

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

JULIE S.¹,

Plaintiff,

v.

ANDREW M. SAUL, Commissioner of
Social Security,

Defendant.

Case No. 3:18-cv-635-SI

OPINION AND ORDER

Karen Stolzberg, P.O. Box 19699, Portland, OR 97280. Of Attorney for Plaintiff.

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Michael H. Simon, District Judge.

Julie S. ("Plaintiff") seeks judicial review of the final decision of the Commissioner of the Social Security Administration ("Commissioner") denying Plaintiff's application for

¹ In the interest of privacy, this opinion uses only the first name and the initial of the last name of the non-governmental party in this case. When applicable, this opinion uses the same designation for a non-governmental party's immediate family member.

Supplemental Security Income (“SSI”) pursuant to the Social Security Act, 42 U.S.C. § 1381. This Court has jurisdiction to review the Commissioner’s decision pursuant to 42 U.S.C. § 405(g). For the following reasons, the Commissioner’s decision is REVERSED and REMANDED for an immediate calculation and payment of benefits.

STANDARD OF REVIEW

The district court must affirm the Commissioner’s decision if it is based on the proper legal standards and the findings are supported by substantial evidence. 42 U.S.C. § 405(g); see also *Hammock v. Bowen*, 879 F.2d 498, 501 (9th Cir. 1989). “Substantial evidence” means “more than a mere scintilla but less than a preponderance.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009) (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)). It means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* (quoting *Andrews*, 53 F.3d at 1039).

When the evidence is susceptible to more than one rational interpretation, the Commissioner’s conclusion must be upheld. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). Variable interpretations of the evidence are insignificant if the Commissioner’s interpretation is a rational reading of the record, and this Court may not substitute its judgment for that of the Commissioner. *See Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193, 1196 (9th Cir. 2004). “[A] reviewing court must consider the entire record as a whole and may not affirm simply by isolating a specific quantum of supporting evidence.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (quoting *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quotation marks omitted)). A reviewing court, however, may not affirm the Commissioner on a ground upon which the Commissioner did not rely. *Id.*; see also *Bray*, 554 F.3d at 1226.

BACKGROUND

A. Plaintiff's Application

Plaintiff was born on December 10, 1970 and was 43 years old on the date the application was protectively filed. AR 20. Plaintiff can communicate in English but has a limited education. AR 20.

On September 11, 2014, Plaintiff protectively filed the current application for supplemental security income, alleging disability beginning January 1, 2003. AR 10. The claim was denied initially on January 21, 2015, and upon reconsideration on April 16, 2015. Plaintiff filed a written request for a hearing on April 29, 2015, and Plaintiff appeared and testified at a hearing on December 1, 2016, before an ALJ. On January 12, 2017, the ALJ issued a denial of benefits. The Appeals Council denied review on February 22, 2018, and this appeal followed.

B. The Sequential Analysis

A claimant is disabled if he or she is unable to “engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . . has lasted or can be expected to last for a continuous period of not less than 12 months[.]” 42 U.S.C.

§ 423(d)(1)(A). “Social Security Regulations set out a five-step sequential process for determining whether an applicant is disabled within the meaning of the Social Security Act.”

Keyser v. Comm’r Soc. Sec. Admin., 648 F.3d 721, 724 (9th Cir. 2011); see also 20 C.F.R.

§§ 404.1520 (DIB), 416.920 (SSD); *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987). Each step is potentially dispositive. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). The five-step sequential process asks the following series of questions:

1. Is the claimant performing “substantial gainful activity?” 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). This activity is work involving significant mental or physical duties done or intended to be done for pay or profit. 20 C.F.R. §§ 404.1510, 416.910. If the claimant is performing such work, she is not disabled within the meaning of the Act. 20 C.F.R.

§§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If the claimant is not performing substantial gainful activity, the analysis proceeds to step two.

2. Is the claimant's impairment "severe" under the Commissioner's regulations? 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). An impairment or combination of impairments is "severe" if it significantly limits the claimant's physical or mental ability to do basic work activities. 20 C.F.R. §§ 404.1521(a), 416.921(a). Unless expected to result in death, this impairment must have lasted or be expected to last for a continuous period of at least 12 months. 20 C.F.R. §§ 404.1509, 416.909. If the claimant does not have a severe impairment, the analysis ends. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the claimant has a severe impairment, the analysis proceeds to step three.
3. Does the claimant's severe impairment "meet or equal" one or more of the impairments listed in 20 C.F.R. Part 404, Subpart P, Appendix 1? If so, then the claimant is disabled. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment does not meet or equal one or more of the listed impairments, the analysis continues. At that point, the ALJ must evaluate medical and other relevant evidence to assess and determine the claimant's "residual functional capacity" ("RFC"). This is an assessment of work-related activities that the claimant may still perform on a regular and continuing basis, despite any limitations imposed by his or her impairments. 20 C.F.R. §§ 404.1520(e), 404.1545(b)-(c), 416.920(e), 416.945(b)-(c). After the ALJ determines the claimant's RFC, the analysis proceeds to step four.
4. Can the claimant perform his or her "past relevant work" with this RFC assessment? If so, then the claimant is not disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). If the claimant cannot perform his or her past relevant work, the analysis proceeds to step five.
5. Considering the claimant's RFC and age, education, and work experience, is the claimant able to make an adjustment to other work that exists in significant numbers in the national economy? If so, then the claimant is not disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v), 404.1560(c), 416.960(c). If the claimant cannot perform such work, he or she is disabled. *Id.*

See also *Bustamante v. Massanari*, 262 F.3d 949, 954 (9th Cir. 2001).

The claimant bears the burden of proof at steps one through four. *Id.* at 953; see also *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999); *Yuckert*, 482 U.S. at 140-41. The Commissioner bears the burden of proof at step five. *Tackett*, 180 F.3d at 1100. At step five, the Commissioner must show that the claimant can perform other work that exists in significant numbers in the national economy, “taking into consideration the claimant’s residual functional capacity, age, education, and work experience.” *Id.*; see also 20 C.F.R. §§ 404.1566, 416.966 (describing “work which exists in the national economy”). If the Commissioner fails to meet this burden, the claimant is disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). If, however, the Commissioner proves that the claimant is able to perform other work existing in significant numbers in the national economy, the claimant is not disabled. *Bustamante*, 262 F.3d at 953-54; *Tackett*, 180 F.3d at 1099.

C. The ALJ’s Decision

At step one, the ALJ found that Plaintiff has not engaged in substantial gainful activity since September 11, 2014, the application date. AR 12. At step two, the ALJ found that Plaintiff has the following severe impairments: A major depressive disorder; anxiety; post-traumatic stress disorder (PTSD); borderline intellectual functioning; a personality disorder, not otherwise specified, with predominantly cluster B features; and alcohol, cocaine, methamphetamine, and cannabis abuse, in reported remission. At step three, the ALJ found that Plaintiff does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1.

The ALJ then found that the Plaintiff had the residual functional capacity (“RFC”) to perform a full range of work at all exertional levels but with the following nonexertional limitations: Plaintiff is limited to simple, repetitive work. Plaintiff can have only incidental contact with the public and no working as part of a team. Plaintiff should avoid hazards. AR 14.

At step four, the ALJ found that Plaintiff is unable to perform any past relevant work. At step five, considering the Plaintiff's RFC and age, education, and work experience, the ALJ found that there are jobs that exist in significant numbers in the national economy that Plaintiff can perform. AR 21. The ALJ therefore concluded that Plaintiff has not been under a disability, as defined in the Social Security Act, since September 11, 2014, the date the application was protectively filed.

DISCUSSION

Plaintiff challenges the ALJ's findings regarding Plaintiff's subjective symptom testimony, the evaluation of medical opinions, the weight given to a lay-witness statement, and the RFC assessment.

A. Plaintiff's Subjective Symptom Testimony

Plaintiff argues that the ALJ erred in his assessment of Plaintiff's subjective symptom testimony. A claimant "may make statements about the intensity, persistence, and limiting effects of his or her symptoms." SSR 16-3p, 2017 WL 5180304, at *6 (Oct. 25 2017).² There is a two-step process for evaluating a claimant's testimony about the severity and limiting effect of the claimant's symptoms. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009). "First, the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment 'which could reasonably be expected to produce the pain or other symptoms alleged.'" *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991) (en banc)). When doing so, "the claimant need not

² Effective March 28, 2016, Social Security Ruling (SSR) 96-7p was superseded by SSR 16-3p, which eliminates the term "credibility" from the agency's sub-regulatory policy. SSR 16-3p; Titles II and XVI: Evaluation of Symptoms in Disability Claims, 81 Fed. Reg. 14166 (Mar. 16, 2016). Because case law references the term "credibility," however, it may be used in this Opinion and Order.

show that her impairment could reasonably be expected to cause the severity of the symptom she has alleged; she need only show that it could reasonably have caused some degree of the symptom.” *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996).

“Second, if the claimant meets this first test, and there is no evidence of malingering, ‘the ALJ can reject the claimant’s testimony about the severity of her symptoms only by offering specific, clear and convincing reasons for doing so.’” *Lingenfelter*, 504 F.3d at 1036 (quoting *Smolen*, 80 F.3d at 1281). It is “not sufficient for the ALJ to make only general findings; he must state which pain testimony is not credible and what evidence suggests the complaints are not credible.” *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993). Those reasons must be “sufficiently specific to permit the reviewing court to conclude that the ALJ did not arbitrarily discredit the claimant’s testimony.” *Orteza v. Shalala*, 50 F.3d 748, 750 (9th Cir. 1995) (citing *Bunnell*, 947 F.2d at 345-46).

The Commissioner superseded Social Security Rule (“SSR”) 96-7p governing the assessment of a claimant’s “credibility” and replaced it with SSR 16-3p. SSR 16-3p eliminates the reference to “credibility,” clarifies that “subjective symptom evaluation is not an examination of an individual’s character,” and requires the ALJ to consider all of the evidence in an individual’s record when evaluating the intensity and persistence of symptoms. SSR 16-3p, available at 2016 WL 1119029, at *1-2. The Commissioner recommends that the ALJ examine “the entire case record, including the objective medical evidence; an individual’s statements about the intensity, persistence, and limiting effects of symptoms; statements and other information provided by medical sources and other persons; and any other relevant evidence in the individual’s case record.” *Id.* at *4. The Commissioner further recommends assessing: (1) the claimant’s statements made to the Commissioner, medical providers, and others regarding the

claimant's location, frequency and duration of symptoms, the impact of the symptoms on daily living activities, factors that precipitate and aggravate symptoms, medications and treatments used, and other methods used to alleviate symptoms; (2) medical source opinions, statements, and medical reports regarding the claimant's history, treatment, responses to treatment, prior work record, efforts to work, daily activities, and other information concerning the intensity, persistence, and limiting effects of an individual's symptoms; and (3) non-medical source statements, considering how consistent those statements are with the claimant's statements about his or her symptoms and other evidence in the file. See *id.* at *6-7.

The ALJ's decision relating to a claimant's subjective testimony may be upheld overall even if not all the ALJ's reasons for rejecting the claimant's testimony are upheld. See *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004). The ALJ may not, however, discount testimony "solely because" the claimant's symptom testimony "is not substantiated affirmatively by objective medical evidence." *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006).

The ALJ found that Plaintiff's medically determinable impairments could reasonably be expected to cause the alleged symptoms, but that Plaintiff's statements concerning the intensity, persistence, and limiting effects of those symptoms were not entirely consistent with the medical evidence and other evidence in the record. AR 15. The ALJ found that Plaintiff "demonstrated an ability to work at substantial gainful activity level as a bindery feeder" during portions of 2007 and 2008. AR 16. As Plaintiff correctly notes, however, the ALJ misquotes the Plaintiff's description for why she left that job. The ALJ states that Plaintiff "left the job . . . for reasons other than disability. She reported 'it was a factory and it was ruining my clothes.'" AR 16. The ALJ does not cite this quote in the record, but Plaintiff cites the quote in its entirety, and argues

that it indicates that the Plaintiff left the job due to her disability: “I hated it because it smelled like oil and ruined all my clothes and I always smell like a factory . . . I tried to keep going, but then my anxiety started getting worse and worse and I couldn’t manage to make myself go in.” AR 325. The Court therefore holds that the ALJ’s description of Plaintiff’s reasons for departing the bindery job therefore is not accurate and therefore is not a clear and convincing reason to reject the Plaintiff’s testimony about her ability to work or the severity of her symptoms. *Lingenfelter*, 504 F.3d at 1036.

Plaintiff also argues that the ALJ’s statements that “polysubstance abuse could be expected to limit [Plaintiff’s] ability to work . . . [but was] not an appropriate basis for obtaining Social Security disability benefits.” Plaintiff argues that there is no suggestion anywhere in the record that Plaintiff sought disability benefits because of polysubstance abuse. The Commissioner concedes that this finding was error but argues that the error was harmless “because the ALJ gave several other specific, clear and convincing reasons” for rejecting Plaintiff’s testimony about the severity of her symptoms. ECF 17 at 5 n.3.

The Court notes that SSR 16-3p eliminated the reference to “credibility,” and clarified that “subjective symptom evaluation is not an examination of an individual’s character.” SSR 16-3p, available at 2016 WL 1119029, at *1-2. The ALJ’s statement about Plaintiff’s prior polysubstance abuse not being “an appropriate basis for obtaining Social Security disability benefits,” which the Commissioner concedes was error, gives the Court concern that the ALJ’s subjective symptom evaluation was at least in part an examination of Plaintiff’s character and therefore was not proper under SSR 16-3p. The Court does not find that the error was harmless, given its likely effect on the ALJ’s findings regarding the consistency of Plaintiff’s subjective symptom testimony with the remainder of the record evidence.

B. Medical Opinion Evidence

Plaintiff argues that the ALJ erred in evaluating the medical opinion evidence. The ALJ is responsible for resolving conflicts in the medical record, including conflicts among physicians' opinions. *Carmickle*, 533 F.3d at 1164. The Ninth Circuit distinguishes between the opinions of three types of physicians: treating physicians, examining physicians, and non-examining physicians. *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014). Generally, "a treating physician's opinion carries more weight than an examining physician's, and an examining physician's opinion carries more weight than a reviewing physician's." *Holohan v. Massanari*, 246 F.3d 1195, 1202 (9th Cir. 2001). If a treating physician's opinion is supported by medically acceptable techniques and is not inconsistent with other substantial evidence in the record, the treating physician's opinion is given controlling weight. *Id.*; see also 20 C.F.R. § 404.1527(d)(2). A treating doctor's opinion that is not contradicted by the opinion of another physician can be rejected only for "clear and convincing" reasons. *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008). If a treating doctor's opinion is contradicted by the opinion of another physician, the ALJ must provide "specific and legitimate reasons" for discrediting the treating doctor's opinion. *Id.*

In addition, the ALJ generally must accord greater weight to the opinion of an examining physician than that of a non-examining physician. *Orn*, 495 F.3d at 631. As is the case with the opinion of a treating physician, the ALJ must provide "clear and convincing" reasons for rejecting the uncontradicted opinion of an examining physician. *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990). If the opinion of an examining physician is contradicted by another physician's opinion, the ALJ must provide "specific, legitimate reasons" for discrediting the examining physician's opinion. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). An ALJ may reject an examining, non-treating physician's opinion "in favor of a nonexamining, nontreating

physician when he gives specific, legitimate reasons for doing so, and those reasons are supported by substantial record evidence.” *Roberts v. Shalala*, 66 F.3d 179, 184 (9th Cir. 1995), as amended (Oct. 23, 1995).

Specific, legitimate reasons for rejecting a physician’s opinion may include its reliance on a claimant’s discredited subjective complaints, inconsistency with medical records, inconsistency with a claimant’s testimony, inconsistency with a claimant’s daily activities, or that the opinion is brief, conclusory, and inadequately supported by clinical findings. *Bray*, 554 F.3d at 1228; *Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008); *Andrews*, 53 F.3d at 1042-43. An ALJ errs by rejecting or assigning minimal weight to a medical opinion “while doing nothing more than ignoring it, asserting without explanation that another medical opinion is more persuasive, or criticizing it with boilerplate language that fails to offer a substantive basis” for the ALJ’s conclusion. *Garrison*, 759 F.3d at 1013; see also *Smolen*, 80 F.3d at 1286 (noting that an ALJ effectively rejects an opinion when he or she ignores it).

“An ALJ can satisfy the ‘substantial evidence’ requirement by ‘setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings.” *Garrison*, 759 F.3d at 1012 (quoting *Reddick*, 157 F.3d at 725). In other words, “[t]he ALJ must do more than offer his conclusions. He must set forth his own interpretations and explain why they, rather than the doctors’, are correct.” *Reddick*, 157 F.3d at 725 (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)). “[T]he opinion of a non-examining medical advisor cannot by itself constitute substantial evidence that justifies the rejection of the opinion of an examining or treating physician.” *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999) (citations omitted); but see *id.* at 600 (opinions of

non-treating or nonexamining physicians may serve as substantial evidence when the opinions are consistent with independent clinical findings or other evidence in the record).

The ALJ rejected Dr. Weniger's opinion about the extent of Plaintiff's mental limitations. AR 17. The ALJ found that Dr. Weniger's estimate that Plaintiff's global assessment of functioning (GAF) score is 50 deserved little weight "because Dr. Weniger examined the claimant on only one occasion and the GAF score is merely a snapshot of the claimant's functioning at a particular time." AR 18. The ALJ also rejected the GAF score finding of Dr. Scott T. Alvord, who determined that Plaintiff's GAF score was in the range of 30 to 35, for the same stated reasons. AR 18. The ALJ noted that the GAF score "is not explained in functional terms and it relies on factors not relevant to the Social Security Administration's disability analysis." AR 19.

The Court agrees with Plaintiff that these findings do not meet the substantial evidence standard, because "[t]he ALJ must do more than offer his conclusions. He must set forth his own interpretations and explain why they, rather than the doctors', are correct." *Reddick*, 157 F.3d at 725 (citing *Embrey*, 849 F.2d at 421-22). The ALJ did not explain why such a snapshot or singular examination was inaccurate, especially given that there were two GAF scores in the record, each found by a different expert. The ALJ also does not explain why the fact that the GAF score "is not explained in functional terms" is a reason to reject the score, especially given the ALJ's seemingly contradictory acknowledgement that each of Plaintiff's GAF scores "indicate[] serious impairment in social and occupational functioning (DSM-IV-TR Diagnostic and Statistical Manual of Mental Disorders)." AR 18. The Court therefore finds that the ALJ's rejection of the GAF score findings of Dr. Weniger and Dr. Alvord was error.

C. Analysis of Lay-Witness Testimony

Plaintiff argues that the ALJ erred in failing to give appropriate weight to the testimony of Candyce Scott. ECF 16. “In determining whether a claimant is disabled, an ALJ must consider lay witness testimony concerning a claimant’s ability to work.” *Stout v. Comm’r*, 454 F.3d 1050, 1053 (9th Cir. 2006). Lay witness testimony regarding a claimant’s symptoms or how an impairment affects her ability to work is competent evidence. *Id.* Thus, an ALJ may not reject such testimony without comment. *Id.* In rejecting lay testimony, the ALJ need not “discuss every witness’s testimony on an individualized, witness-by-witness basis. Rather, if the ALJ gives germane reasons for rejecting testimony by one witness, the ALJ need only point to those reasons when rejecting similar testimony by a different witness.” *Molina v. Astrue*, 674 F.3d 1104, 1114 (9th Cir. 2012).

An ALJ errs by failing to “explain her reasons for disregarding . . . lay witness testimony, either individually or in the aggregate.” *Id.* at 1115 (quoting *Nguyen*, 100 F.3d at 1467 (9th Cir. 1996)). This error may be harmless “where the testimony is similar to other testimony that the ALJ validly discounted, or where the testimony is contradicted by more reliable medical evidence that the ALJ credited.” See *id.* at 1118-19. Additionally, “an ALJ’s failure to comment upon lay witness testimony is harmless where ‘the same evidence that the ALJ referred to in discrediting [the claimant’s] claims also discredits [the lay witness’s] claims.’” *Id.* at 1122 (quoting *Buckner v. Astrue*, 646 F.3d 549, 560 (8th Cir. 2011)). When an ALJ ignores uncontradicted lay witness testimony that is highly probative of a claimant’s condition, “a reviewing court cannot consider the error harmless unless it can confidently conclude that no reasonable ALJ, when fully crediting the testimony, could have reached a different disability determination.” *Stout*, 454 F.3d at 1056.

The ALJ gave only “some weight” to Ms. Scott’s lay testimony. AR 20, 262. The ALJ reasoned that Ms. Scott’s opinion was not entitled to greater weight because she “sees the claimant only a couple of hours a week to engage in arts and crafts.” AR 20. An ALJ may discount a layperson’s opinion based on their limited contact with the claimant. *Crane v. Shalala*, 76 F.3d 251, 254 (9th Cir. 1996). Here, Ms. Scott admitted that she saw Plaintiff only a couple hours of week. AR 262. Because Ms. Scott saw Plaintiff only for that limited duration, she would have no first-hand knowledge to support her assessment that, for example, Plaintiff suffered from nightmares or that she spent two hours per week doing laundry. AR 263-64. This was a reasonable basis on which to discount Ms. Scott’s opinion.

D. The RFC Assessment

Plaintiff argues that the ALJ’s RFC finding does not address the full extent of Plaintiff’s limitations. The Court does not reach this argument because as the Court discusses below, under the credit-as-true doctrine, the ALJ would be required to find the Plaintiff disabled on remand if the improperly discredited evidence (Plaintiff’s subjective symptom testimony and rejection of the GAF scores provided by two medical experts) were credited as true.

E. Remand

“The decision whether to remand a case for additional evidence, or simply to award benefits is within the discretion of the court.” *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987). In *Benecke v. Barnhart*, 379 F.3d 587 (9th Cir. 2004), the Ninth Circuit set forth the framework for determining whether a remand for hearing or a remand for benefits is appropriate.

Remand for further administrative proceedings is appropriate if enhancement of the

record would be useful. Conversely, where the record has been developed fully and further administrative proceedings would serve no useful purpose, the district court should remand for an immediate award of benefits.

Id. at 594 (citations and emphasis omitted). Evidence rejected by the ALJ should be credited and remand for benefits granted where: “(1) the ALJ failed to provide legally sufficient reasons for rejecting the evidence; (2) there are no outstanding issues that must be resolved before a determination of disability can be made; and (3) it is clear from the record that the ALJ would be required to find the claimant disabled were such evidence credited.” Id. (citing *Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000)).

In the Ninth Circuit, the “credit-as-true” doctrine is “settled” and binding on this Court. *Garrison v. Colvin*, 759 F.3d 995, 999 (9th Cir. 2014). The court first determines whether the ALJ made a legal error and then reviews the record as a whole to determine whether the record is fully developed, the record is free from conflicts and ambiguities, and there is any useful purpose in further proceedings. *Dominguez v. Colvin*, 808 F.3d 403, 407 (9th Cir. 2015). Only if the record has been fully developed and there are no outstanding issues left to be resolved does the district court consider whether the ALJ would be required to find the claimant disabled on remand if the improperly discredited evidence were credited as true. Id. If so, the district court can exercise its discretion to remand for an award of benefits. Id. The district court retains flexibility, however, and is not required to credit statements as true merely because the ALJ made a legal error. Id. at 408.

The court Concludes that the record evidence, taken as a whole, demonstrates that Plaintiff’s impairments are disabling. The record has been fully developed and requires no enhancement. The Court finds that the ALJ would be required to find the claimant disabled on remand if the improperly discredited evidence, described above, were credited as true. A remand for an award of benefits is therefore appropriate.

CONCLUSION

The Commissioner's decision that Plaintiff was not disabled is REVERSED AND REMANDED for an immediate calculation and payment of benefits.

IT IS SO ORDERED.

DATED this 28th day of August, 2019.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge