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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER S. KENT,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of
Social Security Administration,

Defendant.

CASE NO. 08-CV-1775-W-RBB

ORDER:

1) **ADOPTS THE REPORT & RECOMMENDATION**
(Doc. No. 19)

2) **GRANTS PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**
(Doc. No. 11)

3) **DENIES DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
(Doc. No. 16)

Plaintiff Christopher S. Kent ("Plaintiff") seeks judicial review of Social Security Commissioner Michael J. Astrue's ("Defendant") final decision that Plaintiff was not disabled within the meaning of the Social Security Act. On January 22, 2010, Magistrate Judge Ruben B. Brooks issued a Report & Recommendation ("Report") advising this Court to grant Plaintiff's motion for summary judgment and to deny Defendant's cross-motion for summary judgment. On February 12, 2010, Defendant

1 filed an objection to the Report. The Court decides the matter on the papers submitted
2 and without oral argument. See S.D. Cal. Civ. R. 7.1(d.1) And for the reasons cited
3 below, the Court **ADOPTS** the Report.

4
5 **I. Procedural Background**

6 The facts of this case, including Plaintiff's medical history, are more fully set forth
7 in the Report and are incorporated herein by reference. The following is a short
8 summary of this case.

9 Plaintiff claims he became disabled on April 1, 2001 because of injuries he
10 sustained to his back and shoulder. (Report at 2.) On May 12, 2006, he applied for
11 disability insurance benefits. (Id. at 1.) On January 25, 2008, after a hearing in front of
12 Administrative Law Judge Edward Steinman, Plaintiff was found to be not disabled. Id.
13 Plaintiff then appealed the decision unsuccessfully and now seeks judicial review of
14 Defendant's determination that he is not entitled to disability insurance or supplemental
15 security income benefits. (Id. at 2.)

16 On September 26, 2008, Plaintiff filed his complaint for judicial review. (Doc. No.
17 1.) After Defendant filed his answer, Plaintiff filed a motion for summary judgment on
18 August 28, 2009. (Doc. No. 11.) His argument is two-fold: (1) the ALJ failed to develop
19 the record, and (2) it was legal error for the ALJ to disregard the opinion of Plaintiff's
20 treating doctor. (Doc. No. 11-1 at 2.) Defendant subsequently filed a cross-motion for
21 summary judgment on November 4, refuting the claims made in Plaintiff's motion.
22 (Doc. No. 16.)

23 On January 22, 2010, Magistrate Judge Brooks issued the Report, agreeing with
24 Plaintiff's second argument and recommending the matter be remanded for further
25 proceeding. (Doc. No. 19.) Defendant objects on this point alone. (Doc. No. 20.)
26

27 **II. Legal Standard**

28 Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1) set

1 forth the duties of the district court in connection with a magistrate judge’s report and
2 recommendation. The district court “must make a de novo determination of those
3 portions of the report ... to which objection is made,” and “may accept, reject, or modify,
4 in whole or in part, the findings or recommendations made by the magistrate.” 28
5 U.S.C. § 636(b)(1)(c); see also United States v. Remsing, 874 F.2d 614, 617 (9th Cir.
6 1989); United States v. Raddatz, 447 U.S. 667, 676 (1980).

7 The Social Security Act entitles a claimant to disability benefits if he is unable to
8 “engage in any substantial gainful activity by reason of any medically determinable
9 physical or mental impairment which can be expected to result in death or which has
10 lasted or can be expected to last for a continuous period of not less than twelve
11 months.” 42 U.S.C. §§ 416(I), 423(d)(1)(A). To qualify for benefits, the impairment
12 must result from “anatomical, physiological, or psychological abnormalities which are
13 demonstrable by medically acceptable clinical and laboratory diagnostic techniques.”
14 42 U.S.C. § 423(d)(3); Gallant v. Heckler, 753 F.2d 1450, 1452 (9th Cir. 1984).
15 Further, the impairment must be of “such severity that he is not only unable to do his
16 previous work but cannot, considering his age, education, and work experience, engage
17 in any other kind of substantial gainful work which exists in the national economy.” 42
18 U.S.C. § 423 (d)(2)(A).

19 Sections 205(g) and 1631(c)(3) of the Social Security Act allow unsuccessful
20 applicants to seek judicial review of the Commissioner’s final agency decision. 42 U.S.C.
21 §§ 405(g), 1383(c)(3). However, the scope of review is limited. A court may not
22 overturn the Commissioner’s final action unless (1) the ALJ’s findings of fact are not
23 supported by substantial evidence, or (2) the ALJ failed to apply the proper legal
24 standards. See Flaten v. Secretary of Health and Human Services., 44 F.3d 1453, 1457
25 (9th Cir. 1995). “Substantial evidence” means evidence a reasonable person might
26 accept as adequate to support the ALJ’s conclusion, considering the record as a whole.
27 See Richardson v. Perales, 402 U.S. 389, 401 (1971); Thomas v. Barnhart, 278 F.3d
28 947, 954 (9th Cir. 2002). In other words, substantial evidence means “more than a

1 scintilla but less than a preponderance” of the evidence. Jamerson v. Chater, 112 F.3d
2 1064, 1066 (9th Cir. 1997). The Court must consider both the evidence that supports
3 and detracts from the Commissioner’s conclusions. See Mayes v. Massanari, 276 F.3d
4 453, 459 (9th Cir. 2001); Desrosiers v. Secretary of Health and Human Services., 846
5 F.2d 573, 576 (9th Cir. 1988).

6 Even if substantial evidence supports the ALJ’s findings, a court must set the
7 decision aside if the ALJ failed to apply the proper legal standards in weighing the
8 evidence and reaching a decision. See Benitez v. Califano, 573 F.2d 653, 655 (9th Cir.
9 1978). But if the evidence supports more than one rational interpretation, the court
10 must uphold the ALJ’s decision. Allen v. Heckler, 749 F.2d 577, 579 (9th Cir. 1989).

11 12 **III. Discussion**

13 In his motion for summary judgment, Plaintiff seeks either a reversal of the ALJ’s
14 decision and an award of benefits, or that the case be remanded to the Social Security
15 Administration for further proceeding. (Doc. No. 11.) Construing his arguments
16 liberally, Plaintiff contends that the ALJ failed to develop the record and committed
17 legal error by ignoring the opinion of Plaintiff’s treating doctor. (Doc. No. 11.) In
18 contrast, Defendant’s cross-motion for summary judgment contends that the record was
19 more than adequate to properly evaluate the evidence and Plaintiff’s claims of legal error
20 lack merit. (Doc. No. 16.)

21 In the Report, the Magistrate Judge found that the ALJ adequately developed the
22 record. (Report at 30-31.) However, he concludes that the ALJ committed legal error
23 by disregarding the opinion of the treating physician. (Id. at 36.) As a result, the
24 Magistrate recommends the matter be remanded for further proceeding. (Id.)
25 Defendant objects to the Report, on this point alone, arguing the ALJ was not required
26 to explicitly reject the treating physician’s opinion. (Doc. No. 20.)

27 In his objection, Defendant does not dispute the ALJ’s lack of explanation, but
28 rather argues that the treating physician’s opinion was not actually contained in the

1 record, so it cannot be considered a “medical opinion” for the purpose of legal authority.
2 (Doc. No. 20.) If not considered an official medical opinion, Defendant contends that
3 the treating physician’s conclusions can be dismissed without explanation. Id. The
4 record contains a different physician’s third-party summary of the treating physician’s
5 report. Although this third-party summary effectively conveys the treating physician’s
6 conclusions about Plaintiff’s condition, Defendant claims the “purported
7 conclusions...were only ‘indirectly’ in the record” and thus do not require consideration
8 from the ALJ. Id. The Court disagrees.

9 The Magistrate Judge’s conclusion is based on the holding in Batson v.
10 Commissioner of Social Security Administration. Batson, 359 F.3d 1190, 1195 (9th Cir.
11 2004). Although the ALJ does not have to follow the medical opinion of the treating
12 physician, he “must give specific, legitimate reasons for disregarding the opinion of the
13 treating physician.” Id., quoting Matney v. Sullivan, 981 F.2d 1016, 1019 (9th Cir.
14 1992). In the current case, ALJ Steinman discusses the reports and findings of several
15 physicians, but fails to give specific, legitimate reasons for contradicting the opinion of
16 the treating physician, Dr. Previte. (Report at 36.)

17 The Court agrees with Plaintiff’s argument that Defendant’s objection is one of
18 form over substance. (Doc. No. 21.) The Report concluded that the record contained
19 evidence sufficient for a proper evaluation of Plaintiff’s claim. (Report at 30.) This
20 included the summary of the treating physician’s findings. While not binding on the
21 ALJ, the treating physician’s opinion is generally afforded the greatest weight in
22 disability cases. Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001). Therefore,
23 had the record lacked a medical opinion from the treating physician, it would have been
24 inadequate. The treating physician’s opinion was present in the record, but the ALJ
25 failed to explain why he disregarded it. Defendant’s attempt to side-step this flaw by
26 citing a technicality is without merit.

27 As such, the Court **ADOPTS** the well-written analysis of the Report and
28 **GRANTS** Plaintiff’s motion for summary judgment. (Report at 36–37.)


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IV. Conclusion

For the reasons stated above, the Court hereby **ADOPTS** the Report in its entirety and finds that the ALJ's disregard of the treating physician's opinion lacks specific and legitimate reasoning. (Doc. No. 19.) As such, and for the reasons stated above, the Court **GRANTS** Plaintiff's motion for summary judgment (Doc. No. 11) and **DENIES** Defendant's cross-motion for summary judgment. (Doc. No. 16.) This case is hereby remanded for further proceeding.

IT IS SO ORDERED.

DATED: March 18, 2010



Hon. Thomas J. Whelan
United States District Judge