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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN A. GOODMAN,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No. C16-285-JCC

**ORDER REVERSING AND
REMANDING CASE FOR
FURTHER ADMINISTRATIVE
PROCEEDINGS**

Susan A. Goodman seeks review of the denial of her application for Disability Insurance Benefits. Ms. Goodman contends the ALJ erred by miscalculating: (1) the Department of Veterans Affairs' (VA) disability rating; (2) the medical evidence; (3) her own testimony; and (4) the lay evidence. Dkt. 9 at 2. Ms. Goodman also contends that new evidence, in the form of a new VA disability determination, submitted to and considered by the Appeals Council undermines the ALJ's decision. *Id.* Ms. Goodman contends that in light of these errors and the new evidence submitted to the Appeals Council, the ALJ's residual functional capacity (RFC) determination fails to account for all of her limitations and is not supported by substantial evidence.¹ *Id.* Ms. Goodman contends that this matter should be remanded for an award of

¹ Ms. Goodman also argued, alternatively, that the Court should remand this case for a new hearing pursuant to sentence six of 42 U.S.C. § 405(g) based on the Commissioner's failure to file the complete
ORDER REVERSING AND REMANDING
CASE FOR FURTHER ADMINISTRATIVE
PROCEEDINGS - 1

1 benefits or, alternatively, for further administrative proceedings. Dkt. 9 at 19. As discussed
2 below, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for
3 further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

4 **BACKGROUND**

5 In August 2012, Ms. Goodman applied for benefits, alleging disability as of June 29,
6 2012. Tr. 47, 184-189. Ms. Goodman's application was denied initially and on reconsideration.
7 Tr. 47, 98-122. After the ALJ conducted a hearing on April 15, 2014, the ALJ issued a decision
8 finding Ms. Goodman not disabled. Tr. 47-59.

9 **THE ALJ'S DECISION**

10 Utilizing the five-step disability evaluation process,² the ALJ found:

11 **Step one:** Ms. Goodman has not engaged in substantial gainful activity since June 29,
12 2012, the alleged onset date.

13 **Step two:** Ms. Goodman has the following severe impairments: major depressive
14 disorder, anxiety disorder, and posttraumatic stress disorder (PTSD).

15 **Step three:** These impairments do not meet or equal the requirements of a listed
16 impairment.³

17 **Residual Functional Capacity:** Ms. Goodman can perform a full range of work at all
18 exertional levels. She can perform simple routine tasks. She can have superficial,
19 infrequent contact with coworkers. She should have no contact with the public. She can
20 have few, if any, changes in work routine or setting.

21 **Step four:** Ms. Goodman cannot perform past relevant work.⁴

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23 record with the Court. Dkt. 17 at 10. Specifically, Ms. Goodman pointed out that two pages of the
hearing transcript were missing from the record. *Id.* On May 2, 2017, this Court issued an order directing
the Commissioner to supplement or complete the record or show cause why the case should not be
remanded for failure to file the complete record. Dkt. 18. On May 18, 2017, the Commissioner
supplemented the record by filing the complete hearing transcript. Dkt. 19. Accordingly, the Court
considers this branch of Ms. Goodman's motion to be moot.

² 20 C.F.R. §§ 404.1520, 416.920.

³ 20 C.F.R. Part 404, Subpart P. Appendix 1.

⁴ It appears that the vocational expert (VE) testified that Ms. Goodman could, in fact, perform her past
relevant work as a scrap sorter. Tr. 93. This issue is not relevant to the Court's determination of Ms.

1 **Step five:** As there are jobs that exist in significant numbers in the national economy that
2 Ms. Goodman can perform, she is not disabled.

3 Tr. 47-59. The Appeals Council denied Ms. Goodman’s request for review making the ALJ’s
4 decision the Commissioner’s final decision. Tr. 1-6.⁵

5
6 **DISCUSSION**

7 **A. Department of Veterans’ Affairs (VA) Disability Determination**

8 Ms. Goodman contends that substantial evidence does not support the ALJ’s evaluation
9 of the VA’s disability determination. Dkt. 9 at 3. The Court agrees.

10 The record contains a letter from the VA dated October 3, 2013, indicating that it had
11 reached a “provisional decision” on Ms. Goodman’s application for benefits. Tr. 291-97.
12 Specifically, the letter indicated that the VA had provisionally determined that Ms. Goodman
13 was 70% disabled due to “PTSD, major depression, and alcohol dependence in remission.” *Id.*
14 The letter further indicated that Ms. Goodman was “denied entitlement to the 100% rate because
15 it wasn’t shown that [she was] unable to work as a result of [her] service connected
16 disability/disabilities.” Tr. 262. The letter indicated that a copy of the “Rating Decision” was
17 also enclosed which “provides a detailed explanation of our decision, the evidence considered,
18 and the reasons for our decision.” Tr. 294. However, the Rating Decision referenced in the
19 letter is not included in the record nor does the letter itself explain the basis for the VA’s
20 provisional decision. The ALJ gave “some weight” to the VA’s provisional decision finding it
21 “consistent with the record as a whole supporting the claimant was able to work with the
22 limitations set forth in the above residual functional capacity.” Tr. 57. The ALJ also discounted

23 _____
Goodman’s claim here. However, if necessary upon reevaluating the evidence on remand, the ALJ
should also address this discrepancy.

⁵ The rest of the procedural history is not relevant to the outcome of the case and is thus omitted.

1 the VA's provisional decision in part because "the Social Security Administration has different
2 rules governing the definition and assessment of disability." *Id.*

3 Subsequent to the ALJ's decision, in March 2015, the VA issued a "final decision" based
4 on the submission of additional evidence. Tr. 7-16. The final decision reaffirmed the finding
5 that Ms. Goodman was 70% disabled but found that she was entitled to "individual
6 unemployability" effective February 1, 2012, because the evidence showed she was "unable to
7 secure or follow a substantially gainful occupation as a result of service-connected posttraumatic
8 stress disorder with major depression and alcohol dependence in remission." *Id.* The March
9 2015 VA determination further indicates that the 70% disability evaluation is based on:
10 "occupational and social impairment, with deficiencies in most areas, such as work, school,
11 family relations, judgment, thinking, or mood"; "difficulty in adapting to a worklike setting";
12 "difficulty in adapting to stressful circumstances"; "difficulty in adapting to work"; "inability to
13 establish and maintain effective relationships"; "difficulty in establishing and maintaining
14 effective work and social relationships"; "disturbances of motivation and mood"; "flattened
15 affect"; "anxiety"; "chronic sleep impairment"; and "depressed mood." Tr. 15-16.

16 A VA determination of disability is "ordinarily" entitled to "great weight." *McCartey v.*
17 *Massanari*, 298 F.3d 1072, 1076 (9th Cir. 2002). However, an ALJ may "give less weight to VA
18 disability rating if he gives persuasive, specific, valid reasons for doing so that are supported by
19 the record." *Valentine v. Comm'r of Soc. Sec. Admin.*, 574 F.3d 685, 694-95 (9th Cir. 2009)
20 (quoting *McCartey*, 298 F.3d at 1076) (internal quotation marks omitted). Here, substantial
21 evidence does not support the ALJ's finding that the VA's 70% disability rating is "consistent
22 with" the RFC assessment. Tr. 57. In the first instance, the letter discussing the provisional
23 decision of 70% disability does not include an explanation of the basis for that finding or the

1 areas in which Ms. Goodman was limited. Tr. 291-97. As such, the ALJ's conclusion that the
2 70% disability rating is consistent with his RFC is purely speculative and is not supported by
3 substantial evidence. Moreover, the letter describing the provisional decision references a
4 "Rating Decision" that provides a "detailed explanation of our decision, the evidence considered,
5 and the reasons for her decision." Tr. 294. However, here, there is no indication the ALJ
6 attempted to obtain the Rating Decision explicitly referenced in the VA's letter. The ALJ has
7 "an independent duty to fully and fairly develop the record and to assure that the claimant's
8 interests are considered." *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001) (internal
9 citations and quotation marks excluded). This duty is triggered by "[a]mbiguous evidence, or the
10 ALJ's own finding that the record is inadequate to allow for proper evaluation of the evidence[.]"
11 *Id.* Under the circumstances, the VA's provisional determination of 70% disability was
12 ambiguous and the record inadequate for the ALJ to conclude that this rating was consistent with
13 the limitations contained in his RFC determination. Accordingly, absent further development of
14 the record, substantial evidence did not support the ALJ's finding.

15 Moreover, the VA's 2015 final determination further undermines the ALJ's evaluation of
16 the VA's disability determination. Tr. 7-16. The 2015 final determination was new evidence
17 which was submitted to the Appeals Council after the ALJ's decision. Tr. 1-4. The Appeals
18 Council examined the evidence and determined that it did not affect the decision about whether
19 Ms. Goodman was disabled. *Id.* Thus, the 2015 VA final determination "became part of the
20 administrative record, which the district court must consider when reviewing the
21 Commissioner's final decision for substantial evidence." *Brewes v. Comm'r of Soc. Sec. Admin.*,
22 682 F.3d 1157, 1163 (9th Cir. 2012). The 2015 final determination undermines the ALJ's
23 finding that the 70% disability determination was "consistent with the RFC" in two ways. Tr.

1 57. First, the final decision does include a Rating Decision which indicates that the 70% rating is
2 based in part on Ms. Goodman's "difficulty in adapting to stressful circumstances." Tr. 13-16.
3 The RFC does not include any limitation directly addressing Ms. Goodman's ability to deal with
4 stress. Second, the final decision determined that, while Ms. Goodman maintained a 70%
5 disability rating, she was also unemployable *beginning February 1, 2012*, due to her
6 impairments. Tr. 7-16. The Commissioner argues that the VA's 2015 final determination does
7 not undermine the ALJ's findings because it is based on a new diagnosis rendered after the
8 ALJ's decision. Dkt. 16 at 17-18. However, the 2015 final determination indicates that while
9 the VA considered a record from 2015 indicating a new diagnosis of bipolar disorder, it also
10 considered records from 2013, prior to the ALJ's decision. Tr. 15. Moreover, based on those
11 records the VA determined that,

12 A review of your VA Medical Center treatment records show you
13 continue to be treated for posttraumatic stress disorder and major
14 depressive disorder. *Symptoms shown in your treatment records and*
15 *current examination are consistent with exam findings of 2013.*
16 Although recent VA examination findings show a separate and distinct
17 new mental illness and abatement of PTSD symptoms, the weight of the
18 medical evidence, specifically VA Medical Center treatment records,
19 shows ongoing care for PTSD with your mood lability more consistent
20 with personality traits rather than a diagnosis of bipolar disorder.
21 Consequently, the evidence being in equipoise, we are assigning more
22 weight to favorable findings showing *continuity of your condition.*

18 *Id.* (emphasis added). Thus, contrary to the Commissioner's argument, the VA concluded that
19 the evidence showed continuity of Ms. Goodman's condition, namely PTSD and major
20 depressive disorder, and that the evidence established individual unemployability commencing
21 February 1, 2012, prior to Ms. Goodman's application for DIB. *Id.* Under these circumstances,
22 the final determination by the VA serves to further undermine the ALJ's finding that the VA's
23 70% disability rating was consistent with the RFC. Tr. 57.

1 Finally, the ALJ also discounts the VA's disability rating because "the Social Security
2 Administration has different rules governing the definition and assessment of disability." Tr. 57.
3 However, this generalized rationale is not a "persuasive, specific, valid reason[]" for discounting
4 the VA determination. *See Valentine*, 574 F.3d at 695 (ALJ's rejection of the VA's disability
5 rating "on the general ground that VA and SSA disability inquiries are different" was not a
6 persuasive, specific, valid reason); *and see McCartey*, 298 F.3d at 1076 (noting the "marked
7 similarity between [the disability programs of the VA and of the SSA].").

8 In sum, substantial evidence does not support the ALJ's finding with respect to the VA's
9 disability determination. On remand, the ALJ should reevaluate the VA's disability rating taking
10 into account the 2015 final decision.

11 **B. Medical Opinion Evidence**

12 In general, more weight should be given to the opinion of a treating physician than to a
13 non-treating physician, and more weight to the opinion of an examining physician than to a
14 nonexamining physician. *See Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Where a
15 treating or examining doctor's opinion is not contradicted by another doctor, it may be rejected
16 only for clear and convincing reasons. *Id.* Where contradicted, a treating or examining
17 physician's opinion may not be rejected without "specific and legitimate reasons supported by
18 substantial evidence in the record for so doing." *Id.* at 830-31. "An ALJ can satisfy the
19 'substantial evidence' requirement by 'setting out a detailed and thorough summary of the facts
20 and conflicting clinical evidence, stating his interpretation thereof, and making findings.'" *Garrison v. Colvin*, 759 F.3d 995, 1011 (9th Cir. 2014) (quoting *Reddick v. Chater*, 157 F.3d
21 715, 725 (9th Cir. 1998)).
22

23 **1. Physical Impairments**

1 **a. Step Two and Consideration of “Non-Severe” Impairments**

2 Ms. Goodman argues, albeit in a somewhat convoluted manner, that the ALJ erred in
3 finding her physical impairments non-severe at step two. Dkt. 9 at 5-6; Dkt. 17 at 8. Ms.
4 Goodman goes on to argue that the ALJ harmfully erred in failing to include in his RFC
5 assessment “all of the limitations caused by all of Goodman’s impairments, including those
6 which the ALJ found were non-severe.” Dkt. 9 at 5-6.

7 At step two of the sequential evaluation, the Commissioner must determine “whether the
8 claimant has a medically severe impairment or combination of impairments.” *See Smolen v.*
9 *Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996); 20 C.F.R. § 404.1520(a)(4)(ii). The claimant has
10 the burden to show that (1) she has a medically determinable physical or mental impairment, and
11 (2) the medically determinable impairment is severe. *See Bowen v. Yuckert*, 482 U.S. 137, 146
12 (1987). A “‘physical or mental impairment’ is an impairment that results from anatomical,
13 physiological, or psychological abnormalities which are demonstrable by medically acceptable
14 clinical and laboratory diagnostic techniques.” 42 U.S.C. §§ 423(d)(3), 1382c(a)(3)(D). Thus, a
15 medically determinable impairment must be established by objective medical evidence from an
16 acceptable medical source. 20 C.F.R. § 404.1521. “‘Regardless of how many symptoms an
17 individual alleges, or how genuine the individual’s complaints may appear to be, the existence of
18 a medically determinable physical or mental impairment cannot be established in the absence of
19 objective medical abnormalities; i.e., medical signs and laboratory findings[.]’” *Ukolov v.*
20 *Barnhart*, 420 F.3d 1002, 1005 (9th Cir. 2005) (quoting SSR 96-4p).

21 In addition to producing evidence of a medically determinable physical or mental
22 impairment, the claimant bears the burden at step two of establishing that the impairment or
23 impairments is “severe.” *See Bowen*, 482 U.S. at 146. An impairment or combination of

1 impairments is severe if it significantly limits the claimant’s physical or mental ability to do
2 basic work activities. 20 C.F.R. §§ 404.1520(c). “The step two inquiry is a de minimus
3 screening device to dispose of groundless claims.” *Smolen*, 80 F.3d at 1290. An impairment or
4 combination of impairments may be found “‘not severe’ only if the evidence establishes a slight
5 abnormality that has ‘no more than a minimal effect on an individual’s ability to work.’” *Id.*
6 (citing *Yuckert v. Bowen*, 841 F.2d 303, 306 (9th Cir. 1988)). However, the claimant has the
7 burden of proving her “impairments or their symptoms affect her ability to perform basic work
8 activities.” *Edlund v. Massanari*, 253 F.3d 1152, 1159-60 (9th Cir. 2001). Moreover, the
9 Commissioner’s regulations require an ALJ to consider all of a claimant’s medically
10 determinable impairments—both severe and non-severe—in fashioning an RFC. 20 C.F.R. §§
11 404.1545(a)(2); 416.945(a)(2); *see also* Social Security Ruling (SSR) 96–8p, 1996 WL 374184
12 at *4 (“In assessing RFC, the adjudicator must consider limitations and restrictions imposed by
13 all of an individual's impairments, even those that are not ‘severe.’”).

14 The ALJ found:

15 [D]egenerative disc disease of the cervical spine, degenerative joint
16 disease of the shoulders, gastroesophageal reflux disease, and migraines
17 are not “severe” impairments. [Ms. Goodman] repeatedly denied pain or
18 tenderness of the neck, back or joints, or musculoskeletal symptoms.
19 Treatment providers generally had unremarkable physical examinations
20 of the claimant. She reported medications markedly improved and
21 completely resolved her headaches. Diagnostic imaging of the neck
22 showed mild to moderate degenerative disease. Diagnostic imaging of
23 the right shoulder showed mild osteoarthritis. Diagnostic imaging of the
left shoulder showed mild to moderate degenerative changes.
Electrodiagnostic study of the extremities showed no evidence of
cervical radiculopathy or peripheral neuropathy of the upper or lower
limbs. The record fails to establish that the impairments have a more
than minimal effect on the claimant’s ability to perform basic work
activities and are, therefore, not “severe” under the regulations.

Tr. 49-50.

The Court agrees the ALJ erred in evaluating Ms. Goodman’s cervical degenerative disc

1 disease at step two. The ALJ appears to accept cervical degenerative disc disease as a medically
2 determinable impairment, noting that diagnostic imaging of the neck showed mild to moderate
3 degenerative disease. Tr. 49. However, the ALJ finds this impairment non-severe because the
4 record does not establish the impairment has “more than a minimal effect on [Ms. Goodman’s]
5 ability to perform basic work activities.” Tr. 50. The ALJ indicates that treatment providers
6 “generally had unremarkable physical examinations” and Ms. Goodman “repeatedly denied pain
7 or tenderness of the neck, back or joints or musculoskeletal symptoms.” *Id.* However, a review
8 of the record reflects several instances in which Ms. Goodman was evaluated for neck pain and
9 on examination she was noted to be tender to palpation, have a moderately limited range of
10 motion, or to have chronic neck spasm of paraspinal and trapezius muscles, for which she was
11 prescribed and received acupuncture treatment and cervical traction. Tr. 406 (tenderness to
12 palpation), 604 (history of acute neck and low back pain limits neck and trunk active range of
13 motion), 699 (neck ROM moderately limited in all directions), 904 (“chronic neck spasm,
14 involvement of paraspinal musculature and trapezius with periscapular spasming”), 940 (use of
15 cervical traction). Thus, substantial evidence does not support the ALJ’s rationale for finding
16 Ms. Goodman’s cervical spine degenerative disc disease to be a non-severe impairment.

17 Moreover, the Court cannot conclude that this error was harmless as the ALJ did not
18 discuss Ms. Goodman’s cervical spine impairment and the related symptoms, opinions and
19 medical findings in evaluating the RFC at subsequent steps of the analysis. *See Lewis v. Astrue*,
20 498 F.3d 909, 911 (9th Cir. 2007) (Any error in failing to list bursitis as a severe impairment at
21 step two was harmless where the ALJ extensively discussed bursitis and considered any
22 limitations posed by bursitis at Step 4 of the analysis). In fact, in evaluating the medical
23 evidence and determining the RFC, the ALJ gives significant weight to Dr. Hale’s opinion that

1 Ms. Goodman had no severe physical impairments. Tr. 56. However, Dr. Hale’s opinion does
2 not indicate that he considered evidence related to Ms. Goodman’s cervical spine impairment at
3 all in determining Ms. Goodman had no severe physical impairments. Tr. 115-116. Rather, as
4 Ms. Goodman points out, the cervical MRI revealing mild to moderate cervical degenerative disc
5 disease post-dates Dr. Hale’s opinion as do the records of Ms. Goodman’s acupuncture treatment
6 for chronic neck spasms. Tr. 604-607, 900-906. Accordingly, the Court cannot conclude the
7 ALJ’s error in evaluating Ms. Goodman’s cervical spine impairment at step two was harmless
8 and the ALJ should reevaluate that impairment at step two and at subsequent steps on remand.

9 The ALJ also erred in failing to evaluate Ms. Goodman’s low back impairment at step
10 two. In October 2013, an MRI revealed degenerative disc disease, albeit minimal, of the lumbar
11 spine. Tr. 604-607. Ms. Goodman’s husband, Michael Goodman, also submitted a lay statement
12 indicating that Ms. Goodman is unable to lift more than five pounds due to her low back pain.
13 Tr. 264. As discussed in more detail below, the ALJ failed to properly reject or account for Mr.
14 Goodman’s statement regarding Ms. Goodman’s lifting restriction in the RFC or in the
15 hypothetical to the VE. Accordingly, the Court cannot determine that the ALJ’s failure to
16 evaluate Mr. Goodman’s low back impairment at step two was harmless as there is evidence that
17 the impairment imposed a significant limitation which must be reevaluated on remand. *See*
18 *Marsh v. Colvin*, 792 F.3d 1170, 1173 (9th Cir. 2015) (“ALJ errors in social security cases are
19 harmless if they are ‘inconsequential to the ultimate nondisability determination’ [... and] ‘a
20 reviewing court cannot consider [an] error harmless unless it can confidently conclude that no
21 reasonable ALJ, when fully crediting the testimony, could have reached a different disability
22 determination.’” (quoting *Stout*, 454 F.3d at 1055-56)).

23 With respect to Ms. Goodman’s shoulder impairments and headaches, substantial

1 evidence supports the ALJ's determination that these impairments were non-severe. The ALJ
2 appears to accept that these are medically determinable impairments. Tr. 49. The ALJ notes
3 that imaging of Ms. Goodman's right shoulder showed mild osteoarthritis and of her left
4 shoulder showed mild to moderate degenerative changes. *Id.* However, the ALJ notes that
5 treatment providers generally had unremarkable physical examinations and that Ms. Goodman
6 acknowledged that medications markedly improved and completely resolved her headaches. *Id.*
7 Substantial evidence supports the ALJ's findings with respect to these impairments. For
8 instance, on examination of her upper extremities Ms. Goodman was found to have full strength
9 and negative impingement. Tr. 406, 749. Moreover, Ms. Goodman testified at the hearing that
10 her medication relieved her migraines and allowed her to get back to her activities. Tr. 78. Ms.
11 Goodman points to no evidence indicating that these impairments or their symptoms were more
12 than a slight abnormality that had more than a minimal effect on her ability to perform basic
13 work activities. Under the circumstances, the ALJ reasonably determined that Ms. Goodman's
14 headache and shoulder impairments were non-severe. However, the ALJ fail to discuss or
15 consider Ms. Goodman's headache and shoulder impairments at all in determining her RFC as
16 required by the regulations. *See* 20 C.F.R. 404.1545(a)(2). Accordingly, on remand the ALJ
17 should also consider and discuss those non-severe impairments in evaluating Ms. Goodman's
18 RFC.

19 **b. B. Rishi Parmar, M.D.**

20 Ms. Goodman contends the ALJ harmfully erred in evaluating the opinion of Dr. Parmar.
21 Dkt. 9 at 5. The Court disagrees.

22 Dr. Parmar examined Ms. Goodman in April 2012 related to her complaints of low back
23 pain. Tr. 372. Dr. Parmar indicated that Ms. Goodman "reports that her chronic back pain is

1 exacerbated by lifting heavy objects at work[]. Her history and physical exam is consistent with
2 our prior records. We recommend that patient lift no more than 5 lbs at work (or home).” *Id.*
3 The ALJ reasonably rejected Dr. Parmar’s opinion as inconsistent with his clinical findings that
4 Ms. Johnson had no pain on palpation of the lower spine or paraspinous muscles. Tr. 55. “[A]n
5 ALJ may discredit treating physicians’ opinions that are conclusory, brief, and unsupported by
6 the record as a whole or by objective medical findings.” *Batson v. Comm’r of Soc. Sec. Admin.*,
7 359 F.3d 1190, 1195 (9th Cir. 2004) (internal citation omitted). Moreover, “[a]n ALJ may reject
8 an examining physician’s opinion if it is contradicted by clinical evidence.” *Ryan v. Comm’r of*
9 *Social Sec.*, 528 F.3d 1194, 1199 (9th Cir. 2008). Furthermore, an ALJ does not err in failing to
10 include a doctor’s recommendations, as opposed to functional limitations, in an RFC assessment.
11 *See Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 691–92 (9th Cir. 2009) (ALJ did not
12 err by failing to incorporate into RFC doctor’s statement that appeared in section of report
13 entitled “Recommendations” and was neither a diagnosis nor statement of claimant’s functional
14 capacity); *and see Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1165 (9th Cir. 2008)
15 (ALJ did not err in failing to incorporate a doctor’s statement into RFC where the doctor’s
16 “proposal was offered as a *recommendation*, not an imperative” (emphasis in original).

17 Ms. Goodman argues that Dr. Parmar’s opinion is based in part on her “prior records.”
18 Dkt. 9 at 5-6. However, Dr. Parmar does not state that his assessment is based upon Ms.
19 Goodman’s prior records but indicates only that her “history and physical exam is consistent
20 with our prior records.” Tr. 372. However, as Ms. Goodman’s physical exam reflects no
21 objective findings, Dr. Parmar’s statement that the exam is consistent with his prior records
22 undermines Ms. Goodman’s argument that those prior records provide independent support for
23 the recommendation against lifting. Accordingly, the ALJ properly discounted Dr. Parmar’s

1 statement as inconsistent with his clinical findings and, even if he had not, the statement is
2 presented in the form of a recommendation (rather than a functional limitation) which the ALJ
3 was not required to adopt in the RFC. *See Valentine*, 574 F.3d at 691–92.

4 Accordingly, the ALJ did not err in evaluating Dr. Parmar’s April 2012 statement.

5 **c. Gordon Hale, M.D.**

6 Ms. Goodman contends the ALJ erred in evaluating the opinion of Dr. Hale. Dkt. 9 at 7.
7 In March 2013, Dr. Hale reviewed Ms. Goodman’s records including her medical history of
8 restless leg syndrome, a-fib, shoulder anthralgia (including a shoulder x-ray showing mild
9 osteoarthritis), chronic low back pain, gastroesophageal reflux disease, and migraines. Tr. 116.
10 Dr. Hale found that Ms. Goodman did not have a “severe” physical impairment. *Id.* Dr. Hale
11 noted there was no evidence of any treatment for these conditions beyond medication
12 management and that in Ms. Goodman’s description of her activities of daily living, she does not
13 indicate she has any limitations to, nor does she make reference to physical conditions. Tr. 115.
14 The ALJ indicates that he is giving Dr. Hale’s opinion significant weight because he “had the
15 benefit of reviewing the medical evidence and it is consistent with treatment providers[’]
16 unremarkable physical examinations of the claimant.” Tr. 56.

17 Ms. Goodman contends the ALJ erred in giving Dr. Hale’s opinion significant weight
18 because he did not review any records after March 2013. Dkt. 9 at 7. This fact, in and of itself,
19 is not a sufficient reason to discount Dr. Hale’s opinion entirely. However, here, Dr. Hale’s
20 opinion does not indicate that he reviewed or considered any evidence with respect to Ms.
21 Goodman’s cervical spine impairment. Tr. 115-116. Moreover, x-ray and MRI reports of Ms.
22 Goodman’s cervical and lumbar spine post-dating Dr. Hale’s opinion show C4-5 and C5-6
23 spondylosis and mild to moderate degenerative disease of the cervical spine, most notable at C4-

1 5, as well as degenerative disc disease, albeit minimal, of the lumbar spine. Tr. 604-606. As
2 noted above, the ALJ erred in evaluating Ms. Goodman’s cervical and lumbar spine impairments
3 at step two and in failing to consider her other non-severe impairments in evaluating the RFC.
4 Thus, in reevaluating Ms. Goodman’s physical impairments at step two, and at subsequent steps,
5 the ALJ should also reevaluate Dr. Hale’s opinion.

6 **2. Mental Health Impairments**

7 **a. Miles K. Hohenegger, Ph.D.**

8 Ms. Goodman contends the ALJ harmfully erred in evaluating the opinion of Dr.
9 Hohenegger. Dkt. 9 at 6-7. The Court agrees.

10 In July 2013, Dr. Hohenegger performed a psychiatric examination of Ms. Goodman and
11 diagnosed post-traumatic stress disorder and major depression. Tr. 720-734. He assessed a
12 Global Assessment of Functioning (GAF) score of 45. Tr. 733. Dr. Hohenegger found Ms.
13 Goodman had “occupational and social impairment with deficiencies in most areas, such as
14 work, school, family relations, judgment, thinking and/or mood.” Tr. 723. Dr. Hohenegger
15 opined that “[t]he overall impact of the Veteran’s psychological stress does at the present time
16 cause deficiencies in most areas; social, occupational, family capabilities[,] secondary to primary
17 symptoms of PTSD and major depression[] [w]ith primary difficulties in conflict resolution,
18 primary difficulties in establishing new relations.” Tr. 732. Dr. Hohenegger opined that Ms.
19 Goodman “is not capable of engaging in sustained employment secondary to primary difficulties
20 in establishing and maintaining effective relationships.” Tr. 733.

21 The ALJ discounted Dr. Hohenegger’s opinion as based “heavily” on Ms. Goodman’s
22 self-reports, which the ALJ discounted as not fully credible. Tr. 56. “If a treating provider’s
23 opinions are based to a large extent on an applicant’s self-reports and not on clinical evidence,

1 and the ALJ finds the applicant not credible, the ALJ may discount the treating provider's
2 opinion." *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014) (internal citations and
3 quotation marks omitted). "However, when an opinion is not more heavily based on a patient's
4 self-reports than on clinical observations, there is no evidentiary basis for rejecting the opinion."
5 *Id.* Moreover, "[a]n ALJ does not provide clear and convincing reasons for rejecting an
6 examining physician's opinion by questioning the credibility of the patient's complaints where
7 the doctor does not discredit those complaints and supports his ultimate opinion with his own
8 observations." *Ryan*, 528 F.3d at 1199-1200.

9 Here, although Dr. Hohenegger considered Ms. Goodman's symptom reports in his
10 evaluation he did not discredit those complaints himself and substantial evidence does not
11 support the ALJ's finding that the doctor relied more heavily on Ms. Goodman's self-reports
12 than on his clinical observations in reaching his opinions. Rather, Dr. Hohenegger's opinion
13 appears to be supported by the results of the mental status examination, including the results of
14 the depression survey (PHQ-9), the post-traumatic stress disorder scale interview (PSS-I), as well
15 as his personal clinical observations. Tr. 730. Specifically, Dr. Hohenegger observed Ms.
16 Goodman's affect to be mildly restricted and her mood mildly depressed. Tr. 730. He further
17 noted that Ms. Goodman score on the PHQ-9 indicated moderate to moderate severe symptoms
18 of depression. *Id.* Dr. Hohenegger noted that Ms. Goodman's score on the PSS-I met criteria for
19 experiencing past sexual traumas, past military sexual trauma and increased arousal associated
20 with past trauma. *Id.* Dr. Hohenegger also indicated that Ms. Goodman's performance on the
21 PSS-I was considered valid and indicated moderately severe to severe symptoms of post-
22 traumatic stress disorder. *Id.* In light of the objective findings supporting Dr. Hohenegger's
23 opinion, substantial evidence does not support the conclusion that he relied more heavily on Ms.

1 Goodman’s self-reports than on his own clinical findings.

2 The ALJ also rejected Dr. Hohenegger’s opinion as inconsistent with the clinical findings
3 of treatment providers. Tr. 56. Specifically, the ALJ noted that Dr. Fukuda “consistently found
4 [Ms. Goodman] was cooperative and pleasant with good eye contact and had a bright, euthymic
5 and good range affect.” *Id.* An ALJ may discount a physician’s opinion as inconsistent with
6 clinical findings. *Valentine*, 574 F.3d at 692–93 (holding that a conflict with treatment notes is a
7 specific and legitimate reason to reject a treating physician’s opinion). However, in evaluating
8 mental health issues “[c]ycles of improvement and debilitating symptoms are a common
9 occurrence” and, in such circumstances, “it is error for an ALJ to pick out a few isolated
10 instances of improvement over a period of months or years and to treat them as a basis for
11 concluding a claimant is capable of working.” *Garrison*, 759 F.3d at 1017; *see also Holohan v.*
12 *Massanari*, 246 F.3d 1195, 1205 (9th Cir. 2001) (“[The treating physician’s] statements must be
13 read in context of the overall diagnostic picture he draws.”). The majority of Dr. Fukuda’s
14 treatment notes cited by the ALJ are from a period subsequent to Dr. Hohenegger’s evaluation
15 and, while Dr. Fukuda’s clinical observations may indicate a period of improvement in late 2013,
16 they do not represent the treatment record as a whole.

17 Dr. Hohenegger based his opinion on his own ninety minute psychiatric examination as
18 well as a review of Ms. Goodman’s VA computer medical records, including the discharge
19 summary from Ms. Goodman’s psychiatric hospitalization. Tr. 720-734. The VA records from
20 the period prior to Dr. Hohenegger’s evaluation reveal that Ms. Goodman was admitted to the
21 psychiatric unit for six days in October 2012 due to depression and suicidal ideation. Tr. 588.
22 During her hospitalization Ms. Goodman was observed to have periods of smiling and
23 tearfulness and her GAF was rated at 35. Tr. 554, 558, 594, 596. She was observed to show

1 pressured speech, an affect that was incongruent at times smiling and laughing while describing
2 past experiences of violence and trauma, circumstantial to tangential thought process and
3 association, frequently beginning to answer a question and then getting off topic. Tr. 566, 576.
4 In the months leading up to and following her discharge from the hospital Ms. Goodman was
5 observed by various providers to show dysphoric, irritable, or anxious mood, to have difficulty
6 concentrating, to be sad and tearful, to have tangential thought processes and circumferential
7 thinking, to exhibit flat affect or to be withdrawn. Tr. 328, 510, 515, 517, 518, 528, 536-537,
8 576, 850, 854, 862. There is also evidence that Ms. Goodman engaged in self-harming behavior,
9 namely cutting, scraping or hitting herself. Tr. 691, 428, 433. Viewing the treatment record as a
10 whole, the ALJ's reference to Dr. Fukuda's treatment notes without more is not a sufficient
11 reason to discount Dr. Hohenegger's evaluation.

12 Accordingly, the ALJ erred in evaluating Dr. Hohenegger's opinion. This error was not
13 harmless as the ALJ failed to either properly reject or include Dr. Hohenegger's limitations in the
14 RFC or in the hypothetical to the VE. The error was therefore potentially consequential to the
15 ALJ's step five determination. *See Marsh*, 792 F.3d at 1173. On remand, the ALJ should
16 reevaluate Dr. Hohenegger's opinion.

17 **b. Katrina L. Higgins, Psy.D.**

18 Ms. Goodman contends the ALJ harmfully erred in evaluating the opinion of Dr. Higgins.
19 Dkt. 9 at 6-7. The Court agrees.

20 The ALJ gave "significant weight" to Dr. Higgins' opinion "because the doctor
21 thoroughly examined the claimant and it is generally consistent with the doctor's clinical
22 findings." Tr. 55. Ms. Goodman argues that although the ALJ purported to give Dr. Higgins'
23 opinions significant weight, the ALJ erred in ignoring important limitations. Dkt. 9 at 6-7. The

1 Commissioner argues the ALJ did not err because he “included significant mental limitations in
2 the RFC assessment that adequately account for *most of* Dr. Higgins’s findings[.]” Dkt. 16 at 5-6
3 (emphasis added). The Court agrees with Ms. Goodman. Contrary to the Commissioner’s
4 argument it is not sufficient that an ALJ’s RFC account for “most of” a doctor’s opined
5 limitations while ignoring other limitations without comment. Here, the ALJ erred in failing to
6 address Dr. Higgins’ opinions that Ms. Goodman “might need a little extra supervision and
7 encouragement to stay on task”, and that she “will not handle conflict or high stress situations
8 well.” Tr. 492. This error was not harmless as the ALJ failed to either properly reject or include
9 these limitations in the RFC or in the hypothetical to the VE. The error was therefore potentially
10 consequential to the ALJ’s step five determination. *See Marsh*, 792 F.3d at 1173. On remand,
11 the ALJ should evaluate these portions of Dr. Higgins’ opinion.

12 Ms. Goodman also argues the ALJ erred in failing to address Dr. Higgins’ opinion that
13 she would require six to twelve months of therapy prior to returning to work. Dkt. 9 at 6.
14 However, Ms. Goodman misstates Dr. Higgins’ opinion. Dr. Higgins’ opinion actually states
15 that “it is likely [Ms. Goodman] will need to be in therapy for 6-12 months minimum. However,
16 during that time she could simultaneously mo[ve] toward returning to work.” Tr. 492. This
17 branch of Dr. Higgins’ opinion does not assign any specific limitation in relation to Ms.
18 Goodman’s ability to work and, as such, the ALJ did not err in failing to provide clear and
19 convincing or specific and legitimate reasons for rejecting the opinion. *See Turner v. Comm’r of*
20 *Social Sec. Admin.*, 613 F.3d 1217, 1223 (9th Cir. 2010) (explaining that where a doctor’s
21 opinion does not assign any specific limitations, an ALJ need not provide reasons for rejecting
22 the opinion because none of the conclusions were actually rejected).

23 **3. Gary L. Nelson, Ph.D. and Kent Reade, Ph.D.**

1 Ms. Goodman argues the ALJ erred in giving great weight to the nonexamining State
2 Agency consulting opinions of Dr. Nelson and Dr. Reade. Dkt. 9 at 7.

3 Dr. Nelson reviewed Ms. Goodman's records in September 2012. Tr. 99-108. Dr.
4 Nelson opined that Ms. Goodman would be moderately limited in her ability to: carry out
5 detailed instructions; maintain attention and concentration for extended periods; perform
6 activities within a schedule, maintain regular attendance and be punctual within customary
7 tolerances; complete a normal workday and workweek without interruptions from
8 psychologically based symptoms and to perform at a consistent pace without an unreasonable
9 number and length of rest periods. Tr. 105. Dr. Nelson further opined that Ms. Goodman would
10 be moderately limited in her ability to interact appropriately with the general public and to
11 respond appropriately to changes in the work setting. Tr. 106. Dr. Nelson found that Ms.
12 Goodman requires a setting with little or no public contact and where contact with co-workers is
13 superficial and infrequent. *Id.* Dr. Nelson indicated that routine tasks would minimize the need
14 for supervisor contact and that Ms. Goodman would require a predictable work setting. *Id.* Dr.
15 Reade reviewed Ms. Goodman's records in February 2013 and reaffirmed Dr. Nelson's opinion.
16 Tr. 118-120.

17 Ms. Goodman contends that "because Dr. Nelson did not review any evidence beyond
18 February 2013, his opinion is entitled to limited weight." Dkt. 9 at 7. This fact, in and of itself,
19 is not a sufficient reason to discount Dr. Nelson's and Dr. Reade's opinions per se. However,
20 Dr. Nelson's and Dr. Reade's opinions are based in part on a review of Dr. Higgins' opinion
21 which must be reevaluated on remand. The opinions also pre-dated Dr. Hohenegger's opinion
22 which must also be reevaluated on remand. Accordingly, in reevaluating Dr. Higgins' and Dr.
23 Hohenegger's opinions on remand, to the extent necessary, the ALJ should also reevaluate and

1 reweigh Dr. Nelson's and Dr. Reade's opinions.

2 **4. Other Medical Evidence**

3 Ms. Goodman also summarizes some other medical evidence in the record which she
4 contends is consistent with Dr. Hohenegger's opinion and the VA determination that she is
5 unemployable. Dkt. 9 at 7-9. Ms. Goodman's own summary of evidence, without more, does
6 not establish a separate, independent harmful error with respect to the ALJ's evaluation of the
7 medical evidence. *Molina v. Astrue*, 674 F.3d 1104, (9th Cir. 2012) (the person seeking review
8 of the ALJ's determination has the burden of showing that the ALJ committed harmful error.).
9 However, the Court has already determined that the ALJ erred in evaluating Dr. Hohenegger's
10 opinion as well as the VA disability determination and that that evidence must be reevaluated on
11 remand.

12 **C. Ms. Goodman's Symptom Testimony**

13 Ms. Goodman contends the ALJ erred in evaluating her symptom testimony. Dkt. The
14 Court agrees.

15 Ms. Goodman testified that she was unable to work because she does not get along with
16 supervisors and people "hounding" her. Tr. 75. She testified that she "stresses out" easily and
17 breaks down. *Id.* She testified she experienced symptoms of PTSD such as flashbacks,
18 nightmares, and difficulty sleeping. Tr. 88. She testified she could pay attention for twenty to
19 thirty minutes and that she had difficulty completing tasks. Tr. 88.

20 The ALJ discounted Ms. Goodman's testimony as inconsistent with the medical
21 evidence. Tr. 54. Specifically, the ALJ noted that Dr. Fukuda consistently found her
22 cooperative and pleasant with good eye contact and a bright, euthymic and good range affect,
23 linear and logical thought process. *Id.* Dr. Ausburger found Ms. Goodman had a euthymic and

1 full range affect and had linear and organized thought process and grossly intact cognition. *Id.*
2 The ALJ also notes that Dr. Higgins found Ms. Goodman cooperative with appropriate eye
3 contact and had a euthymic mood and appropriate affect, was able to respond readily to questions
4 and remain focused on conversation. *Id.* The ALJ also notes that Dr. Higgins' mental status
5 examination indicated that Ms. Goodman was able to recall three of three items after five
6 minutes, complete serial sevens with no error, repeat five digits forward and three digits
7 backward, spell "world" forward and backward, and recite the months of the year backward at a
8 steady pace without error. *Id.*

9 First, the ALJ fails to explain, nor is it clear from the record, why these observations of
10 Ms. Goodman's mood and affect during some visits to healthcare providers for treatment
11 necessarily undermine her allegations that she has difficulty getting along with her supervisors
12 and handling stress in a work environment. *See, e.g., Carl v. Colvin*, No. 14-5769, 2015 WL
13 1736411 (W.D. Wash. April 16, 2015) (finding the fact that a provider found a claimant
14 presented as cooperative, rather than rude and uncooperative, during an examination "is not
15 substantial evidence of an inconsistency with his assessment of marked limitations in social
16 functioning during regular employment"). Second, once again, the ALJ cites selectively to
17 portions of the record which appear to indicate an absence of symptoms but does not evaluate
18 Ms. Goodman's testimony in the context of the record as a whole. The Ninth Circuit has
19 "emphasized repeatedly that it is error to reject a claimant's testimony merely because symptoms
20 wax and wane in the course of treatment." *Garrison*, 759 F.3d at 1018 ("Rather than describe
21 Garrison's symptoms, course of treatment, and bouts of remission, and thereby chart a course of
22 improvement, the ALJ improperly singled out a few periods of temporary well-being from a
23 sustained period of impairment and relied on those instances to discredit Garrison.").

1 “Consistency does not require similarity of findings over time despite a claimant’s evolving
2 mental status.” *Orn v. Astrue*, 495 F.3d 625, 634 (9th Cir. 2007). Here the ALJ ignores the
3 evidence indicating that Ms. Goodman was admitted to the psychiatric unit for six days in
4 October 2012 due to depression and suicidal ideation and with a GAF rating of 35. Tr. 554, 558,
5 594, 596. The ALJ also does not discuss that in the months leading up to and following her
6 discharge from the hospital Ms. Goodman was observed by various providers to show dysphoric,
7 irritable, or anxious mood, to have difficulty concentrating, to be sad and tearful, to exhibit flat
8 affect or to be withdrawn and that she engaged in self-harming behavior. Tr. 328, 510, 515, 517,
9 518, 528, 536-537, 576, 691, 850, 854, 862, 428, 433. Moreover, while the record shows there
10 are periods during which Ms. Goodman denied nightmares, flashbacks and difficulty sleeping,
11 there were also periods during which she endorsed such symptoms or, alternatively, endorsed
12 symptoms of hypersomnolence. Tr. 388, 435, 454, 518, 541, 548, 552, 562, 726-727, 821, 830,
13 931. That Ms. Goodman’s symptoms may have waxed and waned with treatment is not a
14 sufficient reason to discount her testimony as a whole. In sum, the ALJ’s citation to certain
15 providers’ opinions without discussion or consideration of the record as a whole was not a
16 sufficient basis to discount Ms. Goodman’s testimony.

17 The ALJ also notes that Dr. Higgins indicated that while Ms. Goodman reported being
18 diagnosed with PTSD she did not seem to have a clear understanding of what trauma this
19 diagnosis was related to. Tr. 54. Specifically, Dr. Higgins noted that Ms. Goodman indicated
20 she was diagnosed with PTSD in 1987 but did not report trauma until 1988. Tr. 54, 488-493.
21 The ALJ also notes that Dr. Higgins found Ms. Goodman did not meet the criteria for a diagnosis
22 of PTSD finding her symptoms at the time more consistent with major depressive disorder. *Id.*
23 However, several other doctors in the record diagnosed Ms. Goodman with PTSD and the ALJ

1 accepted those diagnoses and considered Ms. Goodman’s PTSD to be a severe impairment. Tr.
2 49. Moreover, Dr. Higgins does not indicate that she believes Ms. Goodman is malingering or
3 exaggerating symptoms and explains that Ms. Goodman may have met the criteria of PTSD in
4 the past or that she may not have adequately portray her anxiety symptoms during the exam. Tr.
5 492. Thus, under the circumstances, Dr. Higgins’ statements, without more, do not substantially
6 undermine Ms. Goodman’s symptom testimony.

7 The ALJ also discounts Ms. Goodman’s symptom testimony as inconsistent with her
8 daily activities. Tr. 55. Inconsistency between a claimant’s testimony and her daily activities
9 may constitute a valid reason to discount that testimony. *See Molina*, 674 F.3d 1104. Here the
10 ALJ specifically notes that Ms. Goodman prepared meals, performed household chores such as
11 cleaning the bathroom, vacuuming, sweeping and mopping, went outside alone, used public
12 transportation, drove without difficulty, shopped in stores, had hobbies of making bracelets and
13 earrings, played computer games, spent time with her sister once a month and her mother twice a
14 month, regularly went to bead stores and church, attended bible study on Wednesday night, and
15 went to Work Source to look for a job. Tr. 55. However, it is unclear how these rather basic,
16 low-stress activities, which Ms. Goodman has the flexibility to perform on her own schedule,
17 necessarily undermine her testimony. *See Smolen*, 80 F.3d at 1284 n. 7 (a claimant need not be
18 completely incapacitated to receive benefits and “many home activities may not be easily
19 transferable to a work setting”); *Bjornson v. Astrue*, 671 F.3d 640, 647 (“The critical differences
20 between activities of daily living and activities in a full-time job are that a person has more
21 flexibility in scheduling the former than the latter, can get help from other persons . . . , and is not
22 held to a minimum standard of performance, as she would be by an employer.”). Nor does the
23 ALJ explain his finding of inconsistency or find that these activities are transferable to the work-

1 setting. *See Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988) (conclusory reasons are
2 insufficient).

3 Moreover, while Ms. Goodman acknowledges that she is capable of performing the
4 activities cited by the ALJ, she also indicates that these activities are restricted by her symptoms.
5 For instance, she indicates that she prepares frozen foods, sandwiches or simple easy instant
6 meals once or twice a week but that her husband does the rest of the cooking. Tr. 273. Ms.
7 Goodman indicates that she vacuums, sweeps, mops and cleans the bathroom but that it takes her
8 a long time and that she needs encouragement from her husband to finish these tasks. *Id.* Ms.
9 Goodman also indicates that she goes outside very little except when she goes to VA
10 appointments. *Id.* Under the circumstances, substantial evidence also does not support the
11 ALJ's finding that Ms. Goodman's testimony is inconsistent with her ability to engage in the
12 rather basic activities identified by the ALJ.

13 The ALJ also discounts Ms. Goodman's testimony in part on the grounds that she worked
14 after the alleged onset date and stopped working for reasons unrelated to her impairments. Tr.
15 55. The ALJ concludes that this demonstrates Ms. Goodman is able to maintain employment
16 despite her impairments. *Id.* The record does not support this finding. Ms. Goodman testified
17 that while she did work as a sign holder for several months after her alleged onset date, she was
18 fired from that job because her employer was dissatisfied with her job performance indicating
19 that she was never at her post. Tr. 74. She further indicated that she always had problems with
20 her supervisors on the job. *Id.* This testimony tends to indicate that Ms. Goodman may, in fact,
21 have been fired due to her difficulty getting along with her supervisors and persisting to
22 complete tasks. This testimony is also consistent with Ms. Goodman's function report in which
23 she indicates that she gets laid off from almost every job. Tr. 271. Moreover, around the same

1 time Ms. Goodman lost her job she was admitted to a psychiatric hospital due to depression and
2 suicidal ideation. Tr. 588. Thus, under the circumstances, substantial evidence does not support
3 this reason for discounting Ms. Goodman's symptom testimony.

4 Accordingly, the ALJ erred in evaluating Ms. Goodman's symptom testimony. This
5 error was not harmless as the ALJ did not properly reject or account for all of Ms. Goodman's
6 stated limitations in the RFC or in the hypothetical to the VE. *See Marsh*, 792 F.3d at 1173.

7 **D. Lay Witness Evidence**

8 Ms. Goodman contends the ALJ erred in evaluating the lay witness statements of her
9 husband Michael Goodman. Dkt. 9 at 15-17. The Court agrees.

10 In an undated statement, Mr. Goodman indicated that he does 95% of the cooking,
11 washes the dishes, does the laundry and does most of the house cleaning. Tr. 226. He indicated
12 that Ms. Goodman: sleeps a lot due to depression and doesn't want to do anything; has to be
13 forced to get out of bed to start the day; doesn't want to get up and go to work without being
14 forced; complains often of suffering from headaches; sleeps about 15 hours a day or more;
15 sometimes works for five or six hours and goes back to sleep when she comes home; used to be
16 able to keep a job involving forty or more hours a week but now she only wanted to sleep; is
17 unable to sleep due to dreams of her past; sometimes goes a week without bathing; doesn't wash
18 her hair or shave her legs for days; either overeats or doesn't eat at all; needs to be reminded to
19 shower or bathe and needs repeated reminders to take her medicine; cooks only frozen dinners; is
20 afraid to pay bills for fear of making a mistake and is afraid to handle money; sleeps a lot more
21 than when he met her three years before and doesn't want to do much; wants to keep to herself;
22 is impaired in lifting due to a bad lower back and in standing, squatting, and bending, due to
23 being overweight; talks loudly because she has difficulty hearing; has nightmares. Tr. 259-266.

1 In November 2012, Mr. Goodman also submitted a statement indicating that he had to
2 take care of Ms. Goodman most of the time and that he does most of the cooking. Tr. 224-231.
3 He indicated Ms. Goodman had been able to work but was laid off and had become more and
4 more depressed and now only wanted to sleep. *Id.* He indicated Ms. Goodman could sweep and
5 mop the floor, clean the bathroom and vacuum but that it takes her all day because she sits down
6 to rest. *Id.* He indicated Ms. Goodman had been driving until she rear ended another car due to
7 being “spaced out” and ran a red light. *Id.* Due to these incidents, he indicated Ms. Goodman no
8 longer drives. *Id.* He further indicated Ms. Goodman: might shower every three days; had to be
9 reminded to shower; had to be woken up and reminded to take her medicine; is always
10 complaining she is tired or has a headache; is unable to pay bills or handle checking or savings
11 accounts because it causes her too much stress; used to go out a lot more before her condition
12 began; can only lift five pounds; has difficulty with memory forgetting the subject during
13 conversation; has difficulty completing tasks; can walk fifteen minutes and then has to rest for
14 twenty minutes; gets distracted easily; has problems getting along with authority figures; has
15 been laid off or fired because of arguments with her bosses; does not handle stress well; does not
16 handle changes to routine well; gets stressed out a lot and depressed when things don’t go her
17 way. *Id.*

18 In determining whether a claimant is disabled, an ALJ must consider lay witness (or
19 nonmedical source) testimony concerning a claimant’s ability to work. *See Dodrill v. Shalala*,
20 12 F.3d 915, 919 (9th Cir. 1993); 20 C.F.R. §§ 404.1513(a)(4), 404.1527(f). Indeed, “lay
21 testimony as to a claimant’s symptoms or how an impairment affects ability to work is
22 competent evidence ... and therefore *cannot* be disregarded without comment.” *Nguyen v.*
23 *Chater*, 100 F.3d 1462, 1467 (9th Cir.1996) (citations omitted). “If the ALJ wishes to discount

1 the testimony of lay witnesses, he must give reasons that are germane to each witness.” *Dodrill*,
2 12 F.3d at 919.

3 The ALJ discounted Mr. Goodman’s statements on the grounds that “[w]hile his
4 statements may reflect his personal observations of the claimant, the medical evidence of record
5 does not support finding greater limitations than those set forth in the above residual functional
6 capacity.” Tr. 57. This was not a valid reason to reject Mr. Goodman’s statements. An ALJ
7 may reject lay witness testimony where it is inconsistent with medical evidence. *Bayliss v.*
8 *Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005). However, the ALJ may not discredit lay
9 testimony simply “as not supported by medical evidence in the record.” *Bruce v. Astrue*, 557
10 F.3d 1113, 1116 (9th Cir. 2009); *see also Smolen*, 80 F.3d at 1289 (“The rejection of the
11 testimony of [the claimant’s] family members because [the claimant’s] medical records did not
12 corroborate her fatigue and pain violates SSR 88–13, which directs the ALJ to consider the
13 testimony of lay witnesses where the claimant’s alleged symptoms are *unsupported* by her
14 medical records.”). Here the ALJ does not point to any specific evidence that contradicts Mr.
15 Goodman’s statements. Rather, as in *Bruce*, 557 F.3d at 1116, the ALJ appears to improperly
16 “discount in general the value of lay testimony in comparison to objective medical evidence.”
17 *Staley v. Astrue*, No. 09-1424, 2010 WL 3230818 (W.D. Wash. July 27, 2010). Moreover, even
18 if the ALJ had discounted Mr. Goodman’s statements as inconsistent with the medical evidence,
19 several of the medical opinions here must be reevaluated on remand. Accordingly, the ALJ erred
20 in discounting Mr. Goodman’s statements on this basis. Moreover, this error was not harmless
21 as the ALJ failed to properly reject or account for all of the limitations described by Mr.
22 Goodman in the RFC or in the hypothetical to the VE. *See Marsh*, 792 F.3d at 1173.
23 Accordingly, on remand, the ALJ should also reevaluate Mr. Goodman’s statement.

1 **E. Scope of Remand**

2 In general, the Court has “discretion to remand for further proceedings or to award
3 benefits.” *Marcia v. Sullivan*, 900 F.2d 172, 176 (9th Cir. 1990). The Court may remand for
4 further proceedings if enhancement of the record would be useful. *See Harman v. Apfel*, 211
5 F.3d 1172, 1178 (9th Cir. 2000). The Court may remand for benefits where (1) the record is
6 fully developed and further administrative proceedings would serve no useful purpose; (2) the
7 ALJ fails to provide legally sufficient reasons for rejecting evidence, whether claimant testimony
8 or medical opinion; and (3) if the improperly discredited evidence were credited as true, the ALJ
9 would be required to find the claimant disabled on remand. *Garrison*, 759 F.3d at 1020. “Where
10 there is conflicting evidence, and not all essential factual issues have been resolved, a remand for
11 an award of benefits is inappropriate.” *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090,
12 1101 (9th Cir. 2014).

13 Here, there is conflicting evidence in the record and it is not clear that the ALJ would be
14 required to find Ms. Goodman disabled if the medical evidence, lay opinion evidence and her
15 own testimony were properly considered. Because the record does not compel a finding of
16 disability, the Court finds it appropriate to remand this case for further administrative
17 proceedings. *See Treichler*, 775 F.3d at 1107.

18 **CONCLUSION**

19 For the foregoing reasons, the Commissioner’s final decision is **REVERSED** and this
20 case is **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. §
21 405(g).

22 On remand, the ALJ should reevaluate: (1) the VA’s disability rating taking into account
23 the 2015 final decision; (2) Ms. Goodman’s physical impairments at step two and subsequent

1 steps to the extent provided above; (3) the opinions of Dr. Hohenegger, Dr. Higgins, Dr. Hale,
2 Dr. Nelson, and Dr. Reade, to the extent provided above; (4) Ms. Goodman's own testimony;
3 and (4) Mr. Goodman's lay statement. The ALJ should reassess and determine the RFC, and
4 reevaluate steps four and five with the assistance of a VE as necessary.

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DATED this 15th day of June, 2017.


JOHN C. COUGHENOUR
United States District Judge