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

NAFISA NOORI,)	NO. ED CV 17-2550-E
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION
)	
NANCY A. BERRYHILL, Acting)	AND ORDER OF REMAND
Commissioner of Social Security,)	
)	
Defendant.)	
)	
)	

Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS
HEREBY ORDERED that Plaintiff's and Defendant's motions for summary
judgment are denied and this matter is remanded for further
administrative action consistent with this Opinion.

PROCEEDINGS

Plaintiff filed a complaint on December 28, 2017, seeking review
of the Commissioner's denial of benefits. The parties filed a consent
to proceed before a United States Magistrate Judge on February 2,
2018. Plaintiff filed a motion for summary judgment on August 16,

1 2018. Defendant filed a motion for summary judgment on September 17,
2 2018. The Court has taken both motions under submission without oral
3 argument. See L.R. 7-15; "Order," filed January 8, 2018.
4

5 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
6

7 Plaintiff, a former translator, asserts disability based
8 primarily on alleged mental problems (Administrative Record ("A.R.")
9 65, 213, 215, 235-41). An Administrative Law Judge ("ALJ") examined
10 the record and heard testimony from Plaintiff, a medical expert and a
11 vocational expert (A.R. 20-209, 213-811).
12

13 The ALJ found Plaintiff has a severe "bipolar type
14 schizoaffective disorder" which precludes the performance of
15 Plaintiff's past relevant work (A.R. 22, 33). However, the ALJ also
16 found Plaintiff retains the residual functional capacity ("RFC") to
17 "perform simple, routine tasks in a habituated work setting . . ."
18 (A.R. 27). In making this finding, the ALJ purported to accord "great
19 weight" to the opinions of Dr. Romualdo R. Rodriguez, a consultative
20 examining psychiatrist (A.R. 29, 32). In the ALJ's written decision,
21 the ALJ did not acknowledge having rejected any of Dr. Rodriguez'
22 opinions (A.R. 22-35).
23

24 The vocational expert testified that a person having the RFC the
25 ALJ found to exist could perform work as a "janitor" or a "laundry
26 worker" (A.R. 61-62). In reliance on this testimony, the ALJ found
27 Plaintiff not disabled (A.R. 34-35). The Appeals Council denied
28 review (A.R. 1-3).

1 Plaintiff argues that Dr. Rodriguez' opinions are inconsistent
2 with the RFC the ALJ found to exist and inconsistent with the
3 conclusion Plaintiff can perform jobs requiring Level 2 reasoning.
4 Defendant argues that Dr. Rodriguez' opinions are consistent with the
5 RFC the ALJ found to exist and consistent with the conclusion
6 Plaintiff can perform jobs requiring Level 2 reasoning.

7
8 As expressed in his report, Dr. Rodriguez' opinions regarding the
9 level of Plaintiff's reasoning ability appear ambiguous. It is
10 unclear from the report whether Dr. Rodriguez believes Plaintiff is
11 limited to Level 1 reasoning or is capable of Level 2 reasoning.
12 Without obtaining clarification from Dr. Rodriguez, the ALJ evidently
13 assumed the latter interpretation. See Little v. Berryhill, 708 Fed.
14 App'x 468, 469-70 (9th Cir. 2018) ("simple work" RFC contradicts
15 doctors' opinions limiting claimant to ability to "understand,
16 remember, and carry out simple 1-2 step instructions . . .").
17 However, the language in Dr. Rodriguez' report is at least equally
18 consistent with the former interpretation. See Flores v. Berryhill,
19 725 Fed. App'x 575, 576 (9th Cir. 2018) (Ninth Circuit interpreted
20 doctor's opinion that claimant is "[a]ble to carry out one-and two-
21 step instructions . . ." to limit claimant "to work requiring no more
22 than one- or two-step instructions," i.e. work requiring no more than
23 Level 1 reasoning).

24
25 Clarification of this potentially material ambiguity in Dr.
26 Rodriguez' report is required. See Sims v. Apfel, 530 U.S. 103, 110-
27 11 (2000) ("Social Security proceedings are inquisitorial rather than
28 adversarial. It is the ALJ's duty to investigate the facts and

1 develop the arguments both for and against granting benefits. . . .");
2 Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996) ("If the ALJ
3 thought he needed to know the basis of Dr. Hoeflich's opinions in
4 order to evaluate them, he had a duty to conduct an appropriate
5 inquiry, for example, by subpoenaing the physicians or submitting
6 further questions to them.") (citations omitted); Brown v. Heckler,
7 713 F.2d 441, 443 (9th Cir. 1983) ("The ALJ has a special duty to
8 fully and fairly develop the record and to assure that the claimant's
9 interests are considered. This duty exists even when the claimant is
10 represented by counsel.").

11
12 If Dr. Rodriguez believes Plaintiff is limited to Level 1
13 reasoning, then the ALJ would be required to explain the failure to
14 incorporate such limitation into the RFC. See Social Security Ruling
15 96-8p¹ ("If the RFC assessment conflicts with an opinion from a
16 medical source, the adjudicator must explain why the opinion was not
17 adopted."); see Flores v. Berryhill, 725 Fed. App'x at 576 (because
18 doctor stated claimant was "able to carry out one- and two-step
19 instructions," and because the ALJ purportedly gave "substantial
20 weight" to this opinion, "the ALJ was required either to limit the
21 claimant's residual functional capacity to Level 1 reasoning or
22 explain why the ALJ had not done so"); see also Little v. Berryhill,
23 708 Fed. App'x at 469-70 (doctor's opinion that claimant could
24 "understand, remember, and carry out simple 1- to 2-step instructions"
25 conflicts with RFC that claimant could perform "simple work"); cf.
26 Rounds v. Commissioner, 807 F.3d 996, 1003 (9th Cir. 2015) (limitation

27
28 ¹ Social Security rulings are "binding on ALJs." Terry
v. Sullivan, 903 F.2d 1273, 1275 n.1 (9th Cir. 1990).

1 to "one to two step" tasks or instructions is inconsistent with the
2 demands of Level 2 reasoning).

3
4 Because the circumstances of this case suggest that further
5 administrative proceedings could remedy the deficiencies discussed
6 herein, remand is appropriate. McLeod v. Astrue, 640 F.3d 881, 888
7 (9th Cir. 2011); see also INS v. Ventura, 537 U.S. 12, 16 (2002) (upon
8 reversal of an administrative determination, the proper course is
9 remand for additional agency investigation or explanation, except in
10 rare circumstances); Leon v. Berryhill, 880 F.3d 1041, 1044 (9th Cir.
11 2018) ("an automatic award of benefits in a disability benefits case
12 is a rare and prophylactic exception to the well-established ordinary
13 remand rule").

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