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

6 PAULA J. ROLLER,

7 Plaintiff,

8 v.

9 CAROLYN W. COLVIN, Acting
10 Commissioner of Social Security,

11 Defendant.

Case No. 3:14-cv-05688-KLS

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

12 Plaintiff has brought this matter for judicial review of defendant's denial of her
13 application for supplemental security income ("SSI") benefits. Pursuant to 28 U.S.C. § 636(c),
14 Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties have consented to have
15 this matter heard by the undersigned Magistrate Judge. After reviewing the parties' briefs and the
16 remaining record, the Court hereby finds that for the reasons set forth below, defendant's
17 decision to deny benefits should be reversed and this matter should be remanded for further
18 administrative proceedings.
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20 FACTUAL AND PROCEDURAL HISTORY

21 On January 25, 2011, plaintiff protectively filed an application for SSI benefits, alleging
22 disability as of January 1, 1999. *See* Dkt. 10, Administrative Record ("AR") 12. That application
23 was denied upon initial administrative review on April 11, 2011, and on reconsideration on
24 January 26, 2012. *See id.* A video hearing was held before an administrative law judge ("ALJ")
25 on January 9, 2013, at which plaintiff, represented by counsel, appeared and testified, as did a
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1 vocational expert. *See* AR 26-58.

2 In a decision dated February 11, 2013, the ALJ determined plaintiff to be not disabled.
3 *See* AR 9-25. Plaintiff's request for review of the ALJ's decision was denied by the Appeals
4 Council on June 27, 2014, making that decision the final decision of the Commissioner of Social
5 Security (the "Commissioner"). *See* AR 2-6; 20 C.F.R. § 416.1481. On September 3, 2014,
6 plaintiff filed a complaint in this Court seeking judicial review of the Commissioner's final
7 decision. *See* Dkt. 3. The administrative record was filed with the Court on January 16, 2015. *See*
8 Dkt. 10. The parties have completed their briefing, and thus this matter is now ripe for the
9 Court's review.
10

11 Plaintiff argues defendant's decision to deny benefits should be reversed and remanded
12 for an award of benefits, or in the alternative for further administrative proceedings, because the
13 ALJ erred:

- 14 (1) in evaluating the opinions of Vincent Phillips, M.D., Sarah Magnuson-
15 Whyte, ARNP, Norman Staley, M.D., and Charles Wolfe, M.D.;
- 16 (2) in evaluating the medical evidence from Sheena Cortesi, PT, Dennis E.
17 Smith, M.D., Ryan J. Halpin, M.D., and Gareth J. Adams, M.D.,
- 18 (2) in discounting plaintiff's credibility;
- 19 (3) in assessing plaintiff's residual functional capacity ("RFC"); and
- 20 (4) in finding plaintiff to be capable of performing other jobs existing in
21 significant numbers in the national economy.

22 For the reasons set forth below, the Court agrees the ALJ erred in evaluating the opinion of Dr.
23 Philips – and thus in assessing plaintiff's RFC and in finding her capable of performing other
24 work – and therefore in determining plaintiff to be not disabled. Also for the reasons set forth
25 below, however, the Court finds that while defendant's decision to deny benefits should be
26 reversed on this basis, this matter should be remanded for further administrative proceedings.

1 DISCUSSION

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

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

24 _____
25 ¹ As the Ninth Circuit has further explained:

26 . . . It is immaterial that the evidence in a case would permit a different conclusion than that
which the [Commissioner] reached. If the [Commissioner]’s findings are supported by
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

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
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26 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 the record.” *Id.* at 830-31. However, the ALJ “need not discuss *all* evidence presented” to him or
2 her. *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation
3 omitted) (emphasis in original). The ALJ must only explain why “significant probative evidence
4 has been rejected.” *Id.*; *see also Cotter v. Harris*, 642 F.2d 700, 706-07 (3rd Cir. 1981); *Garfield*
5 *v. Schweiker*, 732 F.2d 605, 610 (7th Cir. 1984).

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

16
17 The record contains a medical source statement of ability to do work-related activities
18 completed by Dr. Phillips, plaintiff’s treating physician, in early March 2012. *See* AR 358-61.
19 Dr. Phillips opined that plaintiff: could lift and/or carry less than 10 pounds both occasionally
20 and frequently; could stand and/or walk for less than two hours in an eight-hour workday; could
21 sit for less than about six hours in an eight-hour workday; would be limited in regard to pushing
22 and/or pulling in her lower extremities; could never climb, kneel, crouch, crawl, or stoop; and
23 could only occasionally balance. *See* AR 358-60. The ALJ stated he “gave little weight” to Dr.
24 Phillips’ opinion because:

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26 . . . Dr. Phillips proffered his opinion on a check-off form and provided no
narrative support for his opinion. This lack of explanation for the discrepancy

1 between his opinion and his treatment notes that showed mild objective
2 findings renders his opinion less persuasive.

3 AR 18-19. Plaintiff argues, and the Court agrees, that these do not constitute valid reasons for
4 giving the opinion of Dr. Phillips little weight.

5 Defendant is correct that an ALJ “may ‘permissibly reject[] ... check-off reports that [do]
6 not contain any explanation of the bases of their conclusions.’” *Molina v. Astrue*, 674 F.3d 1104,
7 1111 (9th Cir. 2012) (quoting *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir.1996)); *see also*
8 *Holohan v. Massanari*, 246 F.3d 1195, 1202 (9th Cir.2001) (“[T]he regulations give more weight
9 to opinions that are explained than to those that are not.”). Here, however, the evaluation form
10 Dr. Phillips completed does contain some narrative explanations for the limitations he assessed,
11 albeit perhaps not particularly detailed ones. *See* AR 359 (noting plaintiff had obvious but
12 inoperable spine injuries confirmed on MRI), 360 (further noting plaintiff had severe limp due to
13 groin, hip and leg pain and decreased left leg range of motion).

15 The ALJ’s statement that Dr. Phillips’ treatment notes show only mild objective findings
16 also is not supported by the record. Rather, those notes contain findings indicating the presence
17 of significant pain and other symptoms that certainly could support the limitations Dr. Phillips
18 assessed. *See* AR 265 (“Obvious limp, trouble navigating office due to L leg pain.”), 268 (“Still
19 difficulty ambulating”), 274 (“still some difficulty walking”), 277 (“Usual L groin pain”), 279
20 (“Obvious pain, stiffness L groin”), 282 (“Obvious pain, difficulty walking”; “Severe stiffness,
21 limitation L leg at groin”), 285 (“Obvious pain in groin”), 286 (“obvious limp in office today”;
22 “Obvious difficulty raising L leg”), 288 (“Pain L groin when lifted L leg”), 367 (“Still Limps”),
23 371 (“Limps, Pain/Weakness l leg”), 372 (“Still walks slowly due to pain”), 374 (“exquisite
24 tenderness to left groin”), 383 (“Pt always has trouble walking due to L hip/groin pain”), 389
25 (“Still difficulty walking”), 390 (“Trouble walking stiff, painful legs”). Given these findings, the
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1 ALJ erred in rejecting Dr. Phillips' opinion for this reason as well.

2 II. The ALJ's Assessment of Plaintiff's Residual Functional Capacity

3 Defendant employs a five-step "sequential evaluation process" to determine whether a
4 claimant is disabled. *See* 20 C.F.R. § 416.920. If the claimant is found disabled or not disabled at
5 any particular step thereof, the disability determination is made at that step, and the sequential
6 evaluation process ends. *See id.* If a disability determination "cannot be made on the basis of
7 medical factors alone at step three of that process," the ALJ must identify the claimant's
8 "functional limitations and restrictions" and assess his or her "remaining capacities for work-
9 related activities." SSR 96-8p, 1996 WL 374184 *2. A claimant's RFC assessment is used at step
10 four to determine whether he or she can do his or her past relevant work, and at step five to
11 determine whether he or she can do other work. *See id.*

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

20 The ALJ in this case found plaintiff had the residual functional capacity to perform light
21 work along with the following additional limitations:

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23
24
25 **. . . [She] can occasionally climb ladders, ropes, or scaffolds. She can**
26 **frequently climb ramps or stairs and stoop. She should avoid even moderate**
exposure to airborne pollutants.

1 AR 15 (emphasis in original). But because as discussed above the ALJ erred in giving only little
2 weight to the opinion of Dr. Phillips, it cannot be said that the above RFC assessment completely
3 and accurately describes all of plaintiff's functional limitations or to be supported by substantial
4 evidence. As such, the ALJ erred here. Although plaintiff argues the ALJ further erred in failing
5 to include in that assessment the need to use a cane when standing and ambulating, a limitation
6 to sedentary work and an inability to maintain a regular full-time work schedule due to pain and
7 exacerbations of her breathing problems, she has not yet shown that substantial evidence in the
8 record supports such inclusion.
9

10 III. The ALJ's Step Five Determination

11 If a claimant cannot perform his or her past relevant work, at step five of the disability
12 evaluation process the ALJ must show there are a significant number of jobs in the national
13 economy the claimant is able to do. *See Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999);
14 20 C.F.R. § 416.920(d), (e). The ALJ can do this through the testimony of a vocational expert or
15 by reference to defendant's Medical-Vocational Guidelines (the "Grids"). *Osenbrock v. Apfel*,
16 240 F.3d 1157, 1162 (9th Cir. 2000); *Tackett*, 180 F.3d at 1100-1101.
17

18 An ALJ's findings will be upheld if the weight of the medical evidence supports the
19 hypothetical posed by the ALJ. *See Martinez v. Heckler*, 807 F.2d 771, 774 (9th Cir. 1987);
20 *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984). The vocational expert's testimony
21 therefore must be reliable in light of the medical evidence to qualify as substantial evidence. *See*
22 *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988). Accordingly, the ALJ's description of the
23 claimant's disability "must be accurate, detailed, and supported by the medical record." *Id.*
24 (citations omitted). The ALJ, however, may omit from that description those limitations he or
25 she finds do not exist. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).
26

1 At the hearing, the ALJ posed a series of hypothetical questions to the vocational expert
2 containing substantially the same limitations as were included in the ALJ's RFC assessment. *See*
3 AR 49-52. In response thereto, the vocational expert testified that an individual with those
4 limitations – and with the same age, education, and work experience as plaintiff – would be able
5 to perform other jobs. *See id.* Based on the testimony of the vocational expert, the ALJ found
6 plaintiff capable of performing other jobs existing in significant numbers in the national
7 economy. *See* AR 19-20.
8

9 But because as discussed above the ALJ erred in evaluating the opinion of Dr. Phillips
10 and thus in assessing plaintiff's RFC, it cannot be said that the hypothetical question the ALJ
11 posed completely and accurately describes all of plaintiff's functional limitations. As such, the
12 testimony of the vocational expert also cannot be said to be supported by substantial evidence,
13 and therefore the ALJ erred in relying on it here at step five. Plaintiff argues the ALJ should have
14 accepted the vocational expert's additional testimony that an individual who needed two or more
15 unexcused absences per month, unscheduled rest breaks or to leave their work station every 30
16 minutes to stretch for five minutes, would be unable to engage in competitive employment.
17 Again, however, it has not been shown that the substantial evidence in the record supports these
18 limitations or that the ALJ would have been required to adopt them.
19

20 IV. This Matter Should Be Remanded for Further Administrative Proceedings

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

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

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

13 *Smolen*, 80 F.3d 1273 at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir. 2002).
14 Because issues still remain in regard to the medical opinion evidence in the record, and therefore
15 in regard to plaintiff’s RFC and her ability to perform other jobs existing in significant numbers
16 in the national economy, remand for further consideration of those issues is warranted.

17 Plaintiff argues that given the ALJ’s failure to properly reject the opinion of Dr. Phillips,
18 the Court should credit that opinion as true. Where the ALJ has failed “to provide adequate
19 reasons for rejecting the opinion of a treating or examining physician,” that opinion generally is
20 credited “as a matter of law.” *Lester*, 81 F.3d at 834 (citation omitted). On the other hand,
21 remand for further proceedings rather than an award of benefits is appropriate “when, even
22 though all conditions of the [*Smolen*] credit-as-true rule are satisfied, an evaluation of the record
23 as a whole creates serious doubt that a claimant is, in fact, disabled.” *Garrison v. Colvin*, 759
24 F.3d 995, 1021 (9th Cir. 2014). Given that error has been found only with respect to the ALJ’s
25 discounting of the opinion evidence from Dr. Phillips – and in light of the medical and other
26 evidence in the record overall – there is still serious doubt as to whether plaintiff is in fact

1 disabled considering the record as a whole. The Court thus declines to apply the credit as true
2 rule in this matter.

3 CONCLUSION

4 Based on the foregoing discussion, the Court hereby finds the ALJ improperly concluded
5 plaintiff was not disabled. Accordingly, defendant's decision to deny benefits is REVERSED
6 and this matter is REMANDED for further administrative proceedings in accordance with the
7 findings contained herein.
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9 DATED this 8 day of June, 2015.

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13 Karen L. Strombom
14 Karen L. Strombom
15 United States Magistrate Judge
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