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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 JAMES R. KOEN,

11 Plaintiff,

12 v.

13 NANCY A. BERRYHILL, Deputy
14 Commissioner of Social Security for
15 Operations,

16 Defendant.

CASE NO. 3:17-CV-05575-JRC

ORDER ON PLAINTIFF'S
COMPLAINT

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18 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and
19 Local Magistrate Judge Rule MJR 13 (*see also* Consent to Proceed before a United States
20 Magistrate Judge, Dkt. 2). This matter has been fully briefed. *See* Dkt. 11, 12, 13.

21 Examining psychologist Dr. Kay Stradinger, Psy.D. diagnosed plaintiff with
22 alcohol dependence, history of methamphetamine dependence, unspecified depressive
23 disorder, and generalized anxiety disorder. AR. 410. The Administrative Law Judge
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1 Cir. 1983)); *see also* 20 C.F.R. §§ 404.1527(a)(2) (“Medical opinions are statements from
2 physicians and psychologists or other acceptable medical sources that reflect judgments
3 about the nature and severity of your impairment(s), including your symptoms, diagnosis
4 and prognosis, what you can still do despite impairment(s), and your physical or mental
5 restrictions”).

6 A. Duration Requirement

7 First, the ALJ found that plaintiff’s testimony and the medical evidence as a whole
8 show that plaintiff has no significant mental limitations lasting for a continuous period of
9 12 months. AR. 30. Plaintiff argues that Dr. Stradinger’s findings show that plaintiff has
10 longstanding depression and anxiety. Dkt. 11 at 3. Notably, defendant does not address
11 this rationale in her response. *See* Dkt. 12. Nor does defendant refute plaintiff’s argument
12 that Dr. Stradinger’s findings and opinion demonstrate that plaintiff’s depression and
13 anxiety lasted for a continuous period of 12 months. *See* Dkt. 12.

14 Here, the ALJ’s stated reason for rejecting Dr. Stradinger’s opinion was that
15 plaintiff’s testimony and the medical evidence as a whole show that plaintiff has no
16 significant mental limitations lasting for a continuous period of 12 months. AR. 30. That
17 finding is not supported by substantial evidence in the record.

18 Further, the ALJ failed to identify what aspects of plaintiff’s testimony and the
19 medical record conflicted with Dr. Stradinger’s opinion that plaintiff’s condition was
20 unlikely to improve over the next 12 months. AR. 24, 30. Instead, the ALJ leaves
21 plaintiff and the Court to guess what evidence formed the basis for this reason. This is far
22 from “setting out a detailed and thorough summary of the facts and conflicting clinical
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1 evidence, stating [his] interpretation thereof, and making findings....” *Magallanes v.*
2 *Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (internal quotation omitted); *Trevizo v.*
3 *Berryhill*, 871 F.3d 664, 676 (9th Cir. 2017). Therefore, this finding was insufficiently
4 supported by substantial evidence in the record for rejecting Dr. Stradinger’s opinion.

5 B. Plaintiff’s Self-reports

6 Second, the ALJ found that Dr. Stradinger’s opinion relied heavily on plaintiff’s
7 subjective complaints, which the ALJ found to be not credible. AR. 30.

8 According to the Ninth Circuit, “[an] ALJ may reject a treating physician’s
9 opinion if it is based ‘to a large extent’ on a claimant self-reports that have been properly
10 discounted as incredible.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008)
11 (quoting *Morgan v. Comm’r. Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999) (citing
12 *Fair v. Bowen*, 885 F.2d 597, 605 (9th Cir. 1989))). This situation is distinguishable from
13 one in which the doctor provides his own observations in support of his assessments and
14 opinions. *See Ryan v. Comm’r of Soc. Sec. Admin.*, 528 F.3d 1194, 1199-1200 (9th Cir.
15 2008) (“an ALJ does not provide clear and convincing reasons for rejecting an examining
16 physician’s opinion by questioning the credibility of the patient’s complaints where the
17 doctor does not discredit those complaints and supports his ultimate opinion with his own
18 observations”); *see also Edlund v. Massanari*, 253 F.3d 1152, 1159 (9th Cir. 2001).

19 According to the Ninth Circuit, “when an opinion is not more heavily based on a patient’s
20 self-reports than on clinical observations, there is no evidentiary basis for rejecting the
21 opinion.” *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014) (citing *Ryan*, 528 F.3d
22 at 1199-1200).
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1 Here, when discussing Dr. Stradinger’s opinion with respect to the step two
2 finding, the ALJ relied on several inconsistencies to show that plaintiff’s reports are not
3 fully reliable. *See* AR. 24. The ALJ cited to Dr. Stradinger’s treatment notes in which she
4 noted that plaintiff “presented today as initially giving rather limited information[,]”
5 “seemed to give up rather easily[,]” and provided inaccurate information regarding his
6 alcohol consumption. AR. 24 (citing AR. 408, 410, 457).

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8 However, the record does not support the finding that Dr. Stradinger relied upon
9 information which was materially inconsistent with statements elsewhere in the record.
10 Rather, the record reflects that plaintiff initially shared limited information with Dr.
11 Stradinger. Dr. Stradinger noted the reason for this was unclear, but no part of Dr.
12 Stradinger’s evaluation questioned or discredited plaintiff’s reports. *See* AR. 406-410
13 (Dr. Stradinger noted “[i]t was unclear if he was trying to divulge as little or if that was
14 his style to not share a lot of personal information initially.”).

15 Regarding plaintiff’s alcohol use, the ALJ referenced a treatment note from July 7,
16 2014, in which plaintiff presented to the emergency department for shortness of breath.
17 AR. 24 (citing AR. 457). Plaintiff reported that he had 10-12 beers that day and that he
18 drinks nearly every day. AR. 457. Approximately three weeks later, on July 21, 2014, Dr.
19 Stradinger reported that plaintiff recently went through withdrawal from heavy alcohol
20 abuse and cut down on his drinking based on a concern for his health issues. AR. 410.
21 This evidence does not show that Dr. Stradinger relied on inaccurate information. Rather,
22 it appears that plaintiff’s drinking habits changed between his visit to the emergency
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1 room in early July 2014 and his evaluation with Dr. Stradinger several weeks later. AR.
2 410, 457.

3 Moreover, although Dr. Stradinger’s opinion was based in part on plaintiff’s self-
4 reports, Dr. Stradinger also conducted objective measures, including a clinical interview
5 and mental status examination. AR. 406-410. Dr. Stradinger’s findings that plaintiff had
6 problems with concentration and persistence, restless activity during the examination,
7 limited insight, depressed mood, and slightly constricted affect, which was congruent
8 with his mood. AR. 408-410. These are objective measures, and the ALJ gave no specific
9 and legitimate reason for rejecting these findings. *See Buck v. Berryhill*, 869 F.3d 1040,
10 1049 (9th Cir. 2017) (clinical interviews and mental status evaluations are “objective
11 measures” which “cannot be discounted as a self-report.”). The Ninth Circuit recently
12 clarified how an ALJ should evaluate psychiatric evaluations:
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14 [A]s two other circuits have acknowledged, “[t]he report of a psychiatrist
15 should not be rejected simply because of the relative imprecision of the
16 psychiatric methodology.” . . . Psychiatric evaluations may appear
17 subjective, especially compared to evaluation in other medical fields.
18 Diagnoses will always depend in part on the patient's self-report, as well as
19 on the clinician's observations of the patient. But such is the nature of
20 psychiatry. . . . Thus, the rule allowing an ALJ to reject opinions based on
21 self-reports does not apply in the same manner to opinions regarding mental
22 illness.

23 *Buck*, 869 F.3d at 1049 (quoting *Blankenship v. Bowen*, 874 F.2d 1116, 1121 (6th Cir.
24 1989)) (citations omitted). Therefore, the ALJ’s decision to discount Dr. Stradinger’s
opinion based on her reliance on plaintiff’s self-reports is not a valid reason to reject her
opinion.

1 C. Inconsistent with Record

2 With respect to the ALJ's finding that Dr. Stradinger's opinion was inconsistent
3 with the evidence of record, including normal mental status examination findings, AR.
4 24, the Court finds that the record does not support this conclusion. The mental status
5 examination conducted by Dr. Stradinger reflects that plaintiff did not demonstrate
6 significant deficits in judgment or memory, *see* AR. 409-410, however, the ALJ's
7 selective reliance on this finding is not a sufficient basis for undermining Dr. Stradinger's
8 opinion. *See Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th Cir. 2001) (an ALJ may
9 not properly reject a medical opinion based on a selective reliance of the relevant
10 treatment evidence). As noted above, Dr. Stradinger found that plaintiff had problems
11 with concentration, restless activity during the examination, limited insight, and a slightly
12 constricted affect and depressed mood. AR. 408-410. Dr. Stradinger also found that
13 plaintiff's fund of knowledge/information was "low average," plaintiff reported suicidal
14 thoughts and seeing "orbs," and plaintiff had "some problems with concentration[.]" AR.
15 408-09. *Garrison v. Colvin*, 759 F.3d 995, 1017 (9th Cir. 2014) (citation omitted) ("it is
16 error for an ALJ to pick out a few isolated instances of [mental health] improvement over
17 a period of months or years and to treat them as a basis for concluding a claimant is
18 capable of working."); *Reddick*, 157 F.3d at 722-23 (an ALJ must not "cherry-pick"
19 certain observations without considering their context). Therefore, this is not a specific
20 and legitimate reason supported by substantial evidence to reject Dr. Stradinger's
21 opinion.
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1 interact with coworkers and the public, complete a normal workday/workweek without
2 interruptions from psychiatric conditions, and deal with the usual stress encountered in
3 the workplace. AR. 411. The RFC did not contain these limitations. AR. 26. As fully
4 crediting these opinions may very well alter the ultimate disability determination, the
5 Court cannot conclude with confidence ““that no reasonable ALJ, when fully crediting
6 the testimony, could have reached a different disability determination.”” *See Marsh*, 792
7 F.3d at 1173 (citing *Stout*, 454 F.3d at 1055-56). Therefore, the ALJ’s error is not
8 harmless and the Court concludes that this case should be remanded for further
9 consideration of Dr. Stradinger’s opinion.
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11 E. Challenges to other medical opinions

12 Regarding challenges to the ALJ’s evaluation of other medical opinions, because
13 the Court concludes that this case be remanded for further administrative proceedings,
14 and based on the record as a whole, the Court concludes that the remaining medical
15 evidence should be evaluated anew following remand of this matter.

16 **2. Whether the ALJ properly evaluated plaintiff’s testimony, the lay** 17 **evidence, and plaintiff’s RFC.**

18 As the Court concludes that the ALJ erred when evaluating the medical opinion
19 evidence of Dr. Stradinger, and that this case be remanded for further administrative
20 proceedings, *see supra*, section 1, and based on the record as a whole, the Court
21 concludes that plaintiff’s testimony, the lay evidence, and plaintiff’s RFC should be
22 evaluated anew following remand of this matter.
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