

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 ALEX HAMILTON,

8 Plaintiff,

Case No. C17-5493 RAJ

9 v.

10 NANCY A. BERRYHILL, Deputy
11 Commissioner of Social Security for Operations,

12 Defendant.

**ORDER REVERSING AND
REMANDING CASE FOR
FURTHER ADMINISTRATIVE
PROCEEDINGS**

13 Plaintiff seeks review of the denial of his application for Disability Insurance Benefits.
14 Plaintiff contends the ALJ erred by discounting his testimony and the lay testimony of his wife,
15 and failing to account for all the limitations in a medical opinion to which the ALJ gave great
16 weight. Dkt. 11. As discussed below, the Court **REVERSES** the Commissioner's final decision
17 and **REMANDS** the matter for further administrative proceedings under sentence four of 42
18 U.S.C. § 405(g).

19 **BACKGROUND**

20 Plaintiff is currently 30 years old, has a high school education, and has worked as an auto
21 mechanic in the military. Tr. 39. In June 2015, plaintiff applied for benefits, alleging disability
22 as of May 6, 2015. Tr. 25. Plaintiff's applications were denied initially and on reconsideration.
23 Tr. 25. After the ALJ conducted a hearing on August 9, 2016, the ALJ issued a decision finding

ORDER REVERSING AND REMANDING
CASE FOR FURTHER ADMINISTRATIVE
PROCEEDINGS - 1

1 plaintiff not disabled. Tr. 25-41.

2 THE ALJ'S DECISION

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

4 **Step one:** Plaintiff has not engaged in substantial gainful activity since the alleged onset
5 date of May 6, 2015.

6 **Step two:** Plaintiff has the following severe impairments: posttraumatic stress disorder
7 (PTSD), anxiety disorder, mild bulge at L4-L5 with lumbar radiculopathy, small disc
8 protrusion at C6-C7, status post tendon tear to the right ankle, and headaches.

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

11 **Residual Functional Capacity:** Plaintiff can perform light work, except he can only
12 occasionally climb ladders, ropes or scaffolds and frequently stoop, crouch, or climb
13 ramps or stairs. He can perform simple, routine tasks with a reasoning level of 1 or 2.
14 He can have no public contact and only occasional superficial contact with coworkers.
15 He should avoid concentrated exposure to workplace hazards.

16 **Step four:** Plaintiff cannot perform past relevant work.

17 **Step five:** As there are jobs that exist in significant numbers in the national economy that
18 plaintiff can perform, he is not disabled.

19 Tr. 27-40. The Appeals Council denied plaintiff's request for review, making the ALJ's decision
20 the Commissioner's final decision. Tr. 1.³

21 DISCUSSION

22 While there is no dispute that plaintiff has several physical and mental impairments, the
23 only issues under review here concern mental impairments. Plaintiff argues that his testimony
and his wife's statements establish that he needs to take irregular breaks during the day to rest
because his nighttime sleep is severely disrupted by night sweats, night terrors, and nightmares,

¹ 20 C.F.R. §§ 404.1520.

² 20 C.F.R. Part 404, Subpart P. Appendix 1.

³ The rest of the procedural history is not relevant to the outcome of the case and is thus omitted.

1 and that he has irregular anger outbursts. Dkt. 11 at 4-5. Plaintiff also contends that medical
2 opinions establish that his RFC must include limitations on interacting with supervisors and on
3 routine changes and stressful situations. Dkt. 11 at 10.

4 **A. Examining Medical Source M. Kevin Turner, Ph.D.**

5 The ALJ gave “great weight” to Dr. Turner’s September 2015 opinions that plaintiff’s
6 “ability to interact with the public, authority figures and peers was likely to be moderately
7 impaired” and that he was “moderately likely to decompensate under routine changes and
8 stressful situations...” Tr. 38 (citing Tr. 1252). However, in the RFC, the ALJ did not limit
9 interactions with authority figures such as supervisors, and did not limit routine changes or
10 stressful situations.

11 The Commissioner argues that the ALJ accounted for Dr. Turner’s assessment of
12 plaintiff’s ability to interact “with others” by limiting his contact with the public and coworkers.
13 Dkt. 15 at 4. These limits address plaintiff’s ability to interact with “the public ... and peers” but
14 not “authority figures.” The Court concludes the ALJ erred by failing to include Dr. Turner’s
15 opined limitation on interaction with supervisors.

16 The Commissioner argues that the limitation to jobs at reasoning level 1 or 2 adequately
17 prevents decompensation by limiting routine changes and stressful situations, because such jobs
18 are defined as having few, occasional, or no variables. Dkt. 15 at 4 (citing *Dictionary of*
19 *Occupational Titles*, Appendix C, Section III, available at 1991 WL 688702). The definitions
20 limit the number of variables a worker must deal with at a given point in time, but they do not
21 limit how frequently a worker’s routine changes. Furthermore, a limitation on variables does not
22 limit stressful situations. A situation can be stressful even with no changes or variables.
23 Performing a simple task at a high speed can be stressful, for example, especially if there is little

1 tolerance for error.

2 The ALJ thus failed to incorporate two of Dr. Turner’s limitations into the RFC: the
3 limitation on interactions with supervisors, and the limitation on routine changes and stressful
4 situations. The failure to incorporate these limitations into the RFC finding, or provide a legally
5 sufficient reason for rejecting them, renders the ALJ’s RFC finding incomplete and unsupported
6 by substantial evidence. The error is harmful because the ALJ may have relied at step five on
7 jobs plaintiff cannot perform. *See Hill v. Astrue*, 698 F.3d 1153, 1161-62 (9th Cir. 2012).

8 **B. Plaintiff’s Testimony**

9 Plaintiff argues the ALJ erred in discounting his testimony that he would need irregular
10 breaks during the day because of sleep disruptions, including night sweats,⁴ and that he had
11 angry outbursts. Tr. 11 at 2. Where, as here, an ALJ finds that a claimant has established
12 underlying impairments that may reasonably be expected to cause the alleged symptoms and
13 there is no affirmative evidence of malingering, the ALJ may reject plaintiff’s testimony about
14 the severity of his symptoms only “by offering specific, clear and convincing reasons” supported
15 by substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (2017); *see also Carmickle v.*
16 *Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) (court reviews “whether the
17 ALJ’s adverse credibility finding of [a claimant’s] testimony is supported by substantial evidence
18 under the clear-and-convincing standard”).

19 Relying on *Laborin*, plaintiff contends the ALJ erred by discounting his testimony
20 generally, rather than finding specific inconsistencies with his testimony that sleep disruptions
21 cause him to need to lie down during the day and his testimony on anger outbursts. Dkt. 11 at 4-

23 ⁴ However, plaintiff also testified in the August 2016 hearing that after he was given medication
for PTSD, “the night sweats went away....” Tr. 79.

1 6 (citing *Laborin v. Berryhill*, 867 F.3d 1151, 1155 (9th Cir. 2017)). *Laborin* provides:

2 To discredit a claimant’s symptom testimony when the claimant has provided
3 objective medical evidence of the impairments which might reasonably produce
4 the symptoms or pain alleged and there is no evidence of malingering, the ALJ
5 must give “specific, clear, and convincing reasons for rejecting” the testimony by
6 identifying “*which* testimony [the ALJ] found not credible” and explaining
7 “*which* evidence contradicted that testimony.”

8 *Laborin*, 867 F.3d at 1155 (alterations in original) (quoting *Brown–Hunter v. Colvin*, 806 F.3d
9 487, 489, 494 (9th Cir. 2015)). Plaintiff interprets this to mean that the ALJ can only reject a
10 statement if other evidence contradicts that specific statement. However, once an ALJ has
11 specified which evidence contradicts which testimony, the Ninth Circuit permits the ALJ to
12 make a more general credibility assessment based on the contradiction or any other specific,
13 clear, convincing reason. *See, e.g., Thomas v. Barnhart*, 278 F.3d 947, 960 (2002) (“the ALJ
14 properly rejected her testimony by ... providing a specific, clear and convincing reason ... that
15 her testimony was generally not credible”); *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir.
16 1997) (“An ALJ’s finding that a claimant generally lacked credibility is a permissible basis to
17 reject excess pain testimony.”).⁵ The Court must therefore uphold the ALJ’s credibility
18 determination if she provided a specific, clear and convincing reason supported by substantial
19 evidence. *Trevizo*, 871 F.3d at 678.

20 The ALJ discounted plaintiff’s testimony on his mental symptoms because he had a long
21 history of symptoms before he stopped working, and periods of increased symptoms were largely

22 ⁵ In *Laborin*, according to the concurrently filed unpublished disposition, the ALJ approached
23 the claimant’s testimony piecemeal and rejected each symptom based on purported
inconsistencies, and thus the reviewing court analyzed the ALJ’s decision in a similar piecemeal
fashion. *See Laborin v. Berryhill*, 692 Fed. Appx. 959, 961 (2017). A symptom-by-symptom
approach is not required, however. *See Light*, 119 F.3d at 793 (reversing and remanding because
“the ALJ failed to articulate an acceptable reason either for disbelieving Light’s testimony in
general or for discrediting his pain testimony specifically”).

1 due to situational stressors. Tr. 32. The ALJ also discounted plaintiff's testimony because some
2 of his statements are inconsistent with the record. Tr. 35-36.

3 The fact that alleged impairments did not prevent a claimant from working successfully
4 indicates the ability to perform work activities and undermines claims of disability. Plaintiff
5 does not dispute that his symptoms started well before he stopped working at a high level of
6 responsibility. Plaintiff testified that he worked as a motorcycle shop foreman from 2012 to
7 2014. Tr. 60. After that, most of his duties and responsibilities were taken from him. Tr. 60-61.
8 In November 2012, plaintiff was hospitalized "due to his level of anxiety and disorganized state"
9 and "concern that he may harm himself if anxiety symptoms increase." Tr. 1812-13. Yet he
10 continued working as a foreman for at least another year. Plaintiff also reported night sweats as
11 early as November 2013. Tr. 879. The ability to continue working indicates impairments are not
12 disabling, and constitutes a specific, clear, convincing reason to discount plaintiff's testimony.

13 Plaintiff does not dispute that his symptoms were exacerbated during periods of
14 situational stress, and improved when the stressors receded. For example, the November 2012
15 hospitalization was related to "anxiety about the increase in responsibility at work." Tr. 1812.
16 In January 2013, after learning better coping mechanisms, plaintiff's mental status examination
17 was normal and he reported that he had discontinued psychiatric medications and wished to
18 remain without them. Tr. 1684. Plaintiff also does not dispute the ALJ's finding that later
19 periods of increased symptoms have been "situational and related to the process of his separation
20 from the military and relocation to a different State." Tr. 33. Given that the military separation
21 and relocation are complete, those stressors are unlikely to recur.

22 The ALJ found that plaintiff "made numerous inconsistent statements regarding matters
23 relevant to the issue of disability." Tr. 35. Plaintiff does not dispute any inconsistencies, but

1 argues that none relate to his testimony about disrupted sleep and anger outbursts. Dkt. 11 at 5-
2 6. Inconsistencies may, however, establish a general lack of credibility. *Light*, 119 F.3d at 792.
3 Here, inconsistencies between plaintiff's statements and the record regarding medication and
4 drug use are a valid reason to discount his testimony. *See Thomas*, 278 F.3d at 959. Plaintiff
5 also testified that his wife had no family in Washington state, which was inconsistent with his
6 wife's testimony that they moved to Washington because her "brother lived out here so I knew
7 that we could move out here and stay with him until we got on our feet." Tr. 67, 86. Although
8 the ALJ may have included other purported inconsistencies unsupported by substantial evidence,
9 the error is harmless because the remaining reasons to discount plaintiff's testimony are specific,
10 clear and convincing. *See Carmickle*, 533 F.3d at 1162-63 (where an ALJ provides valid reasons
11 to discount a claimant's credibility, inclusion of other erroneous reasons is harmless).

12 The Court concludes the ALJ did not err in discounting plaintiff's testimony regarding
13 anger outbursts and the need for irregular daytime breaks due to disrupted sleep.

14 **C. Lay Testimony**

15 Plaintiff's wife, Danielle Hamilton, testified at the August 2016 hearing that plaintiff
16 "gets angry and frustrated very easily" and has broken things and hit himself during these
17 outbursts. Tr. 87. She also testified that she has to remind him to take care of personal hygiene
18 such as showering and brushing his teeth. Tr. 90. In a June 2015 function report, she stated that
19 he can only "work for 15-30 minutes before he either bursts or becomes too overwhelmed and
20 stressed" and that "at times he does nothing but sleep because of his depression, nightsweats that
21 drenches the bed." Tr. 324, 293. The ALJ gave her testimony "partial weight" on the grounds
22 that one of plaintiff's treatment providers felt she was "enabling" him.⁶ Tr. 37. The ALJ also

23 ⁶ The ALJ also stated plaintiff reported his wife "controlled" much of what he did even before
ORDER REVERSING AND REMANDING
CASE FOR FURTHER ADMINISTRATIVE
PROCEEDINGS - 7

1 discounted Ms. Hamilton’s testimony based on inconsistent explanations of why she left work
2 for a year, and because plaintiff was able to live on his own for three months. Tr. 37.

3 In order to discount competent lay witness testimony, the ALJ must give “germane”
4 reasons supported by substantial evidence. *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir.
5 2005). “Substantial evidence” is more than a scintilla, less than a preponderance, and is “such
6 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
7 *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989) (quoting *Davis v. Heckler*, 868 F.2d 323,
8 326 (9th Cir. 1989)). Plaintiff does not dispute that the ALJ’s reasons for discounting his wife’s
9 testimony are supported by substantial evidence, but argues that they are not “germane” to his
10 sleep disruptions and anger outbursts. Dkt. 11 at 7. But plaintiff’s own citations establish that the
11 reasons must be germane “to each witness”—not to each specific statement by the witness.
12 *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993).

13 To support the charge of enabling, the ALJ cites a treatment note stating that the
14 “[t]herapist will also discuss [claimant’s] wife enabling him to avoid certain tasks and activities
15 by overcompensating for him.” Tr. 1304. Plaintiff does not dispute that this is more than a
16 scintilla of evidence, and the reason is germane because his wife doing more than necessary for
17 him tends to discount her testimony on the severity of his impairments.

18 The ALJ also discounted plaintiff’s wife’s testimony because “despite her claim of
19 having to do everything for the claimant, the claimant was able to live on his own from March
20 through May 2016, when she moved to Washington to start her new job and he was still waiting
21 for his military separation to process.” Tr. 37. Plaintiff’s wife testified that she had to remind

22 _____
23 the alleged onset of disability, but cites no evidence at all and the Court can find none in the
record. This reason is not supported by substantial evidence. The error is harmless, however, as
adequate reasons remain.

1 him to take care of his personal hygiene, that she leaves food for him because he does not cook
2 for himself, that she leaves him chore lists, and that she does the driving. Tr. 88-91. This reason
3 is germane because, again, overstating his needs diminishes the reliability of her testimony as to
4 the severity of his impairments.

5 The ALJ also discounted plaintiff's wife's testimony based on an inconsistency in her
6 reason for quitting her job. She testified at the hearing:

7 I took the year off because I had to take care of him. He could not take care of
8 himself. I was working while he started this process and it was just way too
9 overwhelming because he couldn't keep everything in order so I was trying to
work and keep his things in order and so I took the year off and just tried to get
him all set.

10 Tr. 89. In context, "this process" appears to be the separation and relocation process. The ALJ
11 found that her testimony was contradicted by treatment notes from September 2015 reporting that
12 plaintiff's "wife stated she quit her job in response to the re-location notice...." Tr. 1248; Tr. 37.
13 What the ALJ found contradictory between these statements is not clear. An ALJ "must make a
14 credibility determination with findings sufficiently specific to permit the court to conclude that
15 the ALJ did not arbitrarily discredit" the testimony. *Thomas*, 278 F.3d at 958. However, any
16 error is harmless, as the remaining reasons are sufficiently germane to discount plaintiff's wife's
17 testimony.

18 The Court concludes the ALJ did not err in discounting plaintiff's wife's testimony.

19 **D. Scope of Remand**

20 Plaintiff argues the Court should remand for an award of benefits. In general, the Court
21 has "discretion to remand for further proceedings or to award benefits." *Marcia v. Sullivan*, 900
22 F.2d 172, 176 (9th Cir. 1990). The Court may remand for further proceedings if enhancement of
23 the record would be useful. *See Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000). The

1 Court may remand for benefits where (1) the record is fully developed and further administrative
2 proceedings would serve no useful purpose; (2) the ALJ fails to provide legally sufficient reasons
3 for rejecting evidence, whether claimant testimony or medical opinion; and (3) if the improperly
4 discredited evidence were credited as true, the ALJ would be required to find the claimant
5 disabled on remand. *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014).

6 Here, the Court finds that the record, as it stands, does not compel a finding of disability.
7 There is no evidence in the record as to whether, if Dr. Turner's opined limitations were fully
8 incorporated into the RFC, there would be significant numbers of jobs that plaintiff could
9 perform. Accordingly, remand for further proceedings is appropriate in this case.

10 **CONCLUSION**

11 For the foregoing reasons, the Commissioner's final decision is **REVERSED** and this
12 case is **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. §
13 405(g).

14 On remand, the ALJ should reassess the RFC in light of Dr. Turner's limitations on
15 supervisor interactions, routine changes and stressful situations, and proceed to step five as
16 needed.

17 DATED this 13th day of June, 2018.

18
19 

20
21 The Honorable Richard A. Jones
22 United States District Judge
23