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

Case No. 8:17-CV-00566 (VEB)

ESTHER ALVARADO,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

DECISION AND ORDER

I. INTRODUCTION

In October of 2013, Plaintiff Esther Alvarado applied for Disability Insurance benefits and Supplemental Security Income benefits under the Social Security Act. The Commissioner of Social Security denied the applications.

Plaintiff, by and through her attorneys, Law Offices of Martin Taller, APC, Troy Dana Monge, Esq., of counsel, commenced this action seeking judicial review

1 of the Commissioner’s denial of benefits pursuant to 42 U.S.C. §§ 405 (g) and 1383
2 (c)(3).

3 The parties consented to the jurisdiction of a United States Magistrate Judge.
4 (Docket No. 7, 10). On April 25, 2018, this case was referred to the undersigned
5 pursuant to General Order 05-07. (Docket No. 16).

7 **II. BACKGROUND**

8 Plaintiff applied for benefits on October 7, 2013, alleging disability beginning
9 February 6, 2011. (T at 158-59, 160-69).¹ The applications were denied initially and
10 on reconsideration. Plaintiff requested a hearing before an Administrative Law
11 Judge (“ALJ”).

12 On September 16, 2015, a hearing was held before ALJ Helen E. Heese. (T at
13 40). Plaintiff appeared with her attorney and testified with the aid of an interpreter.
14 (T at 43-54). The ALJ also received testimony from Kelly Winn-Boaitley, a
15 vocational expert. (T at 55-59).

16 On October 20, 2015, the ALJ issued a written decision denying the
17 applications for benefits. (T at 9-30). The ALJ’s decision became the
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19 ¹ Citations to (“T”) refer to the administrative record transcript at Docket No. 14.

1 Commissioner’s final decision on February 2, 2017, when the Appeals Council
2 denied Plaintiff’s request for review. (T at 1-8).

3 On March 29, 2017, Plaintiff, acting by and through her counsel, filed this
4 action seeking judicial review of the Commissioner’s denial of benefits. (Docket No.
5 1). The Commissioner interposed an Answer on August 21, 2017. (Docket No. 13).
6 The parties filed a Joint Stipulation on November 9, 2017. (Docket No. 15).

7 After reviewing the pleadings, Joint Stipulation, and administrative record,
8 this Court finds that the Commissioner’s decision must be reversed and this case be
9 remanded for further proceedings.

11 III. DISCUSSION

12 A. Sequential Evaluation Process

13 The Social Security Act (“the Act”) defines disability as the “inability to
14 engage in any substantial gainful activity by reason of any medically determinable
15 physical or mental impairment which can be expected to result in death or which has
16 lasted or can be expected to last for a continuous period of not less than twelve
17 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a
18 claimant shall be determined to be under a disability only if any impairments are of
19 such severity that he or she is not only unable to do previous work but cannot,

1 considering his or her age, education and work experiences, engage in any other
2 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),
3 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and
4 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

5 The Commissioner has established a five-step sequential evaluation process
6 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step
7 one determines if the person is engaged in substantial gainful activities. If so,
8 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the
9 decision maker proceeds to step two, which determines whether the claimant has a
10 medically severe impairment or combination of impairments. 20 C.F.R. §§
11 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

12 If the claimant does not have a severe impairment or combination of
13 impairments, the disability claim is denied. If the impairment is severe, the
14 evaluation proceeds to the third step, which compares the claimant's impairment(s)
15 with a number of listed impairments acknowledged by the Commissioner to be so
16 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),
17 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or
18 equals one of the listed impairments, the claimant is conclusively presumed to be
19 disabled. If the impairment is not one conclusively presumed to be disabling, the

1 evaluation proceeds to the fourth step, which determines whether the impairment
2 prevents the claimant from performing work which was performed in the past. If the
3 claimant is able to perform previous work, he or she is deemed not disabled. 20
4 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant’s residual
5 functional capacity (RFC) is considered. If the claimant cannot perform past relevant
6 work, the fifth and final step in the process determines whether he or she is able to
7 perform other work in the national economy in view of his or her residual functional
8 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
9 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

10 The initial burden of proof rests upon the claimant to establish a *prima facie*
11 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
12 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
13 is met once the claimant establishes that a mental or physical impairment prevents
14 the performance of previous work. The burden then shifts, at step five, to the
15 Commissioner to show that (1) plaintiff can perform other substantial gainful
16 activity and (2) a “significant number of jobs exist in the national economy” that the
17 claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

1 **B. Standard of Review**

2 Congress has provided a limited scope of judicial review of a Commissioner’s
3 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,
4 made through an ALJ, when the determination is not based on legal error and is
5 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir.
6 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).

7 “The [Commissioner’s] determination that a plaintiff is not disabled will be
8 upheld if the findings of fact are supported by substantial evidence.” *Delgado v.*
9 *Heckler*, 722 F.2d 570, 572 (9th Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial
10 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119
11 n 10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d
12 599, 601-02 (9th Cir. 1989). Substantial evidence “means such evidence as a
13 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*
14 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch inferences and
15 conclusions as the [Commissioner] may reasonably draw from the evidence” will
16 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir. 1965). On review,
17 the Court considers the record as a whole, not just the evidence supporting the
18 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir.
19 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

1 It is the role of the Commissioner, not this Court, to resolve conflicts in
2 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
3 interpretation, the Court may not substitute its judgment for that of the
4 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th
5 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be
6 set aside if the proper legal standards were not applied in weighing the evidence and
7 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d
8 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the
9 administrative findings, or if there is conflicting evidence that will support a finding
10 of either disability or non-disability, the finding of the Commissioner is conclusive.
11 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

12 **C. Commissioner’s Decision**

13 The ALJ determined that Plaintiff had not engaged in substantial gainful
14 activity since February 6, 2011, the alleged onset date, and met the insured status
15 requirements of the Social Security Act through June 30, 2015 (the “date last
16 insured”). (T at 14). The ALJ found that Plaintiff’s status post bilateral carpal tunnel
17 release, bilateral cubital tunnel syndrome, osteoarthritis of the basal joints of the
18 bilateral thumbs, and degenerative disc disease of the cervical spine were “severe”
19 impairments under the Act. (T. at 14).

1 **D. Disputed Issues**

2 As set forth in the Joint Stipulation (Docket No. 15), Plaintiff offers three (3)
3 main arguments in support of her claim that the Commissioner’s decision should be
4 reversed. First, Plaintiff contends that the ALJ did not properly evaluate the medical
5 opinion evidence. Second, she challenges the ALJ’s credibility determination.
6 Third, Plaintiff argues that the ALJ did not properly consider lay witness testimony.
7 This Court will address each argument in turn.

8
9 **IV. ANALYSIS**

10 **A. Medical Opinion Evidence**

11 In disability proceedings, a treating physician’s opinion carries more weight
12 than an examining physician’s opinion, and an examining physician’s opinion is
13 given more weight than that of a non-examining physician. *Benecke v. Barnhart*,
14 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
15 1995). If the treating or examining physician’s opinions are not contradicted, they
16 can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If
17 contradicted, the opinion can only be rejected for “specific” and “legitimate” reasons
18 that are supported by substantial evidence in the record. *Andrews v. Shalala*, 53 F.3d
19 1035, 1043 (9th Cir. 1995).

1 The courts have recognized several types of evidence that may constitute a
2 specific, legitimate reason for discounting a treating or examining physician’s
3 medical opinion. For example, an opinion may be discounted if it is contradicted by
4 the medical evidence, inconsistent with a conservative treatment history, and/or is
5 based primarily upon the claimant’s subjective complaints, as opposed to clinical
6 findings and objective observations. *See Flaten v. Secretary of Health and Human*
7 *Servs.*, 44 F.3d 1453, 1463-64 (9th Cir. 1995).

8 An ALJ satisfies the “substantial evidence” requirement by “setting out a
9 detailed and thorough summary of the facts and conflicting clinical evidence, stating
10 his interpretation thereof, and making findings.” *Garrison v. Colvin*, 759 F.3d 995,
11 1012 (9th Cir. 2014)(quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)).
12 “The ALJ must do more than state conclusions. He must set forth his own
13 interpretations and explain why they, rather than the doctors’, are correct.” *Id.*

14 In the present case, several physicians who treated or examined Plaintiff in
15 connection with her workers’ compensation claim offered opinions regarding her
16 functional capacity. Dr. Luigi Galloni, a treating physician, consistently described
17 Plaintiff as being “[t]emporary partially disabled,” with a restriction against lifting
18 more than 10 pounds, no work above shoulder level, and no repetitive grasping,
19 gripping, or torquing. (T at 427, 430, 434, 440, 452, 458, 465, 473).

1 Dr. Andre Chaves examined Plaintiff in October of 2013 and diagnosed status
2 post bilateral carpal tunnel release, bilateral cubital tunnel syndrome, and
3 osteoarthritis of the basilar joints, bilateral thumbs. (T at 567). Dr. Chaves opined
4 that Plaintiff could not return to her prior work and needed vocational rehabilitation.
5 (T at 568). He found that Plaintiff was permanently restricted from work activities
6 that required repetitive wrist and elbow motion, impact-or vibration-producing tools,
7 or forceful gripping and grasping with both hands. (T at 569). Dr. Chaves opined
8 that Plaintiff could lift 40 pounds at one time or 30 pounds repetitively. (T at 569).

9 Dr. Lawrence Lyons, a clinical psychologist, examined Plaintiff in December
10 of 2014. He assigned a Global Assessment of Functioning (“GAF”) score² of 57 (T
11 at 652), which is indicative of moderate symptoms or difficulty in social,
12 occupational or educational functioning. *Metcalfe v. Astrue*, No. EDCV 07-1039,
13 2008 US. Dist. LEXIS 83095, at *9 (Cal. CD Sep’t 29, 2008). Dr. Lyons opined
14 that Plaintiff was “temporarily totally disabled.” (T at 652).

15 The ALJ gave little weight to Dr. Lyons’s opinion (T at 16), little weight to
16 Dr. Galloni’s assessment (T at 23), and some weight to Dr. Chaves’s findings. (T at
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18 ² “A GAF score is a rough estimate of an individual's psychological, social, and occupational
19 functioning used to reflect the individual's need for treatment.” *Vargas v. Lambert*, 159 F.3d 1161,
1164 n.2 (9th Cir. 1998).

1 24). This Court finds the ALJ’s consideration of the medical opinion evidence
2 flawed for the following reasons.

3 First, the ALJ categorically discounted the opinions of these physicians on the
4 grounds that they had “examined [Plaintiff] solely in the context of a workers’
5 compensation claim, which affects the credibility and relevance of their opinions.”
6 (T at 17, 23). This was improper. “The purpose for which medical reports are
7 obtained does not provide a legitimate basis for rejecting them” unless there is
8 additional evidence demonstrating impropriety. The ALJ identified no such
9 evidence here. *Lester v. Chater*, 81 F.3d 821, 832 (9th Cir. 1995); *see also Reddick*
10 *v. Chater*, 157 F.3d 715, 726 (9th Cir. 1998). Although the ALJ is not obliged to
11 accept opinions from treating or examining physicians as binding, whether they were
12 rendered in the workers’ compensation context or not, the fact that an opinion was
13 formulated in that context does not, *ipso facto*, provide a reason for discounting it.
14 *See Booth v. Barnhart*, 181 F. Supp. 2d 1099, 1105-1106 (C.D. Cal. 2002)(collecting
15 cases); *Perez v. Berryhill*, No. ED CV 16-00583, 2017 U.S. Dist. LEXIS 18011, at
16 *12-13 (C.D. Cal. Feb. 7, 2017). The ALJ here erred by finding that the fact that the
17 doctors treated or examined Plaintiff in the workers’ compensation context
18 “affect[ed] the credibility and relevance of their opinions.” (T at 17, 23). As a
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1 matter of law, medical opinions from treating and examining sources are relevance
2 and entitled to due deference consistent with applicable law.

3 Second, there is serious doubt as to whether the ALJ properly translated the
4 workers' compensation findings. As discussed above, it is well-settled that an ALJ
5 may not disregard a physician's medical opinion simply because it was rendered in
6 the context of a workers' compensation claim or proceeding and/or because workers'
7 compensation terminology is used. *Booth*, 181 F. Supp. 2d at 1105. "Proper
8 evaluation of such medical opinions, however, does present an extra challenge." *Id.*
9 at 1106. The ALJ is obliged to "translate" the workers' compensation findings into
10 the applicable Social Security terminology "in order to accurately assess the
11 implications of those opinions for the Social Security disability determination." *Id.*
12 (citing *Desrosiers v. Sec. of Health & Human Srcvs.*, 846 F.2d 573, 576 (9th Cir.
13 1988)).

14 Although the "translation" need not be explicit, the decision "should at least
15 indicate that the ALJ recognized the differences between the relevant state workers'
16 compensation terminology, on the one hand, and the relevant Social Security
17 disability terminology, on the other hand, and took those differences into account in
18 evaluating the medical evidence." *Id.*

1 Here, Dr. Galloni described Plaintiff as being restricted from repetitive
2 grasping, gripping, or torquing. (T at 427, 430, 434, 440, 452, 458, 465, 473).
3 Likewise, Dr. Chaves opined that Plaintiff was permanently restricted from work
4 activities that required repetitive wrist and elbow motion, impact-or vibration-
5 producing tools, or forceful gripping and grasping with both hands. (T at 569).

6 At first glance, these findings would appear to be consistent with the ALJ's
7 determination that Plaintiff retained the RFC to perform frequent (but not repetitive)
8 forceful gripping, grasping, twisting, and turning, along with frequent (but not
9 repetitive) use of vibrating tools. (T at 17).

10 However, Plaintiff argues, and the Commissioner does not dispute, that in the
11 workers' compensation context, a restriction from "repetitive" motion indicates a
12 50% loss of pre-injury capacity. Thus, the conclusion that Plaintiff could perform
13 certain job tasks frequently (which can, for Social Security Act purposes, include
14 performing the activity 2/3 of the time) is not necessarily consistent with the
15 treating/examining physicians' finding that Plaintiff was restricted from performing
16 those activities repetitively. It is unclear whether the ALJ recognized this issue and,
17 if so, how it was resolved. This was error requiring remand. *See Nguyen v. Colvin*,
18 No. SA CV 12-1837-PJW, 2013 U.S. Dist. LEXIS 175351, at *3 (C.D. Cal. Dec. 12,
19 2013); *Reyes v. Colvin*, No. CV 15-9406-KS, 2016 U.S. Dist. LEXIS 174439, at

1 *22-23 (C.D. Cal. Dec. 15, 2016). On remand, the ALJ will need to translate the
2 limitations assessed in the workers compensation context and consider those
3 translated limitations in the context of the overall evidentiary record when
4 determining Plaintiff's RFC.

5 **B. Credibility**

6 A claimant's subjective complaints concerning his or her limitations are an
7 important part of a disability claim. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d
8 1190, 1195 (9th Cir. 2004)(citation omitted). The ALJ's findings with regard to the
9 claimant's credibility must be supported by specific cogent reasons. *Rashad v.*
10 *Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative evidence of
11 malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear
12 and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General
13 findings are insufficient: rather the ALJ must identify what testimony is not credible
14 and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834;
15 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

16 However, subjective symptomatology by itself cannot be the basis for a
17 finding of disability. A claimant must present medical evidence or findings that the
18 existence of an underlying condition could reasonably be expected to produce the
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1 symptomatology alleged. See 42 U.S.C. §§423(d)(5)(A), 1382c (a)(3)(A); 20 C.F.R.
2 § 404.1529(b), 416.929; SSR 96-7p.

3 In this case, Plaintiff testified as follows: She last worked in 2010. (T at 44).
4 She lives with her son. (T at 46). She makes breakfast and walks around her home
5 for about 30 minutes each morning. (T at 48). She takes her dog for a walk. (T at
6 49). Hand and neck pain prevent her from working. (T at 50). Hand pain makes it
7 difficult to lift or carry objects. (T at 51). Her pain makes it hard to sleep. (T at 52).
8 She would not be able to perform her past work as an assembler because the work
9 required too much use of the hands. (T at 54).

10 The ALJ concluded that Plaintiff's credibility was "diminished" because her
11 allegations were "greater than expected in light of the objective evidence of record."
12 (T at 19). The ALJ also found that Plaintiff's activities of daily living undermined
13 her allegations. (T at 19).

14 However, the ALJ's consideration of the objective evidence, including in
15 particular the medical opinion evidence, was flawed for the reasons stated above. As
16 such, the assessment of Plaintiff's credibility will need to be revisited on remand
17 after reconsideration of the medical opinion evidence.

1 **C. Lay Witness Testimony**

2 “Testimony by a lay witness provides an important source of information
3 about a claimant’s impairments, and an ALJ can reject it only by giving specific
4 reasons germane to each witness.” *Regennitter v. Comm’r*, 166 F.3d 1294, 1298 (9th
5 Cir. 1999). Here, Plaintiff’s son testified that his mother had difficulty sleeping,
6 experienced stress and difficulty dressing, and could not perform household chores
7 on a sustained basis. (T at 263). The ALJ rejected this testimony, finding the son’s
8 statements not supported by the “clinical or diagnostic medical evidence.” (T at 20).
9 Again, because the ALJ’s consideration of that evidence was flawed as outlined
10 above, the lay testimony will likewise need to be revisited on remand.

11 **D. Remand**

12 In a case where the ALJ's determination is not supported by substantial
13 evidence or is tainted by legal error, the court may remand the matter for additional
14 proceedings or an immediate award of benefits. Remand for additional proceedings
15 is proper where (1) outstanding issues must be resolved, and (2) it is not clear from
16 the record before the court that a claimant is disabled. *See Benecke v. Barnhart*, 379
17 F.3d 587, 593 (9th Cir. 2004).

18 Here, this Court finds that remand for further proceedings is warranted. The
19 issue of Plaintiff’s limitations regarding the use of her upper extremities remains

1 outstanding. In particular, the Commissioner must translate the limitations assessed
2 by Dr. Galloni and Dr. Chaves from the workers' compensation context, afford those
3 opinions due weight as required under applicable law, and then determine whether
4 and to what extent the RFC determination needs to be revised. If the RFC
5 determination is revised, then reconsideration of the step four past relevant work
6 would follow, with a step five analysis thereafter, if necessary. This Court cannot
7 say, on this record, whether Plaintiff is disabled and, as such, remand for further
8 proceedings is the right result.

1 **V. ORDERS**

2 IT IS THEREFORE ORDERED that:

3 Judgment be entered REVERSING the Commissioner's decision and
4 REMANDING this matter for further proceedings consistent with this Decision and
5 Order, and it is further ORDERED that

6 The Clerk of the Court file this Decision and Order, serve copies upon counsel
7 for the parties, and CLOSE this case without prejudice to a timely application for
8 attorneys' fees and costs.

9 DATED this 24th day of September, 2018,

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11 /s/Victor E. Bianchini
12 VICTOR E. BIANCHINI
13 UNITED STATES MAGISTRATE JUDGE
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