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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL HONEYCUTT
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 2:16-cv-1650-KJN

ORDER

Plaintiff Daniel Honeycutt seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner”) denying plaintiff’s application for Disability Insurance Benefits (“DIB”) under Title II of the Social Security Act (“Act”).¹ In his motion for summary judgment, plaintiff principally contends that the Commissioner erred by finding that plaintiff was not disabled from September 9, 2003, plaintiff’s alleged disability onset date, through December 31, 2008, plaintiff’s date last insured. (ECF No. 19.) The Commissioner opposed plaintiff’s motion and filed a cross-motion for summary judgment. (ECF No. 22.) Thereafter, plaintiff filed a reply brief. (ECF No. 25.)

¹ This action was referred to the undersigned pursuant to Local Rule 302(c)(15), and both parties voluntarily consented to proceed before a United States Magistrate Judge for all purposes. (ECF Nos. 7, 10.)

1 After carefully considering the record and the parties' briefing, the court GRANTS IN
2 PART plaintiff's motion for summary judgment, DENIES the Commissioner's cross-motion for
3 summary judgment, and REMANDS the action for further administrative proceedings.

4 I. BACKGROUND

5 Plaintiff was born on August 13, 1956; did not graduate high school, but completed 2
6 years of college; can communicate in English; and previously worked as an accountant, billing
7 manager, and computer services analyst. (Administrative Transcript ("AT") 32-33, 42-43, 183,
8 185.)² On November 15, 2012, plaintiff applied for DIB, alleging that his disability began on
9 September 9, 2003. (AT 21, 85, 100, 167.) Plaintiff claimed that he was disabled due to panic
10 disorder and some symptoms indicating possible multiple sclerosis. (AT 184.) After plaintiff's
11 application was denied initially and on reconsideration, an administrative law judge ("ALJ")
12 conducted a hearing on April 17, 2014. (AT 39-73.) The ALJ subsequently issued a decision
13 dated August 15, 2014, determining that plaintiff had not been under a disability, as defined in the
14 Act, from September 9, 2003, plaintiff's alleged disability onset date, through December 31,
15 2008, plaintiff's date last insured. (AT 21-34.) The ALJ's decision became the final decision of
16 the Commissioner when the Appeals Council denied plaintiff's request for review on May 19,
17 2016. (AT 1-3.) Plaintiff subsequently filed this action on July 18, 2016, to obtain judicial
18 review of the Commissioner's final decision. (ECF No. 1.)

19 II. ISSUES PRESENTED

20 On appeal, plaintiff raises the following issues: (1) whether the ALJ improperly
21 discounted the opinion of plaintiff's treating physician, Dr. Ehyai; and (2) whether the ALJ
22 erroneously discounted plaintiff's own testimony regarding his symptoms and functional
23 limitations.

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26 ² Because the parties are familiar with the factual background of this case, including plaintiff's
27 medical and mental health history, the court does not exhaustively relate those facts in this order.
28 The facts related to plaintiff's impairments and treatment will be addressed insofar as they are
relevant to the issues presented by the parties' respective motions.

1 III. LEGAL STANDARD

2 The court reviews the Commissioner’s decision to determine whether (1) it is based on
3 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
4 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
5 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
6 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means “such relevant evidence as a reasonable
7 mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th
8 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is
9 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
10 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citation omitted). “The
11 court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one rational
12 interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

13 IV. DISCUSSION

14 Summary of the ALJ’s Findings

15 The ALJ evaluated plaintiff’s entitlement to DIB pursuant to the Commissioner’s standard
16 five-step analytical framework.³ As an initial matter, the ALJ determined that plaintiff met the

17 ³ Disability Insurance Benefits are paid to disabled persons who have contributed to the Social
18 Security program. 42 U.S.C. §§ 401 et seq. Supplemental Security Income is paid to disabled
19 persons with low income. 42 U.S.C. §§ 1382 et seq. Both provisions define disability, in part, as
20 an “inability to engage in any substantial gainful activity” due to “a medically determinable
21 physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A). A parallel
22 five-step sequential evaluation governs eligibility for benefits under both programs. See 20
23 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-
24 42 (1987). The following summarizes the sequential evaluation:

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

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

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

Step four: Is the claimant capable of performing her past relevant work? If so, the

1 insured status requirements of the Act for purposes of DIB through December 31, 2008. (AT 23.)
2 At the first step, the ALJ concluded that plaintiff had not engaged in substantial gainful activity
3 from September 9, 2003, his alleged disability onset date, through December 31, 2008, plaintiff's
4 date last insured. (Id.) At step two, the ALJ found that plaintiff had the following severe
5 impairment through the date last insured: panic disorder. (Id.) However, at step three, the ALJ
6 determined that, through the date last insured, plaintiff did not have an impairment or
7 combination of impairments that met or medically equaled the severity of an impairment listed in
8 20 C.F.R. Part 404, Subpart P, Appendix 1. (AT 24.)

9 Before proceeding to step four, the ALJ assessed plaintiff's RFC as follows:

10 After careful consideration of the entire record, the undersigned
11 finds that, through the date last insured, the claimant had the
12 residual functional capacity to perform a full range of work at all
13 exertional levels but with the following nonexertional limitations:
the claimant is limited to simple, repetitive tasks in a nonpublic
work setting.

14 (AT 25.) At step four, the ALJ determined that plaintiff was unable to perform any past relevant
15 work through the date last insured. (AT 32.) However, at step five the ALJ found that, in light of
16 plaintiff's age, education, work experience, RFC, and the vocational expert's testimony, there
17 were jobs that existed in significant numbers in the national economy that plaintiff could have
18 performed through the date last insured. (AT 33.)

19 Thus, the ALJ concluded that plaintiff had not been under a disability, as defined in the
20 Act, from September 9, 2003, plaintiff's alleged disability onset date, through December 31,
21 2008, plaintiff's date last insured. (AT 34.)

22 claimant is not disabled. If not, proceed to step five.

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

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

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

1 For a significant part of the period under review, plaintiff was treated for his panic
2 disorder, resulting in various somatic physical and neurological symptoms such as pain,
3 numbness, tingling, other paresthesia, impaired gait, and broken speech, by neurologist Dr. Reza
4 Ehyai. Over that time period, Dr. Ehyai opined on several occasions that plaintiff's panic
5 disorder precluded him from returning to work, especially due to the frequency of panic attacks
6 and the role of stress. The ALJ's decision primarily gave little weight to Dr. Ehyai's opinion,
7 because, according to the ALJ, Dr. Ehyai's treatment records reflected that plaintiff's condition
8 had improved with continued treatment and was fairly stable. (AT 31-32.) The problem with that
9 reasoning is that, although Dr. Ehyai's records certainly document improvement and some degree
10 of stability, the records also potentially suggest that the level of plaintiff's symptoms, even if
11 somewhat stable, may nonetheless have precluded employment. See, e.g., AT 402 ("Although,
12 his anxiety level has improved with medication, still he experiences panic attacks during the
13 daytime...."); AT 400 ("The patient is still symptomatic. Inderal and Xanax are helping, as well
14 as Lexapro. When he gets a panic attack, he becomes confused, has palpitations, shortness of
15 breath, and tremor. His symptoms return frequently under stressful situations and social
16 events."); AT 388 ("Although the frequency of his panic attacks with current treatment have
17 improved, nevertheless, they do occur several times per week, particularly under stressful
18 situations. The symptoms include dizziness, perspiration, paresthesia, and difficulty
19 concentrating.").

20 Of course, that possibility is not to say that the ALJ was required to accept Dr. Ehyai's
21 opinion, but the ALJ's reasons for giving little weight to Dr. Ehyai's opinion are not persuasively
22 supported by the record. Furthermore, no consultative examination of plaintiff was ordered, and
23 the opinions of the non-examining physicians alone are insufficient to reject the opinion of
24 plaintiff's treating physician. Lester, 81 F.3d at 831.

25 Therefore, the court finds it appropriate to remand the action for further proceedings,
26 including a consultative examination with an appropriate mental health specialist, who is
27 provided with full access to plaintiff's prior records. Any opinion rendered by such a consultative
28 examiner would necessarily be retrospective. However, the consultative examiner shall

1 nonetheless endeavor to formulate an opinion regarding plaintiff's mental functional capacity
2 during the relevant period, based on a contemporaneous personal evaluation of plaintiff as well as
3 a thorough review of plaintiff's prior records during the relevant period. The ALJ is also free to
4 develop the record in other respects, such as by obtaining supplemental vocational expert
5 testimony, if appropriate. Importantly, the court does not instruct the ALJ to credit any particular
6 opinion on remand. Indeed, the court expresses no opinion regarding how the evidence should
7 ultimately be weighed, and any ambiguities or inconsistencies resolved, on remand, provided that
8 the ALJ's decision is based on proper legal standards and supported by substantial evidence in the
9 record as a whole.

10 *Other Issues*

11 In light of the court's conclusion that the case should be remanded for further
12 development of the mental health evidence, the court declines to reach the issue of plaintiff's
13 credibility at this juncture. On remand, the ALJ will have an opportunity to reevaluate her
14 credibility findings, if appropriate.

15 The court also notes plaintiff's request in the record to have a different ALJ assigned to
16 this matter on remand. However, although this court disagreed with portions of the ALJ's
17 analysis, nothing on this record indicates that the assigned ALJ could not be a fair and impartial
18 adjudicator on remand. Therefore, the request for reassignment is denied.

19 V. CONCLUSION

20 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 21 1. Plaintiff's motion for summary judgment (ECF No. 19) is GRANTED IN PART.
- 22 2. The Commissioner's cross-motion for summary judgment (ECF No. 22) is
23 DENIED.
- 24 3. The Commissioner's final decision is REVERSED, and the action is
25 REMANDED for further administrative proceedings consistent with this order pursuant to
26 sentence four of 42 U.S.C. § 405(g).
- 27 4. Plaintiff's request for reassignment of this case to another administrative law judge
28 is DENIED.

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5. The Clerk of Court shall close this case.

IT IS SO ORDERED.

Dated: December 21, 2017


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE