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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KAREN HUNT,
Plaintiff,
v.
CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

No. 2:15-cv-0509 DB

ORDER

This social security action was submitted to the court without oral argument for ruling on plaintiff’s motion for summary judgment.¹ For the reasons explained below, plaintiff’s motion is granted, defendant’s cross-motion is denied, the decision of the Commissioner of Social Security (“Commissioner”) is reversed, and the matter is remanded for further proceedings consistent with this order.

PROCEDURAL BACKGROUND

On September 20, 2011, plaintiff filed an application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act (“the Act”) alleging disability beginning on October 1, 2007. (Transcript (“Tr.”) at 11, 163-72.) Plaintiff’s application was denied initially,

¹ Both parties have previously consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c). (See ECF Nos. 6 & 8.)

1 (id. at 107-10), and upon reconsideration. (Id. at 120-25.)

2 Thereafter, plaintiff requested a hearing which was held before an Administrative Law
3 Judge (“ALJ”) on March 20, 2013. (Id. at 53-75.) Plaintiff was represented by an attorney and
4 testified at the administrative hearing. (Id. at 53-54.) In a decision issued on June 7, 2013, the
5 ALJ found that plaintiff was not disabled. (Id. at 24.) The ALJ entered the following findings:

6 1. The claimant has not engaged in substantial gainful activity
7 since September 20, 2011, the application date (20 CFR 416.971 *et*
8 *seq.*).

9 2. The claimant has the following severe impairments: reflex
10 sympathetic dystrophy of the left lower extremity, fibromyalgia,
11 lumbar and cervical degenerative disc disease, chronic fatigue
12 syndrome, migraine/headaches and depression (20 CFR
13 416.920(c)).

14 3. 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 416.920(d), 416.925 and 416.926).

18 4. After careful consideration of the entire record, the undersigned
19 finds that the claimant has the residual functional capacity to
20 perform light work as defined in 20 CFR 416.967(b) except the
21 claimant can perform simple unskilled work.

22 5. The claimant has no past relevant work (20 CFR 416.965).

23 6. The claimant was born on August 20, 1959 and was 52 years
24 old, which is defined as an individual closely approaching advanced
25 age, on the date the application was filed (20 CFR 416.963).

26 7. The claimant has at least a high school education and is able to
27 communicate in English (20 CFR 416.964).

28 8. Transferability of job skills is not an issue because the claimant
does not have past relevant work (20 CFR 416.968).

 9. Considering the claimant’s age, education, work experience,
and residual functional capacity, there are jobs that exist in
significant numbers in the national economy that the claimant can
perform (20 CFR 416.969 and 416.969(a)).

 10. The claimant has not been under a disability, as defined in the
Social Security Act, since September 20, 2011, the date the
application was filed (20 CFR 416.920(g)).

27 (Id. at 13-24.)

28 //

1 On January 6, 2015, the Appeals Council denied plaintiff's request for review of the
2 ALJ's June 7, 2013 decision. (Id. at 1-3.) Plaintiff sought judicial review pursuant to 42 U.S.C. §
3 405(g) by filing the complaint in this action on March 6, 2015. (ECF No. 1.)

4 LEGAL STANDARD

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

11 "[A] reviewing court must consider the entire record as a whole and may not affirm
12 simply by isolating a 'specific quantum of supporting evidence.'" Robbins v. Soc. Sec. Admin.,
13 466 F.3d 880, 882 (9th Cir. 2006) (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir.
14 1989)). If, however, "the record considered as a whole can reasonably support either affirming or
15 reversing the Commissioner's decision, we must affirm." McCartey v. Massanari, 298 F.3d
16 1072, 1075 (9th Cir. 2002).

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

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

22 Step two: Does the claimant have a "severe" impairment? If so,
23 proceed to step three. If not, then a finding of not disabled is
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
determined disabled. If not, proceed to step four.

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

28 ///

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

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

4 The claimant bears the burden of proof in the first four steps of the sequential evaluation
5 process. Bowen v. Yuckert, 482 U.S. 137, 146 n. 5 (1987). The Commissioner bears the burden
6 if the sequential evaluation process proceeds to step five. Id.; Tackett v. Apfel, 180 F.3d 1094,
7 1098 (9th Cir. 1999).

8 APPLICATION

9 In her pending motion plaintiff asserts the following five principal claims: (1) the ALJ
10 erred at step two of the sequential evaluation; (2) the ALJ's treatment of the medical opinion
11 evidence constituted error; (3) the ALJ's treatment of plaintiff's subjective testimony and the lay
12 witness testimony constituted error; (4) the ALJ erred by failing to obtain the testimony of a
13 Vocational Expert; and (5) plaintiff meets or equals a Listing Impairment.² (Pl.'s MSJ (ECF No.
14 14) at 25-45.³)

15 **I. Step Two Evaluation**

16 At step two of the sequential evaluation, the ALJ must determine if the claimant has a
17 medically severe impairment or combination of impairments. Smolen v. Chater, 80 F.3d 1273,
18 1289-90 (9th Cir. 1996) (citing Yuckert, 482 U.S. at 140-41). The Commissioner's regulations
19 provide that "[a]n impairment or combination of impairments is not severe if it does not
20 significantly limit [the claimant's] physical or mental ability to do basic work activities." 20
21 C.F.R. §§ 404.1521(a) & 416.921(a). Basic work activities are "the abilities and aptitudes
22 necessary to do most jobs," and those abilities and aptitudes include: (1) physical functions such
23 as walking, standing, sitting, lifting, and carrying; (2) capacities for seeing, hearing, and speaking;
24 (3) understanding, carrying out, and remembering simple instructions; (4) use of judgment; (5)

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26 ² Although plaintiff's motion for summary judgment asserts six separate claims, two of those
27 claims concern the ALJ's treatment of the medical opinion evidence.

28 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 responding appropriately to supervision, co-workers, and usual work situations; and (6) dealing
2 with changes in a routine work setting. 20 C.F.R. §§ 404.1521(b) & 416.921(b).

3 The Supreme Court has recognized that the Commissioner’s “severity regulation increases
4 the efficiency and reliability of the evaluation process by identifying at an early stage those
5 claimants whose medical impairments are so slight that it is unlikely they would be found to be
6 disabled even if their age, education, and experience were taken into account.” Yuckert, 482 U.S.
7 at 153. However, the regulation must not be used to prematurely disqualify a claimant. Id. at 158
8 (O’Connor, J., concurring). “An impairment or combination of impairments can be found not
9 severe only if the evidence establishes a slight abnormality that has no more than a minimal effect
10 on an individual[’]s ability to work.” Smolen, 80 F.3d at 1290 (internal quotation marks and
11 citation omitted).

12 “[A]n ALJ may find that a claimant lacks a medically severe impairment or combination
13 of impairments only when his conclusion is ‘clearly established by medical evidence.’” Webb v.
14 Barnhart, 433 F.3d 683, 687 (9th Cir. 2005) (quoting Social Security Ruling (“SSR”) 85-28); see
15 also Ukolov v. Barnhart, 420 F.3d 1002, 1006 (9th Cir. 2005) (claimant failed to satisfy step two
16 burden where “none of the medical opinions included a finding of impairment, a diagnosis, or
17 objective test results”). “Step two, then, is ‘a de minimis screening device [used] to dispose of
18 groundless claims[.]’” Webb, 433 F.3d at 687 (quoting Smolen, 80 F.3d at 1290); see also
19 Edlund v. Massanari, 253 F.3d 1152, 1158-59 (9th Cir. 2001) (discussing this “de minimis
20 standard”); Tomasek v. Astrue, No. C-06-07805 JCS, 2008 WL 361129, at *13 (N.D. Cal.
21 Feb.11, 2008) (describing claimant’s burden at step two as “low”).

22 Here, in her brief to the ALJ, plaintiff alleged that her severe impairments included reflex
23 sympathetic dystrophy of the left lower extremity, fibromyalgia, lumbar and cervical degenerative
24 disc disease, chronic fatigue syndrome, migraine/headaches, depression, neuropathy,
25 osteoarthritis of the hands and knees, diffuse idiopathic skeletal hyperostosis, obesity, and
26 tinnitus. (Tr. at 279.) The ALJ’s decision found that plaintiff’s “reflex sympathetic dystrophy of
27 the left lower extremity, fibromyalgia, lumbar and cervical degenerative disc disease, chronic
28 fatigue syndrome, migraine/headaches, and depression” were severe impairments. (Id. at 13.)

1 The ALJ’s decision, however, failed to discuss plaintiff’s alleged impairments of
2 neuropathy, osteoarthritis of the hands and knees, diffuse idiopathic skeletal hyperostosis, obesity,
3 and tinnitus at any step in the sequential evaluation, despite the presence of some supporting
4 evidence. (See Tr. at 395, 549, 558, 560, 622.) Such a failure constitutes harmful error. See
5 Philips v. Colvin, No. 1:12-cv-1772 JLT, 2014 WL 791478, at *7 (E.D. Cal. Feb. 24, 2014) (“the
6 ALJ erred by failing to identify and evaluate the conditions and its symptoms in combination at
7 Step Two, or consider any limitations at Step Four”); see also Burch v. Barnhart, 400 F.3d 676,
8 682 (9th Cir. 2005) (“In determining whether a claimant’s obesity is a severe impairment, an ALJ
9 must do an individualized assessment of the impact of obesity on an individual’s functioning.”);
10 cf. Ortiz v. Commissioner of Social Sec., 425 Fed. Appx. 653, 655 (9th Cir. 2011) (“This is not
11 the total absence of objective evidence of severe medical impairment that would permit us to
12 affirm a finding of no disability at step two.”); Lewis v. Astrue, 498 F.3d 909, 911 (9th Cir. 2007)
13 (any step two error was harmless where “ALJ extensively discussed” condition “at Step 4 of the
14 analysis”).

15 Accordingly, the court finds that plaintiff is entitled to summary judgment in her favor
16 with respect to her claim that the ALJ erred at step two of the sequential evaluation.

17 CONCLUSION

18 With error established, the court has the discretion to remand or reverse and award
19 benefits.⁴ McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir. 1989). A case may be remanded
20 under the “credit-as-true” rule for an award of benefits where:

- 21 (1) the record has been fully developed and further administrative
22 proceedings would serve no useful purpose; (2) the ALJ has failed
23 to provide legally sufficient reasons for rejecting evidence, whether
24 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.

25 _____
26 ⁴ “In light of the remand required by the ALJ’s error at step two of the sequential evaluation, the
27 court need not address plaintiff’s remaining claims.” Meinecke v. Colvin, No. 2:14-cv-2210 AC
28 (TEMP), 2016 WL 995515, at *4 (E.D. Cal. Mar. 14, 2016); see also Sanchez v. Apfel, 85
F.Supp.2d 986, 993 n. 10 (C.D. Cal. 2000) (“Having concluded that a remand is appropriate
because the ALJ erred in ending the sequential evaluation at Step Two, this Court need not
consider the issue of plaintiff’s credibility.”).


1 Garrison v. Colvin, 759 F.3d 995, 1020 (9th Cir. 2014). Even where all the conditions for the
2 “credit-as-true” rule are met, the court retains “flexibility to remand for further proceedings when
3 the record as a whole creates serious doubt as to whether the claimant is, in fact, disabled within
4 the meaning of the Social Security Act.” Id. at 1021; see also Dominguez v. Colvin, 808 F.3d
5 403, 407 (9th Cir. 2015) (“Unless the district court concludes that further administrative
6 proceedings would serve no useful purpose, it may not remand with a direction to provide
7 benefits.”); Treichler v. Commissioner of Social Sec. Admin., 775 F.3d 1090, 1105 (9th Cir.
8 2014) (“Where . . . an ALJ makes a legal error, but the record is uncertain and ambiguous, the
9 proper approach is to remand the case to the agency.”).

10 Here, the court cannot find that further administrative proceedings would serve no useful
11 purpose. This matter will, therefore, be remanded for further proceedings.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff’s motion for summary judgment (ECF No. 14) is granted;
- 14 2. Defendant’s cross-motion for summary judgment (ECF No. 19) is denied;
- 15 3. The Commissioner’s decision is reversed; and
- 16 4. This matter is remanded for further proceedings consistent with this order.

17 Dated: January 11, 2017

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21 DEBORAH BARNES
22 UNITED STATES MAGISTRATE JUDGE

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