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

6 TONI SUE HOLMES,

7 Plaintiff,

8 v.

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

11 Defendant.

Case No. 3:14-cv-05936-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 disability insurance benefits. Pursuant to 28 U.S.C. § 636(c), Federal Rule of
14 Civil Procedure 73 and Local Rule MJR 13, the parties have consented to have this matter heard
15 by the undersigned Magistrate Judge. After reviewing the parties' briefs and the remaining
16 record, the Court hereby finds that for the reasons set forth below, defendant's decision to deny
17 benefits should be reversed and this matter should be remanded for further administrative
18 proceedings.
19

20 FACTUAL AND PROCEDURAL HISTORY

21 On July 8, 2011, plaintiff filed an application for disability insurance benefits, alleging
22 disability as of July 25, 2008. *See* Dkt. 8, Administrative Record ("AR") 18. That application
23 was denied upon initial administrative review on September 19, 2011, and on reconsideration on
24 February 9, 2012. *See id.* A hearing was held before an administrative law judge ("ALJ") on
25
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ORDER - 1

1 December 20, 2012, at which plaintiff, represented by counsel, appeared and testified, as did a
2 vocational expert. *See* AR 35-67.

3 In a decision dated March 18, 2013, the ALJ determined plaintiff to be not disabled. *See*
4 AR 15-34. Plaintiff's request for review of the ALJ's decision was denied by the Appeals
5 Council on October 3, 2014, making that decision the final decision of the Commissioner of
6 Social Security (the "Commissioner"). *See* AR 1-6; 20 C.F.R. § 404.981. On November 26,
7 2014, plaintiff filed a complaint in this Court seeking judicial review of the Commissioner's final
8 decision. *See* Dkt. 1. The administrative record was filed with the Court on February 2, 2015. *See*
9 Dkt. 8. The parties have completed their briefing, and thus this matter is now ripe for the Court's
10 review.
11

12 Plaintiff argues defendant's decision to deny benefits should be reversed and remanded
13 for further administrative proceedings because the ALJ erred in evaluating the medical evidence
14 in the record. For the reasons set forth below, the undersigned agrees the ALJ erred in evaluating
15 the medical evidence, and thus in assessing plaintiff's residual functional capacity ("RFC"), and
16 therefore in determining plaintiff to be not disabled. Also for the reasons set forth below,
17 however, the undersigned recommends that while defendant's decision to deny benefits should
18 be reversed on this basis, this matter should be remanded for further administrative proceedings.
19

20 DISCUSSION

21 The determination of the Commissioner that a claimant is not disabled must be upheld by
22 the Court, if the "proper legal standards" have been applied by the Commissioner, and the
23 "substantial evidence in the record as a whole supports" that determination. *Hoffman v. Heckler*,
24 785 F.2d 1423, 1425 (9th Cir. 1986); *see also Batson v. Commissioner of Social Security Admin.*,
25 359 F.3d 1190, 1193 (9th Cir. 2004); *Carr v. Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991)
26

1 (“A decision supported by substantial evidence will, nevertheless, be set aside if the proper legal
2 standards were not applied in weighing the evidence and making the decision.”) (citing *Browner*
3 *v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1987)).

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

17 I. The ALJ’s Evaluation of the Medical Evidence in the Record

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

20 Where the medical evidence in the record is not conclusive, “questions of credibility and
21

22 ¹ As the Ninth Circuit has further explained:

23 . . . It is immaterial that the evidence in a case would permit a different conclusion than that
24 which the [Commissioner] reached. If the [Commissioner]’s findings are supported by
25 substantial evidence, the courts are required to accept them. It is the function of the
26 [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 resolution of conflicts” are solely the functions of the ALJ. *Sample v. Schweiker*, 694 F.2d 639,
2 642 (9th Cir. 1982). In such cases, “the ALJ’s conclusion must be upheld.” *Morgan v.*
3 *Commissioner of the Social Security Admin.*, 169 F.3d 595, 601 (9th Cir. 1999). Determining
4 whether inconsistencies in the medical evidence “are material (or are in fact inconsistencies at
5 all) and whether certain factors are relevant to discount” the opinions of medical experts “falls
6 within this responsibility.” *Id.* at 603.

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

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

25
26 Plaintiff asserts that the ALJ erred in rejecting the opinion of examining physician Dr.

1 Jesse McClelland, M.D. *See* Dkt. 10, pp. 2-5. Dr. McClelland performed an examination of
2 plaintiff, including a Mental Status Examination (“MSE”), on August 16, 2011. *See* AR 436-41.
3 In his report, Dr. McClelland opined that plaintiff “would likely not be able to deal with the
4 usual stress encountered in the workplace,” “may struggle to maintain regular attendance in the
5 work place,” and “would likely have panic attacks that interrupt her normal workday or simply
6 get off track easily.” AR 441. The ALJ gave this opinion little weight because “it is inconsistent
7 with the doctor’s fairly unremarkable mental status examination of the claimant” and because it
8 “appears the doctor relied heavily on the claimant’s subjective report of symptoms and
9 limitations,” which were found not to be credible. AR 27. The undersigned finds that these are
10 not specific and legitimate reasons, supported by substantial evidence, for rejecting Dr.
11 McClelland’s opinion.
12

13 First, discrepancies between a medical opinion source’s functional assessment and that
14 source’s clinical notes, recorded observations and other comments regarding a claimants
15 capabilities “is a clear and convincing reason for not relying” on the assessment. *Bayliss v.*
16 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005); *see also Weetman v. Sullivan*, 877 F.2d 20, 23
17 (9th Cir. 1989). However, there is no such discrepancy here because Dr. McClelland articulated
18 why he assessed plaintiff with functional limitations, and his reasons lie outside of what the MSE
19 analyzes. Specifically, Dr. McClelland opined:
20

21 Her symptoms continue to worsen as is common with post
22 traumatic stress disorder when one becomes socially isolated.
23 Social isolation reinforces itself because the person stays home to
24 avoid situations that promote anxiety. By giving into that anxiety
25 and staying home, the person has more time to think about the past
26 traumatic events and the anxiety levels increase. Their friends start
to drop off as they get sick of calling because they know the person
is going to say no when they ask them to do anything and the post
traumatic stress disorder patient has more and more difficulty with
social interactions as the levels of anxiety increase. Social

1 isolation, for this reason, can be the nail in the coffin with post
2 traumatic stress disorder. Her symptoms are likely to continue to
3 worsen as she becomes more and more isolated, and she will need
4 aggressive combination of psychotherapy and medications in order
5 to start to reverse this course. Even if she does have an ideal
6 combination of treatment, it is going to take significant time for her
7 to get back to previous level of functioning, and she is likely to
8 have residual psychiatric issues for the rest of her life.

9 AR 440.

10 This reasoning, based on social isolation and its effect on plaintiff's symptomology, is
11 not inconsistent with the MSE results; it is entirely separate from them. That Dr. McClelland
12 found plaintiff to have fair judgment, a cooperative attitude, normal speech, sufficient
13 concentration, and intact memory and abstract thinking in the MSE does not contradict his
14 separate professional observations that led him to assess plaintiff with functional limitations. The
15 diagnoses and observations of psychiatrists and psychologists constitute competent evidence
16 when mental illness is the basis of a disability claim:

17 Courts have recognized that a psychiatric impairment is not as
18 readily amenable to substantiation by objective laboratory testing
19 as is a medical impairment and that consequently, the diagnostic
20 techniques employed in the field of psychiatry may be somewhat
21 less tangible than those in the field of medicine. In general, mental
22 disorders cannot be ascertained and verified as are most physical
23 illnesses, for the mind cannot be probed by mechanical devices in
24 order to obtain objective clinical manifestations of mental illness....
25 [W]hen mental illness is the basis of a disability claim, clinical and
26 laboratory data may consist of the diagnoses and observations of
27 professionals trained in the field of psychopathology. The report of
28 a psychiatrist should not be rejected simply because of the relative
29 imprecision of the psychiatric methodology or the absence of
30 substantial documentation, unless there are other reasons to
31 question the diagnostic technique.

32 *Sanchez v. Apfel*, 85 F.Supp.2d 986, 992 (C.D. Cal. 2000) (quoting *Christensen v. Bowen*, 633
33 F.Supp. 1214, 1220-21 (N.D. Cal. 1986)); *see also Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th
34 Cir. 1987) (opinion that is based on clinical observations supporting diagnosis of depression is

1 competent [psychiatric] evidence). Therefore, the ALJ's finding that Dr. McClelland's opinion
2 was inconsistent with the MSE is not a legitimate reason for rejecting the opinion.

3 Second, a physician's opinion premised on a claimant's subjective complaints may be
4 discounted where the record supports the ALJ in discounting the claimant's credibility. *See*
5 *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (noting rejected physician's opinion
6 relied only on claimant's subjective complaints and testing within claimant's control).

7
8 "However, when an opinion is not more heavily based on a patient's self-reports than on clinical
9 observations, there is no evidentiary basis for rejecting the opinion." *Ghanim v. Colvin*, 763 F.3d
10 1154, 1162 (9th Cir. 2014) (internal citations omitted). As the Ninth Circuit has further clarified
11 in another recent case:

12 . . . [A]n ALJ does not provide clear and convincing reasons for rejecting an
13 examining physician's opinion by questioning the credibility of the patient's
14 complaints where the doctor does not discredit those complaints and supports
15 his ultimate opinion with his own observations. *Edlund v. Massanari*, 253
16 F.3d 1152, 1159 (9th Cir. 2001) ("In sum, the ALJ appears to have relied on
17 her doubt's about [the claimant's] overall credibility to reject the entirety of
18 [the examining psychologist's] report, including portions that [the
19 psychologist] deemed to be reliable."). . . .

20 *Ryan v. Commissioner of Social Sec.*, 528 F.3d 1194, 1199-1200 (9th Cir. 2008). As in *Ryan*,
21 there is nothing in the evaluation reports of Dr. McClelland to suggest he "disbelieved
22 [plaintiff's] description of her symptoms, or that [he] relied on those descriptions more heavily
23 than his own clinical observations in reaching" his conclusion. *Id.* at 1200.

24 The Court notes that "experienced clinicians attend to detail and subtlety in behavior,
25 such as the affect accompanying thought or ideas, the significance of gesture or mannerism, and
26 the unspoken message of conversation." Paula T. Trzepacz and Robert W. Baker, *The*
Psychiatric Mental Status Examination 3 (Oxford University Press 1993). Here, Dr. McClelland
performed an extensive and thorough examination, reporting many clinical observations based

1 on the interaction. *See* AR 436-41. For example, Dr. McClelland noted that plaintiff’s affect was
2 “anxious and tearful” and that her judgment and insight were fair, but also found that plaintiff
3 was able to do simple calculations and was “alert and oriented to person, place, and time.” AR
4 439. Dr. McClelland also made professional observations about plaintiff’s symptomology and
5 the effect of social isolation on those symptoms, as discussed above.

6
7 Therefore, the Court concludes that Dr. McClelland did not base his opinion of plaintiff’s
8 limitations largely on plaintiff’s self-reported symptoms. Rather, he provided a medical source
9 statement that was based on medical records, the doctor’s observations, the objective results of
10 the MSE, and plaintiff’s self-reported symptoms. Thus, the ALJ’s finding that the doctor’s
11 assessment appeared to be based largely on plaintiff’s self-reported symptoms is not supported
12 by substantial evidence.

13
14 Based on the above-stated reasons, the Court concludes that the ALJ’s decision to give
15 little weight to the opinion of Dr. McClelland is not specific and legitimate and supported by
16 substantial evidence in the record. *See Lester*, 81 F.3d at 830-31 (when an examining physician’s
17 opinion is contradicted, that opinion can be rejected “for specific and legitimate reasons that are
18 supported by substantial evidence in the record”).

19
20 “[H]armless error principles apply in the Social Security context.” *Molina v. Astrue*, 674
21 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless, however, only if it is non-prejudicial to
22 the claimant or “inconsequential” to the ALJ’s “ultimate nondisability determination.” *Stout v.*
23 *Commissioner, Social Security Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *see also Molina*,
24 674 F.3d at 1115; *Parra v. Astrue*, 481 F.3d 742, 747 (9th Cir. 2007). The determination as to
25 whether an error is harmless requires a “case-specific application of judgment” by the reviewing
26 court, based on an examination of the record made “‘without regard to errors’ that do not affect

1 the parties' 'substantial rights.'" *Molina*, 674 F.3d at 1118-19 (*quoting Shinseki v. Sanders*, 556
2 U.S. 396, 407 (2009) (*quoting* 28 U.S.C. § 2111)).

3 "[T]he fact that the administrative law judge, had she considered the entire record, might
4 have reached the same result does not prove that her failure to consider the evidence was
5 harmless. Had she considered it carefully, she might well have reached a different conclusion."
6 *Hollingsworth v. Colvin*, 2013 WL 3328609 *4 (W.D. Wash. July 1, 2013) (*quoting Spiva v.*
7 *Astrue*, 628 F.3d 346, 353 (7th Cir. 2010). Had the ALJ fully credited the opinion of Dr.
8 McClelland, she may have included additional limitations in the RFC and in the hypothetical
9 questions posed to the vocational expert regarding plaintiff's ability to engage in work activity
10 within an average schedule and work week. The ultimate disability decision may have changed,
11 and thus the error is not harmless.
12

13 II. This Matter Should Be Remanded for Further Administrative Proceedings

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

22 Benefits may be awarded where "the record has been fully developed" and "further
23 administrative proceedings would serve no useful purpose." *Smolen*, 80 F.3d at 1292; *Holohan v.*
24 *Massanari*, 246 F.3d 1195, 1210 (9th Cir. 2001). Specifically, benefits should be awarded
25 where:
26

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

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

7 Here, the outstanding issue is whether the vocational expert, with a hypothetical that includes all
8 relevant functional limitations, may find an ability to perform other jobs existing in significant
9 numbers in the national economy. Accordingly, remand for further consideration is warranted in
10 this matter.

11 CONCLUSION

12 Based on the foregoing discussion, the Court hereby finds the ALJ improperly concluded
13 plaintiff was not disabled. Accordingly, defendant's decision to deny benefits is REVERSED
14 and this matter is REMANDED for further administrative proceedings in accordance with the
15 findings contained herein.

16 DATED this 5th day of May, 2015.

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20 Karen L. Strombom
21 United States Magistrate Judge
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