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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARK YOUNG,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No. C17-624 BHS

ORDER REVERSING THE
COMMISSIONER’S FINAL
DECISION AND REMANDING
FOR FURTHER PROCEEDINGS

Mark Young appeals the ALJ’s decision finding him not disabled. Dkt. 3. He contends the ALJ erroneously rejected the opinions of Robert Schneider, M.D., and his testimony about his limitations. As relief he contends the Court should remand the case for an award of benefits or alternatively for further administrative proceedings. Dkt. 9 at 1, 9. For the reasons below, the Court finds the ALJ harmfully erred and **REVERSES** the Commissioner’s final decision and **REMANDS** the case for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

I. ALJ’S DECISION

Utilizing the five-step disability evaluation process,¹ the ALJ found:

Step one: Mr. Young has not engaged in substantial gainful activity since June 2015.

¹ 20 C.F.R. §§ 404.1520, 416.920.

1 **Step two:** Degenerative disc disease, cervical and lumbar spine; obstructive sleep
2 apnea; hypothyroidism; neurogenic bladder with urinary incontinence;
3 degenerative joint disorder/arthritis of the bilateral hands are severe impairments.

4 **Step three:** These impairments do not meet or equal the requirements of a listed
5 impairment.²

6 **Residual Functional Capacity:** Mr. Young can perform light work with
7 numerous postural and environmental limitations.

8 **Step four:** Mr. Young can perform past relevant work as a telephone sales
9 representative and sales manager and is therefore not disabled.

10 AR 21-29. The Appeals Council denied review making the ALJ's decision the final
11 decision of the Commissioner. AR 1.

12 **II. DISCUSSION**

13 **A. The ALJ's Evaluation of the Opinions of Robert Schneider, M.D.**

14 Mr. Young contends the ALJ erroneously rejected Dr. Schneider's opinions about
15 the severity of his limitations. In 2015, after examining Mr. Young and reviewing his
16 medical records, Dr. Schneider opined that based upon "history and physical
17 examination," Mr. Young "is extremely limited in activities of daily living at any work
18 site." AR 490. Dr. Young indicated Mr. Young's neurogenic bladder causes frequent
19 voiding and incontinence that greatly embarrasses Mr. Young at work. The doctor also
20 opined "this condition as well as arthralgia from previous injuries in both hands related to
21 DJD, fatigue from sleep apnea, post-operative loss of full range of motion left elbow and
22 shoulder are substantial barriers to a successful occupational placement." *Id.* Dr.
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² 20 C.F.R. Part 404, Subpart P. Appendix 1.

1 Schneider further opined “mild to moderate depression as a consequence to multiple
2 injuries to the upper extremities and neck with chronic pain is significant when combined
3 with a neurogenic bladder.” *Id.*

4 The ALJ gave “little weight” to Dr. Schneider’s opinions for four reasons. AR 27.
5 First, the ALJ found the doctor “appears to have relied heavily on the subjective
6 symptoms.” *Id.* Substantial evidence does not support this finding. If a medical source’s
7 opinions are based “to a large extent” on a patient’s self-reports of symptoms and not on
8 clinical evidence, and the ALJ finds the applicant not credible, the ALJ may discount the
9 source’s opinion. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). However,
10 when an opinion is not more heavily based on a patient’s self-reports than on clinical
11 observations, there is no evidentiary basis for rejecting the opinion. *See Ryan v. Comm’r*
12 *of Soc. Sec.*, 528 F.3d 1194, 1199–1200 (9th Cir. 2008). Additionally, an ALJ does not
13 provide clear and convincing reasons for rejecting an examining doctor’s opinion by
14 questioning the credibility of the patient’s complaints where the doctor does not discredit
15 those complaints and supports her ultimate opinion with her own observations. *Edlund v.*
16 *Massanari*, 253 F.3d 1152, 1159 (9th Cir. 2001).

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18 Here, Dr. Schneider did not question Mr. Young’s credibility or find he was
19 malingering. The record also does not show the doctor based his opinions heavily upon
20 Mr. Young’s statements. To be sure, the doctor noted Mr. Young’s statements about
21 subjective symptoms. But the doctor’s conclusions are not simply based upon what Mr.
22 Young said but rather, as Dr. Schneider indicated, “on history and physical examination.”
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1 AR 490. This is evidenced by the fact Dr. Schneider's report refers to Mr. Young's
2 records, and the results of the mental status and physical examinations he performed on
3 Mr. Young.

4 Second, the ALJ rejected Dr. Schneider's opinions as "not well supported by the
5 evidence." AR 27. The ALJ erred. In *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir.
6 1988), the court explained that conclusory reasons will not justify an ALJ's rejection of a
7 medical opinion:

8 To say that medical opinions are not supported by sufficient objective
9 findings or are contrary to the preponderant conclusions mandated by the
10 objective findings does not achieve the level of specificity our prior cases
11 have required, even when the objective factors are listed seriatim. The ALJ
12 must do more than offer his own conclusions. He must set forth his own
13 interpretations and explain why they, rather than the doctors', are correct.

14 But this is what the ALJ erroneously did by rejecting Dr. Schneider's opinions as "not
15 well supported" and listing seriatim portions of the record in support. The ALJ provides a
16 conclusion but does not explain why his interpretation rather than Dr. Schneider's is
17 correct. Moreover, the medical evidence does not support the ALJ's finding. The medical
18 record shows Mr. Young suffers from the medical conditions noted by Dr. Schneider, and
19 that Mr. Young has problems with his joints and fingers, limits in moving his upper
20 extremities, incontinence, sleep apnea that causes drowsiness during the day, and chronic
21 pain. But the medical record does not contain findings that set forth functional limitations
22 that directly contradict Dr. Schneider's opinions. Hence substantial evidence does not
23 support a finding that the medical record undercuts Dr. Schneider's opinions, as the ALJ
implies.

1 Third, the ALJ rejected Dr. Schneider’s opinion that Mr. Young’s age (55+) and
2 his medical conditions would make it very to find employment that meets the needs of
3 the employer. AR 27. The ALJ found Dr. Schneider is not a vocational expert and thus
4 unqualified to render the opinion. *Id.* The ALJ erred as a matter of law. *See Jager v.*
5 *Barnhart*, 192 Fed. Appx. 589, 591 (9th Cir. 2006) (“As noted by the district court, one
6 of the ALJ’s reasons for rejecting Dr. Ehly’s opinion—his lack of expertise in vocational
7 issues—is clearly not legitimate.”). The ALJ also found the opinion speculative but fails
8 to explain why or how this is so. Dr. Schneider opined Mr. Young’s medical conditions
9 imposed significant functional limitations. He concluded that these limitations, i.e., his
10 “medical conditions” and his age, would make it hard for him to be employable. There is
11 nothing speculative about the conclusion given the doctor’s opinions about the impact
12 Mr. Young’s medical conditions have on his functioning. In short, the ALJ failed to
13 provide valid reasons to reject Dr. Schneider’s 2015 opinions and erred.

15 The ALJ also rejected Dr. Schneider’s 2016 opinions that Mr. Young was limited
16 to using his hands “40% of an 8-hour workday.” AR 27. The ALJ found this opinion is
17 inconsistent with work Mr. Young performed in 2015, and how Mr. Young drove from
18 Seattle to Boise, Idaho in August 2016. *Id.* That Mr. Young performed gainful work
19 activity in 2015 is not grounds to reject Dr. Schneider’s opinions because the ALJ found
20 “the evidence does not show that any of these earnings [in 2015] resulted from work
21 activity after the alleged onset date of June 3, 2015. AR 21. Hence, the ALJ incorrectly
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1 rejected Dr. Schneider’s opinion based upon activities Mr. Young performed during a
2 time period when he was not disabled.

3 That Mr. Young drove from Seattle to Boise once in 2016 also is not evidence
4 contradicting Dr. Schneider’s opinions. The ALJ viewed this drive “as requiring
5 continuous grasping with internal rotation to steer, sitting well over 2 hours out of 8.” AR
6 27. But there is no evidence supporting the ALJ’s finding that the drive was one
7 involving twists and turns requiring “continuous” grasping and internal rotation, or that
8 Mr. Young drove for over two hours at a stretch. Rather, the evidence indicates Mr.
9 Young drove with considerable discomfort, had to make a number of stops, and it took
10 ten hours to drive what normally is a seven-and-a-half-hour trip. AR 48, 54. Accordingly,
11 substantial evidence does not support the ALJ’s finding.

13 The ALJ also rejected Dr. Schneider’s opinions on the grounds that he does home
14 chores and “did job searching and coaching.” AR 27. The ALJ reasoned if Mr. Young
15 were disabled “he would be unable to perform these daily activities.” *Id.* The ALJ erred.
16 The ALJ’s reasoning is reliant on the notion that “disabled” individuals cannot perform
17 daily activities. This reasoning cannot be harmonized with the Ninth Circuit’s repeated
18 assertion “that the mere fact that a plaintiff has carried on certain daily activities . . . does
19 not in any way detract from h[is] credibility as to h[is] overall disability.” *Orn v. Astrue*,
20 495 F.3d 625, 639 (9th Cir. 2007). Of course the ALJ can properly discount a doctor’s
21 opinion by articulating specific daily activities that contradict the opinion. For example a
22 claimant who walks two miles uphill each day engages in activity that contradicts a
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1 doctor's opinion that the claimant is limited to walking no more than 200 yards a day.
2 But the ALJ failed to articulate how doing chores or job searching were activities that
3 contradicted Dr. Schneider's opinions. Each of these activities might take minutes to
4 accomplish, and might not involve much use of the hands, and thus are not necessarily
5 inconsistent with the doctor's opinions. Without more, the ALJ failed to provide a clear
6 and convincing or specific and legitimate reason to reject the doctor's 2016 opinion.

7 **B. The ALJ's Evaluation of Mr. Young's Testimony**

8 Mr. Young contends the ALJ erred in failing to provide a specific reason to reject
9 his testimony. Dkt. 9 at 10. Newly revised Social Security Ruling ("SSR") 16-3p, 2017
10 WL 5180304, at *13, provides guidance on how adjudicators should evaluate the
11 consistency of a claimant's statements. SSR 16-3p, effective March 28, 2016, eliminates
12 the use of the term "credibility" and instead focuses on an evidence-based analysis of the
13 administrative record to determine whether the nature, intensity, frequency, or severity of
14 an individual's symptoms impact his or her ability to work. SSR 16-3p does not,
15 however, alter the standards by which courts will evaluate an ALJ's reasons for
16 discounting a claimant's testimony. To reject subjective complaints, an ALJ must provide
17 "specific, cogent reasons" and, absent affirmative evidence of malingering, must reject a
18 claimant's testimony for "clear and convincing" reasons. *Morgan v. Commissioner of*
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1 SSA, 169 F.3d 595, 599 (9th Cir. 1999); *see Carmickle v. Commissioner, SSA*, 533 F.3d
2 1155, 1160 (9th Cir. 2008).³

3 The ALJ in this case did not find malingering and was therefore required to
4 provide clear and convincing reasons to reject Mr. Young’s testimony. *Smolen v. Chater*,
5 80 F.3d 1273, 1283-84 (9th Cir. 1996). Mr. Young argues the ALJ erred in rejecting his
6 testimony. First, as to Mr. Young’s physical limitations, the ALJ found the “updated
7 medical evidence does not support the allegations . . . and instead demonstrate . . . the
8 claimant retains the maximum residual functional capacity (RFC) to perform a range of
9 light work.” AR 25. Mr. Young argues this is an impermissibly vague rationale. Dkt. 9 at
10 11.

12 Generalized, conclusory findings do not suffice. *See Moisa v. Barnhart*, 367 F.3d
13 882, 885 (9th Cir. 2004) (the ALJ’s credibility findings “must be sufficiently specific to
14 allow a reviewing court to conclude the ALJ rejected the claimant’s testimony on
15 permissible grounds and did not arbitrarily discredit the claimant’s testimony”) (internal
16 citations and quotations omitted); *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir.
17 2001) (the ALJ must “specifically identify the testimony [the ALJ] finds not to be
18 credible and must explain what evidence undermines the testimony”); *Smolen v. Chater*,
19 80 F.3d 1273, 1284 (9th Cir.1996) (“The ALJ must state specifically which symptom
20 testimony is not credible and what facts in the record lead to that conclusion.”). Here, the
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23 ³ In *Carmickle*, the Ninth Circuit rejected the proposition that there had to be a specific
finding of malingering; rather, it was sufficient that there be *affirmative evidence* suggesting
malingering. *See Carmickle*, 533 F.3d at 1160 n.1.

1 ALJ's conclusory statement that the medical evidence does not support Mr. Young's
2 testimony is an invalid conclusory statement.

3 Second, Mr. Young argues the ALJ erred in rejecting his testimony about the
4 severity of his pain. The ALJ found "while the claimant alleges he is in constant, severe
5 back pain, it is routinely noted in the evidence that he is not in any acute distress." At 26.
6 The ALJ may reject a claimant's testimony on the grounds it is contradicted by the
7 medical evidence. *Id.* But the medical record does not contradict Mr. Young's testimony.
8 While the medical record routinely noted Mr. Young was not in "acute distress," the
9 record also routinely noted concomitantly that Mr. Young had chronic pain. *See e.g.* AR
10 567 (no acute distress) and 566 (back pain). Hence the medical record indicates Mr.
11 Young often presented with no acute distress **and** back pain, not no acute distress and **no**
12 back pain. Accordingly, substantial evidence does not support the ALJ's rejection of Mr.
13 Young's testimony about pain.
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15 Third, Mr. Young argues the ALJ erred in rejecting Mr. Young's testimony on the
16 grounds Mr. Young was not fully compliant with treatment. Dkt. 9 at 11. The ALJ found
17 Mr. Young took expired amoxicillin when "common sense indicates that self-medication
18 . . . might well have aggravated instead of improved his health." AR 26. The ALJ erred.
19 An ALJ may consider a claimant's unexplained or inadequately explained failure to
20 follow a prescribed course of treatment when assessing a claimant's testimony. *Fair v.*
21 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). But here, the evidence the ALJ cites does not
22 involve a failure to follow treatment. Instead it involves how Mr. Young took amoxicillin
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1 because the ALJ must consider all limitations and restrictions imposed by all of an
2 individual's impairments. *Celaya v. Halter*, 332 F.3d 1177, 1182 (9th Cir. 2003). That
3 did not occur because the ALJ's RFC determination did not properly account for all
4 limitations set forth by the doctor or by Mr. Young. The case must accordingly be
5 remanded.

6 As to the scope of remand, the Court may remand for an award of benefits where
7 "the record has been fully developed and further administrative proceedings would serve
8 no useful purpose." *McCartey v. Massanari*, 298 F.3d 1072, 1076 (9th Cir. 2002) (citing
9 *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996)). This occurs when: (1) the ALJ
10 has failed to provide legally sufficient reasons for rejecting the claimant's evidence; (2)
11 there are no outstanding issues that must be resolved before a determination of disability
12 can be made; and (3) it is clear from the record that the ALJ would be required to find the
13 claimant disabled if he considered the claimant's evidence. *Id.* at 1076-77. Even when all
14 three requirements are met the Court retains flexibility in determining the appropriate
15 remedy. Here additional proceedings would be useful. At step four, the ALJ found Mr.
16 Young was not disabled because he could perform past relevant work. But this Court is
17 not in a position to make a step five determination as to whether there are other jobs in
18 the national economy that Mr. Young could perform even if his RFC was lower than
19 assessed by the ALJ here. Given the need for further development, the Court concludes
20 that it is appropriate to remand the case for further administrative proceedings.
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1 On remand the ALJ shall reassess Dr. Schneider's opinions and Mr. Young's
2 testimony, develop the record and reassess Mr. Young's RFC as needed, and proceed to
3 steps four and five as appropriate.

4 DATED this 20th day of February, 2018.

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7 BENJAMIN H. SETTLE
8 United States District Judge
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