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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAN KRUGER,

Plaintiff,

v.

CAROLYN W. COLVIN,

Defendant.

Case No. [16-cv-02459-EMC](#)

**ORDER (1) GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT; (2) DENYING
DEFENDANT'S CROSS-MOTION FOR
SUMMARY JUDGMENT; AND (3)
REMANDING CASE FOR FURTHER
PROCEEDINGS**

Docket Nos. 15, 16

In February 2009, Plaintiff Dan Kruger protectively filed an application for disability insurance benefits under Title II of the Social Security Act. *See* AR 203-04. The application was denied initially in April 2009, *see* AR 100-04, and then upon reconsideration in November 2009. *See* AR 108-12. Mr. Kruger then requested a hearing before an administrative law judge (“ALJ”). *See* AR 114. A hearing was held before ALJ Maxine R. Benmour in November 2010. *See* AR 52. Subsequently, in January 2011, ALJ Benmour issued her decision, concluding that Mr. Kruger was not disabled from October 20, 1995 (the alleged onset date) through December 31, 2000 (the date last insured). *See* AR 29-38. Mr. Kruger then asked the Appeals Council for the Social Security Administration (“SSA”) to review the ALJ’s decision, but that request was denied, thus leaving the ALJ’s decision as “the final decision of the Commissioner of Social Security.” AR 1. Mr. Kruger then initiated Case No. C-12-5820 EMC, challenging the ALJ’s decision.

In Case No. C-12-5820 EMC, the parties filed cross-motions for summary judgment, and this Court denied the Commissioner’s motion but granted in part and denied in part Mr. Kruger’s. The Court determined that a remand for further factual development of the record was necessary. *See generally Kruger v. Colvin*, No. C-12-5820 EMC (N.D. Cal.) (Docket No. 18) (order).

1 Consistent with the Court’s order, the SSA conducted further factual development of the
2 record. As noted by Mr. Kruger, he was “not able to offer any additional information beyond what
3 [he] had initially provided,” other than two letters from Dr. Bruce Blumberg, the genetic specialist
4 who first diagnosed him with a condition known as Ehler’s Danlos Syndrome, and more recent
5 medical records from Kaiser, which were dated well past his date last insured. Mot. at 2-3. A new
6 hearing was subsequently held before a different ALJ – Alberto E. Gonzalez – in April 2014. In
7 September 2014, ALJ Gonzalez issued his decision, denying Mr. Kruger’s claim for disability
8 insurance benefits. *See* AR 548-61. The Appeals Council found that the ALJ’s decision was
9 supported by substantial evidence. *See* AR 527. Mr. Kruger thereafter filed the instant action.

10 As indicated by the above, Mr. Kruger has exhausted his administrative remedies with
11 respect to his claim of disability, and this Court has jurisdiction to review pursuant to 42 U.S.C. §
12 405(g). Mr. Kruger has moved for summary judgment, seeking a reversal of the Commissioner’s
13 decision and a remand for an immediate award of benefits. The Commissioner has cross-moved
14 for summary judgment. Having considered the parties’ briefs and accompanying submissions,
15 including but not limited to the administrative record, and good cause appearing therefor, the
16 Court hereby **GRANTS** Mr. Kruger’s motion and **DENIES** the Commissioner’s. The Court
17 remands to the agency for further proceedings.

18 **I. FACTUAL & PROCEDURAL BACKGROUND**

19 As noted above, ALJ Gonzalez rejected Mr. Kruger’s claim for benefits, applying the five-
20 step sequential evaluation process provided for by 20 C.F.R. § 404.1520.

21 “Step one disqualifies claimants who are engaged in substantial
22 gainful activity from being considered disabled under the
23 regulations. Step two disqualifies those claimants who do not have
24 one or more severe impairments that significantly limit their
25 physical or mental ability to conduct basic work activities. Step
26 three automatically labels as disabled those claimants whose
27 impairment or impairments meet the duration requirement and are
28 listed or equal to those listed in a given appendix. Benefits are
awarded at step three if claimants are disabled. Step four
disqualifies those remaining claimants whose impairments do not
prevent them from doing past relevant work. Step five disqualifies
those claimants whose impairments do not prevent them from doing
other work, but at this last step the burden of proof shifts from the
claimant to the government. Claimants not disqualified by step five
are eligible for benefits.”

1 *Celaya v. Halter*, 332 F.3d 1177, 1180 (9th Cir. 2003).

2 In the instant case, ALJ Gonzalez made the following rulings.

- 3 • Mr. Kruger’s date last insured (“DLI”) was December 31, 2000. *See* AR 551; *see*
4 *also Sam v. Astrue*, 550 F.3d 808, 810 (9th Cir. 2008) (stating that “only disabilities
5 existing before date last insured establish entitlement to disability insurance
6 benefits”).
- 7 • Mr. Kruger did not engage in substantial gainful activity from October 20, 1995
8 (the onset date that Mr. Kruger asserted before the first ALJ),¹ to December 31,
9 2000 (the DLI). *See* AR 551.
- 10 • Through the DLI, Mr. Kruger had the following medically determinable
11 impairments: Ehlers Danlos syndrome (“EDS”) and annual fissures at the L4-5 and
12 L5-S1 levels, status post intradiscal electrothermal disc decompression,
13 nucleotomy, and anuloplasty. *See* AR 551.
- 14 • Through the DLI, Mr. Kruger did not have a severe impairment or combination of
15 impairments – *i.e.*, he “did not have an impairment or combination of impairments
16 that significantly limited the ability to perform basic work-related activities for 12
17 consecutive months.” AR 551.

18 Accordingly, ALJ Gonzalez concluded that Mr. Kruger was not disabled from the alleged
19 onset date of disability through December 31, 2000 (*i.e.*, the DLI). AR 560. As indicated in note
20 1, the amended alleged onset date is December 1, 2000.

21 **II. DISCUSSION**

22 A. Legal Standard

23 After a final decision on a claim for benefits by the Commissioner, the claimant may seek
24 judicial review of that decision by a district court. *See* 42 U.S.C. § 405(g). The Commissioner’s
25 decision will be disturbed only if the ALJ has committed legal error or if the ALJ’s findings are
26

27 ¹ Although the ALJ referenced this alleged onset date, the Appeals Council properly noted that, at
28 the hearing before the ALJ, Mr. Kruger amended the alleged onset date to December 1, 2000. *See*
AR 526 (Appeals Council decision, dated November 6, 2015); AR 619 (ALJ hearing).

1 not supported by substantial evidence. *See Stout v. Comm’r of Soc. Sec. Admin.*, 454 F.3d 1050,
2 1052 (9th Cir. 2006) (“We will uphold the Commissioner’s denial of benefits if the Commissioner
3 applied the correct legal standards and substantial evidence supports the decision.”). Substantial
4 evidence is relevant evidence – “more than a scintilla, but less than a preponderance” – that a
5 reasonable mind may accept to support a conclusion. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035
6 (9th Cir. 2007). A court evaluates “the record as a whole, . . . weighing both the evidence that
7 supports and detracts from the ALJ’s conclusion” to determine if substantial evidence supports a
8 finding. *Mayes v. Massanari*, 276 F.3d 453, 459 (9th Cir. 2001). If the evidence supports “more
9 than one rational interpretation,” the Court must uphold the ALJ’s decision. *Burch v. Barnhart*,
10 400 F.3d 676, 680-81 (9th Cir. 2005).

11 B. Step Two Inquiry

12 As noted above, here, the ALJ concluded that Mr. Kruger was not disabled because,
13 through the DLI, he did not have a severe impairment or combination of impairments. That is, he
14 “did not have an impairment or combination of impairments that significantly limited the ability to
15 perform basic work-related activities for 12 consecutive months.” AR 551. This was a step two
16 finding. *See* 20 C.F.R. § 404.1520(c) (providing that a claimant “must have a severe impairment,”
17 *i.e.*, “any impairment or combination of impairments which significantly limits [the claimant’s]
18 physical or mental ability to do basic work activities”).

19 Mr. Kruger argues that ALJ Gonzalez’s step-two analysis should be rejected because (1)
20 the ALJ improperly gave great weight to the opinion of Dr. McCown, a nontreating,
21 nonexamining medical expert who testified at the ALJ hearing, instead of crediting the opinions of
22 Mr. Kruger’s treating physicians, Dr. Saal and Dr. Blumberg; and (2) the ALJ improperly found
23 Mr. Kruger only partially credible. The government disputes such. The Court, however, need not
24 address the merits of these arguments at this time because there is a more fundamental problem
25 before it. That is, the ALJ committed a legal error in his analysis. Although the ALJ properly
26 acknowledged that, at step two, “[a]n impairment or combination of impairments is ‘not severe’
27 when medical and other evidence establish only a slight abnormality or a combination of slight
28 abnormalities that would have no more than a minimal effect on an individual’s ability to work,”

1 AR 550; *see also Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996), he does not appear to
2 have taken into consideration Ninth Circuit law explaining that “the step two inquiry is a de
3 minimis screening device *to dispose of groundless claims.*” *Id.* (emphasis added); *cf. Hoopai v.*
4 *Astrue*, 499 F.3d 1071, 1076 (9th Cir. 2007) (stating that “[t]he step two and step five
5 determinations require different levels of severity of limitations such that the satisfaction of the
6 requirements at step two does not automatically lead to the conclusion that the claimant has
7 satisfied the requirements at step five”). Because the ALJ did not take into account this Ninth
8 Circuit law, he appears to have applied more rigor at step two than is permitted.

9 Accordingly, the Court concludes that summary judgment in Mr. Kruger’s favor and a
10 remand are appropriate. On remand, the agency shall reconsider, under the appropriate legal test,
11 whether Mr. Kruger has met his burden at step two.

12 In so ruling, the Court is not expressing any opinion as to how step two or any of the later
13 steps, if reached, should be resolved. It is worth noting, however, that much of the ALJ’s analysis
14 at step two – which was thorough and detailed – could well inform the agency’s analysis at, *e.g.*,
15 step four, should it reach that step. For example, much of the evidence addressed by the ALJ may
16 be relevant to determining what residual functional capacity Mr. Kruger had at the relevant time.

17 Furthermore, it is worth noting that there does not seem to be any real dispute that a person
18 with Ehlers-Danlos syndrome can experience significant pain out of proportion to the objective
19 medical findings. But, contrary to what Mr. Kruger suggests, even though he was diagnosed with
20 Ehlers-Danlos syndrome, that does not thereby mean that his complaints of disabling pain are
21 unassailable. The ALJ was still entitled – indeed, required – to do a credibility assessment. That
22 remains true for the agency on remand.

23 Finally, the Court notes that this case presents somewhat unique circumstances in that,
24 even though the factual record has been further developed as previously ordered by the Court,
25 there is still, quite simply, minimal evidence regarding Mr. Kruger’s condition at the relevant
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III. CONCLUSION

For the foregoing reasons, the Court grants Mr. Kruger’s motion and denies the Commissioner’s and further remands this case for further proceedings with the agency.

This order disposes of Docket Nos. 15 and 16.

IT IS SO ORDERED.

Dated: December 7, 2016



EDWARD M. CHEN
United States District Judge