UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TONYA C.,[1] Plaintiff, v. ANDREW M. SAUL, Commissioner of Social Security, Defendant.	Case No. EDCV 19-1225-JPR **MEMORANDUM DECISION AND ORDER AFFIRMING COMMISSIONER IN PART AND REVERSING IN PART**

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying her applications for Social Security disability insurance benefits ("DIB") and supplemental security income benefits ("SSI"). The matter is before the Court on the parties' Joint Stipulation, filed March 5, 2020, which the Court has taken under submission without oral argument. For the reasons discussed below, the Commissioner's decision denying Plaintiff's DIB

[1] Plaintiff's name is partially redacted in line 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.

application is affirmed, the decision denying the SSI application is reversed, and this matter is remanded for further proceedings.

II. BACKGROUND

Plaintiff was born in 1980. (Administrative Record ("AR") 231, 238.) She completed her GED (AR 295), obtained a vocational nursing license (id.), and worked as a cashier, hostess, nurse, and optical assistant (AR 282, 296).

On January 12 and 26, 2015, Plaintiff applied for DIB and SSI, respectively, alleging that she had been unable to work since May 11, 2007, because of fibromyalgia, depression, anxiety, irritable bowel syndrome, colitis, and methicillin-resistant staphylococcus aureus ("MRSA").[2] (AR 231, 238, 294.) After her applications were denied initially (AR 117-26) and on reconsideration (AR 128-39), she requested a hearing before an Administrative Law Judge (AR 140-41). One was held on May 17, 2018, at which Plaintiff, who was represented by counsel, testified, as did a vocational expert. (See AR 35-49.) In a written decision issued June 27, 2018, the ALJ found her not disabled. (AR 13-34.) She sought Appeals Council review (AR 229-30), which was denied on May 3, 2019 (AR 1-6). This action followed.

III. STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), a district court may review the Commissioner's decision to deny benefits. The ALJ's findings and

[2] MRSA is a staph infection that is difficult to treat because of resistance to some antibiotics. Methicillin-Resistant Staphylococcus Aureus (MRSA), CDC, https://www.cdc.gov/mrsa/index.html (last visited Mar. 22, 2021).

decision should be upheld if they are free of legal error and supported by substantial evidence based on the record as a whole. See Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence means such evidence as a reasonable person might accept as adequate to support a conclusion. Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is "more than a mere scintilla, but less than a preponderance." Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006)). "[W]hatever the meaning of 'substantial' in other contexts, the threshold for such evidentiary sufficiency is not high." Biestek v. Berryhill, 139 S. Ct. 1148, 1154 (2019). To determine whether substantial evidence supports a finding, the reviewing court "must review the administrative record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998). "If the evidence can reasonably support either affirming or reversing," the reviewing court "may not substitute its judgment" for the Commissioner's. Id. at 720-21.

IV. THE EVALUATION OF DISABILITY

People are "disabled" for Social Security purposes if they are unable to engage in any substantial gainful activity owing to a physical or mental impairment that is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir. 1992).

A. The Five-Step Evaluation Process

An ALJ follows a five-step sequential evaluation process to assess whether someone is disabled. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first step, the Commissioner must determine whether the claimant is currently engaged in substantial gainful activity; if so, the claimant is not disabled and the claim must be denied. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

If the claimant is not engaged in substantial gainful activity, the second step requires the Commissioner to determine whether the claimant has a "severe" impairment or combination of impairments significantly limiting her ability to do basic work activities; if not, a finding of not disabled is made and the claim must be denied. §§ 404.1520(a)(4)(ii) & (c), 416.920(a)(4)(ii) & (c).

If the claimant has a "severe" impairment or combination of impairments, the third step requires the Commissioner to determine whether the impairment or combination of impairments meets or equals an impairment in the Listing of Impairments ("Listing") set forth at 20 C.F.R., part 404, subpart P, appendix 1; if so, disability is conclusively presumed and benefits are awarded. §§ 404.1520(a)(4)(iii) & (d), 416.920(a)(4)(iii) & (d).

If the claimant's impairment or combination of impairments does not meet or equal one in the Listing, the fourth step requires the Commissioner to determine whether the claimant has

sufficient residual functional capacity ("RFC")[3] to perform her past work; if so, she is not disabled and the claim must be denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The claimant has the burden of proving she is unable to perform past relevant work. Drouin, 966 F.2d at 1257. If the claimant meets that burden, a prima facie case of disability is established. Id.

If that happens or if the claimant has no past relevant work, the Commissioner bears the burden of establishing that the claimant is not disabled because she can perform other substantial gainful work available in the national economy, the fifth and final step of the sequential analysis. §§ 404.1520(a)(4)(v), 404.1560(b), 416.920(a)(4)(v), 416.960(b).

B. The ALJ's Application of the Five-Step Process

At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity since May 11, 2007, the alleged onset date. (AR 19.) Her date last insured was December 31, 2012. (Id.) At step two, he determined that she had severe impairments of fibromyalgia, irritable bowel syndrome, "recurrent" MRSA infections, asthma, "cervical degenerative disc disease," carpal tunnel syndrome, bipolar disorder, post-traumatic stress disorder, and "avoidant personality disorder." (Id.)

At step three, he found that Plaintiff's impairments did not

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[3] RFC is what a claimant can do despite existing exertional and nonexertional limitations. §§ 404.1545(a)(1), 416.945(a)(1); see Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). The Commissioner assesses the claimant's RFC between steps three and four. Laborin v. Berryhill, 867 F.3d 1151, 1153 (9th Cir. 2017) (citing § 416.920(a)(4)).

meet or equal any of the impairments in the Listing. (AR 19-21.) At step four, he determined that she had the RFC to perform a range of light work with the following limitations: "occasionally lift and carry 20 pounds"; "frequently lift and carry 10" pounds; "stand and walk (with normal breaks) for a total of 6 hours of an 8-hour workday"; "sit (with normal breaks) for a total of 6 hours of [an] 8-hour workday"; "occasional[ly]" perform "postural" movements; "no climbing ladders, ropes, or scaffolds"; "no unprotected heights or dangerous moving machinery"; "frequent bilaterally . . . reaching overhead, reaching all other directions, handling, fingering, feeling, pushing and pulling upper and lower"; "no concentrated exposure to operating a motor vehicle, humidity, wetness, dusts, odors, fumes, pulmonary irritants, extremes in cold, heat, and vibration"; "should be . . . within 100 yards of a bathroom"; and "unskilled work with only occasional interaction with the general public, coworkers and supervisors." (AR 21.)

The ALJ found that Plaintiff was unable to perform any past relevant work (AR 25), but she could work as a photocopy-machine operator or marker. (AR 26). Accordingly, he found her not disabled. (AR 26-27.)

V. DISCUSSION

Plaintiff alleges that the ALJ erred in evaluating the opinion of osteopath Sula Safar. (See J. Stip. at 5-9, 14-15.) Because the ALJ failed to provide a specific and legitimate reason for giving little weight to that opinion, the matter must be remanded for further analysis and findings on the application for SSI.

A. Applicable Law

Three types of physicians may offer opinions in Social Security cases: those who directly treated the plaintiff, those who examined but did not treat the plaintiff, and those who did neither. See Lester, 81 F.3d at 830. A treating physician's opinion is generally entitled to more weight than an examining physician's, and an examining physician's opinion is generally entitled to more weight than a nonexamining physician's. Id.; see §§ 404.1527(c)(1)-(2), 416.927(c)(1)-(2).[4]

The ALJ may discount a physician's opinion regardless of whether it is contradicted. Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989); see also Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008). When a doctor's opinion is not contradicted by other medical-opinion evidence, however, it may be rejected only for a "clear and convincing" reason. Magallanes, 881 F.2d at 751 (citations omitted); Carmickle, 533 F.3d at 1164 (citing Lester, 81 F.3d at 830-31). When it is contradicted, the ALJ need provide only a "specific and legitimate" reason for discounting it. Carmickle, 533 F.3d at 1164 (citing Lester, 81 F.3d at 830-31). The weight given a doctor's opinion, moreover, depends on whether it is consistent with the record and accompanied by adequate explanation, among other things. See §§ 404.1527(c), 416.927(c); see also Orn v.

[4] For claims filed on or after March 27, 2017, the rules in §§ 404.1520c and 416.920c (not §§ 404.1527 and 416.927) apply. See §§ 404.1520c, 416.920c (evaluating opinion evidence for claims filed on or after Mar. 27, 2017). Plaintiff's claims were filed before March 27, 2017, however, and the Court therefore analyzes them under former §§ 404.1527 and 416.927.

Astrue, 495 F.3d 625, 631 (9th Cir. 2007) (factors in assessing physician's opinion include length of treatment relationship, frequency of examination, and nature and extent of treatment relationship).

B. Relevant Background

On October 26, 2016, Dr. Safar completed a preprinted "MEDICAL OPINION RE: ABILITY TO DO WORK-RELATED ACTIVITIES (PHYSICAL)." (AR 1459-61.) Dr. Safar's check-box responses indicated that Plaintiff could lift no more than 10 pounds occasionally and less than 10 pounds frequently, stand and walk less than two hours during an eight-hour day, sit less than two hours during an eight-hour day, and sit or stand a maximum of 45 minutes before needing to change position. (AR 1459.) The doctor opined that Plaintiff needed to walk around for 45 minutes every 45 minutes, have the opportunity to shift at will from sitting or standing and walking, and lie down at unpredictable intervals every four to six hours. (AR 1460.) She could never twist, stoop, bend, crouch, or climb stairs or ladders. (Id.) She should avoid even moderate exposure to wetness, humidity, noise, fumes, odors, dust, gases, and poor ventilation and all exposure to extreme cold and heat and hazards. (AR 1461.) Her impairments would cause her to be absent from work more than three times a month. (Id.)

The statement noted that Plaintiff had "severe fibromyalgia" and a "bulging disc" (AR 1460), and the "[m]edication [used] to treat the pain cause[d] sedation" (AR 1461). The opinion did not indicate to what period it applied (AR 1459-61), but the earliest treatment record from Dr. Safar

was dated April 11, 2016. (AR 2324; see also J. Stip. at 7.)

The ALJ gave "very little weight" to Dr. Safar's opinion. (AR 24.) He erroneously concluded that the form was completed by a "Sula Sator," from whom there were no supporting treatment records. (AR 23.) Indeed, the ALJ only "presumed" that "Sator" was even a doctor. (AR 23 n.1.) Because "there [were] no records from [the doctor] to compare [the assessed] limitations to in order to determine whether they [were] supported by [the] examinations and treatment of [Plaintiff]," he assigned them little value. (AR 23-24.) The only other reason he gave for rejecting the functional assessment was that "the limitations opined [were] not consistent with the records that show[ed] normal examination signs despite allegations of pain and fatigue." (Id. (citations omitted).) Therefore, they were "not supported by or consistent with the record[]." (AR 24.)

C. Analysis

As an initial matter, nothing indicates that Dr. Safar's opinion relates to Plaintiff's limitations on or before her date last insured. As noted, Dr. Safar's October 2016 opinion did not state to what period it applied (AR 1459-61), and the earliest record of treatment from Dr. Safar is from April 2016 (see AR 2324), over three years after Plaintiff's December 31, 2012 date last insured (see AR 19). Thus, the doctor's opinion has no bearing on the DIB application, and Plaintiff has not argued otherwise. See Grace E.F. v. Saul, No. 2:18-cv-09905-AFM, 2019 WL 6135029, at *6 (C.D. Cal. Nov. 19, 2019) (finding records from over one year after date last insured not relevant to plaintiff's DIB claim when nothing in them purported to concern plaintiff's

limitations on or before date last insured). Because Plaintiff has asserted no other error on appeal, the DIB decision is affirmed.

As to her application for SSI, Dr. Safar's opinion was inconsistent with that of consultative internist John Godes, who opined that Plaintiff was capable of a significantly wider range of work, including lifting and carrying 50 pounds occasionally and 25 pounds frequently, standing and walking for six hours of an eight-hour workday, sitting for six hours of an eight-hour workday, and pushing and pulling without limitation. (AR 1489.) Therefore, the ALJ needed to provide only a "specific and legitimate reason" for discounting Dr. Safar's opinion, Carmickle, 533 F.3d at 1164 (citation omitted), but he failed to do so.

To start, the ALJ misread Dr. Safar's signature as "Sator" and therefore erroneously concluded that "there [were] no records from [the doctor] to . . . determine whether they . . . supported" the limitations imposed. (AR 23.) On the contrary, such treatment notes are in the record. (See, e.g., AR 2234-61, 2320-24.) Further, because the ALJ failed to recognize that Dr. Safar completed the assessment form, he was also unaware of the doctor's credentials as an osteopath and only "presumed" a medical degree. (AR 23 n.1.)

The ALJ also discounted Dr. Safar's opinion because "the limitations opined [were] not consistent with the records that show[ed] normal examination signs despite allegations of pain and fatigue." (AR 23-34 (citations omitted).) He erred, however, in not specifically identifying which aspects of Dr. Safar's opinion

were inconsistent with which medical evidence. See Embrey v. Bowen, 849 F.2d 418, 421-22 (9th Cir. 1988) (holding that ALJ's determination that doctors' opinions were contrary to objective findings, including "relative lack of positive findings," was not sufficiently specific because ALJ provided only "conclusion" and did not "explain" why his "interpretation . . . rather than the doctors'" was correct); Weiskopf v. Berryhill, 693 F. App'x 539, 541 (9th Cir. 2017) (ALJ's recitation of portions of physician's treatment notes and statement that physician's opinion was inconsistent with notes failed to set forth specific and legitimate reason for rejecting opinion). The ALJ cited several treatment notes that he stated "show[ed] normal examination signs" (AR 23), but he did not identify what examination findings were normal or explain how those normal findings were inconsistent with any of the limitations Dr. Safar assessed. Therefore, the ALJ's analysis "does not achieve the level of specificity" required by the Ninth Circuit. Embrey, 849 F.2d at 421.

The Court cannot conclude that the errors were harmless. The ALJ did not compare Dr. Safar's treatment records to the limitations the doctor imposed "to determine whether they [were] supported by [the] examinations and treatment of [Plaintiff]." (AR 23.) The Court cannot predict how the ALJ would have analyzed the issue had he identified a treating osteopath as the author of the assessment and homed in on Dr. Safar's treatment notes in the more than 3300 pages of the record. Cf. Shepard v. Colvin, No. CV 12-10468-VBK., 2013 WL 5183462, at *1 (C.D. Cal. Sept. 11, 2013) (stating that court could not "engage in a

speculative, predictive exercise" of how Commissioner would have evaluated new evidence that Appeals Council articulated no reason for rejecting). And the VE testified at the hearing that there would be no work for a person who could perform only less than sedentary work and would miss three or more days of work a month, as Dr. Safar opined. (AR 47-48.)

Although there were several medical opinions that conflicted with Dr. Safar's, the ALJ did not rely on the findings or opinions of those providers to give Dr. Safar's opinion little weight. See Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 1225 (9th Cir. 2009) (district court must "review the ALJ's decision based on the reasoning and factual findings offered by the ALJ — not post hoc rationalizations that attempt to intuit what the adjudicator may have been thinking" (citations omitted)). Indeed, although Defendant points to the contrary opinion of Dr. Godes as supporting the ALJ's rejection of Dr. Safar's opinion (see J. Stip. at 10-11), the ALJ in fact rejected Dr. Godes's opinion, too (see AR 23).

For all these reasons, the ALJ failed to provide a specific and legitimate reason for discounting Dr. Safar's functional assessment, and the error was not harmless.

When, as here, an ALJ errs, the Court generally has discretion to remand for further proceedings. See Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000) (as amended). When no useful purpose would be served by further administrative proceedings, however, or when the record has been fully developed, it is appropriate under the "credit-as-true" rule to direct an immediate award of benefits. Id. at 1179 (noting that

"the decision of whether to remand for further proceedings turns upon the likely utility of such proceedings"); see also Garrison v. Colvin, 759 F.3d 995, 1019-20 (9th Cir. 2014).

Here, the record has not been fully developed, as the ALJ did not understand who "Sator" was and thus did not have the opportunity to compare the doctor's opinion to the corresponding treatment notes and assess it in the proper context.

If on remand the ALJ chooses to again give very little weight to Dr. Safar's opinion, he can then provide an adequate discussion of the reasons why. Because other doctors found that Plaintiff could work with limitations, as noted by the ALJ (see generally AR 105-06, 1483-90; see also J. Stip. at 10-11 (Defendant arguing same)), the Court has serious doubt as to whether she was disabled during any or all of the relevant period. For this reason, too, remand is appropriate. See Garrison, 759 F.3d at 1021 (recognizing flexibility to remand for further proceedings when "record as a whole creates serious doubt that [plaintiff] is, in fact, disabled").

VI. CONCLUSION

Consistent with the foregoing and under sentence four of 42 U.S.C. § 405(g), IT IS ORDERED that judgment be entered AFFIRMING the Commissioner's decision denying Plaintiff's DIB application, REVERSING the Commissioner's decision denying Plaintiff's SSI application, GRANTING Plaintiff's request for remand, and REMANDING this action for further proceedings consistent with this Memorandum Decision.

DATED: March 23, 2021

JEAN ROSENBLUTH
U.S. Magistrate Judge