limited to “frequent superficial contact with co-workers, the general public, as well
10 as supervisors.” (T at 363). The ALJ gave “great weight” to Dr. Lace’s testimony.
11 (T at 307). The ALJ found Dr. Lace’s opinion “reasonable and consistent with the
12 objective medical evidence.” (T at 307).

13 However, the ALJ concluded that Plaintiff retained the RFC to have incidental
14 contact with co-workers and the public and occasional contact with supervisors. (T
15 at 303). This appears to be at odds with Dr. Lace’s opinion that Plaintiff was limited
16 to “frequent *superficial*” contact with others. (T at 363)(emphasis added). In
17 particular, even if one were to assume that “incidental” contact with co-workers and
18 the public is synonymous with “superficial” contact, there remains a conflict
19 between the conclusion that Plaintiff could have occasional contact with supervisors

1 and Dr. Lace’s limitation to frequent *superficial* contact with supervisors. The ALJ
2 did not explicitly address or resolve this conflict. This was a significant omission,
3 given extensive evidence in the record regarding Plaintiff’s impaired ability to cope
4 with customary work pressure, which would include occasional criticism from
5 supervisors. For example, Dr. Divy Kikani, a consultative examiner, opined that
6 Plaintiff “may be expected to show moderate to marked episodes of emotional
7 deterioration at normal work situations under customer work pressure.” (T at 247-
8 48). Dr. Richard Kangah, Plaintiff’s treating primary care physician, reported that
9 he did not believe Plaintiff could “follow and carry out basic instructions.” (T at
10 504). These findings were consistent with Dr. Lace’s conclusion that Plaintiff could
11 not manage more than superficial contact with supervisors. (T at 363).

12 The Commissioner points to evidence in the record suggesting a lesser degree
13 of limitation with regard to Plaintiff’s social interaction skills. For example, Dr.
14 Douglas Larson, another consultative examiner, assessed only moderate impairment
15 with regard to Plaintiff’s ability to interact appropriately with supervisors and
16 comply with job rules such as safety and attendance. (T at 254). Dr. Richard
17 Starrett, another consultative examiner, reported that while Plaintiff was “socially
18 inappropriate” during the examination, he believed she “probably would be able to
19 interact appropriately with supervisors” (T at 509). In addition, the record

1 indicated that Plaintiff used public transportation, cared for her young daughter, paid
2 bills, had meaningful interpersonal relationships, and attending to her shopping. (T
3 at 302-05, 307, 325-38, 351-53, 355).

4 This Court finds the Commissioner’s argument insufficient to sustain the
5 ALJ’s decision. The ALJ gave “great weight” to Dr. Lace’s assessment for good
6 reason – Dr. Lace performed a detailed review of the record and had the opportunity
7 to actively participate in the administrative hearing and be subject to cross-
8 examination by Plaintiff’s counsel. *See Andrews v. Shalala*, 53 F.3d 1035, 1042 (9th
9 Cir. 1995)(“[A]n ALJ may give greater weight to the opinion of a non-examining
10 expert who testifies at a hearing subject to cross-examination.”). The ALJ did not
11 recognize or address a serious conflict between Dr. Lace’s well-supported
12 assessment and the RFC determination. This conflict related to a key job
13 requirement – namely, the ability to accept criticism, even if only occasionally, from
14 supervisors.

15 Contrary to the Commissioner’s argument, Plaintiff’s ability to maintain daily
16 activities and some interpersonal relationships does not, *ipso facto*, translate into an
17 ability to interact appropriately with a supervisor under the customary demands of
18 competitive, remunerative employment. Indeed, when the claimant’s ability to
19 tolerate work stress, such as the stress of accepting criticism and direction from a

1 supervisor, is at issue, great care must be taken when assessing the probative value
2 of the claimant’s activities of daily living. This is because individuals with chronic
3 mental health problems “commonly have their lives structured to minimize stress
4 and reduce their signs and symptoms.” *Courneya v. Colvin*, No. CV-12-5044, 2013
5 U.S. Dist. LEXIS 161332, at *13-14 (E.D.W.A. Nov. 12, 2013)(quoting 20 C.F.R.
6 Pt. 404, Subp’t P, App. 1 § 12.00(D)); *see also Bjornson v. Astrue*, 671 F.3d 640,
7 647 (7th Cir. 2012)(“The critical differences between activities of daily living and
8 activities in a full-time job are that a person has more flexibility in scheduling the
9 former than the latter, can get help from other persons . . . , and is not held to a
10 minimum standard of performance, as she would be by an employer. The failure to
11 recognize these differences is a recurrent, and deplorable, feature of opinions by
12 administrative law judges in social security disability cases.”)(cited with approval in
13 *Garrison v. Colvin*, 759 F.3d 995, 1016 (9th Cir. 2014)).

14 Given the importance of this issue and the other evidence of limitation in the
15 record, this Court declines to accept the Commissioner’s *post-hoc* efforts to intuit a
16 resolution to this conflict from the record. *See Bray v. Comm’r*, 554 F.3d 1219, 1226
17 (9th Cir. 2009)(“Long-standing principles of administrative law require us to review
18 the ALJ's decision based on the reasoning and factual findings offered by the ALJ —
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1 not post hoc rationalizations that attempt to intuit what the adjudicator may have
2 been thinking.”). A remand is required.

3 **B. Lay Evidence**

4 “Testimony by a lay witness provides an important source of information
5 about a claimant’s impairments, and an ALJ can reject it only by giving specific
6 reasons germane to each witness.” *Regennitter v. Comm’r*, 166 F.3d 1294, 1298 (9th
7 Cir. 1999).

8 In this case, Cynthia Bradley Cagnolatti was hired through Inland Regional, a
9 not-for-profit agency, to act as Plaintiff’s “instructor.” (T at 349, 356-57). She met
10 with Plaintiff to assist her with paying bills, shopping, preparing a resume, and
11 performing research. (T at 349). Ms. Cagnolatti testified that Plaintiff “needs major
12 help in understanding” what she reads. (T at 350). According to Ms. Cagnolatti,
13 Plaintiff’s reading skills are very limited. (T at 350, 355).

14 The ALJ gave some weight to Ms. Cagnolatti’s testimony, finding it
15 consistent with the conclusion that Plaintiff could perform simple and repetitive
16 tasks. (T at 308). The ALJ determined, however, that Plaintiff’s educational records
17 indicated a higher level of reading and writing ability than Ms. Cagnolatti assessed
18 and, thus, the ALJ discounted that aspect of her testimony. (T at 308).

1 This Court finds the ALJ provided germane and sufficient reasons for the
2 weight afforded to Ms. Cagnolatti's testimony. The evidence, including the
3 assessment of Dr. Lace, was supportive of the conclusion that Plaintiff could
4 perform simple, repetitive tasks. (T at 363). Plaintiff's educational records, although
5 documenting deficiencies in the areas of reading and writing, were generated over an
6 extended period of time and indicated that Plaintiff possessed basic reading and
7 writing skills. (T at 174). The ALJ thus acted within her discretion in affording
8 lesser weight to Ms. Cagnolatti's testimony. There is no reversible error as to this
9 aspect of the ALJ's decision.

10 C. Remand

11 In a case where the ALJ's determination is not supported by substantial
12 evidence or is tainted by legal error, the court may remand the matter for additional
13 proceedings or an immediate award of benefits. Remand for additional proceedings
14 is proper where (1) outstanding issues must be resolved, and (2) it is not clear from
15 the record before the court that a claimant is disabled. *See Benecke v. Barnhart*, 379
16 F.3d 587, 593 (9th Cir. 2004).

17 Here, this Court finds that remand for further proceedings is warranted. There
18 is an unresolved conflict between Dr. Lace's assessment, which the ALJ afforded
19 great weight, and the RFC determination, which provided for a greater ability to

1 handle contact with supervisors than Dr. Lace did. This conflict needs to be
2 resolved on remand with the RFC revised as necessary and then a determination as
3 to whether Plaintiff is disabled. It is clear Plaintiff has a material limitation with
4 regard to her ability to handle supervision. On remand, the ALJ will need to
5 undertake a more careful assessment of the evidence before determining the extent
6 of that limitation.

7 **V. ORDERS**

8 IT IS THEREFORE ORDERED that:

9 Judgment be entered REVERSING the Commissioner's decision and
10 REMANDING this action for further proceedings consistent with this Decision and
11 Order, and it is further ORDERED that

12 The Clerk of the Court file this Decision and Order, serve copies upon counsel
13 for the parties, and CLOSE this case without prejudice to a timely application for
14 attorneys' fees and costs.

15 DATED this 29th day of August, 2018,

16
17 /s/Victor E. Bianchini
18 VICTOR E. BIANCHINI
19 UNITED STATES MAGISTRATE JUDGE