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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LETICIA HARO,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

No. 2:16-cv-01139 AC

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”), denying her application for disability insurance benefits (“DIB”) under Title II of the Social Security Act (“the Act”), 42 U.S.C. §§ 401-34.¹ For the reasons that follow, plaintiff’s motion for summary judgment will be GRANTED, and defendant’s cross-motion for summary judgment will be DENIED. The matter will be reversed and remanded to the Commissioner for further proceedings.

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¹ DIB is paid to disabled persons who have contributed to the Disability Insurance Program, and who suffer from a mental or physical disability. 42 U.S.C. § 423(a)(1); Bowen v. City of New York, 476 U.S. 467, 470 (1986).

1 I. PROCEDURAL BACKGROUND

2 Plaintiff applied for DIB on January 14, 2013. Administrative Record (“AR”) 14.² The
3 disability onset date was alleged to be December 19, 2012. Id. The application was disapproved
4 initially and on reconsideration. Id. On August 18, 2014, ALJ Daniel G. Heely presided over the
5 hearing on plaintiff’s challenge to the disapprovals. AR 29 – 53 (transcript). Plaintiff, who
6 appeared with her counsel Jeffrey Milam, was present at the hearing. AR 29. Jo Ann Yoshioka,
7 a Vocational Expert (“VE”), also testified at the hearing. Id.

8 On October 27, 2014, the ALJ found plaintiff “not disabled” under Sections 216(i) and
9 223(d) of Title II of the Act, 42 U.S.C. §§ 416(i), 423(d). AR 14-22 (decision), 23-26 (exhibit
10 list). On March 22, 2016, after receiving Exhibit 16E, Representative Brief dated February 11,
11 2015 as an additional exhibit, the Appeals Council denied plaintiff’s request for review, leaving
12 the ALJ’s decision as the final decision of the Commissioner of Social Security. AR 1-5
13 (decision and additional exhibit list).

14 Plaintiff filed this action on May 25, 2016. ECF No. 1; see 42 U.S.C. § 405(g). The
15 parties consented to the jurisdiction of the magistrate judge. ECF Nos. 7, 11. The parties’ cross-
16 motions for summary judgment, based upon the Administrative Record filed by the
17 Commissioner, have been fully briefed. ECF Nos. 17 (plaintiff’s summary judgment motion), 19
18 (Commissioner’s summary judgment motion), 20 (plaintiff’s reply).

19 II. FACTUAL BACKGROUND

20 Plaintiff was born on April 20, 1966, and accordingly was, at age 46, a younger person
21 under the regulations, when she filed her application.³ AR 55. Plaintiff has at least a high school
22 education, and can communicate in English. AR 178, 305. Plaintiff worked as a school bus
23 driver from December of 1995 through December of 2012. AR 180.

24 III. LEGAL STANDARDS

25 The Commissioner’s decision that a claimant is not disabled will be upheld “if it is
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27 ² The AR is electronically filed at ECF Nos. 13-3 to 13-13 (AR 1 to AR 506).

28 ³ See 20 C.F.R. § 404.1563(c) (“younger person”).

1 supported by substantial evidence and if the Commissioner applied the correct legal standards.”
2 Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1011 (9th Cir. 2003). ““The findings of the
3 Secretary as to any fact, if supported by substantial evidence, shall be conclusive” Andrews
4 v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995) (quoting 42 U.S.C. § 405(g)).

5 Substantial evidence is “more than a mere scintilla,” but “may be less than a
6 preponderance.” Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012). “It means such
7 evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson v.
8 Perales, 402 U.S. 389, 401 (1971) (internal quotation marks omitted). “While inferences from the
9 record can constitute substantial evidence, only those ‘reasonably drawn from the record’ will
10 suffice.” Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006) (citation omitted).

11 Although this court cannot substitute its discretion for that of the Commissioner, the court
12 nonetheless must review the record as a whole, “weighing both the evidence that supports and the
13 evidence that detracts from the [Commissioner’s] conclusion.” Desrosiers v. Secretary of HHS,
14 846 F.2d 573, 576 (9th Cir. 1988); Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985) (“The
15 court must consider both evidence that supports and evidence that detracts from the ALJ’s
16 conclusion; it may not affirm simply by isolating a specific quantum of supporting evidence.”).

17 “The ALJ is responsible for determining credibility, resolving conflicts in medical
18 testimony, and resolving ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th
19 Cir. 2001). “Where the evidence is susceptible to more than one rational interpretation, one of
20 which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.” Thomas v. Barnhart,
21 278 F.3d 947, 954 (9th Cir. 2002). However, the court may review only the reasons stated by the
22 ALJ in his decision “and may not affirm the ALJ on a ground upon which he did not rely.” Orn
23 v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007); Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir.
24 2003) (“It was error for the district court to affirm the ALJ’s credibility decision based on
25 evidence that the ALJ did not discuss”).

26 The court will not reverse the Commissioner’s decision if it is based on harmless error,
27 which exists only when it is “clear from the record that an ALJ’s error was ‘inconsequential to the
28 ultimate nondisability determination.” Robbins v. Soc. Sec. Admin., 466 F.3d 880, 885 (9th Cir.

1 2006) (quoting Stout v. Commissioner, 454 F.3d 1050, 1055 (9th Cir. 2006)); see also Burch v.
2 Barnhart, 400 F.3d 676, 679 (9th Cir. 2005).

3 IV. RELEVANT LAW

4 Disability Insurance Benefits and Supplemental Security Income are available for every
5 eligible individual who is “disabled.” 42 U.S.C. §§ 402(d)(1)(B)(ii) (DIB), 1381a (SSI). Plaintiff
6 is “disabled” if she is “unable to engage in substantial gainful activity due to a medically
7 determinable physical or mental impairment” Bowen v. Yuckert, 482 U.S. 137, 140 (1987)
8 (quoting identically worded provisions of 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A)).

9 The Commissioner uses a five-step sequential evaluation process to determine whether an
10 applicant is disabled and entitled to benefits. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4);
11 Barnhart v. Thomas, 540 U.S. 20, 24-25 (2003) (setting forth the “five-step sequential evaluation
12 process to determine disability” under Title II and Title XVI). The following summarizes the
13 sequential evaluation:

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

16 20 C.F.R. § 404.1520(a)(4)(i), (b).

17 Step two: Does the claimant have a “severe” impairment? If so,
18 proceed to step three. If not, the claimant is not disabled.

19 Id. §§ 404.1520(a)(4)(ii), (c).

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

24 Id. §§ 404.1520(a)(4)(iii), (d).

25 Step four: Does the claimant’s residual functional capacity make
26 him capable of performing his past work? If so, the claimant is not
27 disabled. If not, proceed to step five.

28 Id. §§ 404.1520(a)(4)(iv), (e), (f).

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

Id. §§ 404.1520(a)(4)(v), (g).

1 10. [Step 5, continued] Considering the claimant’s age, education, work
2 experience, and residual functional capacity, there are job that exist in significant
3 numbers in the national economy that the claimant can perform (20 CFR 404.1569
4 and 404.1569(a).

5 11. The claimant has not been under a disability, as defined in the Social Security
6 Act, from December 19, 2012, through the date of this decision (20 CFR
7 404.1520(g)).

8 AR 16-21

9 As noted, the ALJ concluded that plaintiff was “not disabled” under Title II of the Act.

10 AR 21.

11 VI. ANALYSIS

12 Plaintiff alleges that the ALJ erred by failing to provide legally sufficient reasons for
13 finding the plaintiff not credible. AR 17 at 7. Plaintiff argues the failure was harmful, and that
14 the case should be remanded to the Commissioner for further proceedings. Id.

15 A. The ALJ Improperly Rejected Plaintiff’s Subjective Testimony

16 The ALJ improperly rejected plaintiff’s subjective testimony regarding her pain and
17 impairments. Evaluating the credibility of a plaintiff’s subjective testimony is a two-step process.
18 First, the ALJ must “determine whether the claimant has presented objective medical evidence of
19 an underlying impairment which could reasonably be expected to produce the pain or other
20 symptoms alleged. . . . In this analysis, the claimant is not required to show that her impairment
21 could reasonably be expected to cause the severity of the symptom she has alleged; she need only
22 show that it could reasonably have caused some degree of the symptom.” Garrison v. Colvin, 759
23 F.3d 995, 1014 (9th Cir. 2014) (internal citations omitted). Objective medical evidence of the
24 pain or fatigue itself is not required. Id. (internal citations omitted). Second, if the ALJ does not
25 find evidence of malingering, the ALJ may only reject the claimant’s testimony by offering
26 “specific, clear and convincing reasons for doing so.” Id. (internal citations omitted). The Ninth
27 Circuit has “repeatedly warned that ALJs must be especially cautious in concluding that daily
28 activities are inconsistent with testimony about pain, because impairments that would
unquestionably preclude work and all the pressures of a workplace environment will often be
consistent with doing more than merely resting in bed all day.” Id. at 1016.

1 The ALJ’s opinion states that plaintiff’s testimony is discredited for “reasons explained in
2 [the] decision” (AR 19), but the only clear reason the ALJ provides is that plaintiff has “ample
3 activities of daily living” and traveled to Mexico and Monterey during her period of alleged
4 disability. AR 20. The activities of daily living the ALJ describes earlier in his order include
5 cooking, light cleaning, taking her daughter to school, maintaining her personal care, sometimes
6 preparing meals, doing laundry, loading the dishwasher, driving, going out alone, shopping in
7 stores more than once per week, handling money, and watching television for 3 to 4 hours per
8 day. AR 18.

9 The ALJ’s reasons for discounting plaintiff’s subjective testimony are legally insufficient.
10 The ALJ failed to describe with any particularity how any of the above listed activities conflict
11 with plaintiff’s complaints of chronic pain. “An ALJ must identify the specific testimony that
12 lacks credibility, provide clear and convincing reasons why the testimony is not credible, and
13 identify the specific evidence in the record which supports the ALJ’s determination.” Talbot v.
14 Colvin, No. SACV 14-1935 JC, 2015 WL 5826808, at *4 (C.D. Cal. Sept. 30, 2015). The ALJ’s
15 minimal, blanket statement does not suffice.

16 To the extent the ALJ found that plaintiff’s travels to Mexico and Monterey specifically
17 contradicted her subjective testimony, the analysis is lacking. AR 20. The ALJ does not explain
18 how these trips create an inconsistency. Id. A review of the hearing transcript reveals that
19 plaintiff experienced increased problems with pain and stiffness during each of these trips. AR
20 41-43. The fact of these trips alone does not conflict with plaintiff’s testimony regarding her pain
21 and limitations. The ALJ erred in discrediting plaintiff with such limited support for doing so.

22 C. Remand

23 The undersigned agrees with plaintiff that the ALJ’s error is harmful and remand for
24 further proceedings by the Commissioner is necessary. AR 17 at 16. An error is harmful when it
25 has some consequence on the ultimate non-disability determination. Stout v. Comm’r, Soc. Sec.
26 Admin., 454 F.3d 1050, 1055 (9th Cir. 2006). The ALJ’s error in this matter was harmful;
27 plaintiff’s subjective testimony, properly considered, may very well result in a more restrictive
28 residual functional capacity assessment, which may in turn alter the finding of non-disability.


1 It is for the ALJ to determine in the first instance whether plaintiff has severe impairments
2 and, ultimately, whether she is disabled under the Act. See Marsh v. Colvin, 792 F.3d 1170, 1173
3 (9th Cir. 2015) (“the decision on disability rests with the ALJ and the Commissioner of the Social
4 Security Administration in the first instance, not with a district court”). “Remand for further
5 administrative proceedings is appropriate if enhancement of the record would be useful.”
6 Benecke v. Barnhart, 379 F.3d 587, 593 (9th Cir. 2004). Here, the ALJ failed to properly
7 consider plaintiff’s testimony. Further development of the record consistent with this order is
8 necessary, and remand for further proceedings is the appropriate remedy.

9 VII. CONCLUSION

10 For the reasons set forth above, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff’s motion for summary judgment (ECF No. 17), is GRANTED;
- 12 2. The Commissioner’s cross-motion for summary judgment (ECF No. 19), is DENIED;
- 13 3. This matter is REMANDED to the Commissioner for further consideration consistent
14 with this order; and
- 15 4. The Clerk of the Court shall enter judgment for plaintiff, and close this case.

16 DATED: September 6, 2017

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18 ALLISON CLAIRE
19 UNITED STATES MAGISTRATE JUDGE
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