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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JUAN RODRIGUEZ,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No.: 16-cv-2806-CAB-DHB

**ORDER ON CROSS-MOTIONS FOR
SUMMARY JUDGMENT**
[Doc. Nos. 14, 15]

On November 15, 2016, Plaintiff Juan Rodriguez (“Plaintiff”) filed a complaint pursuant to 42 U.S.C. § 405(g) of the Social Security Act requesting judicial review of the final decision of the Commissioner of the Social Security Administration (“Commissioner” or “Defendant”) regarding the denial of Plaintiff’s claim for disability benefits. [Doc. No. 1.] On March 31, 2017, Plaintiff filed a motion for summary judgment, requesting the Court reverse the Commissioner’s final decision and order the payment of benefits, or, alternatively, remand the case for further proceedings. [Doc. No. 14.] On April 28, 2017, Defendant filed a cross-motion for summary judgment and an opposition to the Plaintiff’s motion, requesting that the Court affirm the Commissioner’s final decision. [Doc. No. 15.] For the reasons set for below, Plaintiff’s motion for summary judgment is granted and Defendant’s cross-motion for summary judgment is denied. The case is remanded to the ALJ for further proceedings consistent with this opinion.

1 **I. Background**

2 On April 15, 2012, Plaintiff filed an application for disability and disability
3 insurance benefits under Title II of the Social Security Act, alleging a disability beginning
4 on September 13, 2007. [Administrative Record (“A.R.”) at 217-18, 259.] After a denial
5 at the initial determination [A.R. at 122) and a denial on reconsideration [A.R. at 139],
6 Plaintiff requested and was granted a hearing before an Administrative Law Judge (“ALJ”).
7 [Id. at 156-159.]

8 On February 17, 2015, a hearing was held on Plaintiff’s claim before ALJ Howard
9 Tremlin. [Id. at 59-86.] Plaintiff, who was represented by counsel, appeared and testified
10 at the hearing. [Id.] Also appearing and testifying was a vocational expert. [Id.]

11 On April 30, 2015, the ALJ issued a decision denying Plaintiff’s claim for benefits.
12 [Id. at 29-38.] Applying the five-step, sequential-evaluation process for adjudication of
13 disability claims, the ALJ found that Plaintiff met the insured status requirements of the
14 Social Security Act through March 31, 2015. [Id. at 32.] The ALJ also found that Plaintiff
15 did not engage in substantial gainful activity during the period from the alleged onset date
16 of September 13, 2007 through his date last insured of March 31, 2015. [Id. at 32.] Further,
17 the ALJ concluded the Plaintiff’s listed impairments, which consisted of “mild
18 chondromalacia; medial femoral condyle with early degenerative changes, left knee,
19 status-post left knee arthroscopy with diminished extension; mild thoracic spondylosis with
20 mild levoscoliosis; lumbar degenerative disc disease, with mild facet arthritis, L5-S1; and
21 complaints of pain in the right hip and right knee” affected him more than minimally, but
22 they did not meet or equal the severity of symptoms required under the medical listings.
23 [Id. at 32-33.] Additionally, the ALJ held that Plaintiff had the residual functional capacity
24 to perform light work, could occasionally lift 20 pounds, climb, kneel, and crouch, and
25 could frequently lift 10 pounds, sit, stand, walk for six hours in an eight hour workday, and
26 frequently stoop. [Id. at 33.] The ALJ also found that Plaintiff was capable of performing
27 his past work as a gate guard. [Id. at 37.] Furthermore, the ALJ found that even upon
28 application of grid rule 201.19, at sedentary exertion, the claimant was still not considered

1 disabled. [*Id.* at 37.] Ultimately, the ALJ concluded that Plaintiff was not disabled under
2 sections 216(i) and 223(d) of the Social Security Act from April 15, 2012 through March
3 31, 2015. [*Id.* at 38.]

4 On May 13, 2015, dissatisfied with the ALJ’s decision, Plaintiff requested review
5 with the Appeals Council. [*Id.* at 23-25.] On September 20, 2016, the Appeals Council
6 denied Plaintiff’s request for review thereby casting the ALJ’s decision as the final decision
7 of the Commissioner. [*Id.* at 1-7.]

8 Plaintiff commenced this action pursuant to 42 U.S.C. §§ 405(g). On March 31,
9 2017, Plaintiff filed the current motion for summary judgment. [Doc. No. 14.] On April
10 28, 2017, Defendant filed the cross-motion for summary judgment. [Doc. No. 15.] Both
11 parties filed their briefs in opposition. [Doc. Nos. 16, 17.]

12 **II. Legal Standards**

13 Under 42 U.S.C. section 405(g), courts review the ALJ's decision to determine
14 whether substantial evidence supports the ALJ's findings and if they are free of legal error.
15 *See Smolen v. Chater*, 80 F.3d 1273, 1279 (9th Cir.1996); *DeLorme v. Sullivan*, 924 F.2d
16 841, 846 (9th Cir.1991) (ALJ's disability determination must be supported by substantial
17 evidence and based on the proper legal standards). The Commissioner’s final decision
18 should not be disturbed unless; (1) the ALJ’s finding are based on legal error; or (2) the
19 ALJ’s determinations are not supported by substantial evidence in the record as a whole.
20 *See Schneider v. Comm’r of Soc. Sec. Admin*, 223 F.3d 968, 973 (9th Cir. 2000).

21 The reviewing court must follow three important rules when analyzing an ALJ’s
22 decision. *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015). First, the court
23 “leave[s] it to the ALJ to determine credibility, resolve conflicts in testimony, and resolve
24 ambiguities in the record.” *Treichler v. Comm’r of Soc. Sec. Admin*, 775 F.3d 1090, 1098
25 (9th Cir. 2014). Second, the court should “disturb the Commissioner’s decision to deny
26 benefits only if it is not supported by substantial evidence or is based on legal error.” *Id.*
27 (internal quotation marks and citation omitted). Substantial evidence means such relevant
28 evidence as a reasonable mind might accept as adequate to support a conclusion. *Valentine*

1 *v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009). In determining if
2 substantial evidence exists, courts must review the record as a whole and consider adverse
3 as well as supporting evidence. *See Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th
4 Cir.2006). Where evidence can reasonably be construed to support more than one rational
5 interpretation, the ALJ's decision must be upheld. *See Batson v. Comm’r of the Soc. Sec.*
6 *Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). This includes deferring to the ALJ’s
7 credibility determinations and resolutions of evidentiary conflicts. *Lewis v. Apfel*, 236 F.3d
8 503, 509 (9th Cir. 2001). “However, a reviewing court must consider the entire record as
9 a whole and may not affirm simply by isolating a ‘specific quantum of supporting
10 evidence.’” *Robbins*, 466 F.3d at 882 (quoting *Hammock v. Bowen*, 879 F.2d 498, 501
11 (9th Cir.1989)); *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir.2007). Third, the court must
12 uphold an ALJ’s decision, even when the ALJ commits legal error if that error is harmless.
13 *Trechler*, 775 F.3dd at 1099.

14 **III. Discussion**

15 Specifically at issue here is the residual functional capacity determination made by
16 the ALJ between steps three and four of the five step sequential evaluation process.
17 Plaintiff asserts that when determining his residual functional capacity the ALJ failed to
18 articulate specific, clear and convincing reasons for rejecting his testimony. [Doc. No. 14-
19 1 at 4-10.] Defendant counters that, based on substantial evidence, the ALJ properly
20 assessed Plaintiff’s credibility. [Doc. No. 15-1 at 4-7.]

21 An ALJ engages in a two-step analysis in determining whether a claimant’s
22 testimony regarding subjective pain or symptoms is credible. *Molina v. Astrue*, 674 F.3d
23 1104. 1112 (9th Cir. 2012). “First, the ALJ must determine whether the claimant has
24 presented objective medical evidence of an underlying impairment which would
25 reasonable be expected to produce pain.” *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir.
26 2014). Second, “[i]f the claimant satisfies the first step of this analysis, and there is no
27 evidence of malingering, “the ALJ can reject the claimant’s testimony about the severity
28 of her symptoms only by offering specific, clear and convincing reasons for doing so.” *Id.*

1 at 1014-1015. This requires the ALJ identify which testimony is not credible and what
2 evidence undermines the claimant's complaints. *Lester v. Chater*, 81 F.3d 821, 834 (9th
3 Cir. 1995).

4 The ALJ may consider inconsistencies either in the claimant's testimony or between
5 the testimony and the claimant's conduct. *See Turner v. Comm'r Soc. Sec. Admin*, 613
6 F.3d 1217, 1224-25 (9th Cir. 2010). The ALJ is required to consider a claimant's daily
7 activities and may reasonably discount a claimant's subjective complaints where the
8 claimant engaged in activities inconsistent with the alleged symptoms. *See* 20 C.F.R. §§
9 404.1529(c)(3), 416.927(c)(3); *Molina*, 674 F.3d at 1113. Where, as here, a Plaintiff has
10 provided evidence of an underlying impairment, the ALJ may "reject the claimant's
11 testimony about the severity of h[is] symptoms only by offering specific, clear and
12 convincing reasons for doing so." *Brown-Hunter*, 806 F.3d at 493 (9th Cir. 2015) (quoting
13 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)).

14 Plaintiff alleges disability based on a number of knee, hip and spinal complaints.¹
15 Neither party disputes the ALJ's determination that Plaintiff has presented objective
16 medical evidence of an underlying impairment which would reasonably be expected to
17 produce pain. *See Garrison* 759 F.3d at 1014. Accordingly, the first prong of the *Garrison*
18 analysis is satisfied. As a consequence, the Court must determine whether the ALJ
19 provided specific, clear and convincing reasons for discrediting Plaintiff's testimony
20 concerning his subjective pain that are supported by evidence in the record. The clear and
21 convincing standard is "the most demanding required in Social Security cases" and "is not
22 an easy requirement to meet." *Garrison*, 759 F.3d at 1015 (quoting *Moore v. Comm'r of*
23 *Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

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27 ¹ Plaintiff's complaints include: mild chondromalacia; medial femoral condyle with early degenerative
28 changes, left knee, status-post left knee arthroscopy with diminished extension; mild thoracic spondylosis
with mild levoscoliosis; lumbar degenerative disc disease, with mild facet arthritis, L5-S1; and complaints
of pain in the right hip and right knee.

1 Here, the ALJ found that the functional limitations resulting from Plaintiff's
2 impairments were not as intense, persisting and limiting as he alleged. [A.R. at 34.]. In so
3 finding, the ALJ noted that Plaintiff's credibility was diminished because "those
4 allegations are greater than expected in light of the objective evidence of record." [*Id.* at
5 35.] After making this determination the ALJ went on to summarize the medical evidence
6 in the record but failed to tie a particular statement he found to be not credible to particular
7 medical evidence.

8 Beginning in 2007, Plaintiff stopped working after he sustained a work-related injury
9 to his left knee when he stepped on a container and twisted his knee when he was working
10 at EDCO. On December 10, 2009, Plaintiff underwent a left knee diagnostic arthroscopy,
11 left knee medial femoral condyle chondroplasty and left knee major synovectomy. [*Id.* at
12 442-43.] As the ALJ correctly summarized, Plaintiff testified that he has used a cane since
13 his knee surgery in 2007 [*Id.* at 64]; he takes pain medication for pain in his knees, back
14 and hips [*Id.* at 65]; he uses a cane to ambulate [*Id.* at 72.]; and Plaintiff reported that he
15 cannot lift a gallon of milk [*Id.* at 68]. [*Id.* at 34.] Plaintiff also stated that he can sit for
16 about ten to fifteen minutes and stand and walk ten to fifteen minutes. [*Id.* at 67-68.]
17 Further, Plaintiff described his activities on a daily basis, including feeding his dogs and
18 watering the plants. [*Id.* at 72]. Plaintiff also testified that he has difficulty getting dressed,
19 needs help showering, and lies down four times a day for about thirty - forty-five minutes
20 at a time. [*Id.* at 69, 75.] Additionally, Plaintiff asserted that he suffers from diabetes,
21 sometimes feels dizzy and nauseous, has problems with his eyes, and utilizes back support
22 and a knee brace on his left knee. [*Id.* at 65-67, 72.]

23 The ALJ identified a number of statements made by Dr. Harris in 2010 and 2011
24 that repeatedly recommended Plaintiff be placed on light work duty that consisted of
25 sedentary work. [*Id.* at 34-35, 444-45, 571, 589-592, 640.] The ALJ also noted that in a
26 November 23, 2010 re-examination report, Dr. Murphy concluded that Plaintiff continued
27 to be permanent and stationary, and his work status remained light. [*Id.* at 35, 566-576.]
28 In addition, the ALJ summarized the medical examiner's report submitted by Dr. Hall,

1 dated September 19, 2012, who recommended Plaintiff be fitted for a valgus unloading
2 type brace; utilize a cane; use anti-inflammatory medications; and ice his knee. [*Id.* at 35,
3 639, 674-77.] The ALJ also cited the November 2, 2014 and January 12, 2015, treatment
4 records from Borrego Centro Medico which indicate that Plaintiff was obese with a BMI
5 of 31, a pre-diabetic who was not in acute distress, was not feeling tired or poorly, had no
6 blurry vision, had no dizziness and was advised on diet and exercise. [*Id.* at 35, 683-85,
7 724-25.]

8 Further, the ALJ read and gave great weight to the findings within a pre-hearing
9 consultative examination performed by Dr. Sabourin, a Board certified orthopedic surgeon,
10 who evaluated Plaintiff on June 4, 2013. Dr. Sabourin determined that despite his
11 conditions Plaintiff was not precluded from performing a significant range of light
12 exertional capacity. [*Id.* at 624-629] After performing a physical examination Dr.
13 Sabourin reported that Plaintiff had some disproportion in regards to the severity and
14 duration of his complaints, had surgery on his left knee showing some chondromalacia,
15 with some atrophy in the left leg and decreased range of motion, and also complained of
16 back pain that Plaintiff related to a 1999 work-related injury that caused two discs to
17 herniate. [*Id.*] Dr. Sabourin opined that Plaintiff was able to: occasionally lift and/or carry
18 twenty pounds, climb kneel and crouch; frequently lift and/or carry ten pounds and stoop;
19 sit, stand, and/or walk for six hours in an eight-hour workday; and that he did not need an
20 assistive device to ambulate. [*Id.* at 628.] The ALJ also correctly noted that Dr. Sabourin
21 reported that during the examination Plaintiff was:

22 not fully cooperative during the exam, so there was uncertainty as to the exact
23 degree of limitation he had and his feet were equally calloused; and the lumbar
24 spine problems were not as severe as noted in the history when the x-rays were
25 read by a second physician.

26 *Id.* at 36.

27 Similarly, the ALJ also read and gave great weight to the findings of consultative
28 examiner, Dr. Moazzaz, a Board certified orthopedic surgeon who evaluated Plaintiff on

1 July 29, 2012. [*Id.* at 36-37.] The ALJ correctly summarized Dr. Moazzaz’s finding that
2 Plaintiff was not precluded from performing light exertional work, despite conditions of
3 status-post left knee arthroscopy with diminished extension and degenerative disc disease.
4 [*Id.* at 37, 611-617.] Dr. Moazzaz found that Plaintiff presented with a history of low back,
5 left knee pain, and degenerative changes of the lumbar spine, was lacking range of motion
6 of the left knee following two arthroscopies, but had an intact neurological exam with a
7 negative straight leg raise test. [*Id.* at 611-614.] Dr. Moazzaz opined that Plaintiff was:
8 able to lift and/or carry twenty pounds occasionally and ten pounds frequently; sit, stand,
9 and/or walk for six hours in an eight-hour workday; occasionally bend, kneel, stoop, crawl
10 and crouch; not subject to restrictions with overhead activities and could fully use his hands
11 for fine and gross manipulative movements; and did not need an assistive device to
12 ambulate. [*Id.* at 615.]

13 However, “although the ALJ summarized a significant portion of the administrative
14 record in support of h[is] RFC determination” he did not provide “clear and convincing
15 reasons for finding the claimant’s symptom testimony not credible.” *Brown-Hunter*, 806
16 F.3d at 494. Here, the ALJ determined that:

17 [a]fter careful consideration of the evidence, the undersigned finds that the
18 claimant’s medically determinable impairments could reasonably be
19 expected to cause the alleged symptoms; however, the claimant’s statements
20 concerning the intensity, persistence and limiting effects of these symptoms
are not entirely credible for the reasons explained in this decision.

21 A.R. 34. After stating his non-credibility conclusion and summarizing the medical
22 evidence, the ALJ did not specifically identify which of Plaintiff’s statements he did not
23 find credible and why, nor did he explain what evidence in the record undermines
24 Plaintiff’s complaints. *See Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (“General
25 findings are insufficient, rather, the ALJ must identify what testimony is not credible and
26 what evidence undermines the claimant’s complaints.”); *Holohan v. Massanari*, 246 F.3d
27 1195, 1208 (9th Cir. 2001) (“the ALJ must specifically identify the testimony she or he
28 finds not be credible and must explain what evidence undermined the testimony”).

1 This is precisely the type of general conclusory statement that the Ninth Circuit has
2 held to be insufficient. *See, e.g., Treichler*, 775 F.3d at 1102 (holding that the ALJ erred
3 by making only a “single general statement that ‘the claimant’s statements concerning the
4 intensity, persistence and limiting effects of these symptoms are not credible to the extent
5 they are inconsistent with the above residual functional capacity assessment.”); *Brown-*
6 *Hunter*, 806 F.3d at 493-494 (holding ALJ’s general statement that “she found, based on
7 unspecified claimant testimony and a summary of medical evidence, that “the functional
8 limitations from the claimant’s impairments were less serious than she has alleged”
9 insufficient because they failed to identify which of claimants statements are she found to
10 be not credible and why). While it could be inferred that the specific portions of the
11 medical records identified by the ALJ were the contradictory evidence and conclusions he
12 used in making his determination, this is not enough. Rather, the ALJ is required to connect
13 the contradictory evidence to specific statements made by Plaintiff; by not doing so he has
14 failed to provide the basic information necessary to ensure meaningful judicial review.
15 Thus, the Court finds the ALJ committed legal error because he “failed to identify the
16 testimony []he found not credible, []he did not link that testimony to the particular parts of
17 the record supporting h[is] non-credibility determination.” *Brown-Hunter*, 806 F.3d at 494.

18 Further, the Court finds that the error was not harmless. After rejecting Plaintiff’s
19 limitation testimony and assessing Plaintiff’s residual functioning capacity almost
20 exclusively on the medical records, the ALJ concluded that Plaintiff was capable of
21 performing light work. But, a hypothetical the ALJ posed to the Vocational Expert is
22 evidence that a different disability conclusion may have been reached had Plaintiff’s
23 testimony been considered. After being presented with a hypothetical that somewhat
24 mirrored Plaintiff’s testimony, the Vocation Expert concluded that under such
25 circumstances the past work of gate guard or other work could not be performed. [A.R.
26 83.] Therefore, this Court cannot find the error was harmless, because it cannot
27 “confidently conclude that no reasonable ALJ, when fully crediting the testimony, could
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1 have reached a different disability determination.” *Stout v. Comm’r*, 454 F.3d 1050, 1055-
2 56 (9th Cir. 2006).

3 **IV. Remedy**

4 The Court next addresses the question of remedy. The Court can either remand for
5 further proceedings, or remand for an award of benefits. Because Plaintiff’s entitlement to
6 benefits is not clearly established on the present record, remand for further proceedings is
7 therefore appropriate.

8 “A district court may ‘revers[e] the decision of the Commissioner of Social Security,
9 with or without remanding the case for a rehearing, but the proper course, except in rare
10 circumstances, is to remand to the agency for additional investigation or explanation.”
11 *Dominguez v. Colvin*, 808 F.3d 403, 407 (9th Cir. 2015) (internal quotation marks and
12 citation omitted). In order to remand a case for an award of benefits a district court must
13 conclude “that further administrative proceedings would serve no useful purpose.” *Burrell*
14 *v. Colvin*, 775 F.3d 1133, 1141 (9th Cir. 2014) (discussing *Garrison*, 759 F.3d).² However,
15 “a reviewing court is not required to credit claimant’s allegations regarding the extent of
16 their impairments as true merely because the ALJ made a legal error in discrediting their
17 testimony.” *Dominguez*, 808 F.3d at 408 (quoting *Treichler*, 775 F.3d at 1106). *See also*
18 *Burrell*, 775 F.3d at 1141 (“[W]e may remand on an open record for further proceedings
19 when the record as a whole creates serious doubt as to whether the claimant is, in fact,
20 disabled within the meaning of the Social Security Act.”) (internal quotation marks and
21 citation omitted); *Connett v. Barnhart*, 340 F.3d 871, 874-76 (9th Cir. 2003) (finding that
22 a reviewing court retains discretion to remand for further proceedings even when the ALJ
23 fails to assert specific facts or reasons to reject [the claimant]’s testimony”).

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26 ² A district court may remand directly for an award of benefits only when: “(1) the record has been fully
27 developed and further administrative proceedings would serve no useful purpose; (2) the ALJ failed to
28 provide legally sufficient reasons for rejecting evidence; and (3) if the improperly discredited evidence
was credited as true, the ALJ would be required to find the claimant disabled on remand.” *Garrison*,
759 F.3d at 1020.

1 Here, remand for further proceedings is appropriate because the Court is unable to
2 conclude that the record is “free from conflicts, ambiguities [and] gaps” and that Plaintiff’s
3 “entitlement to benefits is clear.” *Treichler*, 755 F.3d at 1103-04. Although the ALJ’s
4 generalized conclusion was erroneous, he may, with or without further development of the
5 record, be able to sufficiently identify and articulate which of Plaintiff’s statements he finds
6 not credible and link the statements to the portions of the evidentiary record that
7 demonstrate the inconsistencies.


8 **V. Conclusion**

9 For the reasons discussed above, the Court finds that although the administrative
10 record may support the ALJ’s conclusion, he has failed to provide the necessary reasoning
11 in support of his credibility determination. Accordingly, the Court **GRANTS** Plaintiff’s
12 motion for summary judgment. Defendant’s cross-motion for summary judgment is
13 **DENIED**.

14 It is therefore **ORDERED** that the final decision of the Commissioner of Social
15 Security is reversed and the case is **REMANDED** for further proceedings and additional
16 explanation.

17 It is **SO ORDERED**.

18 Dated: August 11, 2017

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21 Hon. Cathy Ann Bencivengo
22 United States District Judge
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