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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

EMILY R. SEVIER,  
  
Plaintiff,  
  
v.  
  
CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,  
  
Defendant.

Case No. 3:14-cv-05606-RBL  
  
ORDER REVERSING AND  
REMANDING DEFENDANT’S  
DECISION TO DENY BENEFITS

Plaintiff Sevier has brought this matter for judicial review of defendant’s denial of her application for disability insurance and supplemental security income (“SSI”) benefits. The defendant’s decision to deny benefits is reversed and this matter is remanded for further administrative proceedings.

FACTUAL AND PROCEDURAL HISTORY

Plaintiff filed an application for disability insurance benefits on August 27, 2010, and an application for SSI benefits on March 30, 2012, alleging in both applications she became disabled beginning July 26, 2010. *See* Dkt. 13, Administrative Record (“AR”) 21. Those applications were denied upon initial administrative review on December 6, 2010, and on reconsideration on February 25, 2011. *See id.* A hearing was held before an administrative law judge (“ALJ”) on June 6, 2012, at which plaintiff, represented by counsel, appeared and testified, as did a vocational expert. *See* AR 44-102.

1 In a decision dated November 30, 2012, the ALJ determined plaintiff to be not disabled.  
2 See AR 18-41. Plaintiff's request for review of the ALJ's decision was denied by the Appeals  
3 Council on June 27, 2014, making that decision the final decision of the Commissioner of Social  
4 Security (the "Commissioner"). See AR 1-6; 20 C.F.R. § 404.981, § 416.1481. On August 4,  
5 2014, plaintiff filed a complaint in this Court seeking judicial review of the Commissioner's final  
6 decision. See Dkt. 3. The administrative record was filed with the Court on October 8, 2014. See  
7 Dkt. 13. The parties have completed their briefing, and thus this matter is ripe for the Court's  
8 review.  
9

10 Plaintiff argues defendant's decision to deny benefits should be reversed and remanded  
11 for an award of benefits, or in the alternative for further administrative proceedings, because the  
12 ALJ erred: (1) in evaluating the medical evidence in the record; (2) in discounting plaintiff's  
13 credibility; (3) in failing to find plaintiff's panic disorder an impairment at step two; (4) in  
14 assessing plaintiff's residual functional capacity ("RFC"); and (5) in finding her to be capable of  
15 performing other jobs existing in significant numbers in the national economy. Furthermore,  
16 plaintiff argues that (6) additional evidence incorporated into the record by the Appeals Council  
17 undermines the ALJ's decision.  
18

19 The Court agrees that the ALJ erred in evaluating the medical evidence on the record, and  
20 thus in assessing plaintiff's RFC and finding her capable of returning to past work or  
21 alternatively performing other work, and therefore in determining plaintiff to be not disabled.  
22 The Court remands the matter for further administrative proceedings, as more fully explained  
23 below.  
24

#### 25 DISCUSSION

26 The determination of the Commissioner that a claimant is not disabled must be upheld by

1 the Court, if the “proper legal standards” have been applied by the Commissioner, and the  
2 “substantial evidence in the record as a whole supports” that determination. *Hoffman v. Heckler*,  
3 785 F.2d 1423, 1425 (9th Cir. 1986); *see also Batson v. Commissioner of Social Security Admin.*,  
4 359 F.3d 1190, 1193 (9th Cir. 2004); *Carr v. Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991)  
5 (“A decision supported by substantial evidence will, nevertheless, be set aside if the proper legal  
6 standards were not applied in weighing the evidence and making the decision.”) (*citing Brawner*  
7 *v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1987)).

9 Substantial evidence is “such relevant evidence as a reasonable mind might accept as  
10 adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation  
11 omitted); *see also Batson*, 359 F.3d at 1193 (“[T]he Commissioner’s findings are upheld if  
12 supported by inferences reasonably drawn from the record.”). “The substantial evidence test  
13 requires that the reviewing court determine” whether the Commissioner’s decision is “supported  
14 by more than a scintilla of evidence, although less than a preponderance of the evidence is  
15 required.” *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence  
16 admits of more than one rational interpretation,” the Commissioner’s decision must be upheld.  
17 *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984) (“Where there is conflicting evidence  
18 sufficient to support either outcome, we must affirm the decision actually made.”) (quoting  
19 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).<sup>1</sup>

22 \_\_\_\_\_  
23 <sup>1</sup> As the Ninth Circuit has further explained:

24 . . . It is immaterial that the evidence in a case would permit a different conclusion than that  
25 which the [Commissioner] reached. If the [Commissioner]’s findings are supported by  
26 substantial evidence, the courts are required to accept them. It is the function of the  
[Commissioner], and not the court’s to resolve conflicts in the evidence. While the court may  
not try the case de novo, neither may it abdicate its traditional function of review. It must  
scrutinize the record as a whole to determine whether the [Commissioner]’s conclusions are  
rational. If they are . . . they must be upheld.

*Sorenson*, 514 F.2d at 1119 n.10.

1 I. The ALJ's Evaluation of the Medical Evidence in the Record

2 The ALJ is responsible for determining credibility and resolving ambiguities and  
3 conflicts in the medical evidence. *See Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998).

4 Where the medical evidence in the record is not conclusive, "questions of credibility and  
5 resolution of conflicts" are solely the functions of the ALJ. *Sample v. Schweiker*, 694 F.2d 639,  
6 642 (9th Cir. 1982). In such cases, "the ALJ's conclusion must be upheld." *Morgan v.*  
7 *Commissioner of the Social Security Admin.*, 169 F.3d 595, 601 (9th Cir. 1999). Determining  
8 whether inconsistencies in the medical evidence "are material (or are in fact inconsistencies at  
9 all) and whether certain factors are relevant to discount" the opinions of medical experts "falls  
10 within this responsibility." *Id.* at 603.

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

20 The ALJ must provide "clear and convincing" reasons for rejecting the uncontradicted  
21 opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
22 1996). Even when a treating or examining physician's opinion is contradicted, that opinion "can  
23 only be rejected for specific and legitimate reasons that are supported by substantial evidence in  
24 the record." *Id.* at 830-31. However, the ALJ "need not discuss *all* evidence presented" to him or  
25 her. *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation  
26

1 omitted) (emphasis in original). The ALJ must only explain why “significant probative evidence  
2 has been rejected.” *Id.*; see also *Cotter v. Harris*, 642 F.2d 700, 706-07 (3rd Cir. 1981); *Garfield*  
3 *v. Schweiker*, 732 F.2d 605, 610 (7th Cir. 1984).

4 In general, more weight is given to a treating physician’s opinion than to the opinions of  
5 those who do not treat the claimant. See *Lester*, 81 F.3d at 830. On the other hand, an ALJ need  
6 not accept the opinion of a treating physician, “if that opinion is brief, conclusory, and  
7 inadequately supported by clinical findings” or “by the record as a whole.” *Batson*, 359 F.3d at  
8 1195; see also *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002); *Tonapetyan v. Halter*,  
9 242 F.3d 1144, 1149 (9th Cir. 2001). An examining physician’s opinion is “entitled to greater  
10 weight than the opinion of a nonexamining physician.” *Lester*, 81 F.3d at 830-31. A non-  
11 examining physician’s opinion may constitute substantial evidence if “it is consistent with other  
12 independent evidence in the record.” *Id.* at 830-31; *Tonapetyan*, 242 F.3d at 1149.

13 Plaintiff asserts that the ALJ erred in improperly rejecting the medical opinion of  
14 examining physician Dr. Terilee Wingate, Ph.D. See Dkt. 18, pp. 9-10. Dr. Wingate performed a  
15 psychological evaluation on March 30, 2012. See AR 363-68. In her clinical summary, Dr.  
16 Wingate opined that plaintiff “would have difficulty attending to task throughout the daily and  
17 weekly work schedule. She is anxious if she has to interact with others or go into public places.  
18 She will not be able to interact with coworkers or the public.” AR 365. Dr. Wingate rated  
19 plaintiff’s prognosis as “poor,” finding that she has “a serious medical condition that is not likely  
20 to improve.” *Id.*

21 With respect to Dr. Wingate’s medical opinion evidence, the ALJ found:

22 I give some weight to Dr. Wingate’s opinion. She had the opportunity to examine  
23 and test the claimant prior to opining on her ability to work. Her finding that the  
24 claimant should not be able to interact with the public is also consistent with the  
25 claimant’s allegations and statements regarding her abilities. However, I limit the  
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1 weight I give to Dr. Wingate's opinion because she fails to define how difficult it  
2 would be for the claimant to attend to task for a normal work schedule. It is  
3 unclear from her statement whether she believes the claimant's anxiety would be  
4 completely disabling or just an impediment the claimant could overcome. There is  
5 no objective medical evidence in the claimant's file to support the claimant's  
6 allegations that her anxiety is completely disabling. However, I do find there is  
sufficient evidence to limit the claimant's interaction with the public. I find no  
need to seek clarification on whether she could do a work schedule because based  
on the claimant's credibility I would reject such a limit as speculative. See  
credibility analysis.

7 AR 32.

8 In accepting part of Dr. Wingate's opinion and rejecting part, the ALJ's decision fails to  
9 address the opined limitation that plaintiff will not be able to interact with coworkers. The  
10 Commissioner "may not reject 'significant probative evidence' without explanation." *Flores v.*  
11 *Shalala*, 49 F.3d 562, 570-71 (9th Cir. 1995) (*quoting Vincent*, 739 F.2d at 1395 (*quoting Cotter*,  
12 642 F.2d at 706-07)). The "ALJ's written decision must state reasons for disregarding [such]  
13 evidence." *Flores, supra*, 49 F.3d at 571. Here, the ALJ accepts Dr. Wingate's limitation on  
14 public interaction and explains why he rejects the opinion that plaintiff would have difficulty  
15 attending to task for a normal work schedule. However, the ALJ neither explicitly rejects the  
16 limitation regarding interaction with coworkers nor gives reasons why the limitation is not  
17 incorporated into his assessment of plaintiff's RFC. *See* AR 25-26. Such an omission is in error.  
18 *See* SSR 96-8p, 1996 SSR LEXIS 5 at \*20 (an RFC assessment by the ALJ "must always  
19 consider and address medical source opinions. If the RFC assessment conflicts with an opinion  
20 from a medical source, the adjudicator must explain why the opinion was not adopted.").

21 Defendant argues that the ALJ made the "implicit decision to reject Dr. Wingate's  
22 opinion regarding coworkers in favor of other, more compelling evidence." *See* Dkt. 24, p. 13.  
23 Defendant asserts that the opinion was rejected by summarizing the conflicting evidence in detail  
24 and interpreting it. *See* Dkt. 24, p. 12. However, according to the Ninth Circuit, "[l]ong-standing  
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1 principles of administrative law require us to review the ALJ’s decision based on the reasoning  
2 and actual findings offered by the ALJ— not post hoc rationalizations that attempt to intuit what  
3 the adjudicator may have been thinking.” *Bray v. Comm’r of SSA*, 554 F.3d 1219, 1225-26 (9th  
4 Cir. 2009) (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947) (other citation omitted)); *see*  
5 *also Molina v. Astrue*, 674 F.3d 1104, 1121 (9th Cir. 2012) (“we may not uphold an agency’s  
6 decision on a ground not actually relied on by the agency”) (citing *Chenery Corp.*, *supra*, 332  
7 U.S. at 196). The ALJ nowhere stated that he was deciding that more compelling evidence  
8 controverted Dr. Wingate’s opinion regarding interaction with coworkers; he simply failed to  
9 address the issue.  
10

11           Moreover, the ALJ did not adequately summarize the conflicting evidence in his decision  
12 and did not provide any reasoning for his interpretation and ultimate conclusion that plaintiff was  
13 not limited from interacting with coworkers. As the Defendant points out, the ALJ did mention  
14 that Dr. Rogelio Zaragoza, Ph.D., thought Seveir could interact with coworkers; however, the  
15 ALJ gave no weight to that opinion. *See* AR 32. As also noted by defendant, the ALJ mentioned  
16 that plaintiff had no more than moderate limitations in social functioning, as evidenced by her  
17 reports of having friends, getting along with authority figures, and going shopping in grocery  
18 stores. *See* AR 28-29. However, in listing these activities in the context of evaluating the  
19 credibility of plaintiff’s statements, the ALJ does nothing to explain why he then gives weight to  
20 Dr. Wingate’s opinion that plaintiff’s interaction with the public should be limited but gives no  
21 weight to the opinion that her interaction with coworkers should be limited. Therefore, the ALJ  
22 did not provide the required specific and legitimate reasons for rejecting Dr. Wingate’s opinion  
23 that plaintiff could not interact with coworkers.  
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1 The Ninth Circuit has “recognized that harmless error principles apply in the Social  
2 Security Act context.” *Molina*, 674 F.3d at 1115 (citing *Stout v. Commissioner, Social Security*  
3 *Administration*, 454 F.3d 1050, 1054 (9th Cir. 2006) (collecting cases)). The Ninth Circuit noted  
4 that “in each case we look at the record as a whole to determine [if] the error alters the outcome  
5 of the case.” *Id.* The court also noted that the Ninth Circuit has “adhered to the general principle  
6 that an ALJ’s error is harmless where it is ‘inconsequential to the ultimate nondisability  
7 determination.’” *Id.* (quoting *Carmickle v. Comm’r Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th  
8 Cir. 2008)) (other citations omitted). The court noted the necessity to follow the rule that courts  
9 must review cases “‘without regard to errors’ that do not affect the parties’ ‘substantial rights.’”  
10 *Id.* at 1118 (quoting *Shinsheki v. Sanders*, 556 U.S. 396, 407 (2009) (quoting 28 U.S.C. § 2111)  
11 (codification of the harmless error rule)).  
12

13 Had the ALJ fully credited the opinion of Dr. Wingate regarding plaintiff’s ability to  
14 interact with coworkers, the RFC would have included additional limitations, as would the  
15 hypothetical questions posed to the vocational expert. As the ALJ’s ultimate determination  
16 regarding disability was based on the testimony of the vocational expert on the basis of an  
17 improper hypothetical question, these errors affected the ultimate disability determination and  
18 are not harmless.  
19

## 20 II. The ALJ’s Assessment of Plaintiff’s Residual Functional Capacity

21 Defendant employs a five-step “sequential evaluation process” to determine whether a  
22 claimant is disabled. *See* 20 C.F.R. § 404.1520; 20 C.F.R. § 416.920. If the claimant is found  
23 disabled or not disabled at any particular step thereof, the disability determination is made at that  
24 step, and the sequential evaluation process ends. *See id.* If a disability determination “cannot be  
25 made on the basis of medical factors alone at step three of that process,” the ALJ must identify  
26



1 the claimant’s “functional limitations and restrictions” and assess his or her “remaining  
2 capacities for work-related activities.” SSR 96-8p, 1996 WL 374184 \*2. A claimant’s RFC  
3 assessment is used at step four to determine whether he or she can do his or her past relevant  
4 work, and at step five to determine whether he or she can do other work. *See id.*

5 Residual functional capacity thus is what the claimant “can still do despite his or her  
6 limitations.” *Id.* It is the maximum amount of work the claimant is able to perform based on all  
7 of the relevant evidence in the record. *See id.* However, an inability to work must result from the  
8 claimant’s “physical or mental impairment(s).” *Id.* Thus, the ALJ must consider only those  
9 limitations and restrictions “attributable to medically determinable impairments.” *Id.* In assessing  
10 a claimant’s RFC, the ALJ also is required to discuss why the claimant’s “symptom-related  
11 functional limitations and restrictions can or cannot reasonably be accepted as consistent with the  
12 medical or other evidence.” *Id.* at \*7.

13  
14 The ALJ in this case assessed found that plaintiff had the RFC to perform:

15  
16 **light work as defined in 20 CFR 416.967(b) and 416.967(b) except she can**  
17 **frequently balance and crouch. She can perform all other postural activities**  
18 **occasionally. She can have no greater than frequent exposure extreme cold,**  
19 **extreme heat, excess humidity and hazards such as unprotected heights or**  
20 **hazardous machinery. She can have no exposure to industrial irritants such**  
21 **as fumes, dust, gases, or poorly ventilated areas. She should have no**  
22 **interaction with the public.**

23 AR 25-26 (emphasis in original). However, because as discussed above the ALJ erred in failing  
24 to address the opinion of Dr. Wingate, the ALJ’s RFC assessment does not completely and  
25 accurately describe all of plaintiff’s capabilities. Accordingly, here, too, the ALJ erred.  
26

1 III. The ALJ's Step Four Determination

2 The claimant has the burden at step four of the disability evaluation process to show that  
3 he or she is unable to return to his or her past relevant work. *Tackett v. Apfel*, 180 F.3d 1094,  
4 1098-99 (9th Cir. 1999).

5 At the hearing, the ALJ posed hypothetical questions to the vocational expert containing  
6 substantially the same limitations as were included in the ALJ's RFC assessment. *See* AR 95-96.  
7 In response, the vocational expert testified that an individual with those limitations – and with  
8 the same age, education, and work experience as plaintiff – would be able to perform her past  
9 work as a polystyrene molding machine operator. *See* AR 96. Based on the testimony of the  
10 vocational expert, the ALJ found plaintiff capable of returning to past work. *See* AR 33. Again,  
11 however, because the ALJ erred in assessing the plaintiff's RFC, the hypothetical question did  
12 not completely and accurately describe all of plaintiff's capabilities. Therefore, the ALJ's step  
13 four determination is not supported by substantial evidence and is in error.

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16 IV. The ALJ's Findings at Step Five

17 If a claimant cannot perform his or her past relevant work, at step five of the disability  
18 evaluation process the ALJ must show there are a significant number of jobs in the national  
19 economy the claimant is able to do. *See Tackett*, 180 F.3d at 1098-99; 20 C.F.R. § 404.1520(d),  
20 (e), § 416.920(d), (e). The ALJ can do this through the testimony of a vocational expert or by  
21 reference to defendant's Medical-Vocational Guidelines (the "Grids"). *Osenbrock v. Apfel*, 240  
22 F.3d 1157, 1162 (9th Cir. 2000); *Tackett*, 180 F.3d at 1100-1101.

23  
24 An ALJ's findings will be upheld if the weight of the medical evidence supports the  
25 hypothetical posed by the ALJ. *See Martinez v. Heckler*, 807 F.2d 771, 774 (9th Cir. 1987);  
26 *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984). The vocational expert's testimony

1 therefore must be reliable in light of the medical evidence to qualify as substantial evidence. *See*  
2 *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988). Accordingly, the ALJ’s description of the  
3 claimant’s disability “must be accurate, detailed, and supported by the medical record.” *Id.*  
4 (citations omitted). The ALJ, however, may omit from that description those limitations he or  
5 she finds do not exist. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

6  
7 At the hearing, the ALJ posed a hypothetical question to the vocational expert containing  
8 substantially the same limitations as were included in the ALJ’s assessment of plaintiff’s residual  
9 functional capacity. *See* AR 95-96. In response to that question, the vocational expert testified  
10 that an individual with those limitations—and with the same age, education and work experience  
11 as plaintiff—would be able to perform other jobs. *See* AR 96. Based on the testimony of the  
12 vocational expert, the ALJ found plaintiff would be capable of performing other jobs existing in  
13 significant numbers in the national economy. *See* AR 34-35. Again, however, because the ALJ  
14 erred in assessing the plaintiff’s RFC, the hypothetical question did not completely and  
15 accurately describe all of plaintiff’s capabilities. Therefore, the ALJ’s step five determination is  
16 not supported by substantial evidence and is in error.

17  
18 V. This Matter is Remanded for Further Administrative Proceedings

19 The Court may remand this case “either for additional evidence and findings or to award  
20 benefits.” *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Generally, when the Court  
21 reverses an ALJ’s decision, “the proper course, except in rare circumstances, is to remand to the  
22 agency for additional investigation or explanation.” *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th  
23 Cir. 2004) (citations omitted). Thus, it is “the unusual case in which it is clear from the record  
24 that the claimant is unable to perform gainful employment in the national economy,” that  
25 “remand for an immediate award of benefits is appropriate.” *Id.*  
26

1 Benefits may be awarded where “the record has been fully developed” and “further  
2 administrative proceedings would serve no useful purpose.” *Smolen*, 80 F.3d at 1292; *Holohan v.*  
3 *Massanari*, 246 F.3d 1195, 1210 (9th Cir. 2001). Specifically, benefits should be awarded where:

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

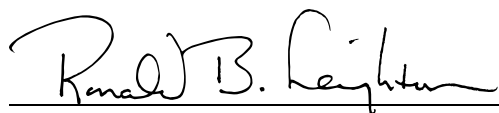
8 *Smolen*, 80 F.3d 1273 at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir. 2002).

9 Here, issues still remain regarding plaintiff’s functional capabilities and her ability to perform  
10 other jobs existing in significant numbers in the national economy. Accordingly, this case is  
11 remanded for further consideration.

12 CONCLUSION

13 The ALJ improperly concluded plaintiff was not disabled. Accordingly, defendant’s  
14 decision to deny benefits is REVERSED and this matter is REMANDED for further  
15 administrative proceedings in accordance with this opinion.  
16

17 DATED this 1st day of June, 2015.

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21 RONALD B. LEIGHTON  
22 UNITED STATES DISTRICT JUDGE  
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