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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

7 GARRETT WADE LINDERMAN,

8 Plaintiff,

9 v.

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

12 Defendant.

Case No. C17-5934 RSM

ORDER REVERSING AND
REMANDING THE CASE FOR
FURTHER ADMINISTRATIVE
PROCEEDINGS

13 Plaintiff, Garrett Wade Linderman, seeks review of the denial of his application for
14 Supplemental Security Income. Plaintiff's lawyer filed an opening brief that violates the Court's
15 scheduling order (Dkt. 8), in that it fails to list the errors alleged beginning on page one, and sets
16 forth the issue for review in general statements, exactly as the Court prohibits. Counsel is
17 advised that future briefs that fail to conform to the Court's scheduling order may be summarily
18 stricken.

19 Plaintiff contends the ALJ erred by rejecting the opinions of three doctors. Dkt. 9. As
20 discussed below, the Court REVERSES the Commissioner's final decision and REMANDS the
21 matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

22 **BACKGROUND**

23 Plaintiff is currently 55 years old, has a high school education, and has no past relevant

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1 work. Tr. 30. Plaintiff applied for benefits in May 2014, alleging disability as of June 2013. Tr.
2 21. Plaintiff's applications were denied initially and on reconsideration. Tr. 21. After the ALJ
3 conducted a hearing in June 2016, the ALJ issued a decision finding plaintiff not disabled. Tr.
4 21-31.

5 THE ALJ'S DECISION

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

7 **Step one:** Plaintiff has not engaged in substantial gainful activity since the May 2014
8 application date.

9 **Step two:** Plaintiff has the following severe impairments: degenerative disc disease of
10 the spine, rotator cuff tendonitis, chronic liver disease, chronic renal failure, anxiety,
11 substance abuse, and antisocial personality disorder.

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

14 **Residual Functional Capacity:** Plaintiff can perform light work, further limited to
15 occasional overhead reaching bilaterally. He can frequently climb ramps and stairs and
16 occasionally climb ladders, ropes, or scaffolds. He can frequently balance, stoop, kneel
17 and crouch, and occasionally crawl. He can have no exposure to extremes of temperature
18 or gases, chemicals or fumes. He can perform simple, routine tasks and follow short,
19 simple instructions. He can do work that needs little or no judgment and can perform
20 simple duties that can be learned on the job in less than 30 days. He can respond
21 appropriately to supervision, but cannot be required to work in close coordination with
22 coworkers where teamwork is required. He can have occasional changes in the work
23 environment. He can do work that requires no contact with the general public to perform
work tasks.

18 **Step four:** Plaintiff has no past relevant work.

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

21 Tr. 23-31. The Appeals Council denied plaintiff's request for review, making the ALJ's decision

23 ¹ 20 C.F.R. § 416.920(a)(4).

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

1 the Commissioner's final decision. Tr. 1.³

2 DISCUSSION

3 The Court may reverse an ALJ's decision only if it is not supported by substantial
4 evidence or if the ALJ applied the wrong legal standard. *See Molina v. Astrue*, 674 F.3d 1104,
5 1110 (9th Cir. 2012). Even then, the Court will reverse the ALJ's decision only if the claimant
6 demonstrates that the ALJ's error was harmful. *Id.* "Substantial evidence" is more than a
7 scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might
8 accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971);
9 *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). While the Court is required to
10 examine the record as a whole, it may neither reweigh the evidence nor substitute its judgment
11 for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the
12 evidence is susceptible to more than one rational interpretation, it is the Commissioner's
13 conclusion that must be upheld. *Id.*

14 A. Medical Opinions

15 When contradicted, a treating or examining doctor's opinion may not be rejected without
16 "specific and legitimate reasons" that are supported by substantial evidence in the record. *Lester*
17 *v. Chater*, 81 F.3d 821, 830, 831 (9th Cir. 1996).

18 Plaintiff appears to argue that the ALJ erred by discounting the medical opinions of
19 examining doctors Felicia Mueller, Psy.D., Jennifer Irwin, M.D., and treating doctor Sharon
20 Carter, M.D., regarding his mental health. Dkt. 9.

21 1. Dr. Mueller

22 In February 2014, Dr. Mueller opined, among other impairments, that plaintiff's ability to

23 ³ The rest of the procedural history is not relevant to the outcome of the case and is thus omitted.
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1 maintain appropriate behavior in a work setting was severely impaired, and his ability to
2 maintain punctual attendance and complete a normal workday and workweek was markedly
3 impaired. Tr. 310-11. The ALJ gave Dr. Mueller’s opinions “little weight” because they were
4 “not supported by citation to medical records or other factual reference” and because they
5 “appear[ed] to have been made for the purposes of qualifying” plaintiff for disability benefits.
6 Tr. 27. The second reason is erroneous. *See Lester*, 81 F.3d at 832 (In the absence of “evidence
7 of actual improprieties” an ALJ “may not assume that doctors routinely lie in order to help their
8 patients collect disability benefits.”).

9 The ALJ’s first reason is not supported by substantial evidence. Dr. Mueller performed a
10 clinical interview and a mental status examination. Tr. 308-312. Her observations included
11 depressed affect and labile mood, plaintiff scored “severe” on an anxiety rating scale, and her
12 testing results showed plaintiff had abnormalities in thought process and content, orientation,
13 perception, memory, fund of knowledge, concentration, abstract thought, insight and judgment.
14 Tr. 309, 312. The Commissioner argues that the fact that “Dr. Mueller listed diagnoses that
15 allegedly had existed since 1984 and 1999, without disclosing the source of such diagnoses and
16 onset” indicates that her opinions were unsupported by the record. Dkt. 12 at 4. Dr. Mueller
17 listed a 1999 onset date for her diagnoses of PTSD, cannabis dependence, and rule-out ADHD,
18 and a 1981 onset date for antisocial personality disorder. Tr. 310. The fact that Dr. Mueller
19 relied on plaintiff’s self-reports to estimate the onset date for conditions she diagnosed does not
20 undermine the reliability of her diagnoses or her functional capacity evaluation.

21 The Court concludes the ALJ erred by discounting Dr. Mueller’s opinions.

22 **2. Dr. Irwin**

23 In March 2015, Dr. Irwin opined that plaintiff “would have difficulty performing work

1 activities, on a consistent basis, without special or additional instructions” and “would have
2 difficulty completing a normal workday/workweek, without interruptions from his psychiatric
3 condition.” Tr. 363. The ALJ gave Dr. Irwin’s opinions “little weight” because she “did not
4 describe if the claimant would nevertheless be able to work despite the ‘difficulty’ she believed
5 he would have in certain areas” and Dr. Irwin “assumed that the claimant’s substance use was in
6 full sustained remission when in fact it was not...” Tr. 29 (citing Tr. 304, 457).

7 The ALJ’s first reason, that Dr. Irwin’s opinions were too vague to assist in the disability
8 determination, is a specific and legitimate reason to discount the opinions. Dr. Irwin’s opinion
9 imposes a limitation, but does not explain how severe the limitation is. At the hearing, a
10 vocational expert testified that an employee who was off task for 20% of the time, or who missed
11 two days of work per month, could not maintain competitive employment. Tr. 68-69. The ALJ
12 reasonably concluded that Dr. Irwin’s opined limitation of “difficulty” was too vague to assist in
13 determining whether plaintiff would be able to stay on task enough of the time to maintain
14 competitive employment. When the evidence is susceptible to more than one rational
15 interpretation, it is the Commissioner’s conclusion that must be upheld. *Thomas*, 278 F.3d at
16 954.

17 The ALJ’s second reason, that Dr. Irwin misdiagnosed plaintiff with drug abuse disorders
18 in remission, was erroneous. In March 2015, Dr. Irwin diagnosed plaintiff with amphetamine,
19 cannabis, and opioid use disorders, all “in full, sustained remission.” Tr. 362-63. A few months
20 before, in November 2014, a treating physician reported that plaintiff “still uses amphetamines
21 occasionally” and was “going to go through inpatient rehabilitation in the next couple of
22 months.” Tr. 304. More than a year after Dr. Irwin’s examination, in June 2016, a letter from
23 plaintiff’s counseling service states that they “have been working on” tapering off his marijuana

1 use so that he can undergo a treatment for his liver disease. Tr. 457. Plaintiff had disclosed to
2 Dr. Irwin that, although he was not using marijuana at the time, he planned to start using it again
3 in a few months when he obtained a medical marijuana card. Tr. 361. Thus Dr. Irwin was aware
4 of plaintiff's intended use and evidently concluded that prescribed marijuana use does not
5 constitute a disorder. The ALJ does not explain what difference plaintiff's remission status
6 might make to Dr. Irwin's opinions regarding functional limitations. There is no suggestion that,
7 for example, plaintiff was intoxicated during the examination, potentially affecting the results.
8 And Dr. Irwin specifically stated that plaintiff's "[a]ntisocial personality disorder is not treatable
9 and is a lifelong problem." Tr. 363.

10 Although one of the ALJ's reasons to discount Dr. Irwin's opinions was erroneous, the
11 error was harmless because the ALJ's remaining valid reason is specific and legitimate. *See*
12 *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1163 (9th Cir. 2008) (remaining valid
13 reasons "are specific findings related to [claimant's] ability to perform vocational functions).

14 **3. Dr. Carter**

15 Dr. Carter did not provide any opinions as to plaintiff's functional limitations. *See* Tr.
16 418-420. Plaintiff seems to argue that Dr. Carter's diagnoses are similar to those of Dr. Mueller
17 and Dr. Irwin, thus bolstering their opinions. Dkt. 9 at 10-11. Similar diagnoses have little
18 bearing on plaintiff's functional limitations, which are what the ALJ is charged with evaluating
19 in determining his RFC. Plaintiff alleges no error at step two, where the ALJ determined all of
20 his severe impairments. The Court concludes the ALJ did not err by not specifically addressing
21 Dr. Carter's report.

1 B. Scope of Remand

2 Plaintiff argues the Court should remand for an award of benefits or, in the alternative,
3 for further administrative proceedings. Dkt. 9 at 15-16. In general, the Court has “discretion to
4 remand for further proceedings or to award benefits.” *Marcia v. Sullivan*, 900 F.2d 172, 176 (9th
5 Cir. 1990). The Court may remand for further proceedings if enhancement of the record would
6 be useful. *See Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000). The Court may remand
7 for benefits where (1) the record is fully developed and further administrative proceedings would
8 serve no useful purpose; (2) the ALJ fails to provide legally sufficient reasons for rejecting
9 evidence, whether claimant testimony or medical opinion; and (3) if the improperly discredited
10 evidence were credited as true, the ALJ would be required to find the claimant disabled on
11 remand. *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014).

12 Here, the Court finds that enhancement of the record would be useful. For example, as
13 plaintiff points out, there has been no psychological examiner who was able to review the entire
14 medical record. Dkt. 9 at 15-16. Accordingly, remand for further proceedings is appropriate.

15 **CONCLUSION**

16 For the foregoing reasons, the Commissioner’s final decision is REVERSED and this
17 case is REMANDED for further administrative proceedings under sentence four of 42 U.S.C. §
18 405(g).

19 On remand, the ALJ should reevaluate the opinions of Dr. Mueller, develop the record as
20 appropriate, reassess the RFC, and proceed to step five as necessary.

21 DATED this 27th day of July, 2018.

22 

23 RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE