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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RENEE G. SCARBOROUGH,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

No. 2:15-cv-0146 DB

ORDER

This social security action was submitted to the court without oral argument for ruling on plaintiff’s motion for summary judgment.¹ Plaintiff argues that the ALJ’s treatment of the medical opinion evidence and subjective testimony constituted error. For the reasons explained below, plaintiff’s motion is granted, the decision of the Commissioner of Social Security (“Commissioner”) is reversed, and the matter is remanded for the payment of benefits.

PROCEDURAL BACKGROUND

In December of 2011 or January of 2012, plaintiff filed applications for Disability Insurance Benefits (“DIB”) under Title II of the Social Security Act (“the Act”) and for Supplemental Security Income (“SSI”) under Title XVI of the Act alleging disability beginning

¹ Both parties have previously consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c). (See ECF Nos. 10 & 19.)

1 on May 22, 2008. (Transcript (“Tr.”) at 11, 177-89.) Plaintiff’s applications were denied
2 initially, (id. at 109-17), and upon reconsideration. (Id. at 122-32.)

3 Thereafter, plaintiff requested a hearing which was held before an Administrative Law
4 Judge (“ALJ”) on April 10, 2013. (Id. at 29-69.) Plaintiff was represented by an attorney and
5 testified at the administrative hearing. (Id. at 29-30.) In a decision issued on May 31, 2013, the
6 ALJ found that plaintiff was not disabled. (Id. at 23.) The ALJ entered the following findings:

7 1. The claimant meets the insured status requirements of the Social
8 Security Act through June 30, 2010.

9 2. The claimant has not engaged in substantial gainful activity
10 since May 22, 2008, the alleged onset date (20 CFR 404.1571 *et seq.*, and 416.971 *et seq.*).

11 3. The claimant has the following severe impairments: major
12 depressive disorder; anxiety; and substance addiction (alcohol) (20
13 CFR 404.1520(c) and 416.920(c)).

14 4. The claimant does not have an impairment or combination of
15 impairments that meets or medically equals the severity of one of
16 the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1
17 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925
18 and 416.926).

19 5. After careful consideration of the entire record, the undersigned
20 finds that the claimant has the residual functional capacity to
21 perform a full range of work at all exertional levels but with the
22 following nonexertional limitations: the claimant can perform
23 simple (as defined in the DOT as SVP levels 1 and 2), routine and
24 repetitive tasks; can work in a low stress job consisting of only
25 occasional decision making and occasional changes in the work
26 setting; can have only occasional interaction with the general
27 public; and can work around coworkers throughout the day, but
28 with only occasional interaction with coworkers.

 6. The claimant is capable of performing past relevant work as a
warehouse laborer. This work does not require the performance of
work-related activities precluded by the claimant’s residual
functional capacity (20 CFR 404.1565 and 416.965).

 7. The claimant has not been under a disability, as defined in the
Social Security Act, from May 22, 2008, through the date of this
decision (20 CFR 404.1520(f) and 416.920(f)).

26 (Id. at 13-22) (footnotes omitted).

27 On November 19, 2014, the Appeals Council denied plaintiff’s request for review of the
28 ALJ’s May 31, 2013 decision. (Id. at 1-3.) Plaintiff sought judicial review pursuant to 42 U.S.C.

1 § 405(g) by filing the complaint in this action on January 16, 2015. (ECF No. 1.)

2 LEGAL STANDARD

3 “The district court reviews the Commissioner’s final decision for substantial evidence,
4 and the Commissioner’s decision will be disturbed only if it is not supported by substantial
5 evidence or is based on legal error.” Hill v. Astrue, 698 F.3d 1153, 1158-59 (9th Cir. 2012).
6 Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to
7 support a conclusion. Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001); Sandgate v.
8 Chater, 108 F.3d 978, 980 (9th Cir. 1997).

9 “[A] reviewing court must consider the entire record as a whole and may not affirm
10 simply by isolating a ‘specific quantum of supporting evidence.’” Robbins v. Soc. Sec. Admin.,
11 466 F.3d 880, 882 (9th Cir. 2006) (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir.
12 1989)). If, however, “the record considered as a whole can reasonably support either affirming or
13 reversing the Commissioner’s decision, we must affirm.” McCarty v. Massanari, 298 F.3d
14 1072, 1075 (9th Cir. 2002).

15 A five-step evaluation process is used to determine whether a claimant is disabled. 20
16 C.F.R. § 404.1520; see also Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). The five-step
17 process has been summarized as follows:

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

21 Step two: Does the claimant have a “severe” impairment? If so,
22 proceed to step three. If not, then a finding of not disabled is
23 appropriate.

24 Step three: Does the claimant’s impairment or combination of
25 impairments meet or equal an impairment listed in 20 C.F.R., Pt.
26 404, Subpt. P, App. 1? If so, the claimant is automatically
27 determined disabled. If not, proceed to step four.

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

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

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

2 The claimant bears the burden of proof in the first four steps of the sequential evaluation
3 process. Bowen v. Yuckert, 482 U.S. 137, 146 n. 5 (1987). The Commissioner bears the burden
4 if the sequential evaluation process proceeds to step five. Id.; Tackett v. Apfel, 180 F.3d 1094,
5 1098 (9th Cir. 1999).

6 APPLICATION

7 In his² pending motion plaintiff argues that the ALJ committed the following two
8 principal errors: (1) the ALJ's treatment of the medical opinion evidence constituted error; and
9 (2) the ALJ's treatment of the subjective testimony constituted error. (Pl.'s MSJ (ECF No. 17) at
10 15-27.³)

11 I. Medical Opinion Evidence

12 The weight to be given to medical opinions in Social Security disability cases depends in
13 part on whether the opinions are proffered by treating, examining, or nonexamining health
14 professionals. Lester, 81 F.3d at 830; Fair v. Bowen, 885 F.2d 597, 604 (9th Cir. 1989). "As a
15 general rule, more weight should be given to the opinion of a treating source than to the opinion
16 of doctors who do not treat the claimant" Lester, 81 F.3d at 830. This is so because a
17 treating doctor is employed to cure and has a greater opportunity to know and observe the patient
18 as an individual. Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996); Bates v. Sullivan, 894
19 F.2d 1059, 1063 (9th Cir. 1990).

20 The uncontradicted opinion of a treating or examining physician may be rejected only for
21 clear and convincing reasons, while the opinion of a treating or examining physician that is
22 controverted by another doctor may be rejected only for specific and legitimate reasons supported
23 by substantial evidence in the record. Lester, 81 F.3d at 830-31. "The opinion of a nonexamining
24 physician cannot by itself constitute substantial evidence that justifies the rejection of the opinion
25 of either an examining physician or a treating physician." (Id. at 831.) Finally, although a

26 _____
27 ² Plaintiff is transgender, considers himself to be male, and will be referred to as such in this
28 decision. (Pl.'s MSJ (ECF No. 17) at 1.)

³ Page number citations such as this one are to the page number reflected on the court's CM/ECF
system and not to page numbers assigned by the parties.

1 treating physician’s opinion is generally entitled to significant weight, “[t]he ALJ need not
2 accept the opinion of any physician, including a treating physician, if that opinion is brief,
3 conclusory, and inadequately supported by clinical findings.” Chaudhry v. Astrue, 688 F.3d 661,
4 671 (9th Cir. 2012) (quoting Bray v. Comm’r of Soc. Sec. Admin., 554 F.3d 1219, 1228 (9th Cir.
5 2009)).

6 **A. Dr. David Scott**

7 Plaintiff argues that the ALJ’s treatment of Dr. Scott’s opinion constituted error. (Pl.’s
8 MSJ (ECF No. 17) at 16-19.) As defendant correctly points out, however, Dr. Scott did not
9 provide an opinion. (Def.’s MSJ (ECF No. 25) at 6.) “In disability benefits cases . . . physicians
10 may render medical, clinical opinions, or they may render opinions on the ultimate issue of
11 disability—the claimant’s ability to perform work.” Garrison v. Colvin, 759 F.3d 995, 1012 (9th
12 Cir. 2014) (quoting Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998)).

13 Here, Dr. Scott provided neither. Instead, plaintiff takes issue with the ALJ’s
14 characterization of Dr. Scott’s treatment record. However, it cannot be said that the ALJ did not
15 thoroughly discuss Dr. Scott’s treatment record.⁴ (Tr. at 18.)

16 **B. Dr. Wendy Weiss**

17 Plaintiff argues that the ALJ’s treatment of Dr. Weiss’ opinion constituted error. (Pl.’s
18 MSJ (ECF No. 17) at 19-24.) In this regard, Dr. Weiss examined plaintiff on January 18, 2013.
19 (Tr. at 410.) On February 13, 2013, Dr. Weiss provided a “Psychological Evaluation.” (Id. at
20 410-15.) On February 15, 2013, Dr. Weiss completed a Medical Source Statement Concerning
21 the Nature and Severity of an Individual’s Mental Impairment form. (Id. at 416-20.)

22 The ALJ’s decision discussed Dr. Weiss’ opinion, stating, in part:

23 At the examination, the claimant was reported to be generally
24 cooperative and, at time, irritable and impatient, the claimant was
25 unsure of any recent current events, the claimant made errors
26 repeating digits beginning at four numbers, and was unable to
27 complete serial threes. The claimant’s short-term memory was
28 limited, the claimant had some capacity for abstract thinking, and
the claimant’s calculation abilities were limited. The claimant
reported hearing frogs, demonic voices, and derogatory voices. The

⁴ As discussed below, this is not to say that the ALJ’s discussion of Dr. Scott’s treatment record was without error.

1 claimant's mood was described as tired and the claimant reported
2 feeling down and depressed on a daily basis. Based on the
3 evaluation, Dr. Weiss diagnosed the claimant with major
4 depression, recurrent, moderate to severe, and polysubstance
5 dependence in remission, and assessed a GAF score of 40. She
6 opined the claimant's ability to understand and memorize ranged
7 from not significantly limited to moderately limited, the claimant's
8 ability to sustain concentration and persistence ranged from not
9 significantly limited to markedly limited, the claimant's ability to
10 socially interact ranged from not significantly limited to moderately
11 limited, and the claimant's ability to adapt ranged from not
12 significantly limited to moderately limited. Dr. Weiss further
13 opined the claimant would be unable to complete a workday more
14 than three or four times per month.

15 (Tr. at 19) (citations omitted).

16 The ALJ afforded Dr. Weiss' opinion only "little weight." (Id.) In this regard, the ALJ
17 found that the opinion was "inconsistent with the overall objective record" which established that
18 plaintiff's symptoms "improved and stabilized with routine, conservative treatment, medication
19 compliance, attendance at therapy sessions, and abstinence from alcohol use." (Id. at 19-20.)
20 This statement, however, is flawed in several respects.

21 First, that a patient's symptoms improve and/or stabilize with treatment does not mean
22 that the impairments would no longer be present in a work setting. See Hutsell v. Massanari, 259
23 F.3d 707, 712 (8th Cir. 2001) ("We also believe that the Commissioner erroneously relied too
24 heavily on indications in the medical record that Hutsell was 'doing well,' because doing well for
25 the purposes of a treatment program has no necessary relation to a claimant's ability to work or to
26 her work-related functional capacity."); Holohan v. Massanari, 246 F.3d 1195, 1205 (9th Cir.
27 2001) ("That a person who suffers from severe panic attacks, anxiety, and depression makes some
28 improvement does not mean that the person's impairments no longer seriously affect her ability to
function in a workplace.").

Moreover, a review of plaintiff's medical records reveals that he continued to experience
serious impairments during the course of his treatment, including complaints of "trouble
sleeping," "+paranoia," feeling "sad," "trouble staying asleep," feelings of being in a "dark
space," "voices tell[ing] him to walk outside into the middle of the street," and other auditory
hallucinations. (Tr. at 313, 315, 324, 327, 332, 382, 404.) During this period Dr. Scott found that

1 plaintiff's Global Assessment of Functioning ("GAF") ranged between 45-50.⁵ (Id. at 300, 315,
2 336, 408, 426.)

3 Cycles of improvement and debilitating symptoms are a common
4 occurrence, and in such circumstances it is error for an ALJ to pick
5 out a few isolated instances of improvement over a period of
6 months or years and to treat them as a basis for concluding a
7 claimant is capable of working.

8 Garrison, 759 F.3d at 1017.

9 The ALJ's assertion that claimant's treatment was routine and/or conservative is also
10 erroneous, as it is entirely unsupported. In this regard, the ALJ's decision acknowledged that
11 plaintiff's treatment included medication and therapy sessions. Aside from perhaps psychiatric
12 hospitalization, it is not clear that any further treatment was even available to the plaintiff.

13 Moreover, his medications included Buspar, Elavil, Remeron, Zolfot, Risperdal, Seroquel,
14 and amitriptyline. (Tr. at 326, 336, 359.) "Courts specifically have recognized that the
15 prescription of several of these medications connotes mental health treatment which is not
16 'conservative,' within the meaning of social security jurisprudence." Carden v. Colvin, No. CV
17 13-3856-E, 2014 WL 839111, at *3 (C.D. Cal. Mar. 4, 2014) (listing cases); see also Johnson v.
18 Colvin, No. ED CV 13-1476-JSL (E), 2014 WL 2586886, at *5 (C.D. Cal. June 7, 2014) ("Courts
19 specifically have recognized that the prescription of . . . Seroquel connotes mental health
20 treatment which is not 'conservative,' within the meaning of social security jurisprudence.").

21 The ALJ also rejected Dr. Weiss' opinion because it found that plaintiff was disabled as of
22 May 22, 2008, despite the fact that there was no medical evidence prior to September 29, 2011.
(Tr. at 20.) In this regard, the ALJ found that "[t]his suggests Dr. Weiss primarily relied upon the

23 ⁵ A GAF score represents a present rating of overall psychological functioning on a scale of 0 to
24 100. See Diagnostic and Statistical Manual of Disorders, at 34 (Am. Psychiatric Ass'n, 4th Ed.
25 2000) ("DSM-IV"); see also Keyser v. Commissioner Social Sec. Admin., 648 F.3d 721, 723 (9th
26 Cir. 2011) ("A GAF score is a rough estimate of an individual's psychological, social, and
27 occupational functioning used to reflect the individual's need for treatment."). A GAF score in
28 the range of 41 to 50 denotes: "Serious symptoms (e.g., suicidal ideation, severe obsessional
rituals, frequent shoplifting) OR any serious impairment in social, occupational, or school
functioning (e.g., no friends, unable to keep a job)." DSM-IV at 34. Moreover, "GAF scores are
typically assessed in controlled, clinical settings that may differ from work environments in
important respects." Garrison, 759 F.3d at 1003.

1 claimant’s subjective statements in forming an opinion.” (Id.)

2 However, as noted below, the ALJ’s decision fails to provide clear and convincing reasons
3 for discrediting plaintiff’s testimony that he has been disabled since May 22, 2008. Nonetheless,
4 even if the ALJ’s reasons for discrediting plaintiff’s subjective testimony were not erroneous, it is
5 not legitimate to reject Dr. Weiss’ entire opinion—which was based on her review of plaintiff’s
6 medical records and her own examination—based solely on a dispute over the appropriate
7 disability onset date.

8 In rejecting Dr. Weiss’ opinion, the ALJ also found that Dr. Weiss’ assessed GAF score of
9 40 was “inconsistent with the claimant’s mental health treatment history” simply because plaintiff
10 had “not been referred for any psychiatric hospitalizations during the alleged period.” (Id.) A
11 GAF of 40, however, indicates “[s]ome impairment in reality testing or communication . . . or
12 major impairment in several areas, such as work or school, family relations, judgment, thinking,
13 or mood” American Psychiatric Association, Diagnostic and Statistical Manual of Mental
14 Disorders 34 (4th ed. Text Revision 2000). In this regard, that plaintiff’s GAF was 40 and he was
15 not referred for psychiatric hospitalization is not in any way inconsistent. Moreover, as noted
16 above, plaintiff’s treating physician found that plaintiff’s GAF score ranged between 45-50,
17 scores which indicate the plaintiff was suffering from serious symptoms. Such a difference
18 between Dr. Scott’s scores and Dr. Weiss’ scores is not so significant as to call into question Dr.
19 Weiss’ entire opinion.

20 Finally, the ALJ rejected Dr. Weiss’ opinion because the “form completed . . . lends itself
21 to indicate that an individual is disabled based on the definitions of the rating terms,” and because
22 it was purportedly “unclear from the form as to whether Dr. Weiss actually considered the rating
23 definitions when [she] completed this form.” (Tr. at 20.) In this regard, the ALJ stated that Dr.
24 Weiss found plaintiff unable to maintain concentration for 5 to 15 minutes but plaintiff was able
25 to give a personal history and participate in mental status examination, “which presumably took
26 longer than 5 to 15 minutes.” (Id.)

27 Dr. Weiss’ examination, however, reflects that plaintiff “became irritable and impatient,”
28 and “demonstrated difficulty in terms of [his] capacity for attention and concentration” (Tr.

1 at 413.) Moreover, in selecting ratings Dr. Weiss was tasked with translating the results of her
2 examination into an opinion as to plaintiff's ability to function with respect to work-related
3 abilities. (Id. at 416.) Her examination was likely conducted in a controlled, clinical setting that
4 would differ from any work environment in important respects.

5 For the reasons stated above, the court finds that the ALJ failed to offer specific and
6 legitimate, let alone clear and convincing, reasons supported by substantial evidence in the record
7 for rejecting Dr. Weiss' opinion.⁶

8 Accordingly, plaintiff's claim that the ALJ's treatment of the medical opinion evidence
9 constituted error is granted as to the ALJ's treatment of Dr. Weiss' opinion.

10 **II. Subjective Testimony**

11 Plaintiff argues that the ALJ's treatment of plaintiff's testimony and the testimony of his
12 mental health case worker constituted error. (Pl.'s MSJ (ECF No. 17) at 24-27.)

13 **A. Plaintiff's Testimony**

14 The Ninth Circuit has summarized the ALJ's task with respect to assessing a claimant's
15 credibility as follows:

16 To determine whether a claimant's testimony regarding subjective
17 pain or symptoms is credible, an ALJ must engage in a two-step
18 analysis. First, the ALJ must determine whether the claimant has
19 presented objective medical evidence of an underlying impairment
20 which could reasonably be expected to produce the pain or other
21 symptoms alleged. The claimant, however, need not show that her
22 impairment could reasonably be expected to cause the severity of
23 the symptom she has alleged; she need only show that it could
24 reasonably have caused some degree of the symptom. Thus, the
25 ALJ may not reject subjective symptom testimony . . . simply
26 because there is no showing that the impairment can reasonably
27 produce the degree of symptom alleged.

28 Second, if the claimant meets this first test, and there is no evidence
of malingering, the ALJ can reject the claimant's testimony about
the severity of her symptoms only by offering specific, clear and
convincing reasons for doing so

⁶ In discussing Dr. Weiss' opinion, the ALJ's decision "emphasized that the claimant underwent the examination . . . through an attorney referral in an effort to generate medical evidence," and stated that "the context in which it was produced cannot be entirely ignored." (Tr. at 19.) "[I]n the absence of other evidence to undermine the credibility of a medical report, the purpose for which the report was obtained does not provide a legitimate basis for rejecting it." Reddick v. Chater, 157 F.3d 715, 726 (9th Cir. 1998).

1 Lingenfelter v. Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007) (citations and quotation marks
2 omitted). “The clear and convincing standard is the most demanding required in Social Security
3 cases.” Moore v. Commissioner of Social Sec. Admin., 278 F.3d 920, 924 (9th Cir. 2002). “At
4 the same time, the ALJ is not required to believe every allegation of disabling pain, or else
5 disability benefits would be available for the asking” Molina v. Astrue, 674 F.3d 1104, 1112
6 (9th Cir. 2012).

7 “The ALJ must specifically identify what testimony is credible and what testimony
8 undermines the claimant’s complaints.” Valentine v. Commissioner Social Sec. Admin., 574
9 F.3d 685, 693 (9th Cir. 2009) (quoting Morgan v. Comm’r of Soc. Sec. Admin., 169 F.3d 595,
10 599 (9th Cir. 1999)). In weighing a claimant’s credibility, an ALJ may consider, among other
11 things, the “[claimant’s] reputation for truthfulness, inconsistencies either in [claimant’s]
12 testimony or between [her] testimony and [her] conduct, [claimant’s] daily activities, [her] work
13 record, and testimony from physicians and third parties concerning the nature, severity, and effect
14 of the symptoms of which [claimant] complains.” Thomas v. Barnhart, 278 F.3d 947, 958-59
15 (9th Cir. 2002) (modification in original) (quoting Light v. Soc. Sec. Admin., 119 F.3d 789, 792
16 (9th Cir. 1997)). If the ALJ’s credibility finding is supported by substantial evidence in the
17 record, the court “may not engage in second-guessing.” Id.

18 Here, the ALJ found that plaintiff’s medically determinable impairments could reasonably
19 be expected to cause his alleged symptoms, but that plaintiff’s statements concerning the
20 intensity, persistence and limiting effects of those symptoms were not “entirely credible for the
21 reasons explained in this decision.” (Tr. at 17.)

22 In this regard, the ALJ found that plaintiff’s credibility was diminished because the
23 discontinuation of his last job was the result of a group termination. (Id.) The ALJ explained that
24 this “suggests the claimant could have continued working after the alleged onset date” because
25 plaintiff did not seek “mental health treatment until September 2011.” (Id.) “In fact, through the
26 second quarter of 2011, the claimant received unemployment benefits.” (Id.)

27 The Ninth Circuit has “particularly criticized the use of a lack of treatment to reject mental
28 complaints both because mental illness is notoriously underreported and because ‘it is a

1 questionable practice to chastise one with a mental impairment for the exercise of poor judgment
2 in seeking rehabilitation.” Regennitter v. Commissioner of Social Sec. Admin., 166 F.3d 1294,
3 1299-300 (9th Cir. 1999) (quoting Nguyen v. Chater, 100 F.3d 1462, 1465 (9th Cir. 1996)).

4 Moreover, “while receipt of unemployment benefits can undermine a claimant’s alleged inability
5 to work fulltime,” a plaintiff’s allegations of disability are only inconsistent with the plaintiff’s
6 testimony if the plaintiff “held himself out as available for full-time or part-time work.”

7 Carmickle v. Commissioner, Social Sec. Admin., 533 F.3d 1155, 1161-62 (9th Cir. 2008)

8 Here, plaintiff testified that after he was terminated his drinking became worse, he “was
9 depressed,” and “was in the bed all the time.” (Id. at 35.) Since that time plaintiff’s condition
10 deteriorated. (Id. at 36.) Thereafter, plaintiff began receiving mental health treatment and was
11 encouraged by his treatment providers to explore disability benefits. (Tr. at 314, 317, 329.) In
12 this regard, it appears that plaintiff was terminated, his conditioned worsened, he sought
13 treatment, and became aware of the possibility that his conditioned had worsened to such a degree
14 that he was disabled and had been for some time. That is consistent with the evidence of record
15 and plaintiff’s testimony. Accordingly, the court does not find this to be a clear and convincing
16 reason for rejecting plaintiff’s testimony.

17 The ALJ’s decision also found that the evidence of record did not support claimant’s
18 testimony. (Id. at 17.) The ALJ’s decision then provides a lengthy recitation of the medical and
19 opinion evidence but—aside from again noting that plaintiff alleged disability onset of May 22,
20 2008, but did not seek treatment until September 29, 2011—fails to explain what evidence
21 contradicted plaintiff’s testimony.⁷

22 Accordingly, the court finds that the ALJ failed to offer specific, clear, and convincing
23 reasons for rejecting plaintiff’s testimony.

24 **B. Mental Health Case Worker**

25 In addition to evidence from acceptable medical sources, a plaintiff may offer opinions
26 from “other sources” to establish the severity of impairments. See 20 C.F.R. §§ 404.1513(d),

27 _____
28 ⁷ Moreover, it appears to the court that plaintiff’s testimony is consistent with the evidence of record.

1 416.913(d). However, the ALJ may afford less weight to other source opinions. Nonetheless, the
2 ALJ may only reject evidence from an “other source,” if the ALJ gives a germane reason for
3 doing so. See Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012); Bain v. Astrue, 319 Fed.
4 Appx. 543, 546 (9th Cir. 2009); Petty v. Colvin, 954 F.Supp.2d 914, 926 (D. Ariz. 2013) (“An
5 ALJ is free to discount testimony from other sources, but as the Commissioner concedes, he must
6 give reasons germane to each witness for doing so.”).

7 Here, plaintiff’s mental health case worker, Bruce Jones, completed a Function Report-
8 Adult-Third Party form on March 15, 2012. (Tr. at 220.) However, Jones also testified at the
9 April 10, 2013 administrative hearing. (Id. at 52-59, 64-65.) Jones testified that he had contact
10 with plaintiff generally once a week since January of 2012. (Id. at 52-53.) Jones worked on
11 plaintiff’s treatment plan, spoke with plaintiff’s group counseling facilitators, and with the
12 plaintiff. (Id. at 52-55.) On roughly 10 occasions over the last year, plaintiff’s condition
13 deteriorated to the point that Jones had to personally transport plaintiff to the “mental health
14 facility.” (Id. at 17, 55.) Jones opined that plaintiff had problems with “his temperament and
15 anxiety,” and “lack of concentration” (Id. at 58.)

16 The ALJ, however, afforded Jones’ opinion, “little weight.” (Id. at 20.) In this regard, the
17 ALJ found that Jones’ statements were similar to those of the plaintiff and that “there exist good
18 reasons for questioning the reliability of the claimant’s subjective complaints.” (Id.) As noted
19 above, however, the ALJ’s decision failed to offer specific, clear, and convincing reasons for
20 rejecting plaintiff’s testimony.

21 The ALJ also stated that because Jones was not an acceptable medical source his
22 statements were “less persuasive on those same issues than medical opinions.” (Id.) The ALJ’s
23 decision, however, did not grant anything more than “little weight,” to the medical opinions of
24 record. (Id. at 19-20.) Moreover, Jones’ statements appear consistent with the record of
25 plaintiff’s treating physician, Dr. Scott, and with the opinion of the examining physician Dr.
26 Weiss.

27 Finally, the ALJ noted that plaintiff’s statements were “not entirely supported by the
28 clinical or diagnostic medical evidence,” and thus Jones’ statements should be rejected for “the

1 same reasons” (Id.) As noted above, this finding is inconsistent with plaintiff’s treatment
2 records, which routinely found he suffered from serious symptoms, with his non-conservative
3 treatment, and with the opinion of the only examining physician, Dr. Weiss.

4 For the reasons stated above, the court finds that the ALJ’s decisions failed to provide
5 germane reasons for rejecting Jones’ testimony. Accordingly, the court finds that plaintiff is
6 entitled to summary judgment on his claim that the ALJ’s treatment of the subjective evidence
7 constituted error.

8 CONCLUSION

9 With error established, the court has the discretion to remand or reverse and award
10 benefits. McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir. 1989). A case may be remanded
11 under the “credit-as-true” rule for an award of benefits where:

- 12 (1) the record has been fully developed and further administrative
13 proceedings would serve no useful purpose; (2) the ALJ has failed
14 to provide legally sufficient reasons for rejecting evidence, whether
15 claimant testimony or medical opinion; and (3) if the improperly
discredited evidence were credited as true, the ALJ would be
required to find the claimant disabled on remand.

16 Garrison, 759 F.3d at 1020. Even where all the conditions for the “credit-as-true” rule are met,
17 the court retains “flexibility to remand for further proceedings when the record as a whole creates
18 serious doubt as to whether the claimant is, in fact, disabled within the meaning of the Social
19 Security Act.” Id. at 1021; see also Dominguez v. Colvin, 808 F.3d 403, 407 (9th Cir. 2015)
20 (“Unless the district court concludes that further administrative proceedings would serve no
21 useful purpose, it may not remand with a direction to provide benefits.”); Treichler v.
22 Commissioner of Social Sec. Admin., 775 F.3d 1090, 1105 (9th Cir. 2014) (“Where . . . an ALJ
23 makes a legal error, but the record is uncertain and ambiguous, the proper approach is to remand
24 the case to the agency.”).

25 Here, the record contains ample treatment records, the opinion of an examining physician,
26 plaintiff’s testimony, other source testimony, and the testimony of a Vocational Expert (“VE”).
27 In this regard, the court finds that the record has been fully developed and further administrative
28 proceedings would serve no useful purpose.

1 As set forth above, the ALJ has failed to provide legally sufficient reasons for rejecting
2 multiple items of evidence. Moreover, if the improperly discredited evidence were credited as
3 true, the ALJ would be required to find plaintiff disabled on remand. In this regard, at the April
4 10, 2013 hearing, the ALJ asked the VE if the restrictions identified in Dr. Weiss' opinion would
5 "eliminate jobs at all exertion levels." (Tr. at 64.) The VE testified that such restrictions "would
6 be preclusive of any and all" jobs. (Id.) Finally, the record as a whole creates no serious doubt
7 that the claimant is, in fact, disabled within the meaning of the Social Security Act.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's motion for summary judgment (ECF No. 17) is granted;
- 10 2. Defendant's cross-motion for summary judgment (ECF No. 25) is denied;
- 11 3. The Commissioner's decision is reversed;
- 12 4. This matter is remanded for the immediate award of benefits; and
- 13 5. The Clerk of the Court shall enter judgment for plaintiff, and close this case.

14 Dated: March 7, 2017

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17 DEBORAH BARNES
18 UNITED STATES MAGISTRATE JUDGE
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