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

KEVIN VOUA LEE,

No. 2:15-CV-2467-CMK

Plaintiff,

vs.

MEMORANDUM OPINION AND ORDER

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

_____ /

Plaintiff, who is proceeding with retained counsel, brings this action under 42 U.S.C. § 405(g) for judicial review of a final decision of the Commissioner of Social Security. Pursuant to the written consent of all parties, this case is before the undersigned as the presiding judge for all purposes, including entry of final judgment. See 28 U.S.C. § 636(c). Pending before the court are plaintiff’s motion for summary judgment (Doc. 12) and defendant’s cross-motion for summary judgment (Doc. 15).

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1 **I. PROCEDURAL HISTORY**

2 Plaintiff applied for social security benefits on May 30, 2008. In the application,
3 plaintiff claimed that disability began on March 15, 2008. Plaintiff's claim was initially denied.
4 Following denial of reconsideration, plaintiff requested an administrative hearing, which was
5 held on July 7, 2010, before Administrative Law Judge ("ALJ") T. Patrick Hannon. In a
6 September 9, 2010, decision, the ALJ concluded that plaintiff is not disabled based on the
7 following relevant findings:

- 8 1. The claimant has the following severe impairment(s): Gout, high blood
9 pressure, high cholesterol, and post-traumatic stress disorder (PTSD);
10 2. The claimant does not have an impairment or combination of impairments
11 that meets or medically equals an impairment listed in the regulations;
12 3. The claimant has the following residual functional capacity: the claimant
13 can perform sedentary work; plaintiff has moderate difficulty in
14 understanding and carrying out complex instructions but has no difficulty
15 in carrying out simple and repetitive tasks consistent with unskilled work;
16 and
17 4. Considering the claimant's age, education, work experience, residual
18 functional capacity, and the Medical-Vocational Guidelines, there are jobs
19 that exist in significant numbers in the national economy that the claimant
20 can perform.

21 The Appeals Council declined review on August 26, 2011, and plaintiff sought judicial review.

22 In Lee v. Astrue, 1:11-CV-1789-GSA, the court reversed and remanded for further
23 proceedings. A second hearing has held before the ALJ Danny Pittman on December 3, 2013.

24 At the hearing, plaintiff amended the alleged onset date to January 1, 2010. In a February 10,
25 2014, decision, the ALJ concluded that plaintiff is not disabled based on the following relevant
26 findings:

1. The claimant has the following severe impairment(s): Gout, rheumatoid
arthritis, and depressive disorder;
2. The claimant does not have an impairment or combination of impairments
that meets or medically equals an impairment listed in the regulations;

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1 standard was applied in weighing the evidence, see Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th
2 Cir. 1988).

4 III. DISCUSSION

5 In his motion for summary judgment, plaintiff argues the ALJ failed to properly
6 evaluate the opinions of examining physician Dr. Parayno, non-examining state agency
7 reviewing physician Dr. S. Khan, and treating physician Dr. Apai Polyudhapoom. The weight
8 given to medical opinions depends in part on whether they are proffered by treating, examining,
9 or non-examining professionals. See Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir. 1995).
10 Ordinarily, more weight is given to the opinion of a treating professional, who has a greater
11 opportunity to know and observe the patient as an individual, than the opinion of a non-treating
12 professional. See id.; Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996); Winans v. Bowen,
13 853 F.2d 643, 647 (9th Cir. 1987). The least weight is given to the opinion of a non-examining
14 professional. See Pitzer v. Sullivan, 908 F.2d 502, 506 & n.4 (9th Cir. 1990).

15 In addition to considering its source, to evaluate whether the Commissioner
16 properly rejected a medical opinion the court considers whether: (1) contradictory opinions are
17 in the record; and (2) clinical findings support the opinions. The Commissioner may reject an
18 uncontradicted opinion of a treating or examining medical professional only for “clear and
19 convincing” reasons supported by substantial evidence in the record. See Lester, 81 F.3d at 831.
20 While a treating professional’s opinion generally is accorded superior weight, if it is contradicted
21 by an examining professional’s opinion which is supported by different independent clinical
22 findings, the Commissioner may resolve the conflict. See Andrews v. Shalala, 53 F.3d 1035,
23 1041 (9th Cir. 1995). A contradicted opinion of a treating or examining professional may be
24 rejected only for “specific and legitimate” reasons supported by substantial evidence. See Lester,
25 81 F.3d at 830. This test is met if the Commissioner sets out a detailed and thorough summary of
26 the facts and conflicting clinical evidence, states her interpretation of the evidence, and makes a

1 finding. See Magallanes v. Bowen, 881 F.2d 747, 751-55 (9th Cir. 1989). Absent specific and
2 legitimate reasons, the Commissioner must defer to the opinion of a treating or examining
3 professional. See Lester, 81 F.3d at 830-31. The opinion of a non-examining professional,
4 without other evidence, is insufficient to reject the opinion of a treating or examining
5 professional. See id. at 831. In any event, the Commissioner need not give weight to any
6 conclusory opinion supported by minimal clinical findings. See Meanel v. Apfel, 172 F.3d 1111,
7 1113 (9th Cir. 1999) (rejecting treating physician’s conclusory, minimally supported opinion);
8 see also Magallanes, 881 F.2d at 751.

9 1. Dr. Parayno

10 As to Dr. Parayno, the ALJ stated:

11 Dr. Parayno opined in December 2013 [Exhibit 20F] that it was apparent
12 to him that the claimant had both mental and medical disabilities that
13 impaired his ability to engage in any substantial gainful activity. . . . I give
14 limited weight because this opinion. . . concerns an issue reserved to the
Commissioner and is not an opinion as to the nature and severity of the
claimant’s impairment. . . .

15 According to plaintiff, the ALJ erred in rejecting Dr. Parayno’s statements regarding ability to
16 engage in gainful employment, ability to engage in activities of daily living, and deficits in
17 memory and concentration.

18 A review of Dr. Parayno’s December 2, 2013, report reflects the following
19 “discussion” offered by the doctor:

20 We have a 44 year old Hmong married male who suffers from Major
21 Depressive Disorder, recurrent, severe without psychotic features and
22 Post-traumatic Stress Disorder, chronic. He also suffers from several
23 medical problems and on one occasion he was treated overnight at the
24 Emergency Room. . . . The significant findings on mental status
25 examination are disorientation to time, place, and situation, impairment of
26 his recent, remote, and current memory, concentration and attention as
indicated by his inability to perform the forward digit span and serial
sevens test, inability to remember the date of births of his 5 children which
meant impaired remote memory and inability to recall 5 items after 3
minutes. He exhibited a disorientation to time, place, and situation. He
also showed poor social judgment on the envelope with the stamp and
address on it test. He definitely had poor knowledge of U.S. History &

1 Civics and poor or impaired proficiency in basic English. In summary, it
2 is apparent [he] has both mental and medical disability that impairs his
3 ability to engage in any substantial gainful activity. He definitely has
4 restricted activities of daily living and constriction of his social life. His
5 family including his wife and children perform the daily activities of daily
6 living such as cooking, housekeeping, grocery shopping, and laundry. He
7 does not like to visit friends and relatives or go to socials and prefers to
8 stay in the bedroom or go to the living room sometimes and watch
9 television avoiding war movies or scenes that depict gunfights because it
10 triggers nightmares and flashbacks when he goes to bed at night.

11 Out of this entire “discussion” – which is more a recitation of test results and plaintiff’s own
12 subjective report – the only opinion present is Dr. Parayno’s statement that plaintiff has a
13 disability precluding substantial gainful activity. As the ALJ correctly observed, such a judgment
14 is reserved for the Commissioner. See 20 C.F.R. § 404.1527(d)(1); McLeod v. Astrue, 640 F.3d
15 881 (9th Cir. 2011).

16 2. Dr. Khan

17 As to Dr. Khan, the ALJ stated:

18 The State Agency medical consultant [Dr. Khan] opined that the claimant
19 would be able to understand and remember simple instructions, sustain
20 attention and concentration for two-hour periods, to complete a regular
21 workday at an acceptable pace and attendance schedule, interact
22 adequately in casual setting, and respond appropriately to constructive
23 instructions, and respond to simple and infrequent changes in routine.
24 They also recommended non-public work setting with exposure to others
25 that was not too intense and/or prolonged (Exhibits 4F; 6F). I give some
26 weight to the State Agency opinion, but give little weight to social
interaction as it was [not] well supported and consistent with the record as
a whole.

Plaintiff notes that Dr. Khan opined that he “can sustain simple repetitive one-two step tasks”
and argues:

In this case, the ALJ stated that he gave “some weight” to Dr.
Khan’s opinions, but gave “little weight” to social interaction. . . . AR
302. To begin with, it is unclear what “some weight” means. It does not
indicate whether the ALJ accepted or rejected the limitation to one-to-two
step tasks. In fact, it does not indicate whether the ALJ acknowledged the
difference between a simple and repetitive tasks versus a limitation to one-
to-two-step tasks.

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1 What is clear, however, is that the ALJ's ultimate finding of fact is
2 that Kevin Lee is limited to simple, routine tasks. AR 298. Whether
3 intended or not, this constitutes a rejection of Dr. Khan's opinion that
4 Kevin Lee is limited to one-to-two-step tasks. And the ALJ failed to
5 provide any explanation for rejecting this medical source statement offered
6 by Dr. Khan, which is error under SSRs 96-6p and 96-8p.

7
8 Plaintiff also argues that the ALJ failed to articulate sufficient reasons supported by the record
9 for giving little weight to Dr. Khan's opinion that he is limited with respect to social interaction.

10 The record contains two assessments by Dr. Khan, both completed on August 4,
11 2008. In a mental residual function capacity assessment form, Dr. Khan rated plaintiff as "not
12 significantly limited" in the ability to understand, remember, and carry out "very short and simple
13 instructions." In the same assessment form, Dr. Khan opined that plaintiff is "[a]ble to
14 understand and remember simple instructions," though the doctor did not offer an additional
15 statement on plaintiff's ability to carry out simple instructions. In a psychiatric review technique
16 form, Dr. Khan stated:

17 Allegations are credible. However extent alleged, intensity, persistence
18 and functional limitations are not fully credible when reviewed with the
19 totality of evidence in mind [¶] . . . Degree of alleged limitations exceeds
20 objective findings.

21 The claimant is partially credible with an MDI and overall considering the
22 MSE and ADLs it appears that the claimant can sustain simple repetitive
23 one-two step tasks with adequate pace and persistence, adapt and relate to
24 coworkers and supervisors and deal with changes but would probably do
25 better in a nonpublic setting with exposure/contact to others that is not too
26 intense and/or prolonged.

27 Given this record, Dr. Khan clearly opined that plaintiff is capable of understanding,
28 remembering, and carrying out simple tasks. The ALJ accepted this opinion and included it in
29 his residual functional capacity finding. Dr. Khan's addition of the phrase "one-two" in the
30 psychiatric review technique form does not appear to constitute the doctor's opinion of an
31 additional limitation, particularly in the context of the doctor's overall impression that the
32 [d]egree of alleged limitations exceeds objective findings."

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1 As to limitations on social interaction, Dr. Khan assessed plaintiff is “not
2 significantly limited” in his ability to work in coordination with or proximity to others without
3 being distracted, as well as every other area of social interaction except plaintiff’s ability to
4 interact appropriately with the general public which Dr. Khan assessed as “moderately limited.”
5 Dr. Khan also stated that plaintiff would “probably do better” in a non-public setting with
6 “exposure/contact to others” that is “not too intense and/or prolonged.” This equivocal statement
7 does not constitute a medical opinion. Again, the statement is offered in the context of Dr.
8 Khan’s assessment that the limitations alleged by plaintiff exceed the objective evidence.
9 Additionally, while the statement suggests that plaintiff may “do better” with more limited social
10 interaction, the statement does not indicate an opinion that plaintiff is incapable of the level of
11 social interaction required for unskilled work, which primarily involves dealing with objects
12 rather than people. See SSR 85-15; see also Hoopai v. Astrue, 499 F.3d 1075 (9th Cir. 2007).

13 3. Dr. Polyudhapoom

14 As to Dr. Polyudhapoom, the ALJ stated:

15 In March 2013, Dr. Apai Polyudhapoom reported that the claimant could
16 lift less than five pounds, sit for 30 minutes at one time and 30 minutes
17 over an 8-hour period, and stand and walk for 30 minutes at one time and
18 30 minutes over an 8-hour period. He must lie down or elevate his legs for
19 10 minutes. He could reach and handle for 30 minutes each and never
20 push and pull (Exhibits 10F; 19F). I give limited weight to such restrictive
21 limitations as the medical evidence and Dr. Polyudhapoom’s records do
22 not support such restrictive limitations. Dr. Polyudhapoom apparently
23 relied quite heavily on the subjective report of symptoms and limitations
24 provided by the claimant, and seemed to uncritically accept as true most, if
25 not all, of what the claimant reported. Yet, as explained elsewhere in this
26 decision, there exist good reasons for questioning the reliability of the
claimant’s subjective complaints.

Plaintiff argues that these reasons are insufficient.

The court does not agree. In concluding that the doctor’s opinion is only entitled
to limited weight, the ALJ noted that the opinion is not supported by objective evidence. The
record contains a three-page “questionnaire” completed by Dr. Polyudhapoom on March 21,
2013. When prompted to list objective findings, the doctor stated: “pain in knuckle of right

1 hand” and “tender of lumbar spine area.” Other than an unexplained reference to uric acid levels,
2 Dr. Polyudhapoom listed no objective findings. The ALJ properly rejected this doctor’s
3 conclusory and unsupported opinions.
4

5 **IV. CONCLUSION**

6 Based on the foregoing, the court concludes that the Commissioner’s final
7 decision is based on substantial evidence and proper legal analysis. Accordingly, IT IS HEREBY
8 ORDERED that:

- 9 1. Plaintiff’s motion for summary judgment (Doc. 12) is denied;
 - 10 2. Defendant’s cross-motion for summary judgment (Doc. 15) is granted; and
 - 11 3. The Clerk of the Court is directed to enter judgment and close this file.
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13 DATED: March 27, 2017

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15 **CRAIG M. KELLISON**
16 UNITED STATES MAGISTRATE JUDGE
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