

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AARON J. CAMPOS,

Plaintiff,

v.

MARTIN O’MALLEY, Commissioner of
Social Security,¹

Defendant.

Case No. 1:23-cv-00940-KJM-BAM

**FINDINGS AND RECOMMENDATIONS
REGARDING PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT**

(Docs. 17, 19)

FOURTEEN-DAY DEADLINE

Findings and Recommendations

INTRODUCTION

Plaintiff Aaron J. Campos (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying his applications for disability insurance benefits under Title II of the Social Security Act and for supplemental security income under Title XVI of the Social Security Act. The matter is currently before the Court on Plaintiff’s motion for summary judgment and the parties’ briefs, which were submitted, without oral argument, to Magistrate Judge Barbara A. McAuliffe, for issuance of findings and recommendations.

¹ Martin O’Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin O’Malley is substituted as the defendant in this suit.

1 Plaintiff further testified that he lives with his parents. On an average day, he tries to exercise
2 a little bit and eat. Sometimes he forgets to eat or is too sad to do anything. AR 49. When asked
3 about chores, Plaintiff testified that he washes dishes and sometimes cleans the bathroom. It
4 sometimes takes him a few days to a week to shower or brush his teeth. He needs reminders from his
5 parents. He needs to be reminded that he does not smell the best, that he needs to take a shower, or
6 that maybe he should not be wearing these clothes in this weather or pajamas at night. AR 52. He can
7 watch a movie or television show, but he has a very short attention span. He likes to do multiple
8 things at one time. He wants to be watching a movie, while cleaning, while on his phone, while
9 sending out some emails. AR 52.

10 Plaintiff also reported that he has been working with the Department of Behavioral Health for
11 three or four years and has been through three or four doctors. AR 49. The first doctor said that
12 Plaintiff was not responding to anything that they did and recommended “electronic compulsive
13 therapy.” AR 49-50.

14 Plaintiff claimed that he does not have a hard time interacting with people outside of his home,
15 but will get into altercations with people outside of his home if it extreme. He is a stickler for justice
16 and if he sees something wrong, then he wants to say something. AR 50. He still has difficulty with
17 anger outbursts or controlling his anger. AR 52-53. In the past, he has had difficulty dealing with
18 stressful situations or changes. His doctor earlier suggested that Plaintiff willingly go on a 5150 hold,
19 but Plaintiff had to work. It also had been suggested over the years by different people, but he just
20 always had to work. His doctor did make him go to the ER, where he stayed for about 12 hours,
21 because they were afraid that he was a danger to himself. He was having a bad night and overtook
22 medication on purpose. AR 53-54.

23 Plaintiff indicated that his symptoms have gotten better with TMS therapy, but may be
24 “returning now.” AR 54. He also reported that TMS helped “for a little bit.” AR 54.

25 **Medical Record**

26 The relevant medical record was reviewed by the Court and will be referenced below as
27 necessary to this Court’s decision.

28 ///

1 evidence and making findings, the Commissioner must apply the proper legal standards. *E.g.*,
2 *Burkhart v. Bowen*, 856 F.2d 1335, 1338 (9th Cir. 1988). This Court must uphold the Commissioner’s
3 determination that the claimant is not disabled if the Commissioner applied the proper legal standards,
4 and if the Commissioner’s findings are supported by substantial evidence. *See Sanchez v. Sec’y of*
5 *Health and Human Servs.*, 812 F.2d 509, 510 (9th Cir. 1987).

6 REVIEW

7 In order to qualify for benefits, a claimant must establish that he or she is unable to engage in
8 substantial gainful activity due to a medically determinable physical or mental impairment which has
9 lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. §
10 1382c(a)(3)(A). A claimant must show that he or she has a physical or mental impairment of such
11 severity that he or she is not only unable to do his or her previous work, but cannot, considering his or
12 her age, education, and work experience, engage in any other kind of substantial gainful work which
13 exists in the national economy. *Quang Van Han v. Bowen*, 882 F.2d 1453, 1456 (9th Cir. 1989). The
14 burden is on the claimant to establish disability. *Terry v. Sullivan*, 903 F.2d 1273, 1275 (9th Cir.
15 1990).

16 DISCUSSION³

17 Plaintiff argues that the ALJ failed to provide clear and convincing reasons to reject Plaintiff’s
18 severe psychiatric symptomology. (Doc. 17 at 8.)

19 In deciding whether to admit a claimant’s subjective complaints, the ALJ must engage in a
20 two-step analysis. *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014); *Batson v. Comm’r of Soc.*
21 *Sec. Admin.*, 359 F.3d 1190, 1196 (9th Cir. 2004). First, the claimant must produce objective medical
22 evidence of her impairment that could reasonably be expected to produce some degree of the symptom
23 or pain alleged. *Garrison*, 759 F.3d at 1014. If the claimant satisfies the first step and there is no
24 evidence of malingering, the ALJ may reject the claimant’s testimony regarding the severity of her
25 symptoms only by offering specific, clear and convincing reasons for doing so. *Id.* at 1015. “This
26

27 ³ The parties are advised that this Court has carefully reviewed and considered all of the briefs, including
28 arguments, points and authorities, declarations, and/or exhibits. Any omission of a reference to any specific
argument or brief is not to be construed that the Court did not consider the argument or brief.

1 requires the ALJ to ‘specifically identify the testimony [from a claimant] she or he finds not to be
2 credible and ... explain what evidence undermines that testimony.’” *Lambert v. Saul*, 980 F.3d 1266,
3 1277 (9th Cir. 2020) (alterations in original). In other words, the ALJ must “identify specifically
4 which of [plaintiff’s] statements she found not credible and why.” *Brown-Hunter v. Colvin*, 806 F.3d
5 487, 493 (9th Cir. 2015); *see also Sanders v. Comm’r of Soc. Sec.*, No. 1:21-cv-00204-DAD-BAM,
6 2024 WL 1641035, at *1 (E.D. Cal. Apr. 16, 2024) (discussing clear and convincing standard, which
7 requires ALJs to show their work).

8 Here, the ALJ found that Plaintiff’s medically determinable impairments could reasonably be
9 expected to cause the alleged symptoms, but found his statements concerning the intensity, persistence
10 and limiting effects of those symptoms “not entirely consistent with the medical evidence and other
11 evidence in the record for the reasons explained in this decision.” AR 29-30. The ALJ therefore was
12 required to provide specific, clear and convincing reasons for discounting Plaintiff’s subjective
13 complaints.

14 The ALJ first found that Plaintiff’s statements regarding the intensity, persistence, and limiting
15 effects of his symptoms were “inconsistent because the medical evidence indicates that the severity of
16 claimant’s impairments was not to the degree alleged.” AR 30. While a lack of objective medical
17 evidence cannot form the sole basis for discounting testimony, inconsistency with the medical
18 evidence or medical opinions can be sufficient. *See Woods v. Comm’r of Soc. Sec.*, No. 1:20-cv-
19 01110-SAB, 2022 WL 1524772, at *10 n.4 (E.D. Cal. May 13, 2022) (citing *Carmickle v. Comm’r,*
20 *Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008); *see also Smartt v. Kijakazi*, 53 F.4th 489, 498
21 (9th Cir. 2022) (“When objective medical evidence in the record is *inconsistent* with the claimant’s
22 subjective testimony, the ALJ may indeed weigh it as undercutting such testimony.”); *accord Dittmer*
23 *v. Comm’r of Soc. Sec.*, No. 1:22-CV-01378-SAB, 2024 WL 967439, at *9 (E.D. Cal. Mar. 6, 2024)
24 (“Ninth Circuit caselaw has distinguished testimony that is ‘uncorroborated’ by the medical evidence
25 from testimony that is ‘contradicted’ by the medical records, deeming the latter sufficient on its own to
26 meet the clear and convincing standard.”). Here, the Court does not find inconsistency with the record
27 to be a sufficient reason for discounting Plaintiff’s symptom testimony.

1 In her opinion, the ALJ summarized Plaintiff's testimony related to his mental health issues as
2 follows:

3 The claimant testified that he is unable to work because of his mental health condition,
4 which causes him to forget things (Hearing Testimony). He testified that he sometimes
5 needs reminders to attend to his personal hygiene. The claimant also testified to deficits in
6 concentration and that he has a short attention span and likes to [do] multiple things at the
7 same time, such as watching television while cleaning or checking email. He testified that
8 he experiences anger outbursts and that it is hard for him not to lash out at people if he
9 feels they are doing something wrong. The claimant also testified to difficulty dealing with
10 stressful situations and changes in the past.

11 AR 29.

12 After concluding that Plaintiff's statements were inconsistent with the medical record, the ALJ
13 acknowledged Plaintiff's history of borderline personality disorder and depression and treatment with
14 psychotropic medication. AR 30. The ALJ then summarized the medical evidence of record related to
15 Plaintiff's mental health impairments, including medication management notes, mental status
16 examinations, and psychiatry notes. AR 30-31, citing AR 290-91, 317-18, 362-65, 334-38, 383-90,
17 376-77. The ALJ did not identify the specific statements or allegations she found inconsistent with the
18 cited medical records. Although the ALJ summarized Plaintiff's testimony, this is not equivalent to
19 identifying specific statements, and it is not evident from the ALJ's decision if she intended to
20 discount the entirety of Plaintiff's testimony or merely specific portions of that testimony. *Sanders*,
21 2024 WL 1641035, at *2 ("But summarizing plaintiff's testimony is not equivalent to identifying
22 specific statements"). Even if the ALJ did identify specific testimony, she provided no explanation as
23 to why such testimony was inconsistent with the medical record. The ALJ's summary of the medical
24 evidence is not the same as providing a specific, clear and convincing reason for discounting Plaintiff's
25 testimony. *Cf. Lambert*, 980 F.3d at 1278 ("providing a summary of medical evidence ... is not the
26 same as providing clear and convincing reasons for finding the claimant's symptom testimony not
27 credible."); *Brown-Hunter*, 806 F.3d at 494 ("Because the ALJ failed to identify the testimony she
28 found not credible, she did not link that testimony to the particular parts of the record supporting her
non-credibility determination. This was legal error.").

1 As the only other reason for discounting Plaintiff’s allegations, the ALJ found “[t]he
2 stabilization of the claimant’s mental health condition when adherent to his psychotropic medication
3 and improvement with TMS [Transcranial Magnetic Stimulation] therapy indicates that the severity of
4 the claimant’s borderline personality disorder, schizophrenia, and bipolar disorder is not to the degree
5 alleged.” AR 31. The ALJ further explained that such conditions allowed Plaintiff to perform work at
6 all exertional levels. AR 31. The effectiveness of medication or treatment is a relevant factor in
7 determining the severity of a claimant's symptoms. 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3).
8 While symptoms may wax and wane during the progression of a mental disorder, “evidence of
9 medical treatment successfully relieving symptoms can undermine a claim of disability.” *Wellington v.*
10 *Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017); *see also Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d
11 1001, 1006 (9th Cir. 2006) (“Impairments that can be effectively controlled with medication are not
12 disabling for the purpose of determining eligibility for SSI benefits.”); *Corrales v. O’Malley*, No.
13 1:23-cv-01066-HBK, 2024 WL 3596824, at *6 (E.D. Cal. July 31, 2024) (indicating favorable
14 response to treatment can undermine complaints of severe mental limitations); *accord Evans v.*
15 *Comm'r of Soc. Sec.*, No. 2:22-cv-435-KJN, 2023 WL 3570083, at *10 (E.D. Cal. May 19, 2023)
16 (concluding ALJ properly rejected plaintiff’s severe symptom testimony based, in part, on findings
17 that medication controlled some of her mental health impairments).

18 The Court does not find this to be a specific, clear, and convincing reason for discounting
19 Plaintiff’s subjective complaints. The ALJ merely summarized the medical record without specifying
20 which of those records demonstrated stabilization of Plaintiff’s mental health condition when adherent
21 to medication. Further, the ALJ’s finding of stabilization is not convincing or otherwise supported by
22 substantial evidence. When read as a whole, the cited medical records do not undermine Plaintiff’s
23 subjective complaints. For instance, the ALJ referenced medication management notes from October
24 2019, which identified Plaintiff’s reported benefit from medication, but the corresponding mental
25 status examination revealed an anxious mood and impaired judgment and insight. AR 30, 290.
26 Plaintiff also reported that his Abilify “made him more anxious,” and the medication notes indicated
27 that Plaintiff had used “seroquel, Depakote, Zoloft, wellbutrin and lithium without much benefit and
28 they made him more moody or tired.” AR 290. The treatment provider discontinued Plaintiff’s

1 Abilify because “it made him more anxious” and increased Plaintiff’s Cymbalta for depression,
2 Seroquel for his mood, and added Propranolol for anxiety. AR 291.

3 The ALJ also referenced medication management notes from March 2020, but those notes
4 indicated that even while on medication Plaintiff dropped his online class because he was
5 “unmotivated,” and his insight and judgment remained impaired. AR 30, 317. Plaintiff’s treatment
6 provider again adjusted Plaintiff’s medication, increasing Plaintiff’s Cymbalta for depression and his
7 Topamax for mood. AR 318. The ALJ also cited medication management notes from June 2020
8 indicating that Plaintiff reported feeling good. AR 30, 315-16. However, Plaintiff continued to have
9 impaired insight and judgment, and the treatment provider again modified Plaintiff’s medications. AR
10 315-16. The ALJ referenced psychiatry notes from September 2020, but those notes indicated that
11 Plaintiff’s mood was anxious even while on medication. AR 30, 361-65. The provider also pointed
12 out that Plaintiff’s past psychiatric medications of Zoloft, Prozac, Vistaril, Depakote ER, Seroquel XR,
13 Lithium carbonate, Lexapro, Abilify, Paxil, and Cymbalta were ineffective. AR 364.

14 The ALJ referenced medication management notes from March 2021, but those notes revealed
15 a depressed and anxious mood while Plaintiff continued with medication. The provider also added an
16 additional medication for focusing. AR 30, 383-84. The ALJ also referenced medication management
17 notes from June 2021 and September 2021, indicating “the claimant’s reported improved mood and
18 mania with psychotropic medication.” AR 31, 378-79, 380-81. Although the ALJ correctly noted that
19 the treatment provider identified improved mood and mania with Seroquel, by September 2021 it was
20 “mostly for sleep.” AR 379. Plaintiff’s insight and judgment continued to be impaired, and his
21 medications were again adjusted in September 2021, with a trial of gabapentin added for sleep and
22 anxiety. AR 31, 378-79, 380.

23 Additionally, the ALJ acknowledged that Plaintiff sought neurological treatment with interest
24 in TMS therapy in September 2021, and the corresponding neurological exam was normal. AR 31,
25 351-52. However, the ALJ failed to acknowledge the neurologist’s indication that Plaintiff’s severe
26 depression had resulted in “difficulty maintaining employment” and had “truly interfered with his
27 life.” AR 351. The neurologist confirmed that Plaintiff had “seen many psychiatrists over the years
28 and he has been on mental antidepressants and antidepressant enhancers over the years in different

1 doses and combinations, however, he continues to have severe impairment from depression.” AR 351.
2 The neurologist further assessed Plaintiff with severe major depression, again affirming Plaintiff “has
3 had depression for many years and he has failed a multitude of antidepressants.” AR 352. Plaintiff
4 was to have an initial TMS session. AR 352.

5 The ALJ’s subsequent finding that Plaintiff’s condition improved with TMS therapy such that
6 he could work at all exertional levels also is not a clear and convincing reason for discounting
7 Plaintiff’s subjective complaints supported by substantial evidence. To support her finding, the ALJ
8 cited a single treatment record from December 2021. AR 31, 376-77 [Ex. 9F/24-25]. Although that
9 record included Plaintiff’s report that TMS therapy was helpful, it also included Plaintiff’s report that
10 he still had “some anxiety 10/10 depression 4-6/10 focus is off sometimes sad mood . . . sometimes
11 has VH [visual hallucinations] sees things.” AR 376. Further the ALJ apparently failed to consider
12 the temporary nature of any improvement with TMS therapy, as Plaintiff testified that he felt his
13 symptoms may be returning, and that TMS helped only for “a little bit.” AR 54.

14 Based on the foregoing, the Court finds that the ALJ failed to provide specific, clear and
15 convincing reasons to discount Plaintiff’s symptom testimony. Moreover, the ALJ appears to have
16 improperly “cherry-picked” aspects of the medical record to demonstrate stabilization and
17 improvement of Plaintiff’s mental impairments, without considering the record as a whole, including
18 evidence implicating both the lack of stabilization or effectiveness with medications and only
19 temporary improvement with TMS therapy. *Ghanim v. Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014).

20 **B. Remedy**

21 The decision whether to remand for further proceedings or order an immediate award of
22 benefits is within the Court’s discretion. *See Harman v. Apfel*, 211 F.3d 1172, 1175-78 (9th Cir. 2000).
23 “[A] remand for further proceedings regarding the subjective statements of a claimant is an
24 appropriate remedy.” *See Wheeler v. Kijakazi*, No. 1:21-cv-1225 JLT BAM, 2023 WL 4146215, at *7
25 (E.D. Cal. June 23, 2023) (citations omitted). Unless “the record has been fully developed and further
26 administrative proceedings would serve no useful purpose,” remand for further proceedings is
27 warranted. *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014). As it is not clear that “further
28 administrative proceedings would serve no useful purpose,” remand for further proceedings is

1 appropriate. *Id.*; see also *Dominguez v. Colvin*, 808 F.3d 403, 407 (9th Cir. 2015) (“A district court
2 may reverse the decision of the Commissioner of Social Security, with or without remanding the cause
3 for a rehearing, but the proper course, except in rare circumstances, is to remand to the agency for
4 additional investigation or explanation.”) (internal quotes and citations omitted).

5 **CONCLUSION AND RECOMMENDATION**

6 Based on the foregoing, the Court finds that the ALJ’s decision is not supported by substantial
7 evidence in the record as a whole and is not based on proper legal standards. Accordingly, IT IS
8 HEREBY RECOMMENDED as follows:

- 9 1. Plaintiff’s motion for summary judgment (Doc. 17) be granted.
- 10 2. The Commissioner’s request to affirm the agency’s determination (Doc. 19) be denied.
- 11 3. The matter be remanded pursuant to sentence four of 42 U.S.C. § 405(g) for further
12 proceedings.
- 13 4. The Clerk of this Court be directed to enter judgment in favor of Plaintiff Aaron J.
14 Campos, and against Defendant Martin O’Malley, Commissioner of Social Security.

15 These Findings and Recommendations will be submitted to the United States District Judge
16 assigned to the case, as required by 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being
17 served with these findings and recommendations, the parties may file written objections with the
18 Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
19 Recommendations.” The parties are advised that the failure to file objections within the specified time
20 may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal.
21 *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391,
22 1394 (9th Cir. 1991)).

23
24 IT IS SO ORDERED.

25 Dated: August 30, 2024

26 /s/ Barbara A. McAuliffe
27 UNITED STATES MAGISTRATE JUDGE
28