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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANI V.,¹
Plaintiff
v.
KILOLO KIJAKAJI, Acting
Commissioner of Social Security,
Defendant.

Case No. 5:20-cv-02107-GJS

**MEMORANDUM OPINION AND
ORDER**

I. PROCEDURAL HISTORY

Plaintiff Ani V. (“Plaintiff”) filed a complaint seeking review of the decision of the Commissioner of Social Security denying her applications for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”). The parties filed consents to proceed before the undersigned United States Magistrate Judge [Dkts. 10 and 13] and briefs [Dkt. 15 (“Pl. Br.”), Dkt. 24 (“Def. Br.”), Dkt 25 (“Reply”)] addressing disputed issues in the case. The matter is now ready for decision. For the reasons discussed below, the Court finds that this matter should be

¹ In the interest of privacy, this Order uses only the first name and the initial of the last name of the non-governmental party in this case.

1 remanded.

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II. ADMINISTRATIVE DECISION UNDER REVIEW

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Plaintiff filed applications for DIB and SSI on March 17, 2017, alleging disability beginning May 27, 2014. [Dkt. 12, Administrative Record (“AR”) 15, 251-75.] Plaintiff’s applications were denied at the initial level of review and on reconsideration. [AR 15, 160-70, 175-80.] A hearing was held before Administrative Law Judge Elizabeth Stevens Bentley (“the ALJ”) on January 8, 2020. [AR 15, 39-58.]

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On January 17, 2020, the ALJ issued an unfavorable decision applying the five-step sequential evaluation process for assessing disability. [AR 15-26]; *see* 20 C.F.R. §§ 404.1520(b)-(g)(1), 416.920(b)-(g)(1). [AR 15-30.] At step one, the ALJ determined that Plaintiff had not engaged in substantial gainful activity (“SGA”) since the alleged onset date. [AR 18.] At step two, the ALJ determined that Plaintiff has the following severe impairments: degenerative disc disease of the cervical and lumbar spine; carpal tunnel syndrome, right upper extremity; and depression. [AR 18.] At step three, the ALJ determined that Plaintiff does not have an impairment or combination of impairments that meets or medically equals the severity of one of the impairments listed in Appendix I of the Regulations. [AR 18]; *see* 20 C.F.R. Pt. 404, Subpt. P, App. 1. The ALJ found that Plaintiff has the residual functional capacity (“RFC”) to perform light work, as defined in 20 C.F.R. §§ 404.1567(b), 416.967(b), but she requires a sit/stand option such that she can sit for 15 minutes at a time before needing to stand and stand for 15 minutes at a time before needing to sit. [AR 20.] The ALJ also found Plaintiff is able to: occasionally climb ladders, ropes and scaffolds; frequently stoop, kneel, crouch and crawl; occasionally reach overhead bilaterally; frequently handle and finger with the right upper extremity; and perform simple, routine tasks. [AR 20.] At step four, the ALJ determined that Plaintiff is not able to perform any past relevant work. [AR

1 28.] At step five, the ALJ found there are jobs that exist in significant numbers in
2 the national economy that Plaintiff can perform, including representative jobs such
3 as information clerk and assembler, small products. [AR 28-29.] Based on these
4 findings, the ALJ found Plaintiff not disabled through the date of the decision. [AR
5 29-30.]

6 The Appeals Council denied review of the ALJ's decision on August 21,
7 2020. [AR 1-6.] This action followed.

8 Plaintiff raises the following issues challenging the ALJ's findings and
9 determination of non-disability:

- 10 1. The ALJ erred in finding that there were a significant number of
11 jobs that Plaintiff could perform. [Pl. Br. at 2-3.]
- 12 2. The ALJ failed to properly assess and reject the opinions of
13 Plaintiff's treatment and examining sources. [Pl. Br. at 3-12.]
- 14 3. The ALJ improperly evaluated Plaintiff's RFC. [Pl. Br. at 12-23.]
- 15 4. The ALJ improperly rejected Plaintiff's testimony. [Pl. Br. at 23-
16 25.]

17 The Commissioner asserts that the ALJ's decision should be affirmed. [Def.
18 Br. at 1-18.]

19 20 **III. GOVERNING STANDARD**

21 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner's decision to
22 determine if: (1) the Commissioner's findings are supported by substantial
23 evidence; and (2) the Commissioner used correct legal standards. *See Carmickle v.*
24 *Comm'r Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Brewes v. Comm'r*
25 *Soc. Sec. Admin.*, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial evidence is
26 more than a mere scintilla but less than a preponderance; it is such relevant evidence
27 as a reasonable mind might accept as adequate to support a conclusion." *Gutierrez*
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1 *v. Comm’r of Soc. Sec.*, 740 F.3d 519, 522-23 (9th Cir. 2014) (internal quotation
2 marks and citation omitted).

3 The Court will uphold the Commissioner’s decision when “the evidence is
4 susceptible to more than one rational interpretation.” *Magallanes v. Bowen*, 881
5 F.2d 747, 750 (9th Cir. 1989). However, the Court may review only the reasons
6 stated by the ALJ in his decision “and may not affirm the ALJ on a ground upon
7 which he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). The
8 Court will not reverse the Commissioner’s decision if it is based on harmless error,
9 which exists if the error is “inconsequential to the ultimate nondisability
10 determination.” *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015)
11 (internal quotation marks and citations omitted).

12 IV. DISCUSSION

13 A. The ALJ Erred in Evaluating the Medical Opinion Evidence

14 Petitioner challenges the ALJ’s evaluation of the medical opinions relating to
15 her physical and mental impairments. [Pl. Br. 3-12.] Respondent contends that the
16 ALJ reasonably evaluated the opinion evidence. [Def. Br. at 4-9.]

17 1. Legal Standards

18 The weight given to medical opinions depends in part on whether they are
19 proffered by treating, examining, or non-examining professionals. *See Holohan v.*
20 *Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001); *Lester v. Chater*, 81 F.3d 821,
21 830 (9th Cir. 1995).² In general, opinions of treating sources are entitled to the
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25 ² The regulations governing the evaluation of medical evidence were amended
26 for claims filed after March 27, 2017. *See* 20 C.F.R. §§ 404.1520c, 416.920c. The
27 new regulations change how the Social Security Administration considers medical
28 opinions and eliminate the deference to treating source medical opinions. *See* 20
C.F.R. § 404.1520c(a); *see also* 81 Fed. Reg. 62560, at 62573-74 (Sept. 9, 2016).
Because Petitioner’s claims were filed on March 17, 2017, the Court does not apply
the new regulations.

1 greatest weight, opinions of examining, non-treating sources are entitled to lesser
2 weight, and opinions of non-examining, non-treating sources are entitled to the least
3 weight. *See Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014).

4 If a treating or examining doctor’s opinion is contradicted by another doctor’s
5 opinion, an ALJ may only reject it by providing “specific and legitimate reasons that
6 are supported by substantial evidence in the record.” *Lester*, 81 F.3d at 830-31. An
7 ALJ can satisfy this standard by “setting out a detailed and thorough summary of the
8 facts and conflicting evidence, stating his [or her] interpretation thereof, and making
9 findings.” *Magallanes*, 881 F.2d at 751 (internal quotation marks and citation
10 omitted).

11 2. The ALJ Failed to Properly Evaluate Dr. Grogan’s Opinion

12 Having carefully reviewed the record, the Court finds the ALJ erred by
13 mischaracterizing and failing to state legally sufficient reasons for rejecting the
14 opinion of an examining orthopedic surgeon, Dr. Thomas Grogan.

15 In the decision, the ALJ misstated Dr. Grogan’s opinion regarding Plaintiff’s
16 ability to sit, stand and walk. The ALJ stated: “[i]n a Physical Capacities form
17 dated February 2, 2017, Dr. Grogan opined the claimant was able to stand and/or
18 walk for zero to two hours in an eight-hour day [and] sit for zero to two hours in an
19 eight-hour day.” [AR 24.] However, a review of the Physical Capacities form
20 reflects that Dr. Grogan opined that Plaintiff was able to: stand/walk 0 to 2 hours at
21 *one time*, for a *total of 2 to 4 hours* in an 8-hour workday; and sit 0 to 2 hours at *one*
22 *time*, for a *total of 4 to 6 hours* in an 8-hour workday. [AR 564 (emphasis added).]
23 Thus, the ALJ erred in rejecting Dr. Grogan’s assessment of Plaintiff’s physical
24 capacities.

25 The ALJ also failed to provide specific and legitimate reasons supported by
26 substantial evidence for rejecting to Dr. Grogan’s opinion. [AR 24.] The three
27 reasons the ALJ provided for giving “little weight” to Dr. Grogan’s opinion are
28 addressed and rejected.

1 First, to the extent the ALJ found that “the extreme limitation[s] opined by
2 Dr. Grogan [were] not consistent with [Plaintiff’s] treatment record or imaging as
3 noted above [in the decision],” her assessment is impermissibly broad and
4 conclusory and “does not achieve the level of specificity” required to justify
5 rejection of an examining physician’s opinion. [AR 25]; *Rodriguez v. Bowen*, 876
6 F.2d 759, 762 (9th Cir. 1989) (“[m]erely to state that a medical opinion is not
7 supported by enough objective findings does not achieve the level of specificity our
8 prior cases have required”) (internal quotation marks and citation omitted). “The
9 ALJ must do more than offer [her] conclusions. [She] must set forth [her] own
10 interpretations and explain why they, rather than the doctors’, are correct.” *Embrey*
11 *v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988). While Defendant argues that Dr.
12 Grogan’s opinion is inconsistent with the opinions of Plaintiff’s treating and
13 examining physicians in certain respects [Def. Br. at 7], a conflict in the medical
14 evidence merely triggers, rather than satisfies, the ALJ’s obligation of providing
15 specific and legitimate reasons supported by substantial evidence. *See Bayliss v.*
16 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005) (“If a treating or examining doctor’s
17 opinion is contradicted by another doctor’s opinion, an ALJ may only reject it by
18 providing specific and legitimate reasons that are supported by substantial
19 evidence.”); *Chernick v. Comm’r of Soc. Sec.*, No. 1:19-CV-00160-JDP, 2020 WL
20 3542287, at *2 (E.D. Cal. June 30, 2020) (“[B]ecause the ‘specific and legitimate’
21 requirement is triggered by a conflict between the opinion and the record, it would
22 make little sense if the ALJ could satisfy that standard by noting the existence of a
23 conflict.”). Moreover, Plaintiff’s imaging records appear to support Dr. Grogan’s
24 opinion that Plaintiff suffers from facet arthropathy of the lower lumbar spine. [AR
25 563-64.] X-rays revealed positive facet changes throughout the lower lumbar spine.
26 [AR 563.] In addition, MRIs of Plaintiff’s spine revealed a 2 to 3 mm disc
27 protrusion at C5-6 extending partially into the left neuroforaminal exit zone, a 1 to 2
28 mm midline disc protrusion at L1-2, disc desiccation and degeneration with a 3 to 4

1 mm disc protrusion at L3-4 impinging on and partially distorting the thecal sac,
2 desiccation and degeneration with a 2 to 3 mm disc protrusion at L5-S1 extending to
3 both neural foraminal exit zones, and scoliosis convex to the right. [AR 22, 583-
4 86.]

5 Second, the ALJ asserted that Dr. Grogan opined that Plaintiff was “partially
6 disabled through August 1, 2017,” using criteria for determining disability under the
7 workers’ compensation system, rather than Social Security disability terminology.
8 [AR 25.] This was not a specific and legitimate reason for rejecting Dr. Grogan’s
9 opinion. An ALJ “may not disregard a ... medical opinion simply because it was
10 initially elicited in a state workers’ compensation proceeding, or because it is
11 couched in the terminology used in such proceedings.” *Booth v. Barnhart*, 181 F.
12 Supp. 2d 1099, 1105 (C.D. Cal. 2002); *Lester*, 81 F.3d at 830 (“The purpose for
13 which medical reports are obtained does not provide a legitimate basis for rejecting
14 them.”).

15 Third, the ALJ asserted that “the determination of disability is an issue
16 reserved to the Commissioner.” [AR 25.] However, “[i]n disability benefits cases
17 ... physicians may render medical, clinical opinions, or they may render opinions on
18 the ultimate issue of disability — the claimant’s ability to perform work.” *Reddick*
19 *v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted); *Holohan*, 246 F.3d
20 at 1202 (same). Thus, the ALJ was not entitled to reject Dr. Grogan’s opinion
21 simply because he gave an opinion that Plaintiff was “partially disabled.” [AR 25.]

22 Accordingly, the Court finds the ALJ failed to provide specific and legitimate
23 reasons for discrediting Dr. Grogan’s opinion and the ALJ’s decision denying
24 benefits is not supported by substantial evidence.

25 26 **V. REMAND FOR FURTHER PROCEEDINGS**

27 The Court has discretion to remand or reverse and award benefits. *See*
28 *Trevizo v. Berryhill*, 871 F.3d 664, 682 (9th Cir. 2017). “Remand for further

1 proceedings is appropriate where there are outstanding issues that must be resolved
2 before a determination can be made, and it is not clear from the record that the ALJ
3 would be required to find the claimant disabled if all the evidence were properly
4 evaluated.” *Hill v. Astrue*, 698 F.3d 1153, 1162 (9th Cir. 2012); *Treichler v.*
5 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1101 (9th Cir. 2014) (remand for
6 award of benefits is inappropriate where “there is conflicting evidence, and not all
7 essential factual issues have been resolved”). But “[w]here ‘(1) the record has been
8 fully developed and further administrative proceedings would serve no useful
9 purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting
10 evidence, whether claimant testimony or medical opinion; and (3) if the improperly
11 discredited evidence were credited as true, the ALJ would be required to find the
12 claimant disabled on remand,’” it is appropriate to exercise this discretion to direct
13 an immediate award of benefits. *Trevizo*, 871 F.3d at 682-83 (quoting *Garrison*,
14 759 F.3d at 1020).

15 Here, remand is required because the ALJ failed to properly evaluate Dr.
16 Grogan’s opinion and there are outstanding issues that must be resolved before a
17 final determination can be made. On remand, the ALJ should reconsider Dr.
18 Grogan’s opinion, explain the weight afforded to that opinion, and provide legally
19 sufficient reasons for rejecting any portion of that opinion.

20 Having found that remand is warranted, the Court declines to address
21 Plaintiff’s remaining issues. *See Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir.
22 2012) (“Because we remand the case to the ALJ for the reasons stated, we decline to
23 reach [plaintiff’s] alternative ground for remand.”).

24 25 VI. CONCLUSION

26 For all of the foregoing reasons, **IT IS ORDERED** that:

27 (1) the decision of the Commissioner is REVERSED and this matter is

28 REMANDED pursuant to sentence four of 42 U.S.C. § 405(g) for further

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administrative proceedings consistent with this Memorandum Opinion and
Order; and
(2) Judgment be entered in favor of Plaintiff.

IT IS ORDERED.

DATED: July 12, 2022



GAIL J. STANDISH
UNITED STATES MAGISTRATE JUDGE