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

DEANNA WRIGHT,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

Case No. CV 16-01294-RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff Deanna Wright¹ (“Plaintiff”) challenges the Commissioner’s² denial of her application for disability insurance benefits (“DIB”). For the reasons stated below, the decision of the Commissioner is REVERSED and the action is REMANDED for further proceedings consistent with this Order.

¹ At the time of the hearing, Plaintiff was known as Deanna Lynn McEachern. (Administrative Record (“AR”) 39.)

² Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill, the current Acting Commissioner of Social Security, is hereby substituted as the defendant herein.

1 **II. PROCEEDINGS BELOW**

2 On September 12, 2013, Plaintiff protectively filed a Title II application for
3 DIB alleging disability beginning December 29, 2012. (AR 22, 77.) Her
4 application was denied on November 14, 2013. (AR 88.) Thereafter, Plaintiff filed
5 a written request for hearing, and a hearing was held on October 22, 2014. (AR 96-
6 97, 37.) Represented by counsel, Plaintiff appeared and testified, along with an
7 impartial medical expert and an impartial vocational expert. (AR 37-76.) On
8 January 14, 2015, the Administrative Law Judge (“ALJ”) found that Plaintiff had
9 not been under a disability, pursuant to the Social Security Act,³ since December
10 29, 2012. (AR 32.) The ALJ’s decision became the Commissioner’s final decision
11 when the Appeals Council denied Plaintiff’s request for review. (AR 1-7.)
12 Plaintiff filed this action on July 12, 2016. (Dkt. No. 1.)

13 The ALJ followed a five-step sequential evaluation process to assess whether
14 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,
15 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged
16 in substantial gainful activity since the alleged onset date. (AR 24.) At **step two**,
17 the ALJ found that Plaintiff has the following severe impairments: bilateral carpal
18 tunnel syndrome, status post release surgeries, left cervical radiculopathy,
19 degenerative disc disease of the cervical and lumbar spine, degenerative joint
20 disease of the bilateral knees, obesity, hypertension, rheumatoid arthritis, lumbar
21 spondylosis, and fibromyalgia. (AR 24.) At **step three**, the ALJ found that
22 Plaintiff “does not have an impairment or combination of impairments that meets or
23 medically equals the severity of one of the listed impairments in 20 CFR Part 404,
24 Subpart P, Appendix 1.” (AR 26.)

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26 ³ 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 Before proceeding to step four, the ALJ found that Plaintiff has the residual
2 functional capacity (“RFC”) to perform a range of light work with the following
3 additional limitations:

4 [T]he claimant can lift and/or carry 20 pounds occasionally and 10
5 pounds frequently; she can stand and/or walk for four hours out of an
6 eight-hour workday with normal breaks; she can sit for six hours out
7 of an eight-hour workday with normal breaks; she can occasionally
8 use the upper extremities for pushing or pulling; she can occasionally
9 use the lower extremities for operating foot controls; she can
10 occasionally climb stairs, bend, balance, and stoop; she cannot climb
11 ladders, ropes and scaffolds; she cannot kneel, crouch, crawl, or work
12 at unprotected heights; she is precluded from work above shoulder
level with both upper extremities; and the claimant is limited to
frequent but not constant gross and fine manipulations with both
upper extremities.

13 (AR 26.)

14 At **step four**, the ALJ found that Plaintiff is unable to perform any past
15 relevant work. (AR 30-31.) At **step five**, based on Plaintiff’s age, education, work
16 experience, RFC, and the testimony of the vocational expert, the ALJ found that
17 Plaintiff had acquired work skills from past relevant work that were transferable to
18 other occupations with jobs existing in significant numbers in the national
19 economy. (AR 31-32.) Accordingly, the ALJ found that Plaintiff was not disabled.

20 (AR 32.)

21 **III. STANDARD OF REVIEW**

22 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s
23 decision to deny benefits. A court must affirm an ALJ’s findings of fact if they are
24 supported by substantial evidence, and if the proper legal standards were applied.
25 *Mayer v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “‘Substantial evidence’
26 means more than a mere scintilla, but less than a preponderance; it is such relevant
27 evidence as a reasonable person might accept as adequate to support a conclusion.”
28 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*

1 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial
2 evidence requirement “by setting out a detailed and thorough summary of the facts
3 and conflicting clinical evidence, stating his interpretation thereof, and making
4 findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

5 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a
6 specific quantum of supporting evidence. Rather, a court must consider the record
7 as a whole, weighing both evidence that supports and evidence that detracts from
8 the Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir.
9 2001) (citations and internal quotations omitted). “‘Where evidence is susceptible
10 to more than one rational interpretation,’ the ALJ’s decision should be upheld.”
11 *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing *Burch v.*
12 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see also Robbins*, 466 F.3d at 882
13 (“If the evidence can support either affirming or reversing the ALJ’s conclusion, we
14 may not substitute our judgment for that of the ALJ.”). The Court may review only
15 “the reasons provided by the ALJ in the disability determination and may not affirm
16 the ALJ on a ground upon which he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630
17 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)).

18 **IV. DISCUSSION**

19 Plaintiff contends that the ALJ: (1) erred in the RFC determination because
20 Plaintiff should have been found limited to only occasional use of her hands; (2)
21 erred in assessing Plaintiff’s testimony regarding her pain and limitations; (3) erred
22 in relying on the VE’s testimony at step five because the VE’s testimony conflicted
23 with the Dictionary of Occupational Titles; (4) erred at step five because the ALJ
24 did not properly find other jobs with transferable skills; and (5) erred in failing to
25 consider the third-party statement of Plaintiff’s mother. (Joint Submission (“JS”) 3-
26 7, 10-20, 27-35, 37-47.) The Commissioner contends that the RFC is supported by
27 substantial evidence, the ALJ properly assessed Plaintiff’s subjective statements,
28 the ALJ did not err at step five because she properly relied on the VE’s testimony

1 and properly found other jobs with transferable skills, and the ALJ properly
2 considered the third-party statement of Plaintiff's mother. (JS 7-10, 20-27, 35-37,
3 41-42, 45-46.) For the reasons below, the Court agrees with Plaintiff on the issue
4 of subjective symptom testimony and remands on that ground.

5 **A. The ALJ Erred in Discounting Plaintiff's Testimony Regarding**
6 **her Subjective Symptoms**

7 Plaintiff argues that the ALJ erred in discrediting her subjective symptom
8 testimony. (JS 14-20, 27-30.) The Commissioner argues that the ALJ's reasons for
9 discrediting Plaintiff's claims of disabling symptoms were specific and legally
10 valid. (JS 21-25.)

11 **1. *Plaintiff's Testimony***

12 At the administrative hearing, Plaintiff testified that she had been disabled
13 since December 2012 due to pain in her feet, knees, and hands that made getting up
14 and down and walking difficult. (AR 42-43.) She testified that currently, she still
15 has difficulty getting up and down, she cannot stand for very long and "[t]hat's why
16 I have my walker," she cannot do much with her hands due to carpal tunnel, she has
17 problems with her shoulders and hips, and her "pain is just tremendous" in the
18 morning. (AR 45.) She testified that she is "usually up all night" and gets up at
19 night to take pain medications. (AR 47.)

20 Plaintiff testified that she could sit for five to ten minutes at a time and "am
21 constantly fidgeting;" could not stand in one place without a walker for 20 minutes;
22 and could not walk 15 minutes, even with a walker, and would have to sit down and
23 rest. (AR 56.) She also lies down during the day for an hour or two, and dozes in a
24 reclining position about three to four hours per day. (AR 57-58.) On bad days, she
25 cannot get out of the recliner and she needs help to go to the bathroom and do
26 simple things. (AR 58-59.) She has about eight to nine bad days per month. (AR
27 59.) She usually spends her day trying to get out of bed, taking medication so she
28 can get out of bed, sitting in her chair until she can attempt to shower, and going to

1 doctor appointments or running errands if she can. (AR 64-65.) She has been
2 using a walker since February 2013. (AR 57.)

3 Plaintiff testified that she can do laundry with a little basket with wheels,
4 “somewhat” keeps her room up, does a lot of research on her Kindle Fire regarding
5 her conditions, watches movies on the television, and has friends or relatives come
6 visit her every other month. (AR 48.)

7 Plaintiff testified that her medication causes side effects of tiredness, foggy
8 brain, and memory problems. (AR 61.) She takes an anti-depressant because “all
9 day long I just kind of sit because I’m in so much pain it’s depressing.” (AR 63.)

10 **2. Applicable Legal Standards**

11 “In assessing the credibility of a claimant’s testimony regarding subjective
12 pain or the intensity of symptoms, the ALJ engages in a two-step analysis.” *Molina*
13 *v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citing *Vasquez v. Astrue*, 572 F.3d
14 586, 591 (9th Cir. 2009)). “First, the ALJ must determine whether the claimant has
15 presented objective medical evidence of an underlying impairment which could
16 reasonably be expected to produce the pain or other symptoms alleged.” *Treichler*
17 *v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (quoting
18 *Lingenfelter*, 504 F.3d at 1036) (internal quotation marks omitted). If so, and if the
19 ALJ does not find evidence of malingering, the ALJ must provide specific, clear
20 and convincing reasons for rejecting a claimant’s testimony regarding the severity
21 of his symptoms. *Id.* The ALJ must identify what testimony was found not
22 credible and explain what evidence undermines that testimony. *Holohan v.*
23 *Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001). “General findings are
24 insufficient.” *Lester*, 81 F.3d at 834.

25 **3. Discussion**

26 “After careful consideration of the evidence,” the ALJ found that Plaintiff’s
27 “medically determinable impairments could reasonably be expected to cause the
28 alleged symptoms,” but found that Plaintiff’s “statements concerning the intensity,

1 persistence and limiting effects of these symptoms are not entirely credible for the
2 reasons explained in this decision.” (AR 28.) Although it is not entirely clear on
3 what ground(s) the ALJ discounts Plaintiff’s subjective symptom testimony, the
4 ALJ appears to rely on the sole reason that “the objective medical evidence does
5 not support the alleged severity of symptoms.” (AR 30.) No malingering
6 allegation was made, and therefore, the ALJ’s reasons must be “clear and
7 convincing.”

8 The Commissioner argues that the ALJ gave four specific and legally valid
9 reasons to discredit Plaintiff’s claims of disabling symptoms: (1) “the
10 preponderance of the evidence does not support the severely limited functioning
11 [Plaintiff] described;” (2) greater weight was given to “the opinions and
12 observations of acceptable medical sources;” (3) the “lack of a longitudinal mental
13 health treatment record” undermined Plaintiff’s claims of disabling depression,
14 anxiety and memory problems; and (4) Plaintiff’s claims were inconsistent with her
15 acknowledged daily activities. (JS 21-27.) As Plaintiff argues, however, none of
16 these reasons is clear and convincing. (JS 27-30.) When the ALJ noted the
17 preponderance of the evidence not supporting the described limited functioning, the
18 ALJ was referring to the lack of objective support for the third-party statement, not
19 Plaintiff’s testimony. (AR 27.) Furthermore, the ALJ never articulated that she
20 rejected Plaintiff’s subjective symptom testimony based upon the medical opinions
21 or Plaintiff’s activities of daily living. Regarding the lack of a longitudinal mental
22 health treatment record, Plaintiff avers that she did not make a claim regarding
23 mental impairment, and any reliance on lack of a mental health treatment record is
24 irrelevant. (JS at 28.)

25 At most, the ALJ appears to rely on the lack of supporting objective evidence
26 to discount Plaintiff’s testimony, citing medical findings and opinions and
27 concluding that “the objective record does not show findings consistent with the
28 sedentary level of functioning [Plaintiff] has alleged.” (AR 28-30.) “[A]n ALJ’s

1 ‘vague allegation’ that a claimant’s testimony is ‘not consistent with the objective
2 medical evidence,’ without any ‘specific finding in support’ of that conclusion, is
3 insufficient.” *Treichler*, 775 F.3d at 1103 (citation omitted). The “ALJ must
4 identify the testimony that was not [consistent], and specify ‘what evidence
5 undermines the claimant’s complaints.’” *Id.* (citation omitted); *Brown-Hunter v.*
6 *Colvin*, 806 F.3d 487, 493 (9th Cir. 2015). Here, the ALJ did neither. Even
7 assuming she did, the lack of supporting objective medical evidence cannot form
8 the sole basis for discounting pain testimony. *See Trevizo v. Berryhill*, 871 F.3d
9 664, 679 (9th Cir. 2017), as amended Sept. 14, 2017 (“[A]n ALJ ‘may not disregard
10 [a claimant’s testimony] solely because it is not substantiated affirmatively by
11 objective medical evidence.’”) (citation omitted); *Burch*, 400 F.3d at 681
12 (“Although lack of medical evidence cannot form the sole basis for discounting
13 pain testimony, it is a factor that the ALJ can consider in his credibility analysis.”).

14 The ALJ did not give clear and convincing reasons, supported by substantial
15 evidence, for discounting Plaintiff’s subjective symptom testimony. Accordingly,
16 remand is warranted on this issue.

17 **B. The Court Declines to Address Plaintiff’s Remaining Arguments**

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

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1 **C. Remand for Further Administrative Proceedings**

2 Because further administrative review could remedy the ALJ’s errors,
3 remand for further administrative proceedings, rather than an award of benefits, is
4 warranted here. *See Brown-Hunter*, 806 F.3d at 495 (remanding for an award of
5 benefits is appropriate in rare circumstances). Before ordering remand for an award
6 of benefits, three requirements must be met: (1) the Court must conclude that the
7 ALJ failed to provide legally sufficient reasons for rejecting evidence; (2) the Court
8 must conclude that the record has been fully developed and further administrative
9 proceedings would serve no useful purpose; and (3) the Court must conclude that if
10 the improperly discredited evidence were credited as true, the ALJ would be
11 required to find the claimant disabled on remand. *Id.* (citations omitted). Even if
12 all three requirements are met, the Court retains flexibility to remand for further
13 proceedings “when the record as a whole creates serious doubt as to whether the
14 claimant is, in fact, disabled within the meaning of the Social Security Act.” *Id.*
15 (citation omitted).

16 Here, remand for further administrative proceedings is appropriate. The
17 Court finds that the ALJ failed to provide clear and convincing reasons supported
18 by substantial evidence to discount Plaintiff’s subjective symptom testimony.

19 On remand, the ALJ shall reassess Plaintiff’s subjective allegations in light of
20 SSR 16-3p – Evaluation of Symptoms in Disability Claims, 2016 WL 1119029
21 (Mar. 16, 2016), which would apply upon remand. The ALJ shall then reassess the
22 third-party statement and Plaintiff’s RFC in light of the reassessment of Plaintiff’s
23 subjective allegations and proceed through steps four and five to determine what
24 work, if any, Plaintiff is capable of performing.

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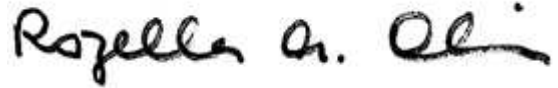
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V. CONCLUSION

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

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



DATED: November 15, 2017

ROZELLA A. OLIVER
UNITED STATES MAGISTRATE JUDGE

NOTICE

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