

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DENNIS R. P.,¹

Plaintiff,

v.

NANCY A. BERRYHILL, Deputy
Commissioner of Operations of Social
Security,
Defendant.

Case No. ED CV 17-02519-RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff Dennis R. P. (“Plaintiff”) challenges the Commissioner’s denial of his application for a period of disability and disability insurance benefits (“DIB”). For the reasons stated below, the decision of the Commissioner is REVERSED and REMANDED.

II. PROCEEDINGS BELOW

On April 27, 2014, Plaintiff filed a Title II application for DIB alleging disability beginning April 21, 2014. (Administrative Record (“AR”) 60, 70.) His

¹ Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 application was denied initially on August 6, 2014, and upon reconsideration on
2 February 4, 2015. (AR 84, 91.) On April 9, 2015, Plaintiff filed a written request
3 for hearing, and a hearing was held on March 31, 2017. (AR 33, 97.) Represented
4 by counsel, Plaintiff appeared and testified, along with an impartial vocational
5 expert. (AR 35-59.) On May 10, 2017, the Administrative Law Judge (“ALJ”)
6 found that Plaintiff had not been under a disability, pursuant to the Social Security
7 Act,² since April 21, 2014. (AR 26.) The ALJ’s decision became the
8 Commissioner’s final decision when the Appeals Council denied Plaintiff’s request
9 for review. (AR 1.) Plaintiff filed this action on December 19, 2017. (Dkt. No. 1.)

10 The ALJ followed a five-step sequential evaluation process to assess whether
11 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,
12 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged
13 in substantial gainful activity since April 21, 2014, the alleged onset date (“AOD”).
14 (AR 19.) At **step two**, the ALJ found that Plaintiff had the following severe
15 impairments: hypertension; obstructive sleep apnea; osteoarthritis; degenerative
16 joint disease of the right knee; and lumbar spine degenerative disc disease. (*Id.*) At
17 **step three**, the ALJ found that Plaintiff “does not have an impairment or
18 combination of impairments that meets or medically equals the severity of one of
19 the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.” (AR 20.)

20 Before proceeding to step four, the ALJ found that Plaintiff had the residual
21 functional capacity (“RFC”) to:

22 [P]erform light work . . . except he can lift and/or carry, push, and pull
23 20 pounds occasionally and 10 pound[s] frequently, stand and/or walk
24 about six hours out of an eight-hour workday, and sit [for] six hours in
25 an eight-hour workday, all with normal breaks. He can occasionally

26 ² Persons are “disabled” for purposes of receiving Social Security benefits if they
27 are unable to engage in any substantial gainful activity owing to a physical or
28 mental impairment expected to result in death, or which has lasted or is expected to
last for a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

1 climb ramps and stairs but not climb ladders, ropes, or scaffolds, and
2 can occasionally balance, stoop, kneel, crouch, and crawl.

3 (*Id.*) At **step four**, based on Plaintiff’s RFC and the vocational expert’s testimony,
4 the ALJ found that Plaintiff was not capable of performing past relevant work. (AR
5 25.) At **step five**, “[c]onsidering the claimant’s age, education, work experience,
6 and residual functional capacity,” the ALJ found that Plaintiff “has acquired work
7 skills from past relevant work that are transferrable to other occupations with jobs
8 existing in significant numbers in the national economy.” (AR 25.) Accordingly,
9 the ALJ determined that Plaintiff has not been under a disability from the AOD
10 through the date of decision. (AR 26.)

11 **III. STANDARD OF REVIEW**

12 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s
13 decision to deny benefits. A court must affirm an ALJ’s findings of fact if they are
14 supported by substantial evidence and if the proper legal standards were applied.
15 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “‘Substantial evidence’
16 means more than a mere scintilla, but less than a preponderance; it is such relevant
17 evidence as a reasonable person might accept as adequate to support a conclusion.”
18 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*
19 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial
20 evidence requirement “by setting out a detailed and thorough summary of the facts
21 and conflicting clinical evidence, stating his interpretation thereof, and making
22 findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

23 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a
24 specific quantum of supporting evidence. Rather, a court must consider the record
25 as a whole, weighing both evidence that supports and evidence that detracts from
26 the Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir.
27 2001) (citations and internal quotation marks omitted). “‘Where evidence is
28 susceptible to more than one rational interpretation,’ the ALJ’s decision should be

1 upheld.” *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing
2 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see Robbins*, 466 F.3d at
3 882 (“If the evidence can support either affirming or reversing the ALJ’s
4 conclusion, we may not substitute our judgment for that of the ALJ.”). The Court
5 may review only “the reasons provided by the ALJ in the disability determination
6 and may not affirm the ALJ on a ground upon which he did not rely.” *Orn v.*
7 *Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d
8 871, 874 (9th Cir. 2003)).

9 **IV. DISCUSSION**

10 Plaintiff raises the following issues for review: (1) whether the ALJ properly
11 considered the relevant medical evidence, including medical opinions; (2) whether
12 the ALJ properly considered Plaintiff’s testimony; and (3) whether the ALJ
13 properly developed the record, particularly at step five. (*See* Joint Submission
14 (“JS”) 4.) For the reasons below, the Court agrees with Plaintiff regarding the
15 assessment of his testimony and remands on that ground.

16 **A. The ALJ Failed to Properly Evaluate Plaintiff’s Subjective** 17 **Testimony**

18 The ALJ began by reciting the relevant and familiar two-step analysis that an
19 ALJ undertakes in assessing a claimant’s testimony regarding subjective pain or the
20 intensity of symptoms: (1) the ALJ must determine whether there is an underlying
21 impairment that could reasonably be expected to produce the pain or other
22 symptoms alleged; and (2) if so, the ALJ must “evaluate the intensity, persistence,
23 and limiting effects of [Plaintiff’s] symptoms to determine the extent to which they
24 limit [Plaintiff’s] functional limitations.” (AR 20.) *See Treichler v. Comm’r of*
25 *Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (in assessing the credibility
26 of a claimant’s symptom testimony, “[f]irst, the ALJ must determine whether the
27 claimant has presented objective medical evidence of an underlying impairment
28 which could reasonably be expected to produce the pain or other symptoms

1 alleged”; if so, and if the ALJ does not find evidence of malingering, the ALJ must
2 provide “specific, clear and convincing reasons for rejecting a claimant’s testimony
3 regarding the severity of the claimant’s symptoms”).

4 After reciting this two-step analysis, the ALJ summarized Plaintiff’s
5 testimony from the hearing. (AR 20-21.) The ALJ also considered Plaintiff’s
6 Exertional Activities Questionnaire, finding that Plaintiff’s statements within it “are
7 of the same general nature as the subjective complaints from [Plaintiff’s]
8 testimony.” (AR 21.) Next, “[a]fter careful consideration of the evidence,” the
9 ALJ found that Plaintiff’s “medically determinable impairments could reasonably
10 be expected to cause the alleged symptoms,” but found that Plaintiff’s “statements
11 concerning the intensity, persistence and limiting effects of these symptoms are not
12 entirely consistent with the medical evidence and other evidence in the record for
13 the reasons explained in this decision.” (*Id.*) The ALJ therefore determined that
14 Plaintiff’s allegations affect his ability to work “only to the extent they can
15 reasonably be accepted as consistent with the objective medical evidence and other
16 evidence.” (*Id.*) This determination is little more than a recitation of the ALJ’s
17 duty to consider Plaintiff’s subjective symptom testimony. *See* SSR 16-3p, 2016
18 WL 1119029, at *2 (S.S.A. Mar. 16, 2016) (“In determining whether an individual
19 is disabled, we consider all of the individual’s symptoms, including pain, and the
20 extent to which the symptoms can reasonably be accepted as consistent with the
21 objective medical and other evidence in the individual’s record.”); *see also id.* at *9
22 (“In evaluating an individual’s symptoms, it is not sufficient for our adjudicators to
23 make a single, conclusory statement that ‘the individual’s statements about his or
24 her symptoms have been considered’ or that ‘the statements about the individual’s
25 symptoms are (or are not) supported or consistent.’”).

26 The ALJ then proceeded to objectively summarize Plaintiff’s medical
27 treatment records. (*See* AR 21-23.) The ALJ also considered and weighed the
28 medical opinion evidence. (*See* AR 24.) But the ALJ made no specific findings,

1 nor did he connect any evidence to Plaintiff’s symptoms or testimony. The ALJ
2 must explain which symptoms are inconsistent with the evidence of record and
3 must explain how his evaluation of the symptoms led to that conclusion. *See* 2016
4 WL 1119029, at *8; *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001)
5 (“[T]he ALJ must specifically identify the testimony she or he finds not to be
6 credible and must explain what evidence undermines the testimony.”). The
7 determination must contain specific reasons for the weight given to the individual’s
8 symptoms and must clearly articulate how the ALJ evaluated the claimant’s
9 symptoms. 2016 WL 1119029, at *9; *see Lester*, 81 F.3d at 834 (“General findings
10 are insufficient.”).

11 Accordingly, the Court concludes that the ALJ did not give clear and
12 convincing reasons, supported by substantial evidence, for discounting Plaintiff’s
13 subjective symptom testimony. Remand is therefore warranted on this issue.

14 **B. The Court Declines To Address Plaintiff’s Remaining Arguments**

15 Having found that remand is warranted, the Court declines to address
16 Plaintiff’s remaining arguments. *See Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir.
17 2012) (“Because we remand the case to the ALJ for the reasons stated, we decline
18 to reach [plaintiff’s] alternative ground for remand.”); *see also Augustine ex rel.*
19 *Ramirez v. Astrue*, 536 F. Supp. 2d 1147, 1153 n.7 (C.D. Cal. 2008) (“[The] Court
20 need not address the other claims plaintiff raises, none of which would provide
21 plaintiff with any further relief than granted, and all of which can be addressed on
22 remand.”).

23 **C. Remand For Further Administrative Proceedings**

24 Because further administrative review could remedy the ALJ’s errors,
25 remand for further administrative proceedings, rather than an award of benefits, is
26 warranted here. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015)
27 (remanding for an award of benefits is appropriate in rare circumstances). Before
28 ordering remand for an award of benefits, three requirements must be met: (1) the

1 Court must conclude that the ALJ failed to provide legally sufficient reasons for
2 rejecting evidence; (2) the Court must conclude that the record has been fully
3 developed and further administrative proceedings would serve no useful purpose;
4 and (3) the Court must conclude that if the improperly discredited evidence were
5 credited as true, the ALJ would be required to find the claimant disabled on
6 remand. *Id.* (citations omitted). Even if all three requirements are met, the Court
7 retains flexibility to remand for further proceedings “when the record as a whole
8 creates serious doubt as to whether the claimant is, in fact, disabled within the
9 meaning of the Social Security Act.” *Id.* (citation omitted).

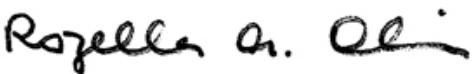
10 Here, remand for further administrative proceedings is appropriate. The
11 Court finds that the ALJ failed to provide clear and convincing reasons supported
12 by substantial evidence to discount Plaintiff’s subjective testimony. On remand,
13 the ALJ shall reassess Plaintiff’s subjective allegations. The ALJ shall then
14 reassess Plaintiff’s RFC and proceed through step four and step five, if necessary,
15 to determine what work, if any, Plaintiff is capable of performing.

16 **V. CONCLUSION**

17 IT IS ORDERED that Judgment shall be entered REVERSING the decision
18 of the Commissioner denying benefits, and REMANDING the matter for further
19 proceedings consistent with this Order.

20 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
21 Order and the Judgment on counsel for both parties.

22
23 DATED: November 26, 2018

24 

25 ROZELLA A. OLIVER
26 UNITED STATES MAGISTRATE JUDGE

27 **NOTICE**

28 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,
LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**