UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ALLEN HATFIELD,

Plaintiff,

v.

CAROLYN W. COLVIN,

Defendant.

Case No. 14-cv-03262-JCS

ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT

Re: Dkt. No. 25

I. INTRODUCTION

This case concerned Plaintiff Michael Hatfield's challenge to the Commissioner of Social Security's (the "Commissioner's") denial of his most recent application for disability benefits. The Court granted Hatfield's motion for summary judgment, denied the Commissioner's motion for summary judgment, and ordered the case remanded to the Commissioner for an award of benefits pursuant to the Ninth Circuit's "credit-as-true" rule. The Commissioner now asks the Court to alter or amend judgment under Rule 59(e) of the Federal Rules of Civil Procedure. For the reasons stated below, the Commissioner's present Motion is DENIED.[1]

II. BACKGROUND

A. Administrative Proceedings

After Hatfield was initially found not to be disabled in 2010—a decision not at issue in the present action—Hatfield filed another application for disability benefits in April of 2011. The application was denied, and an administrative law judge (the "ALJ") held a hearing in August of 2012. The ALJ issued a decision finding Hatfield not disabled.

First, the ALJ found that Hatfield was not engaged in substantial gainful activity. AR at

[1] The parties have consented to the jurisdiction of the undersigned magistrate judge for all purposes pursuant to 28 U.S.C § 636(c).

20. Then, the ALJ adopted the previous ALJ's findings with respect to Hatfield's severe impairments, finding a lack of new impairments or increased severity in previously considered impairments. AR at 20–21. Given the finding of no new or exacerbated impairments since the previous decision, the ALJ then adopted the previous ALJ's conclusion in the next step—that Hatfield's impairments do not meet or equal a listed impairment. AR at 21. With respect to the residual functional capacity ("RFC") analysis, the ALJ found no changed circumstances with respect to Hatfield's prior RFC and adopted the previous ALJ's RFC assessment. AR at 22. In so doing, the ALJ rejected a treating physician's March 2012 opinion that Hatfield could sit for less than two hours total and could stand or walk for less than two hours total in an eight-hour work day. AR at 21–24. The ALJ's analysis of that opinion, which is central to the Court's previous Order and to the Commissioner's present Motion, reads as follows:

> The claimant recently came under the care of Jeffrey Meckler, M.D., who completed a form indicating that the claimant has significant difficulties affecting his ability to sit, stand/walk, maintain attention and concentration, and maintain regular attendance. Exhibit B12F. The undersigned has considered this opinion but finds that it is entitled to only partial weight because it is not well-supported by Dr. Meckler's treatment notes. Specifically, the undersigned notes that Dr. Meckler has seen the claimant on only three occasions, for treatment of fatigue, sexual dysfunction, and shoulder pain. Dr. Meckler administered testosterone injections and prescribed pain medications. In January 2012, Dr. Meckler noted that the claimant's current treatment was improving his daily function, and in February 2012 he noted normal psychiatric findings and no complaints of pain. Exhibit B16F.

AR at 23.

Finally, the ALJ adopted the previous ALJ's finding that Hatfield could not perform past relevant work but could perform other available work in the economy, even though the vocational expert at the second hearing found no available jobs given Hatfield's RFC. AR at 24, 62–63.

B. The Court's Previous Order

The Court held that the ALJ erred in rejecting Dr. Meckler's opinions regarding Hatfield's capacity to sit and stand during a workday. While the ALJ based her decision in part on her conclusion that "Dr. Meckler has seen the claimant on only three occasions," AR at 23, the Court determined that the record actually reflected five office visits in the period before Dr. Meckler

prepared the assessment at issue. Order (dkt. 22)[2] at 9. The Court also determined that Dr. Meckler's relationship with Hatfield extended well beyond the "treatment of fatigue, sexual dysfunction, and shoulder pain," AR at 23, and the provision of testosterone injections and pain medication discussed in the ALJ's decision. Order at 8−9. While the ALJ wrote that Dr. Meckler "noted normal psychiatric findings and no complaints of pain" during a February 2012 visit, AR at 23, the "Review of Symptoms" in those treatment notes indicates that Hatfield was "[p]ositive for back pain and joint pain," AR at 40. *See* Order at 10. The Court also questioned the ALJ's reliance on a boilerplate statement of normal psychiatric findings that was included in every treatment note, even where Dr. Meckler prescribed medication for bipolar disorder. *Id.* The Court found numerous indications of Hatfield's pain symptoms in the record that the ALJ failed to address. *Id.* at 11. Overall, the Court determined that the ALJ's decision to afford "only partial weight" to Dr. Meckler's opinion—and in effect to discount it entirely—was not supported by substantial evidence, particularly given the legal standard for affording deference to the opinion of a treating physician. The Court followed Ninth Circuit precedent to credit Dr. Meckler's opinions as true because the ALJ erred in discounting his credibility, and the Court therefore granted Hatfield's motion, entered judgment in his favor, and ordered the case remanded for an award of benefits. *Id.* at 12−14.[3]

C. The Parties' Present Arguments

The Commissioner argues that the Court "substituted its own judgment for that of the ALJ," contravening the "'highly deferential standard of review'" required when reviewing social security disability decisions. Mot. (dkt. 25) at 6−7 (quoting *Valentine v. Astrue*, 574 F.3d 685, 690 (9th Cir. 2009)). According to the Commissioner, the ALJ was correct to determine that Dr. Meckler's treatment notes do not support Dr. Meckler's opinions regarding Hatfield's purported disability. *Id.* at 8−10. For example, the Commissioner points to multiple notes that Hatfield "appears well-developed and well-nourished" with "no distress," and observes that Dr. Meckler's

[2] *Hatfield v. Colvin*, No. 14-cv-03262-JCS, 2015 WL 4089834 (N.D. Cal. July 6, 2015).
[3] The Court also noted a number of other discrepancies between the ALJ's analysis and the administrative record, but those discrepancies did not form the basis for the Court's decision and need not be addressed in detail in this Order. *See* Order at 14.

treatment notes do not address the tests described in his opinion on Hatfield's disability, such as a straight leg raising test. *Id.* at 9−10 (citing AR at 805, 810). The Commissioner asserts that "[t]he regulations and case law make clear that such discrepancies constitute a valid basis for discounting a doctor's opinion regarding the claimant's functionality." *Id.* at 10.

The Commissioner also argues that the Court erred in its interpretation of Dr. Meckler's treatment notes regarding Hatfield's psychiatric symptoms, in determining that Dr. Meckler's opinions were uncontroverted, and in remanding for an award of benefits rather than for further administrative proceedings. *Id.* at 11−21.

Hatfield argues that the Commissioner concedes at least one error by the ALJ—the number of times Dr. Meckler treated Hatfield—and that where the Commissioner sees the Court substituting its judgment for the ALJ's, the Court in fact objectively determined that the ALJ's stated reasoning was not supported by substantial evidence in the record. Opp'n (dkt. 26) at 3−8. According to Hatfield, the Commissioner's arguments extend beyond the ALJ's stated reasoning, and the Court must constrain its review to the grounds articulated by the ALJ. *Id.* at 7−8 (citing, *e.g.*, *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007)). Hatfield also argues that the Court was correct to determine that Dr. Meckler's opinion was uncontroverted, that the Commissioner's pre-judgment arguments failed to present reasons why a judgment in Hatfield's favor should take the form of remand for further proceedings rather than remand for benefits, and that the Court was correct to remand the case for benefits under the Ninth Circuit's credit-as-true doctrine. *Id.* at 8−11.

III. ANALYSIS

A. Legal Standard

Rule 59(e) provides that a party may file a "motion to alter or amend a judgment." Fed. R. Civ. P. 59(e). The Ninth Circuit has explained the standard for a motion under Rule 59(e) as follows:

> "Since specific grounds for a motion to amend or alter are not listed in the rule, the district court enjoys considerable discretion in granting or denying the motion." *McDowell v. Calderon*, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (en banc) (per curiam) (internal quotation marks omitted). But amending a judgment after its entry remains "an extraordinary remedy which should be used sparingly."

> *Id*. (internal quotation marks omitted). In general, there are four basic grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law. *Id*.

Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1112 (9th Cir. 2011). This Rule "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been made prior to the entry of judgment." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (citation omitted). In this case, the Commissioner relies on the first and third grounds for relief, claiming manifest error and injustice. *See* Mot. at 5.

B. Procedural Impropriety of the Motion

Amending judgment is an "extraordinary remedy," *Allstate*, 643 F.3d at 1113, and Rule 59(e) "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been made prior to the entry of judgment," *Exxon Shipping*, 554 U.S. at 485 n.5. All of the Commissioner's arguments either were or could have been presented in the Commissioner's initial response and cross-motion for summary judgment. *See* dkt. 21. Neither the Commissioner's failure to raise arguments at that time, nor her dissatisfaction with the Court's ruling on arguments the parties already presented, is a valid basis for a motion under Rule 59(e). *See Exxon Shipping*, 554 U.S at 485 n.5. This alone is a sufficient reason to deny the present Motion. The Court nevertheless discusses the Commissioner's arguments below.

C. The ALJ's Failure to Credit Dr. Meckler's Opinion

Dr. Meckler completed a form indicating, among other opinions, that Hatfield could neither sit nor stand or walk for more than two hours in an eight-hour work day. AR at 749. There is no dispute that, if true, this would preclude Hatfield from working. Nor is there any dispute that Dr. Meckler was Hatfield's treating physician. The ALJ could therefore reject Dr. Meckler's opinion only for "clear and convincing reasons" if it was uncontroverted, or for "specific and legitimate reasons" if contradicted by another, non-treating doctor. *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995).

The ALJ provided the following seven reasons for affording only "partial weight"—in

effect, no weight—to Dr. Meckler's opinion: (1) "it is not well-supported by Dr. Meckler's treatment notes"; (2) "Dr. Meckler has seen the claimant on only three occasions"; (3) Dr. Meckler only provided "treatment of fatigue, sexual dysfunction, and shoulder pain"; (4) that treatment consisted of "administer[ing] testosterone injections and prescrib[ing] pain medications"; (5) Dr. Meckler noted improvement in Hatfield's daily functioning in January of 2012; (6) Dr. Meckler "noted normal psychiatric findings" in February of 2012; and (7) Dr. Meckler noted "no complaints of pain" in February of 2012. AR at 23. The Court addresses these reasons in turn.

First, the conclusory statement that Dr. Meckler's opinion "is not well-supported by Dr. Meckler's treatment notes"—without more—is not a "specific" reason, as required to reject the contradicted opinion of a treating physician, much less a "clear and convincing" reason sufficient to meet the higher standard for rejecting an uncontroverted opinion.[4] Of course, the ALJ went on to give what she saw as specific discrepancies between the opinion and the treatment notes, as listed above and discussed below, but the Commissioner cannot rely on the generic assertion of lack of support to now put forward what she contends are other inconsistencies beyond those that the ALJ discussed, such as the treatment notes' failure to discuss some of the tests included in the disability opinion. *See* Mot. at 9; *Orn*, 495 F.3d at 630 ("[Courts] review only the reasons provided by the ALJ in the disability determination and may not affirm the ALJ on a ground upon which he did not rely.").

Next, the Commissioner concedes that the ALJ erred in stating that Dr. Meckler only saw Hatfield on three occasions. *See* Mot. at 10 n.2. According to the Commissioner, however, the error was harmless because Dr. Meckler saw Hatfield on only four occasions before issuing his opinion regarding Hatfield's disability: November 9, 2011; January 5, 2012; February 2, 2012; and March 26, 2012. *See id.* at 8−10 & n.2. The Commissioner apparently overlooks notes

[4] The Court stands by its conclusion that Dr. Meckler's opinion is uncontroverted because the arguably contradictory opinions predate Dr. Meckler's treatment of Hatfield, because Hatfield's claim is premised on the belief that his condition has worsened since his first application for benefits was rejected, and because the ALJ did not identify purportedly contradictory opinions as a reason to reject Dr. Meckler's opinion. *See* Order at 7. But that issue is immaterial to the outcome, because the ALJ's reasons to reject the opinion do not meet even the "specific and legitimate" standard for treating physicians' opinions that are contradicted by other medical evidence.

indicating that a fifth (or sequentially, first[5]) "Office Visit" occurred on October 19, 2011, with Dr. Meckler listed as the provider. *See* AR at 808−09. Moreover, although the sixth visit on April 26, 2012 occurred after Dr. Meckler issued his disability opinion in March, *see* AR at 800−01, the ALJ did not qualify her statement that "Dr. Meckler has seem the claimant on only three occasions" as limited to visits before the disability opinion, *see* AR at 23, and a subsequent visit that confirmed Hatfield's symptoms of pain and weakness should warrant at least some discussion. It is not clear why the Court should assume that the ALJ's misstatement of the record was harmless when Hatfield in fact saw Dr. Meckler *twice as many times* as the ALJ stated, particularly given that prior cases have held that the opinion of a treating physician who has seen a patient only *once* is still "entitled to greater weight than that of an examining or reviewing physician." *See Benton ex rel. Benton v. Barnhart*, 331 F.3d 1030, 1038−39 (9th Cir. 2003); Order at 9. The ALJ's statement that Dr. Meckler saw Hatfield only three times was neither supported by substantial evidence nor a legitimate reason to disregard Dr. Meckler's opinions.

Third, as discussed in the Court's previous Order, Dr. Meckler treated Hatfield for a significantly wider range of ailments than the "fatigue, sexual dysfunction, and shoulder pain" acknowledged by the ALJ, and that treatment extended beyond merely "administer[ing] testosterone injections and prescrib[ing] pain medications." *See* AR at 23; Order at 8−9. Despite the Court basing its previous Order in part on the ALJ's incomplete characterization of Dr. Meckler's treatment of Hatfield, the Commissioner does not address that issue in her present Motion. The Court stands by its conclusion that the ALJ's implication that Dr. Meckler treated Hatfield in only a limited scope was not supported by substantial evidence and thus was not a legitimate reason to disregard Dr. Meckler's opinions.

The ALJ correctly stated that Dr. Meckler noted some improvement of Hatfield's daily

[5] The Court's previous Order stated that Dr. Meckler "began to oversee Hatfield's treatment in September 2011." Order at 4. The Commissioner is correct that although Dr. Meckler later reviewed notes from Hatfield's September visit with a physician's assistant, there is no evidence that Dr. Meckler became involved before October. *See* Mot. at 9 n.1. That misstatement in the Court's previous Order does not affect the outcome. The Court need not address whether the ALJ erred in failing to acknowledge Dr. Meckler's familiarity with the work of other members of a treatment team. *See Benton ex rel. Benton v. Barnhart*, 331 F.3d 1030, 1039 (9th Cir. 2003).

function in January of 2012. AR at 23; *see* AR at 806. As discussed in the Court's previous Order, however, a disabled person can improve and yet remain disabled. Order at 11; *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014) ("The fact that a person suffering from depression makes some improvement 'does not mean that the person's impairment[] no longer seriously affect[s] [his] ability to function in a workplace.'" (quoting *Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th Cir. 2001) (alterations in original)). Without any indication of what level of functioning Hatfield had at the time of the January visit with Dr. Meckler, the isolated note of improvement does not contradict Dr. Meckler's later opinions regarding Hatfield's impairments.

The Commissioner argues that the ALJ properly relied on a series of treatment notes indicating normal psychiatric findings. Mot. at 11−12 (citing AR at 804, 805, 807, 810, 811). This argument could more properly be framed as defending the ALJ's reliance on the single such note that she actually discussed in her decision, from February 2, 2012. *See* AR at 23, 805. The Court stands by its previous conclusion that the ALJ's reliance on the note was not supported by substantial evidence where the same boilerplate diagnosis appeared in every treatment record, even when Dr. Meckler described Hatfield as anxious and nervous and prescribed medication for bipolar disorder. Order at 10 (citing AR at 804). Regardless, Hatfield's mental health is not material to the determination that he is disabled because he lacks sufficient capacity to sit, stand, or walk during a workday. *See id.* at 12−13.

Finally, the ALJ erroneously stated that Dr. Meckler "noted . . . no complaints of pain" during Hatfield's February 2012 visit. AR at 23. As discussed in the Court's previous Order, Dr. Meckler in fact wrote in his "Review of Symptoms" that Hatfield was "[p]ositive for back pain and joint pain." AR at 804. The Commissioner suggests that the ALJ was correct to disregard this note because it describes Hatfield's subjective reports of symptoms rather than Dr. Meckler's objective findings, and Dr. Meckler also wrote that Hatfield "appear[ed] well-developed and well-nourished" and exhibited "no distress." Mot. at 9−10; AR at 805. The Commissioner does not address the fact that the ALJ's stated reason for disregarding Dr. Meckler's opinion—that Dr. Meckler noted "no *complaints* of pain," AR at 23 (emphasis added)—objectively misstates the record. Moreover, the note that the Commissioner relies on regarding Hatfield's lack of "distress"

is prefaced with the category "Constitutional." *See* AR at 805. In the "Review of Symptoms," Hatfield's "constitutional" symptoms consist of "malaise/fatigue." AR at 804. In contrast, his pain symptoms fall within the separate category "Musculoskeletal." *Id.* Thus, while the "no distress" note could perhaps weigh against complaints of malaise and fatigue, there is no indication that Dr. Meckler disputed the back and joint pain he recorded in Hatfield's "Review of Symptoms." The ALJ's statement that Dr. Meckler noted "no complaints of pain" was not supported by substantial evidence and therefore was not a legitimate reason to disregard Dr. Meckler's opinions.

Accordingly, the ALJ did not identify any specific, legitimate reason, supported by substantial evidence, to limit the weight given to Dr. Meckler's opinion that Hatfield could neither sit nor stand or walk for two hours in an eight-hour workday. *See* AR at 23, 749. The Court finds no manifest error or injustice in its previous conclusion that the ALJ erred in rejecting Dr. Meckler's opinions, and thus erred in finding no changed circumstances from Hatfield's previous determination of non-disability.

D. Remand for Benefits

The Commissioner also argues that the Court erred in crediting Dr. Meckler's opinions as true and remanding for an award of benefits, rather than for further administrative proceedings. Mot. at 14−21. The Commissioner's objection to the Ninth Circuit's credit-as-true doctrine is noted for the record, *see id.* at 16, but this Court is bound by Ninth Circuit precedent. Accordingly, it is appropriate to remand for benefits rather than further proceedings where: (1) the ALJ failed to provide legally sufficient reasons to reject a claimant's testimony or a medical opinion; (2) the record has been fully developed; and (3) if the testimony were treated as credible, the ALJ would be required to find the claimant disabled on remand. *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1101 (9th Cir. 2014); *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014). Even if those conditions are met, the Court retains discretion to remand for further proceedings if "the record as a whole creates serious doubt as to whether the claimant is, in fact, disabled." *Garrison*, 759 F.3d at 1021; *see also Treichler*, 775 F.3d at 1102. The credit-as-true doctrine incentivizes careful analysis during an ALJ's first review of the credibility of medical

evidence and promotes efficient and timely final decisions for claimants, many of whom "'suffer from painful and debilitating conditions, as well as severe economic hardship.'" *Garrison*, 759 F.3d at 1019−20 (quoting *Varney v. Sec'y of Health & Human Servs.*, 859 F.2d 1396, 1398−99 (9th Cir. 1988)). "'[I]f grounds for [concluding that a claimant is not disabled] exist, it is both reasonable and desirable to require the ALJ to articulate them in the original decision.'" *Id.* at 1020 (quoting *Varney*, 859 F.2d at 1399) (alterations in original).

In arguing that the case should not be remanded for an award of benefits, the Commissioner's brief prior to judgment merely recited a legal standard and the conclusory assertion that "even if the Court were to accept Plaintiff's arguments that the ALJ's credibility finding or evaluation of the opinion evidence was legally deficient, substantial evidence would remain suggesting Plaintiff is not disabled and additional proceedings would be necessary before disability could be judicially determined." Comm'r's Cross Mot. & Opp'n (dkt. 20) at 10. Rule 59(e) "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been made prior to the entry of judgment." *Exxon Shipping*, 554 U.S. at 485 n.5. The Court will not countenance a legal strategy of reserving substantive argument as to why further administrative proceedings are necessary until after the entry of an adverse judgment.

Moreover, even if the Court were to consider the Commissioner's post-judgment arguments, the Court stands by the conclusion that remand for benefits is appropriate. As discussed above, the ALJ failed to provide sufficient reasons to reject Dr. Meckler's opinions. There is no dispute that Hatfield would be found disabled if Dr. Meckler's opinions regarding his limited capacity to sit, stand, and walk were taken as true. The remaining questions, then, are whether the record has been fully developed, and whether the record creates serious doubt as to Hatfield's disability.

This is a case where the administrative record includes evidence from multiple medical sources including a treating physician's opinions regarding the claimant's capabilities in work-related settings. The Commissioner never suggested that the record was not fully developed until after the Court entered judgment in Hatfield's favor. As for whether there are "serious doubts" as to Hatfield's disability, the vocational expert testified that no jobs would be available for someone

similarly situated to Hatfield even with far less significant restrictions than Dr. Meckler identified. According to the vocational expert, for example, merely requiring a "sit/stand option" would preclude Hatfield from finding work. AR at 61−63.

The Commissioner's position appears to be, essentially, that whenever medical evidence is not unanimous, even if dissenting opinions come from only non-treating physicians, courts cannot rely on a treating physician's testimony under the credit-as-true rule but must instead remand to give the ALJ a second attempt at weighing the evidence. Such a rule would significantly undermine the prophylactic and efficiency concerns underlying the credit-as-true doctrine, and the Court declines to so limit it. In this case, the Court finds that the record was fully developed and finds no serious doubt that Hatfield is disabled based on the record as a whole. Remanding for benefits was neither manifest error nor manifest injustice.

IV. CONCLUSION

For the reasons stated above, the Commissioner's Motion to Alter or Amend Judgment is DENIED. The Judgment remanding the case for an award of benefits stands as previously entered.

IT IS SO ORDERED.

Dated: April 8, 2016

JOSEPH C. SPERO
Chief Magistrate Judge