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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 FRANK M. CAMACHO,

7 Plaintiff,

8 v.

9 NANCY A. BERRYHILL, Acting
10 Commissioner of Social Security,¹

11 Defendant.

Case No. 2:16-cv-01202-KLS

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

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13 Plaintiff has brought this matter for judicial review of defendant's denial of his
14 application for supplemental security income (SSI) benefits. The parties have consented to have
15 this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c), Federal Rule of Civil
16 Procedure 73; Local Rule MJR 13. For the reasons set forth below, the Court finds that
17 defendant's decision to deny benefits should be reversed, and that this matter should be
18 remanded for further administrative proceedings.
19

20 FACTUAL AND PROCEDURAL HISTORY

21
22 On May 14, 2013, plaintiff filed an application for SSI benefits, alleging he became
23 disabled beginning January 1, 2004. Dkt. 9, Administrative Record (AR), 20. That application
24 was denied on initial administrative review and on reconsideration. *Id.* At a hearing held before

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26 ¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to Federal Rule of Civil
Procedure 25(d), Nancy A. Berryhill should be substituted for Acting Commissioner Carolyn W. Colvin as the
defendant in this suit. The Clerk is directed to update the docket, and all future filings by the parties should reflect
this change.

1 an Administrative Law Judge (ALJ), plaintiff, represented by counsel, appeared and testified, as
2 did a vocational expert. AR 38-81. Also at the hearing, plaintiff amended his alleged onset date
3 of disability to May 14, 2013. AR 20.

4 In a written decision dated March 6, 2015, the ALJ found that plaintiff could perform
5 both his past relevant work and other jobs existing in significant numbers in the national
6 economy, and therefore that he was not disabled. AR 20-33. On June 15, 2016, the Appeals
7 Council denied plaintiff's request for review of the ALJ's decision, making that decision the
8 final decision of the Commissioner, which plaintiff then appealed in a complaint with this Court
9 on August 2, 2016. AR 1; Dkt. 1-3; 20 C.F.R. § 416.1481.

11 Plaintiff seeks reversal of the ALJ's decision and remand for further administrative
12 proceedings, arguing the ALJ erred:

- 13 (1) in evaluating the medical opinion evidence from William Wilkinson,
14 Ed.D., Jan Lewis, Ph.D., and Eugen Kester, M.D.;
- 15 (2) in assessing plaintiff's residual functional capacity (RFC); and
- 16 (3) in finding plaintiff could perform other jobs existing in significant
17 numbers in the national economy.

18 For the reasons set forth below, the Court agrees the ALJ erred in evaluating the medical opinion
19 evidence from Drs. Lewis and Kester, and therefore in assessing plaintiff's RFC and in finding
20 he could perform other jobs existing in significant numbers in the national economy. Remand for
21 further administrative proceedings is thus warranted.

22 DISCUSSION

23 The Commissioner's determination that a claimant is not disabled must be upheld if the
24 "proper legal standards" have been applied, and the "substantial evidence in the record as a
25 whole supports" that determination. *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986);
26

1 *see also* *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004); *Carr v.*
2 *Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991). “A decision supported by substantial
3 evidence nevertheless will be set aside if the proper legal standards were not applied in weighing
4 the evidence and making the decision.” *Carr*, 772 F.Supp. at 525 (citing *Brawner v. Sec’y of*
5 *Health and Human Sers.*, 839 F.2d 432, 433 (9th Cir. 1987)). Substantial evidence is “such
6 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
7 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation omitted); *see also* *Batson*, 359 F.3d at
8 1193.
9

10 The Commissioner’s findings will be upheld “if supported by inferences reasonably
11 drawn from the record.” *Batson*, 359 F.3d at 1193. Substantial evidence requires the Court to
12 determine whether the Commissioner’s determination is “supported by more than a scintilla of
13 evidence, although less than a preponderance of the evidence is required.” *Sorenson v.*
14 *Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence admits of more than one
15 rational interpretation,” that decision must be upheld. *Allen v. Heckler*, 749 F.2d 577, 579 (9th
16 Cir. 1984). That is, “[w]here there is conflicting evidence sufficient to support either outcome,”
17 the Court “must affirm the decision actually made.” *Allen*, 749 F.2d at 579 (quoting *Rhinehart v.*
18 *Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).
19

20 I. The ALJ’s Evaluation of the Medical Opinion Evidence
21

22 The ALJ is responsible for determining credibility and resolving ambiguities and
23 conflicts in the medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Where
24 the evidence is inconclusive, “questions of credibility and resolution of conflicts are functions
25 solely of the [ALJ].” *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). In such situations,
26 “the ALJ’s conclusion must be upheld.” *Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d

1 595, 601 (9th Cir. 1999). Determining whether inconsistencies in the evidence “are material (or
2 are in fact inconsistencies at all) and whether certain factors are relevant to discount” medical
3 opinions “falls within this responsibility.” *Id.* at 603.

4 In resolving questions of credibility and conflicts in the evidence, an ALJ’s findings
5 “must be supported by specific, cogent reasons.” *Reddick*, 157 F.3d at 725. The ALJ can do this
6 “by setting out a detailed and thorough summary of the facts and conflicting clinical evidence,
7 stating his interpretation thereof, and making findings.” *Id.* The ALJ also may draw inferences
8 “logically flowing from the evidence.” *Sample*, 694 F.2d at 642. Further, the Court itself may
9 draw “specific and legitimate inferences from the ALJ’s opinion.” *Magallanes v. Bowen*, 881
10 F.2d 747, 755, (9th Cir. 1989).

12 The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted
13 opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
14 1996). Even when a treating or examining physician’s opinion is contradicted, that opinion “can
15 only be rejected for specific and legitimate reasons that are supported by substantial evidence in
16 the record.” *Id.* at 830-31. However, the ALJ “need not discuss *all* evidence presented” to him or
17 her. *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation
18 omitted) (emphasis in original). The ALJ must only explain why “significant probative evidence
19 has been rejected.” *Id.*; *see also Cotter v. Harris*, 642 F.2d 700, 706-07 (3rd Cir. 1981); *Garfield*
20 *v. Schweiker*, 732 F.2d 605, 610 (7th Cir. 1984).

23 In general, more weight is given to a treating physician’s opinion than to the opinions of
24 those who do not treat the claimant. *See Lester*, 81 F.3d at 830. On the other hand, an ALJ need
25 not accept the opinion of a treating physician, “if that opinion is brief, conclusory, and
26 inadequately supported by clinical findings” or “by the record as a whole.” *Batson v. Comm’r of*

1 Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004); see also *Thomas v. Barnhart*, 278 F.3d
2 947, 957 (9th Cir. 2002); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001). An
3 examining physician’s opinion is “entitled to greater weight than the opinion of a nonexamining
4 physician.” *Lester*, 81 F.3d at 830-31. A non-examining physician’s opinion may constitute
5 substantial evidence if “it is consistent with other independent evidence in the record.” *Id.* at
6 830-31; *Tonapetyan*, 242 F.3d at 1149.

7
8 With respect to the opinion evidence from Dr. Lewis and Dr. Kester the ALJ found:

9 Dr. Lewis, the State agency psychological consultant, found in August 2013
10 that the claimant retained the capacity to understand and remember simple
11 instructions. He was capable of performing simple work-related tasks
12 although concentration, persistence and pace “will occasionally wane in
13 response to psych.” His psychiatric symptoms “will interfere with reliability
14 of attendance and capacity to tolerate working closely with others without
15 distraction.” He would work best away from the public and with limited
16 coworker interaction. He would benefit from additional time in learning new
17 tasks at work. He would profit from hands-on and demonstration for
18 instruction. He could reach the goals set by others in the workplace.

19 Dr. Kester, another State agency psychological consultant, affirmed Dr.
20 Lewis’s findings. I give partial weight to the opinions of Dr. Lewis and Dr.
21 Kester. The record contains evidence they did not see, that indicates the
22 claimant is far more capable than they have assessed. In addition, as an
23 Administrative Law Judge, I am tasked with assessing the most the claimant
24 can do, not in identifying situations where he would “work best.”

25 AR 30-31 (internal citations and footnote omitted). Plaintiff argues, and the Court agrees, that in
26 rejecting both medical sources’ opinions that plaintiff’s concentration, persistence, and pace will
occasionally wane, and that his psychiatric symptoms will interfere with reliability of attendance
and the capacity to tolerate working closely with others without distraction, on the basis that the
record “contains evidence they did not see,” the ALJ erred, as it is not at all clear what evidence
in record the ALJ is referring to here. See *Garrison v. Colvin*, 759 F.3d 995, 1012-13 (9th Cir.
2014) (“[A]n ALJ errs when he rejects a medical opinion or assigns it little weight while doing

1 nothing more than ignoring it, asserting without explanation that another medical opinion is more
2 persuasive, or criticizing it with boilerplate language that fails to offer a substantive basis for his
3 conclusion.”).

4 Defendant asserts plaintiff’s argument lacks merit, because the ALJ is not required to
5 discuss every piece of evidence, but only that which is significant and probative. Defendant goes
6 on to state that “[e]ven when an agency explains its decision with less than ideal clarity,” the
7 Court “must uphold it if the agency’s path may reasonably be discerned.” Dkt. 12, p. 12 (quoting
8 *Molina v. Astrue*, 674 F.3d 1104, 1121 (9th Cir. 2012)). This, however, is a far cry from what the
9 ALJ provided in terms of an explanation, which was essentially none, and from which no actual
10 path can reasonably be discerned. As such the Court is without a proper basis to determine if the
11 ALJ’s rejection of the above opinions is supported by substantial evidence.²

12
13 II. The ALJ’s Assessment of Plaintiff’s RFC

14 The Commissioner employs a five-step “sequential evaluation process” to determine
15 whether a claimant is disabled. 20 C.F.R. § 416.920. If the claimant is found disabled or not
16 disabled at any particular step thereof, the disability determination is made at that step, and the
17 sequential evaluation process ends. *See id.* A claimant’s RFC assessment is used at step four of
18 the process to determine whether he or she can do his or her past relevant work, and at step five
19 to determine whether he or she can do other work. SSR 96-8p, 1996 WL 374184, at *2. It is what
20 the claimant “can still do despite his or her limitations.” *Id.*

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24 ² On the other hand, the Court finds no error in the ALJ rejecting Dr. Lewis’s and Dr. Kester’s opinion that plaintiff
25 would work best away from the public and with limited coworker interaction, would benefit from additional time in
26 learning new tasks at work, and would profit from hands-on and demonstration for instruction, on the basis that he is
tasked with assessing the most plaintiff can do, and not on identifying situations where he would work best. Each of
these assessments indicate, as defendant points out, what would seem to be plaintiff’s “ideal working environment,”
rather than what he is maximally capable of doing. Dkt. 12, p. 13 (quoting Social Security Ruling (SSR) 96-8p, 1996
WL 374184 (“RFC is the individual’s *maximum* remaining ability to do sustained work activities in an ordinary
work setting on a regular and continuing basis”).

1 A claimant's RFC is the maximum amount of work the claimant is able to perform based
2 on all of the relevant evidence in the record. *Id.* However, an inability to work must result from
3 the claimant's "physical or mental impairment(s)." *Id.* Thus, the ALJ must consider only those
4 limitations and restrictions "attributable to medically determinable impairments." *Id.* In assessing
5 a claimant's RFC, the ALJ also is required to discuss why the claimant's "symptom-related
6 functional limitations and restrictions can or cannot reasonably be accepted as consistent with the
7 medical or other evidence." *Id.* at *7.

9 The ALJ in this case assessed the following mental RFC:

10 **he is able to understand, remember and carry out simple, routine and**
11 **repetitive tasks; no tandem tasks or tasks involving a cooperative team**
12 **effort; he would be able to adapt to routine changes in workplace setting**
13 **[sic]; contact with the general public is not an essential element of any**
14 **task; however, occasional, superficial contact not [sic] precluded.**

15 AR 26 (emphasis in the original). But because as discussed above the ALJ erred in failing to
16 properly evaluate the medical opinion evidence from Dr. Lewis and Dr. Kester, the ALJ's RFC
17 assessment cannot be said to completely and accurately describe all of plaintiff's limitations.

18 III. The ALJ's Step Five Determination

19 If a claimant cannot perform his or her past relevant work, at step five of the sequential
20 disability evaluation process the ALJ must show there are a significant number of jobs in the
21 national economy the claimant is able to do. *Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir.
22 1999); 20 C.F.R. § 416.920(d), (e). The ALJ can do this through the testimony of a vocational
23 expert. *Osenbrock v. Apfel*, 240 F.3d 1157, 1162 (9th Cir. 2000); *Tackett*, 180 F.3d at 1100-1101.
24 An ALJ's step five determination will be upheld if the weight of the medical evidence supports
25 the hypothetical posed to the vocational expert. *Martinez v. Heckler*, 807 F.2d 771, 774 (9th Cir.
26 1987); *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984). The vocational expert's

1 testimony therefore must be reliable in light of the medical evidence to qualify as substantial
2 evidence. *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988). Accordingly, the ALJ’s
3 description of the claimant’s functional limitations “must be accurate, detailed, and supported by
4 the medical record.” *Id.* (citations omitted).

5 The ALJ found plaintiff could perform other jobs existing in significant numbers in the
6 national economy, based on the vocational expert’s testimony offered at the hearing in response
7 to a hypothetical question concerning an individual with the same age, education, work
8 experience and RFC as plaintiff. AR 32-33. But because as discussed above the ALJ erred in
9 assessing plaintiff’s RFC, the hypothetical question the ALJ posed to the vocational expert – and
10 thus that expert’s testimony and the ALJ’s reliance thereon – also cannot be said to be supported
11 by substantial evidence or free of error.³

13 III. Remand for Further Administrative Proceedings

14 The Court may remand this case “either for additional evidence and findings or to award
15 benefits.” *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Generally, when the Court
16 reverses an ALJ’s decision, “the proper course, except in rare circumstances, is to remand to the
17 agency for additional investigation or explanation.” *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th
18 Cir. 2004) (citations omitted). Thus, it is “the unusual case in which it is clear from the record
19 that the claimant is unable to perform gainful employment in the national economy,” that
20 “remand for an immediate award of benefits is appropriate.” *Id.*

21 Benefits may be awarded where “the record has been fully developed” and “further
22 administrative proceedings would serve no useful purpose.” *Smolen*, 80 F.3d at 1292; *Holohan v.*

25 ³ Although plaintiff does not expressly contest the ALJ’s additional determination regarding his ability to perform
26 his past relevant work at step four of the sequential disability evaluation process (AR 31-32), the ALJ’s errors in
evaluating the medical opinion evidence from Dr. Lewis and Dr. Kester and in assessing plaintiff’s RFC necessarily
call into question that finding as well.

1 *Massanari*, 246 F.3d 1195, 1210 (9th Cir. 2001). Specifically, benefits should be awarded where:

2 (1) the ALJ has failed to provide legally sufficient reasons for rejecting [the
3 claimant's] evidence, (2) there are no outstanding issues that must be resolved
4 before a determination of disability can be made, and (3) it is clear from the
5 record that the ALJ would be required to find the claimant disabled were such
6 evidence credited.

7 *Smolen*, 80 F.3d 1273 at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir. 2002).

8 Because issues remain in regard to the medical opinion evidence, plaintiff's RFC, and his ability
9 to perform other jobs existing in significant numbers in the national economy, remand for further
10 consideration of those issues is warranted.

11 CONCLUSION

12 Based on the foregoing discussion, the Court finds the ALJ improperly determined
13 plaintiff to be not disabled. Defendant's decision to deny benefits therefore is REVERSED and
14 this matter is REMANDED for further administrative proceedings.

15 DATED this 31st day of January, 2017.

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19 Karen L. Strombom
20 United States Magistrate Judge
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