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

REBECCA L. SINGLETON,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No. SA CV 16-01328 AFM

**MEMORANDUM OPINION AND
ORDER REVERSING DECISION
OF COMMISSIONER AND
REMANDING FOR FURTHER
ADMINISTRATIVE
PROCEEDINGS**

I. BACKGROUND

Plaintiff Rebecca L. Singleton filed her application for disability insurance benefits under Title II of the Social Security Act on May 29, 2013, alleging disability beginning October 10, 2010. After denial on initial review and on reconsideration, a hearing took place before an Administrative Law Judge (ALJ) on September 8, 2014. In a decision dated October 28, 2014, the ALJ found that Plaintiff was not disabled within the meaning of the Social Security Act for the period from October 10, 2010, through the date of the decision. The Appeals Council declined to set aside the ALJ’s unfavorable decision in a notice dated

1 May 16, 2016. Plaintiff filed a Complaint herein on July 14, 2016, seeking review
2 of the Commissioner's denial of her application for benefits.

3 In accordance with the Court's Order Re: Procedures in Social Security
4 Appeal, the Plaintiff filed a memorandum in support of the complaint on June 9,
5 2017; the Commissioner filed a memorandum in support of her answer on July 14,
6 2017; Plaintiff did not file a reply. This matter now is ready for decision.

7
8 **II. DISPUTED ISSUES**

- 9 1. Whether the ALJ improperly evaluated the medical opinion
10 evidence; and
11 2. Whether the ALJ improperly rejected Plaintiff's testimony
12 regarding pain and function limitations.

13
14 **III. STANDARD OF REVIEW**

15 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's decision to
16 determine whether the Commissioner's findings are supported by substantial
17 evidence and whether the proper legal standards were applied. *See Treichler v.*
18 *Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014). Substantial
19 evidence means "more than a mere scintilla" but less than a preponderance. *See*
20 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Lingenfelter v. Astrue*, 504 F.3d
21 1028, 1035 (9th Cir. 2007). Substantial evidence is "such relevant evidence as a
22 reasonable mind might accept as adequate to support a conclusion." *Richardson*,
23 402 U.S. at 401. This Court must review the record as a whole, weighing both the
24 evidence that supports and the evidence that detracts from the Commissioner's
25 conclusion. *Lingenfelter*, 504 F.3d at 1035. Where evidence is susceptible of more
26 than one rational interpretation, the Commissioner's decision must be upheld. *See*
27 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).

1 **IV. FIVE-STEP EVALUATION PROCESS**

2 The Commissioner (or ALJ) follows a five-step sequential evaluation process
3 in assessing whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920;
4 *Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995), *as amended* April 9, 1996.
5 In the first step, the Commissioner must determine whether the claimant is
6 currently engaged in substantial gainful activity; if so, the claimant is not disabled
7 and the claim is denied. *Id.* If the claimant is not currently engaged in substantial
8 gainful activity, the second step requires the Commissioner to determine whether
9 the claimant has a “severe” impairment or combination of impairments significantly
10 limiting his ability to do basic work activities; if not, a finding of nondisability is
11 made and the claim is denied. *Id.* If the claimant has a “severe” impairment or
12 combination of impairments, the third step requires the Commissioner to determine
13 whether the impairment or combination of impairments meets or equals an
14 impairment in the Listing of Impairments (“Listing”) set forth at 20 C.F.R. part
15 404, subpart P, appendix 1; if so, disability is conclusively presumed and benefits
16 are awarded. *Id.* If the claimant’s impairment or combination of impairments does
17 not meet or equal an impairment in the Listing, the fourth step requires the
18 Commissioner to determine whether the claimant has sufficient “residual functional
19 capacity” to perform his past work; if so, the claimant is not disabled and the claim
20 is denied. *Id.* The claimant has the burden of proving that he is unable to perform
21 past relevant work. *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992). If the
22 claimant meets this burden, a *prima facie* case of disability is established. *Id.* The
23 Commissioner then bears the burden of establishing that the claimant is not
24 disabled, because he can perform other substantial gainful work available in the
25 national economy. *Id.* The determination of this issue comprises the fifth and final
26 step in the sequential analysis. 20 C.F.R. §§ 404.1520, 416.920; *Lester*, 81 F.3d at
27 828 n.5; *Drouin*, 966 F.2d at 1257.

1 **V. THE ALJ'S APPLICATION OF THE FIVE-STEP PROCESS**

2 At step one, the ALJ found that Plaintiff had not engaged in substantial
3 gainful activity since October 10, 2010, the alleged onset date. (AR 13.) At step
4 two, the ALJ found that Plaintiff had the following severe impairments: obesity;
5 rheumatoid arthritis with synovitis of hands, shoulders, wrists, knees, and feet;
6 fibromyalgia; degenerative joint disease; lumbosacral neuropathy; possible rotator
7 cuff tear in the right shoulder. (*Id.*) At step three, the ALJ found that Plaintiff did
8 not have an impairment or combination of impairments that meets or medically
9 equals the severity of one of the listed impairments. (AR 14.) At step four, the
10 ALJ found that, from October 10, 2010 through October 2, 2012, Plaintiff had the
11 residual functional capacity (RFC) to perform light work, except

12 [Plaintiff] could stand and/or walk for up to six hours and sit for up to
13 six hours in an eight-hour workday, could occasionally climb stairs but
14 never climb ladders, ropes or scaffolds; could occasionally balance,
15 stoop, and crouch but never kneel or crawl; and could can perform
16 occasional overhead reaching with the right upper extremity. (AR 14.)

17 The ALJ further found that after October 3, 2012, Plaintiff had the residual
18 functional capacity to perform light work except

19 [Plaintiff] can stand and/or walk for up to four hours and sit for up to
20 six hours in an eight-hour workday, with the use of a cane to walk
21 outside the work area; could occasionally climb stairs but never climb
22 ladders, ropes or scaffolds; can occasionally balance, stoop, and
23 crouch but never kneel or crawl; can perform occasional overhead
24 reaching with the right upper extremity and occasionally use foot
25 pedals; can perform frequent fine and gross manipulation bilaterally,
26 and should have no concentrated exposure to humidity, wetness,
27 extremes of temperature or vibration. (AR 14-16.)
28

1 Finally, based on Plaintiff's age, education, work experience, and RFC, the
2 ALJ concluded that Plaintiff is capable of performing her past relevant work as
3 member service clerk. (AR 16-17.) Accordingly, the ALJ concluded that Plaintiff
4 was not disabled under the Social Security Act from October 10, 2010, through
5 October 28, 2014, the date of the decision. (AR 17.)
6

7 **VI. DISCUSSION**

8 Medical expert Irvin S. Belzer, M.D. testified during the administrative
9 hearing regarding plaintiff's residual functional capacity. (AR 38-40.) In pertinent
10 part, Dr. Belzer opined that after October 3, 2012, plaintiff was limited to standing
11 and walking two hours in total in a day, and never more than thirty minutes at a
12 time. (AR 38-39, 42-43.) He further testified that plaintiff could only occasionally
13 engage in handling, fingering and feeling because of inflammation in her fingers.
14 (AR 39.) A vocational expert ("VE") also testified at the hearing. In response to a
15 hypothetical — that included Dr. Belzer's limitations regarding standing and
16 walking, as well as fine and gross manipulation — the VE testified that past relevant
17 work could not be performed and that no light work would be performed under
18 those limitations. (AR 53-54.)¹ In response to a hypothetical with lesser limitations
19 — allowing up to four hours of standing and/or walking in an eight hour day and
20 frequent fine and gross manipulation bilaterally — the VE testified that then
21 plaintiff could perform past relevant work as member service clerk. (AR 51.)

22 The ALJ's decision assessed the opinion of Dr. Belzer as an "impartial
23 medical expert," as follows:

24 ***The undersigned gives great weight to the opinion of the medical***
25 ***expert.*** Dr. Belzer has an awareness of all the medical evidence in the
26

27 ¹ The ALJ also acknowledged that under the vocational grid rules, it was irrelevant
28 whether Plaintiff could perform sedentary jobs because she was 52 at her alleged onset
date. (AR 54.)

1 record, was present at the hearing to question the claimant and to hear
2 her testimony, and understands Social Security disability programs and
3 requirements. (AR 16; emphasis added.)

4 The decision did not state why any portion of Dr. Belzer’s opinion should not be
5 adopted. Instead, the ALJ found the opposite, concluding that “*Dr. Belzer’s*
6 *opinions are reasonable and consistent with the objective medical evidence as a*
7 *whole.*” (*Id.*; emphasis added.) Nevertheless, in its RFC finding for post
8 October 3, 2012, the ALJ’s decision did not incorporate all of the limitations from
9 Dr. Belzer’s opinion. Without explanation, the decision included less restrictive
10 limitations regarding standing, walking and manipulation that conflicted with
11 Dr. Belzer’s opinion and materially impacted the VE’s testimony regarding past
12 relevant work. In particular, the RFC finding stated that plaintiff “can stand and/or
13 walk for up to four hours” and “can perform frequent fine and gross manipulation
14 bilaterally.” (AR 14.) On the basis of the less restrictive limitations in the RFC,
15 the ALJ found that plaintiff was not disabled.

16 The ALJ’s rejection of significant limitations from Dr. Belzer’s opinion was
17 error. An ALJ may reject a non-examining physician’s opinion “by reference to
18 specific evidence in the medical record.” *Sousa v. Callahan*, 143 F.3d 1240, 1244
19 (9th Cir. 1998); *see also Haynes v. Colvin*, 2016 WL 844802, at *3 (C.D. Cal.
20 Mar. 1, 2016); *Barcenas v. Colvin*, 2015 WL 8023069, at *2, n.1 (C.D. Cal. Dec. 4,
21 2015). The Social Security regulations also require an ALJ to articulate reasons for
22 rejecting a medical opinion: “If the RFC assessment conflicts with an opinion from
23 a medical source, the adjudicator must explain why the opinion was not adopted.”
24 SSR 96-8p, at *7, 1996 WL 374184. It is error for an ALJ to ignore probative
25 medical evidence without comment and without providing a sufficient basis for
26 rejecting that evidence. *See Carmickle v. Comm’r. Soc. Sec. Admin.*, 533 F.3d
27 1155, 1164 (9th Cir. 2008); *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir.
28 1995). Although each piece of medical evidence need not be discussed, an ALJ has

1 an obligation to assess significant evidence from a physician’s opinion. *See Vincent*
2 *v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984).

3 Here, despite stating that the opinion was entitled to “great weight,” the
4 ALJ’s decision provided no explanation why important aspects of Dr. Belzer’s
5 opinion should be rejected. This was a violation of the law requiring “reference to
6 specific evidence in the medical record” if a non-examining physician’s opinion is
7 to be rejected. *See Sousa v. Callahan*, 143 F3d. at 1244. In addition, to the extent
8 the decision could be read to say that a portion of Dr. Belzer’s opinion was
9 inconsistent with the objective medical record, that would directly conflict with the
10 ALJ’s finding that the medical expert’s opinion was “reasonable and consistent
11 with the objective evidence as a whole.” Such unexplained material discrepancies
12 in the ALJ’s decision constitute reversible error, and the Court is not required to
13 speculate regarding the basis for the ALJ’s conclusions. *See Gonzalez v. Sullivan*,
14 914 F.2d 1197, 1201 (9th Cir. 1990).

15 The Court has considered the Commissioner’s arguments and finds them
16 unpersuasive. The Commissioner urges that the ALJ did provide a reason for
17 rejecting portions of Dr. Belzer’s opinion when the decision stated that the opinion
18 of Dr. Ho (a treating physician), should be given no weight because it was
19 inconsistent with objective evidence of record. (AR 16.) However, the decision
20 does not link the rejection of Dr. Ho’s opinion to a rejection of any aspect of
21 Dr. Belzer’s opinion. Rather, in the very preceding sentence, the ALJ affirmatively
22 found “most importantly” that Dr. Belzer’s opinion was “reasonable and consistent
23 with the objective medical evidence.” (*Id.*) Thus, the Commissioner’s argument by
24 reference to Dr. Ho is refuted by the ALJ’s own findings regarding Dr. Belzer. The
25 Commissioner also asserts that the ALJ’s citation to State agency reviewing
26 physicians Zuniga and Bayar provided a basis for rejecting Dr. Belzer’s opinion
27 regarding standing and walking. But the decision only generally referenced these
28 reviewers, stating that “significant weight” was afforded to their opinions. (AR 16.)

1 It does not discuss the reviewers' opinions on standing or walking or state that
2 those opinions are a reason for disregarding Dr. Belzer's opinions regarding these
3 limitations. Moreover, in their assessments, the State agency reviewers opined that
4 plaintiff's standing and/or walking was limited to a total of 2 hours (AR 63, 74) and
5 that plaintiff had limited gross manipulation on both sides (AR 64, 75). These
6 conclusions directly support Dr. Belzer regarding these exertional limitations and
7 are not a basis for rejecting Dr. Belzer's opinion.

8 Finally, given the significance that the standing/walking and manipulation
9 limitations had on the VE's opinions, this error was not harmless and was not
10 inconsequential to the ALJ's determination that Plaintiff was not disabled. *See*
11 *Stout v. Comm'r, Social Sec. Admin.*, 454 F.3d 1050, 1055-56 (9th Cir. 2006);
12 *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012).²

13 14 **VII. DECISION TO REMAND**

15 The law is well established that the decision whether to remand for further
16 proceedings or simply to award benefits is within the discretion of the Court. *See,*
17 *e.g., Salvador v. Sullivan*, 917 F.2d 13, 15 (9th Cir. 1990); *McAllister v. Sullivan*,
18 888 F.2d 599, 603 (9th Cir. 1989); *Lewin v. Schweiker*, 654 F.2d 631, 635 (9th Cir.
19 1981). Before a case may be remanded for an immediate award of benefits, three
20 requirements must be met: "(1) the record has been fully developed and further
21 administrative proceedings would serve no useful purpose; (2) the ALJ has failed to
22 provide legally sufficient reasons for rejecting evidence, whether claimant
23 testimony or medical opinion; and (3) if the improperly discredited evidence were
24 credited as true, the ALJ would be required to find the claimant disabled on
25

26 ² Because reversal and remand for further administrative proceedings are warranted based
27 on the ALJ's assessment of the expert medical testimony of Dr. Belzer, it is unnecessary
28 to address the disputed issue regarding the ALJ's adverse credibility assessment.

1 remand.” *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014); *see also Brown-*
2 *Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015). If the record is “uncertain and
3 ambiguous, the proper approach is to remand the case to the agency” for further
4 proceedings. *See Treichler*, 775 F.3d at 1105. Here, further proceedings would be
5 useful to resolve conflicts and ambiguities in the record. *Id.* at 1103-04 (in
6 evaluating whether further administrative proceedings would be useful, the
7 reviewing court should consider “whether the record as a whole is free from
8 conflicts, ambiguities, or gaps, whether all factual issues have been resolved, and
9 whether the claimant’s entitlement to benefits is clear under the applicable legal
10 rules”); *Burrell v. Colvin*, 775 F.3d 1133, 1141-42 (9th Cir. 2014). In particular,
11 remand proceedings would be useful in clarifying the record here and resolving
12 conflicts relating to the medical opinion evidence and for further addressing issues
13 related to Plaintiff’s credibility.³

14 * * * *

15 IT THEREFORE IS ORDERED that Judgment be entered reversing the
16 decision of the Commissioner of Social Security and remanding this matter for
17 further administrative proceedings consistent with this Order.

18
19 DATED: November 20, 2017

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21 _____
22 ALEXANDER F. MacKINNON
23 UNITED STATES MAGISTRATE JUDGE
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28 ³ The Court does intend to limit the scope of the remand.