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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIFFANY HAYNES,

Plaintiff,

No. CIV S-03-497 JFM (TEMP)

vs.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

ORDER

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Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying an application for Disability Income Benefits (“DIB”) under Title II of the Social Security Act (“Act”). For the reasons discussed below, the court will grant plaintiff’s motion for summary judgment, deny the Commissioner’s cross-motion for summary judgment, and remand for payment of benefits.

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1 I. Factual and Procedural Background

2 In a decision dated October 22, 2004, the ALJ determined plaintiff was not  
3 disabled.<sup>1</sup> The ALJ's decision became the final decision of the Commissioner when the Appeals  
4 Council denied plaintiff's request for review. The ALJ found plaintiff has severe impairments of  
5 vasodepressor syncope/presyncope and migraine headaches disorder but these impairments do  
6 not meet or medically equal a listed impairment; plaintiff is not fully credible; plaintiff can  
7 perform medium work with the restriction that she cannot work around heights, with dangerous  
8 machinery, cannot drive and cannot swim; plaintiff can perform her past relevant work as an  
9 administrative clerk; and plaintiff is not disabled. Administrative Transcript ("AT") 21.

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11 <sup>1</sup> Disability Insurance Benefits are paid to disabled persons who have contributed to the  
12 Social Security program, 42 U.S.C. § 401 *et seq.* Supplemental Security Income ("SSI") is paid  
13 to disabled persons with low income. 42 U.S.C. § 1382 *et seq.* Under both provisions, disability  
14 is defined, in part, as an "inability to engage in any substantial gainful activity" due to "a  
15 medically determinable physical or mental impairment." 42 U.S.C. §§ 423(d)(1)(a) &  
16 1382c(a)(3)(A). A five-step sequential evaluation governs eligibility for benefits. See 20 C.F.R.  
17 §§ 423(d)(1)(a), 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987). The  
18 following summarizes the sequential evaluation:

16 Step one: Is the claimant engaging in substantial gainful  
17 activity? If so, the claimant is found not disabled. If not, proceed  
18 to step two.

17 Step two: Does the claimant have a "severe" impairment?  
18 If so, proceed to step three. If not, then a finding of not disabled is  
19 appropriate.

19 Step three: Does the claimant's impairment or combination  
20 of impairments meet or equal an impairment listed in 20 C.F.R., Pt.  
21 404, Subpt. P, App.1? If so, the claimant is automatically  
22 determined disabled. If not, proceed to step four.

21 Step four: Is the claimant capable of performing his past  
22 work? If so, the claimant is not disabled. If not, proceed to step  
23 five.

22 Step five: Does the claimant have the residual functional  
23 capacity to perform any other work? If so, the claimant is not  
24 disabled. If not, the claimant is disabled.

24 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

25 The claimant bears the burden of proof in the first four steps of the sequential evaluation  
26 process. Bowen, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential  
evaluation process proceeds to step five. Id.

1 Plaintiff contends the ALJ improperly characterized the medical record and rejected the opinions  
2 of examining physicians and disregarded third party laywitness evidence.<sup>2</sup>

3 II. Standard of Review

4 The court reviews the Commissioner's decision to determine whether (1) it is  
5 based on proper legal standards under 42 U.S.C. § 405(g), and (2) substantial evidence in the  
6 record as a whole supports it. Copeland v. Bowen, 861 F.2d 536, 538 (9th Cir. 1988) (citing  
7 Desrosiers v. Secretary of Health and Human Services, 846 F.2d 573, 575-76 (9th Cir. 1988)).  
8 Substantial evidence means more than a mere scintilla of evidence, but less than a  
9 preponderance. Saelee v. Chater, 94 F.3d 520, 521 (9th Cir. 1996) (citing Sorenson v.  
10 Weinberger, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975)). "It means such relevant evidence as a  
11 reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402  
12 U.S. 389, 402, 91 S. Ct. 1420 (1971) (quoting Consolidated Edison Co. v. N.L.R.B., 305 U.S.  
13 197, 229, 59 S. Ct. 206 (1938)). The record as a whole must be considered, Howard v. Heckler,  
14 782 F.2d 1484, 1487 (9th Cir. 1986), and both the evidence that supports and the evidence that  
15 detracts from the ALJ's conclusion weighed. See Jones v. Heckler, 760 F.2d 993, 995 (9th Cir.  
16 1985). The court may not affirm the ALJ's decision simply by isolating a specific quantum of  
17 supporting evidence. Id.; see also Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If  
18 substantial evidence supports the administrative findings, or if there is conflicting evidence  
19 supporting a finding of either disability or nondisability, the finding of the ALJ is conclusive, see  
20 Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987), and may be set aside only if an  
21 improper legal standard was applied in weighing the evidence, see Burkhart v. Bowen, 856 F.2d  
22 1335, 1338 (9th Cir. 1988).

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24 <sup>2</sup> Plaintiff also contends the ALJ improperly discredited her subjective complaints and  
25 disregarded the testimony of the vocational expert. In light of the ALJ's errors with respect to  
26 the medical record and laywitness evidence, which errors require remand of this matter, the court  
need not reach plaintiff's arguments with respect to the credibility analysis of plaintiff's  
testimony and the vocational expert.

1 III. Analysis

2 A. Medical Opinions

3 Plaintiff contends the ALJ mischaracterized the medical record and improperly  
4 rejected the opinions of examining neurologist Dr. McIntire, examining neurologist Dr. Jordan,  
5 and examining psychiatrist and neurologist Dr. Strahley. The weight given to medical opinions  
6 depends in part on whether they are proffered by treating, examining, or non-examining  
7 professionals. Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). Ordinarily, more weight is  
8 given to the opinion of a treating professional, who has a greater opportunity to know and  
9 observe the patient as an individual. Id.; Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996).

10 To evaluate whether an ALJ properly rejected a medical opinion, in addition to  
11 considering its source, the court considers whether (1) contradictory opinions are in the record,  
12 and (2) clinical findings support the opinions. An ALJ may reject an uncontradicted opinion of a  
13 treating or examining medical professional only for “clear and convincing” reasons. Lester, 81  
14 F.3d at 831. In contrast, a contradicted opinion of a treating or examining professional may be  
15 rejected for “specific and legitimate” reasons, that are supported by substantial evidence. Id. at  
16 830. While a treating professional’s opinion generally is accorded superior weight, if it is  
17 contradicted by a supported examining professional’s opinion (e.g., supported by different  
18 independent clinical findings), the ALJ may resolve the conflict. Andrews v. Shalala, 53 F.3d  
19 1035, 1041 (9th Cir. 1995) (citing Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). In  
20 any event, the ALJ need not give weight to conclusory opinions supported by minimal clinical  
21 findings. Meanel v. Apfel, 172 F.3d 1111, 1113 (9th Cir.1999) (treating physician’s conclusory,  
22 minimally supported opinion rejected); see also Magallanes, 881 F.2d at 751. The opinion of a  
23 non-examining professional, without other evidence, is insufficient to reject the opinion of a  
24 treating or examining professional. Lester, 81 F.3d at 831.

25 Plaintiff contends the ALJ improperly mischaracterized the evidence by  
26 minimizing the number of syncopal episodes in the medical record. The ALJ stated that there

1 was only one documented syncopal episode during a tilt test and that fainting episodes were  
2 observed by medical personnel on only one or two occasions. AT 15, 18, 318 (on tilt table test,  
3 seven minutes into 80-degree tilt, plaintiff experienced syncopal episode associated with drop in  
4 heart rate to low 40s and drop in blood pressure to 60/40). It appears that in summarizing the  
5 medical evidence, the ALJ cited only to those portions of the record which supported his  
6 conclusion that plaintiff's reports of multiple syncopal episodes were not credible. The record,  
7 however, documents other syncopal episodes. AT 216 (plaintiff hospitalized during pregnancy  
8 for exacerbation of vasodepressor syncopal episodes; hospitalization discharge summary noted  
9 several episodes of syncope); 215 (four episodes of lightheadedness, faintness, during 24 hours  
10 of Holter monitor with twenty premature atrial ectopic beats); 320 (during monitoring, plaintiff  
11 had five syncopal episodes associated with variation in sinus rhythm). Although the ALJ is not  
12 required to discuss every test result, this mischaracterization of the medical record undermines  
13 the legitimacy of the reasons given by the ALJ for rejecting the opinions of the examining  
14 physicians.

15 Dr. McIntire examined plaintiff on May 26, 2002 and reviewed her medical  
16 records. AT 324-327. He opined that the syncopal episodes would disrupt plaintiff's ability to  
17 carry out instructions or communicate with coworkers. AT 327. The ALJ rejected Dr. McIntire's  
18 assessed limitations on the sole basis that the record did not support the frequency of syncopal  
19 episodes reported by plaintiff. AT 18. Dr. Jordan examined plaintiff on July 6, 2004 and also  
20 reviewed plaintiff's medical records. AT 332-338. She opined that plaintiff was limited in her  
21 ability to be up and about and move about quickly. AT 337. This limitation was rejected by the  
22 ALJ on the basis that plaintiff had not reported problems with a change in posture. AT 18. Upon  
23 review of the entire record, and particularly in light of the ALJ's disregard of the numerous  
24 syncopal episodes noted in the medical record, the court finds the ALJ's reasons for rejecting Dr.  
25 McIntire's and Dr. Jordan's opinions do not meet the standards set forth above.

26 Dr. Straehly, who examined plaintiff on December 4, 2000, opined similarly to Dr.

1 McIntire with respect to functional limitations attributable to plaintiff's syncopal episodes. AT  
2 282-285. He opined that plaintiff would be able to understand and carry out complicated  
3 instructions only for unpredictable and time-limited intervals. AT 285. In summarizing Dr.  
4 Straehly's report, the ALJ completely omitted this limitation and did not even address whether  
5 any weight was accorded Dr. Straehly's opinion or set forth any reasons for rejecting this opinion.  
6 AT 16, 18. Under these circumstances, the ALJ's decision cannot be upheld.

#### 7 B. Laywitness Evidence

8 Plaintiff further contends the ALJ improperly disregarded the third party report of  
9 her boyfriend. AT 184-189. "[L]ay witness testimony as to a claimant's symptoms or how an  
10 impairment affects ability to work is competent evidence, and therefore cannot be disregarded  
11 without comment." Nguyen v. Chater, 100 F.3d 1462, 1467 (9th Cir. 1996); see also Dodrill v.  
12 Shalala, 12 F.3d 915, 918-19 (9th Cir. 1993) (friends and family members in a position to observe  
13 a plaintiff's symptoms and daily activities are competent to testify to condition). "If the ALJ  
14 wishes to discount the testimony of the lay witnesses, he must give reasons that are germane to  
15 each witness." Dodrill, 12 F.3d at 919; see also Stout v. Commissioner SSA, 454 F.3d 1050,  
16 1056 ((9th Cir. 2006) (where ALJ fails to properly discuss competent lay testimony favorable to  
17 plaintiff, court cannot consider error to be harmless unless it can confidently conclude no  
18 reasonable ALJ, when fully crediting testimony, could have reached different disability  
19 determination).

20 The boyfriend reported plaintiff always needs someone around her because of her  
21 medical condition, did not go shopping unless her mother or boyfriend was with her, and that after  
22 an episode, plaintiff was nonfunctional for thirty minutes to an hour. AT 185, 188.

23 The ALJ failed to discuss, or even acknowledge, this third party report. The report is  
24 corroborative evidence of plaintiff's disabling syncopal episodes, which is at the heart of  
25 plaintiff's disability claim. If the boyfriend's report was fully credited, a reasonable ALJ could  
26 have reached a different disability determination. The court cannot, therefore, find this omission

1 to be harmless error.

2 C. Conclusion

3 The remaining question is whether to remand this case to the ALJ or to order the  
4 payment of benefits. “The decision whether to remand the case for additional evidence or simply  
5 to award benefits is within the discretion of the court.” Stone v. Heckler, 761 F.2d 530, 533 (9<sup>th</sup>  
6 Cir. 1985). Generally, the Court will direct the award of benefits “in cases where no useful  
7 purpose would be served by further administrative proceedings or where the record has been  
8 thoroughly developed.” Varney v. Secretary of Health and Human Services, 859 F.2d 1396, 1399  
9 (9<sup>th</sup> Cir. 1987); see also Benecke v. Barnhart, 340 F.3d 587, 593 (9<sup>th</sup> Cir. 2004).

10 Plaintiff alleges an onset date of disability of November 18, 1999, almost twelve  
11 years ago. On January 16, 2004, this matter was initially remanded under sentence six because the  
12 Commissioner could not locate the claim file. Dkt. no. 11. A new hearing was held at the  
13 administrative level and the action was reopened in the District Court on June 25, 2010, over a  
14 decade after plaintiff alleges she became disabled. In the decision at issue here, the ALJ did not  
15 set forth sufficient reasons for rejecting medical opinion evidence and did not even address the  
16 third party evidence which supported plaintiff’s claim of disabling syncopal episodes. The  
17 vocational expert testified that with episodes causing a loss of consciousness, there would be no  
18 jobs available to plaintiff and that no employer would hire a person with an uncontrollable  
19 problem that could lead to fainting on the job. AT 91, 95. It is apparent from the record that if  
20 the challenged evidence had been properly credited, the ALJ would be required to find plaintiff  
21 disabled. Further delay by remanding for the purpose of correcting the ALJ’s omissions is not  
22 warranted in these circumstances.

23 For the foregoing reasons, this matter will be remanded under sentence four of 42  
24 U.S.C. § 405(g) for immediate payment of benefits.

25 Accordingly, IT IS HEREBY ORDERED that:

- 26 1. Plaintiff’s motion for summary judgment (dkt. no. 33) is granted.

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- 2. The Commissioner's cross motion for summary judgment (dkt. no. 35) is denied.
- 3. This action is remanded to the Commissioner for immediate payment of benefits.
- 4. The Clerk of Court is directed to close this action.

DATED: *August 18, 2011.*

JMM  
haynes.ss.rem

*John F. Moulden*  
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*U.S. Magistrate Judge*