

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Raymond D. v. O'Malley

Raymond D. · No. 24-cv-04209-DMR · Decided September 24, 2025

OPINION

Dominguez v. O'Malley

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 RAYMOND D.,1 Case No. 24-cv-04209-DMR 8 Plaintiff,

ORDER ON CROSS MOTIONS FOR

9 v. SUMMARY JUDGMENT

10 MARTIN O'MALLEY, Re: Dkt. Nos. 18, 21, 24 11 Defendant. 12 Plaintiff Raymond D.
moves2 for summary judgment to reverse the Commissioner of the 13 Social Security
Administration's (the "Commissioner's") final administrative decision, which 14 found Plaintiff
not disabled and therefore denied his application for benefits under Title XVI of 15 the Social
Security Act, 42 U.S.C. § 401 et seq. The Commissioner cross-moves to affirm. For 16 the reasons
stated below, the court grants Plaintiff's motion, denies the Commissioner's motion, 17 and
remands the case for further proceedings consistent with this order.

18 I. PROCEDURAL HISTORY

19 Plaintiff filed an application for disability benefits on March 20, 2017. Administrative 20
Record ("AR") 192-216. The application was initially denied on August 7, 2017 and again on 21
reconsideration on September 25, 2017. AR 116-31. An Administrative Law Judge ("ALJ") held
22 a hearing on June 21, 2018 and issued an unfavorable decision on October 12, 2018. AR 18-35.
23 After the Appeals Council denied review, Plaintiff sought review in this court pursuant to 42 24
1 Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the 25
recommendation of the Committee on Court Administration and Case Management of the Judicial
Conference of the United States. 26 2 Plaintiff filed his opening brief on March 21, 2025. [Docket
No. 18.] On June 20, 2025, 27 Plaintiff filed an unopposed motion to file an amended opening
brief to correct an unintentional 1 U.S.C. § 405(g). AR 1158-71. The Honorable Thomas S.
Hixson remanded the case for further 2 proceedings on October 29, 2020. AR 1172-98 (Civil Case
No. 3:19-cv-07594-TSH, Dkt. 32). 3 Pursuant to Judge Hixson's order, the case was remanded to
the same ALJ for a new 4 hearing on May 6, 2021. AR 1199-1203. The ALJ held three hearings,
on January 26, 2023, May 5 4, 2023, and February 21, 2024. AR 1046-1133. The ALJ issued

another unfavorable decision on

6 March 14, 2024. AR 1011-35. Plaintiff now seeks review in this court. [Docket No. 1.]

7 In the decision following remand, the ALJ determined that Plaintiff has the following 8 severe impairments: bipolar II disorder; depressive disorder; generalized anxiety disorder (GAD); 9 attention deficit hyperactivity disorder (ADHD), combined type; amphetamine abuse in early 10 remission; and polysubstance dependence (20 CFR 416.920(c)). AR 1016. The ALJ found that 11 Plaintiff does not have an impairment or combination of impairments that meets or medically 12 equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 13 (20 CFR 416.920(d), 416.925 and 416.926). AR 1017. The ALJ found that Plaintiff retains the 14 following residual functional capacity (“RFC”): 15 [He can] perform a full range of work at all exertional levels but with the following nonexertional limitations: The claimant can perform 16 routine tasks (not necessarily simple) with few changes, but with no fast-paced production line work (e.g., factory work on an assembly 17 line where people down the line depend on his speed and accuracy). He should have no more than occasional interaction with supervisors, 18 coworkers, and the public. The claimant should not have access to contact with illegal substances (e.g., no law enforcement or pharmacy 19 settings). 20 AR 1019. 21 Relying on the opinion of a vocational expert (“V.E.”) who testified that an individual with 22 such an RFC could perform jobs existing in the economy, including hospital cleaner, industrial 23 cleaner, and hand packager, the ALJ concluded that Plaintiff is not disabled. AR 1026.

24 II. ISSUES FOR REVIEW

25 1. Did the ALJ improperly weigh the medical opinions? 26 2. Did the ALJ err in its credibility determination? 27 3. Is the ALJ’s paragraph C finding supported by substantial evidence?

III. STANDARD OF REVIEW

1 Pursuant to 42 U.S.C. § 405(g), this court has the authority to review a decision by the 2 Commissioner denying a claimant disability benefits. “This court may set aside the 3 Commissioner’s denial of disability insurance benefits when the ALJ’s findings are based on legal 4 error or are not supported by substantial evidence in the record as a whole.” *Tackett v. Apfel*, 180 5 F.3d 1094, 1097 (9th Cir. 1999) (citations omitted). Substantial evidence is evidence within the 6 record that could lead a reasonable mind to accept a conclusion regarding disability status. See 7 *Richardson v. Perales*, 402 U.S. 389, 401 (1971). It is more than a mere scintilla, but less than a 8 preponderance. See *Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir. 1996) (internal citation omitted). 9 When performing this analysis, the court must “consider the entire record as a whole and may not 10 affirm simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (citation and quotation marks omitted). 12 If the evidence reasonably could support two conclusions, the court “may not substitute its 13 judgment for that of the Commissioner” and must affirm the decision. *Jamerson v. Chater*, 112 14 F.3d 1064, 1066 (9th Cir. 1997) (citation omitted). “Finally, the court will not reverse an ALJ’s 15 decision for harmless error, which exists when it is clear from the record that the ALJ’s error was

16 inconsequential to the ultimate nondisability determination.” *Tommasetti v. Astrue*, 533 F.3d 17 1035, 1038 (9th Cir. 2008) (citations and internal quotation marks omitted). 18

IV. DISCUSSION

19 A. The ALJ’s Weighing of the Medical Opinions 20 Plaintiff contends the ALJ erred in finding persuasive the opinion of non-examining, 21 testifying medical expert Michael Lace, PsyD, while finding unpersuasive the opinion of 22 examining psychologist Elizabeth Walser, MSW, PsyD. 23

1. Legal Standard

24 “For social security disability claims filed prior to March 27, 2017, an ALJ is required to 25 assess medical opinions ‘based on the extent of the doctor’s relationship with the claimant.’” 26 *Cross v. O’Malley*, 89 F.4th 1211, 1214 (9th Cir. 2024) (quoting *Woods v. Kijakazi*, 32 F.4th 785, 27 789 (9th Cir. 2022)). Plaintiff filed his application for disability benefits on March 20, 2017; 1 therefore, the pre-March 27, 2017 framework applies. See AR 192-216. Under this framework, 2 courts distinguish between three types of physicians: those who treat the claimant (“treating 3 physicians”) and two categories of “nontreating physicians,” those who examine but do not treat 4 the claimant (“examining physicians”) and those who neither examine nor treat the claimant 5 (“non-examining physicians”). See *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). A treating 6 physician’s opinion is entitled to more weight than an examining physician’s opinion, and an 7 examining physician’s opinion is entitled to more weight than a non-examining physician’s 8 opinion. *Id.* 9 “If the opinion of an examining doctor is contradicted by another doctor, it ‘can only be 10 rejected for specific and legitimate reasons that are supported by substantial evidence in the 11 record.’” *Ford v. Saul*, 950 F.3d 1141, 1155 (9th Cir. 2020) (quoting *Lester*, 81 F.3d at 830-31). 12 “An ALJ needs less substantial evidence to reject an examining physician’s opinion than to reject 13 an [sic] treating physician’s opinion.” *Id.* The ALJ can meet her burden “by setting out a detailed 14 and thorough summary of the facts and conflicting clinical evidence, stating [her] interpretation 15 thereof, and making findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998). “[B]road 16 and vague” reasons do not suffice. *McAllister v. Sullivan*, 888 F.2d 599, 602 (9th Cir. 1989). A 17 non-examining physician’s opinion alone cannot constitute substantial evidence to reject the 18 opinion of an examining or treating physician, *Pitzer v. Sullivan*, 908 F.2d 502, 506 n.4 (9th Cir. 19 1990); *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984), though a non-examining 20 physician’s opinion may be persuasive when supported by other factors. See *Tonapetyan v. 21 Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (noting that opinion by “non-examining medical 22 expert . . . may constitute substantial evidence when it is consistent with other independent 23 evidence in the record”); *Magallanes v. Bowen*, 881 F.2d 747, 751-55 (9th Cir. 1989) (upholding 24 rejection of treating physician’s opinion given contradictory laboratory test results, reports from 25 examining physicians, and testimony from claimant). An opinion that is more consistent with the 26 record as a whole generally carries more persuasiveness. See 20 C.F.R. § 416.927(c)(4). 27 2. Dr. Lace’s Opinion 1 record and concluded that the evidence established that Plaintiff suffered from severe impairments 2 including bipolar II

disorder, depression, GAD, ADHD, and substance abuse. AR 1102-03. Dr. 3 Lace opined that the evidence showed that Plaintiff's general cognitive functioning appeared 4 normal and that mental status exams were also generally normal, citing Plaintiff's treatment notes 5 from 2016, 2018-2019, and 2022 which described normal psychiatric presentation. AR 1104 6 (citing AR 381, 958, 1561-1690, 1750, 3303). Dr. Lace noted that the record supported some 7 attention and concentration issues but opined that those instances may be due to active 8 intoxication or substance use. AR 1104 (citing AR 919). Dr. Lace assessed a mild limitation in 9 the area of remembering, understanding, and applying information; a moderate limitation in the 10 area of social interaction; a moderate limitation in the area of concentration, persistence, or pace; 11 and a mild-to-moderate limitation in the area of adaptation. AR 1105. He provided an RFC 12 assessment consistent with the ALJ's findings. AR 1105-06. At the February 21, 2024 13 supplemental hearing, Dr. Lace testified that he had reviewed the additional records at Exhibits 24F and 25F, and his opinion remained unchanged. AR 1059. Dr. Lace discounted Dr. Walser's 14 opinion because her evaluation was done while Plaintiff was incarcerated and he did not believe it 15 was representative of Plaintiff's normal functioning in a non-prison setting. AR 1060. 16 The ALJ gave "great weight" to Dr. Lace's opinion. AR 1023. The ALJ opined that Dr. 17 Lace "completed a thorough review and summary of the record which formed the basis of his very 18 detailed and well-supported testimony. His opinion is consistent with the totality of medical 19 evidence, as well as generally consistent, albeit more thorough, with the opinions of the State 20 agency medical consultants," Christmas Covell, Ph.D. and D. Funkenstein, M.D. AR 1023. Dr. 21 Covell reviewed the record and assessed on July 25, 2017 that Plaintiff had a moderately limited 22 ability to understand and remember detailed instructions, to maintain attention and concentration 23 for extended periods, to accept instructions and respond appropriately to criticism from 24 supervisors, and to get along with coworkers or peers; and a not significantly limited ability to 25 maintain socially appropriate behavior, although Plaintiff would do best with "routine, superficial 26 contact [with] others in the workplace." AR 92-93. Dr. Funkenstein reviewed the record and 27 1 consultants discounted Dr. Walser's opinion because she "relies heavily on the subjective report of 2 symptoms and limitations provided by the individual, and the totality of the evidence does not 3 support this opinion." AR 94; AR 110. 4 3. Dr. Walser's Opinion 5 On June 21, 2017, Dr. Walser (supervised by Lesleigh Franklin, Ph.D.) performed a 6 psychological evaluation of Plaintiff while he was incarcerated at Santa Rita Jail. AR 890-900.3 7 Dr. Walser reviewed Plaintiff's records and performed seven testing procedures: a clinical 8 interview, mental status examination, Quality of Life Rating Scale, Wechsler Adult Intelligence 9 Scale, Wide Range Assessment of Memory and Learning, Amen Brain Checklist, and Behavior 10 Rating Inventory of Executive Function. AR 890. Plaintiff reported that he had not used any 11 substances since he went to jail in January 2017, and his symptoms had persisted despite his 12 sobriety. AR 890-91. At the time of the evaluation, Plaintiff was housed in administrative 13 segregation and had repeatedly been placed there due to mental health concerns and former gang

14 affiliations. AR 891-92. Based on the evaluation, Dr. Walser determined that Plaintiff would 15 have extreme impairment in his ability to accept instructions and respond to criticism from 16 supervisors. AR 898-99. Dr. Walser determined Plaintiff would have marked impairment in his 17 ability to maintain attention and concentration for two-hour segments, get along and work with 18 others, interact with the public, respond to changes in a routine work setting and deal with normal 19 work stressors, complete a normal workday and workweek without interruptions from 20 psychological symptoms, and maintain regular attendance and be punctual. AR 899. She also 21 determined he would have mild impairment in his ability to understand, remember, and carry out 22 very short and simple instructions. Id. 23 The ALJ gave partial weight to Dr. Walser's opinion, finding that the significant 24 limitations described by Dr. Walser were "unsupported by adequate explanation, inconsistent with 25 the totality of the medical evidence (including the recent testimony of Dr. Lace), inconsistent with 26 some of the claimant's testimony, as well as internally inconsistent with her own observations and 27 1 findings." AR 1024. Regarding Plaintiff's limitations in getting along with others and working 2 under a supervisor, the ALJ identified the parts of the record which contradicted Dr. Walser's 3 findings. Thus, the ALJ cited a Prison Questionnaire filled out by Plaintiff on June 19, 2017 4 where he stated that his ability to get along with authority figures is "fair" and his ability to get 5 along with other inmates is "good." See AR 251. The ALJ cited Plaintiff's testimony at the 6 February 21, 2024 hearing where he stated that he had never been fired from a job or had issues 7 with an employer. See AR 1070-1071. The ALJ generally referenced "examination and treatment 8 notes by providers [Plaintiff] saw while incarcerated," which did not "indicate such significant 9 limitations or difficulties with social interaction, including his interactions with the providers." 10 AR 1024. 11 In addition, the ALJ characterized Dr. Walser's findings as "speculative" because she used 12 the word "likely" in reaching her assessment. AR 1024; see AR 898 ("If [Plaintiff] were in a full 13 time work situation now, he would . . . likely have marked problems paying attention. . . . [He] 14 would likely have marked difficulties completing a normal workday without intrusive 15 psychological symptoms, and marked problems getting to work on a consistent basis."). The ALJ 16 noted that the Amen Attention index score relied on by Dr. Walser was based on Plaintiff's 17 subjective allegations, "rather than solid clinical or objective findings." AR 1024.4 The ALJ 18 further noted that "formal processing speed testing could not be completed" in the prison setting. 19 AR 1024. 20 4. Analysis 21 As an examining physician, Dr. Walser's opinion is entitled to more weight than Dr. 22 Lace's opinion as a non-examining physician. See Lester, 81 F.3d at 830. The ALJ could only 23 discount Dr. Walser's opinion in favor of Dr. Lace's opinion "for specific and legitimate reasons 24 that are supported by substantial evidence in the record." Id. at 830-31. 25 26 4 The Amen Brain System Checklist looks at "reported symptoms in the areas of depression, anxiety, anger, attention, and obsessive/compulsive behaviors." AR 894. According to Dr. 27 Walser, Plaintiff demonstrated "very high" elevations in depression and attention/impulse control, 1 The court finds that the

rationales provided by the ALJ are not specific and legitimate 2 reasons supported by substantial evidence to discount Dr. Walser's opinion. First, the ALJ 3 identified two responses in Plaintiff's Prison Questionnaire as contradicting Dr. Walser's 4 conclusions. However, Plaintiff's self-assessment about his "fair" ability to interact with authority 5 figures and his "good" ability to get along with other inmates is undercut by the fact that he was 6 repeatedly housed in administrative segregation while in prison and reported being happier in 7 solitary confinement rather than with the general prison population. AR 891-92, 1073. The ALJ 8 failed to consider this record evidence, which actually supports Dr. Walser's opinions. Moreover, 9 Plaintiff's self-reported social skills in prison are not commensurate with his social skills in a work 10 setting. Social Security regulations recognize that a claimant's "ability to complete tasks in 11 settings that are highly structured, or that are less demanding or more supportive than typical work 12 settings does not necessarily demonstrate [a claimant's] ability to complete tasks in the context of 13 regular employment during a normal workday or work week." 20 C.F.R. § 404, Subpart P, App'x 1, § 12.00(C)(6)(b). 14 Next, the ALJ pointed to Plaintiff's testimony in 2024 that he had never been fired from a 15 job or had issues with an employer. However, the ALJ failed to consider that Plaintiff has not 16 worked since the alleged onset of his disability in 2010; in other words, Plaintiff had not been 17 employed for the fourteen years preceding his 2024 testimony. AR 255 (Work History Report); 18 1066.5 Under such circumstances, Plaintiff's testimony that he had not been fired or had problems 19 with an employer says little about his current ability to work, given that he had not worked for 20 well over a decade when he made the statement. 21 Next, the ALJ generally referenced "examination and treatment notes by providers 22 [Plaintiff] saw while incarcerated," but did not provide specific citations to treatment notes that 23 purportedly contradict Dr. Walser's findings. AR 1024. In addition, the ALJ faulted the treatment 24 notes for not indicating "significant limitations or difficulties with social interaction, including 25 [Plaintiff's] interactions with the providers." AR 1024. As Judge Hixson already explained in his 26 27 1 prior order, "the ALJ's reliance upon the absence of any evidence showing that plaintiff had a 2 'problem getting along with others' is an assertion that, by definition, is not supported by 3 substantial evidence." Baladad v. Saul, No. 19-CV-00246-PJH, 2020 WL 1503654, at *13 (N.D. 4 Cal. Mar. 30, 2020) (emphasis in original); see also AR 1193-1194. Furthermore, "the ability to 5 present oneself in a reasonable manner to a medical provider specifically trained to interact with 6 individuals with mental limitations does not refute a finding that Plaintiff was, for example, 7 markedly limited in his ability to communicate and perform effectively in a normal work setting." 8 Petro S. v. Comm'r of Soc. Sec., No. 2:19-CV-1620-DWC, 2020 WL 1062946, at *2 (W.D. Wash.

9 Mar. 5, 2020).

10 Next, the ALJ characterized Dr. Walser's findings as "speculative" because she used the 11 word "likely" in her narrative explanation of Plaintiff's limitations. AR 1024. However, the ALJ 12 failed to note that Dr. Walser did not use "likely" when describing Plaintiff's marked functional

13 limitations, marked trouble getting along with the public, and marked trouble with co-workers. AR 898. At the same time, the ALJ credited Dr. Walser's opinion that Plaintiff had mild 14 limitations in the ability to understand, remember, and carry out very short and simple 15 instructions, even though Dr. Walser used the word "likely" when describing Plaintiff's 16 limitations in that area. AR 898. The last page of Dr. Walser's report sets out her determination 17 of Plaintiff's various limitations without any note or addendum suggesting that some of her 18 findings are more speculative than others. AR 899. The court finds that Dr. Walser's use of the 19 word "likely" in some parts of her narrative explanation is not a specific and legitimate reason to 20 discount her medical opinion. 21 The ALJ also states that "there is no attempt in the opinion to adequately explain how [Dr. 22 Walser] came to these conclusions" of marked limitations. AR 1024. As Judge Hixson also noted 23 in his prior order, Dr. Walser explained at length in her report that her examination indicated that 24 Plaintiff experiences frequent disruptions from psychological symptoms, he has longstanding 25 problems following rules and managing impulses, and formal testing showed impairment in 26 memory and attention, behavioral regulation, and perceptual reasoning. AR 893-98. Dr. Walser 27 1 and get the help he needs in the community; and that Plaintiff would have extreme impairment in 2 his ability to accept instructions and respond to criticism from supervisors, as he does not take 3 criticism well and thinks he knows best. AR 898-99. For example, Dr. Walser noted that Plaintiff 4 reported being a "priest" in the Church of Satan and justified bad behavior as "an exercise of 5 individual freedom." AR 897. The court finds that the ALJ erred in stating that Dr. Walser made 6 "no attempt . . . to adequately explain" her findings. AR 1024. 7 The ALJ took issue with Dr. Walser's use of the Amen Attention index score because it 8 was based on Plaintiff's subjective allegations, "rather than solid clinical or objective findings." 9 AR 1024. "Psychological evaluations may appear to rely heavily on the patient's self-reports, 10 especially compared to evaluation in other medical fields, '[b]ut such is the nature of psychiatry. . . 11 . [U]nlike a broken arm, a mind cannot be x-rayed.'" Petro, 2020 WL 1062946, at *2 (quoting 12 Buck v. Berryhill, 869 F.3d 1040, 1049 (9th Cir. 2017)). A clinical interview and a mental status 13 evaluation are objective measures and cannot be discounted as a "self-report," even if the physician's opinion is also partially based on the patient's self-report of symptoms. See Buck, 869 14 F.3d at 1049. Dr. Walser conducted a clinical interview, a mental status exam, and other tests 15 which generated objective measures. The Amen Brain Checklist was only one of several 16 procedures Dr. Walser administered in reaching her findings; even without the Amen Attention 17 index score, Dr. Walser supported her opinion regarding Plaintiff's attention-related limitations 18 with Plaintiff's historical record, his WRAML2 Attention Index, and his BRIEF GEC score. AR 19 896. The ALJ erred in discounting Dr. Walser's opinion by singling out her use of the Amen 20 Attention index score and largely ignoring the battery of other tests and procedures she employed. 21 The ALJ further noted that Dr. Walser was not able to conduct formal processing speed 22 testing. This was because Dr. Walser's interview and testing had to be modified because she was 23 placed with Plaintiff in a non-contact

visiting room assignment due to an administrative error. AR 24 893, 895. However, Dr. Walser observed that Plaintiff worked more slowly on tasks requiring his 25 careful attention, and she observed that a slower processing speed is associated with depression 26 and ADHD. AR 895. Dr. Walser noted that Plaintiff's General Ability Index score was likely an 27 1 into account. Id. 2 Dr. Walser assessed mild-to-moderate limitations in Plaintiff's ability to perform at a 3 consistent pace. AR 898-99. The ALJ did not err in finding this particular opinion less persuasive 4 because of the lack of formal processing speed testing. However, to the extent the ALJ discounted 5 Dr. Walser's other opinions about Plaintiff's limitations because of the lack of formal processing 6 speed testing, the ALJ erred by not explaining how that testing bore on those opinions. See AR 7 1018, 1024. 8 The ALJ relied heavily on "the recent testimony of Dr. Lace" to discount Dr. Walser's 9 conflicting opinion; but "[t]he opinion of a nonexamining physician cannot by itself constitute 10 substantial evidence that justifies the rejection of the opinion of . . . an examining physician." See 11 Lester, 81 F.3d at 831. The ALJ generally stated that Dr. Lace's opinion is "very detailed and 12 well-supported" and "consistent with the totality of the medical evidence, as well as generally 13 consistent . . . with the opinions of the State agency medical consultants." AR 1023. But the ALJ 14 did not identify the "totality of the medical evidence" that supported Dr. Lace's opinion and 15 contradicted Dr. Walser's opinion. This case is distinguishable from cases upholding the 16 Commissioner's decision to reject the opinion of an examining physician based on the testimony 17 of a nonexamining medical advisor. See Lester, 81 F.3d at 831 (discussing cases). In those cases, 18 "an abundance of evidence" supported the Commissioner's decision, such as "laboratory test 19 results," "contrary reports from examining physicians," "testimony from the claimant that 20 conflicted with her treating physician's opinion," and/or "medical reports contained in the record." Id. Here, the opinions of the nonexamining physicians do not by themselves justify the rejection 21 of the only opinion by an examining physician in the record. 22 The ALJ determined that Dr. Walser's opinion was "unsupported by adequate explanation, 23 inconsistent with the totality of the medical evidence (including the recent testimony of Dr. Lace), 24 inconsistent with some of the claimant's testimony, as well as internally inconsistent with her own 25 observations and findings." AR 1024. For the reasons stated above, the court finds that the ALJ 26 erred in concluding that Dr. Walser's opinion was unsupported by adequate explanation. The 27 1 testimony, or in Dr. Walser's observations and findings that is inconsistent with Dr. Walser's 2 opinion. Finally, the ALJ erred in relying on Dr. Lace's testimony as substantial evidence in itself 3 to reject Dr. Walser's conflicting opinion. In sum, the ALJ failed to meet her requirement to 4 provide "specific and legitimate reasons that are supported by substantial evidence in the record" 5 to give Dr. Walser's opinion only partial weight while giving Dr. Lace's opinion great weight. 6 Lester, 81 F.3d at 830-31. 7 B. The ALJ's Credibility Determination 8 Plaintiff argues that the ALJ failed to provide specific, clear or convincing reasons for 9 rejecting Plaintiff's testimony regarding subjective pain or symptoms. 10 1. Legal Standard 11 In general, credibility determinations are the province of the ALJ. "It is the ALJ's role to 12 resolve

evidentiary conflicts. If there is more than one rational interpretation of the evidence, the ALJ's conclusion must be upheld." *Allen v. Sec'y of Health & Human Servs.*, 726 F.2d 1470, 1473 (9th Cir. 1984) (citations omitted). An ALJ is not "required to believe every allegation of disabling pain" or other nonexertional impairment. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (citing 42 U.S.C. § 423(d)(5)(A)). However, if an ALJ discredits a claimant's subjective symptom testimony, the ALJ must articulate specific reasons for doing so. *Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006). In evaluating a claimant's credibility, the ALJ cannot rely on general findings, but "must specifically identify what testimony is credible and what evidence undermines the claimant's complaints." *Id.* at 972 (quotations omitted); see also *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (stating that an ALJ must articulate reasons that are "sufficiently specific to permit the court to conclude that the ALJ did not arbitrarily discredit claimant's testimony"). The ALJ may consider "ordinary techniques of credibility evaluation," including the claimant's reputation for truthfulness and inconsistencies in testimony, and may also consider a claimant's daily activities, and "unexplained or inadequately explained failure to seek treatment or to follow a prescribed course of treatment." *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). 1 symptoms requires a two-step analysis. 20 C.F.R. § 404.1529; *Smolen*, 80 F.3d at 1281 (citations omitted). First, the ALJ must determine whether or not there is a medically determinable 3 impairment that reasonably could be expected to cause the claimant's symptoms. 20 C.F.R. § 404.1529(b); *Smolen*, 80 F.3d at 1281-82. Once a claimant produces medical evidence of an 5 underlying impairment, the ALJ may not discredit the claimant's testimony as to the severity of 6 symptoms "based solely on a lack of objective medical evidence to fully corroborate the alleged 7 severity of" the symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc) 8 (citation omitted). Absent affirmative evidence that the claimant is malingering, the ALJ must 9 provide "specific, clear and convincing" reasons for rejecting the claimant's testimony. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009). The Ninth Circuit has reaffirmed the "specific, clear 11 and convincing" standard applicable to review of an ALJ's decision to reject a claimant's 12 testimony. See *Burrell v. Colvin*, 775 F.3d 1133, 1136 (9th Cir. 2014). 13 2. Analysis 14 The ALJ found that Plaintiff's "medically determinable impairments could reasonably be 15 expected to cause some of the alleged symptoms; however, [his] statements concerning the 16 intensity, persistence and limiting effects of these symptoms are not entirely consistent with the 17 medical evidence and other evidence in the record for the reasons explained in this decision." AR 18 1020. As the ALJ determined that Plaintiff was not malingering, the ALJ must provide "specific, 19 clear and convincing" reasons for rejecting the claimant's testimony. "This requires the ALJ to 20 'specifically identify the testimony [from a claimant] she or he finds not to be credible and . . . 21 explain what evidence undermines that testimony.'" *Lambert v. Saul*, 980 F.3d 1266, 1277 (9th Cir. 2020) (quoting *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 23 2014)). "[T]he 'clear and convincing' standard requires an ALJ to show [her] work." *Smartt v.*

24 Kijakazi, 53 F.4th 489, 499 (9th Cir. 2022). The ALJ did not do so here. 25 The ALJ referred generally to Plaintiff's "allegations of being unable to perform any 26 work." AR 1020. The ALJ also stated: "The claimant does not appear to have received any 27 mental health treatment after 2017 which is consistent with his testimony, but also inconsistent 1 The Ninth Circuit has repeatedly required the ALJ to "identify specifically which of 2 [Plaintiff's] statements she found not credible and why." *Brown-Hunter v. Colvin*, 806 F.3d 487, 3 493 (9th Cir. 2015). Ninth Circuit cases "do not require ALJs to perform a line-by-line exegesis 4 of the claimant's testimony, nor do they require ALJs to draft dissertations when denying 5 benefits." *Lambert*, 980 F.3d at 1277. But "the ALJ must provide some reasoning in order for us 6 to meaningfully determine whether the ALJ's conclusions were supported by substantial 7 evidence." *Colvin*, 806 F.3d at 495 (quoting *Treichler*, 775 F.3d at 1103). For example, in 8 *Colvin*, the ALJ "stated only that she found, based on unspecified claimant testimony and a 9 summary of medical evidence, that 'the functional limitations from the claimant's impairments 10 were less serious than she has alleged.'" *Id.* at 493. The Ninth Circuit reversed the ALJ's 11 decision: "Because the ALJ failed to identify the testimony she found not credible, she did not link 12 that testimony to the particular parts of the record supporting her non-credibility determination. 13 This was legal error." *Id.* at 494. 14 Here, the ALJ provided a summary of evidence in the medical record from 2014 to 2017 15 indicating that Plaintiff's symptoms were generally mild when taking psychotropic medications. 16 AR 1021-22. But (with one exception discussed below), the ALJ failed to specify which parts of 17 Plaintiff's testimony she deemed not credible. The ALJ's general reference to Plaintiff's 18 "allegations of being unable to perform any work" falls short of the requirement to specifically 19 identify which of Plaintiff's statements the ALJ found not credible and why. 20 The ALJ did identify one statement that Plaintiff made in September 2017 to his treatment 21 provider that he has difficulty maintaining employment due to "conflict with his supervisors." AR 22 1022 (citing AR 1890). The ALJ explained that this was inconsistent with Plaintiff's February 21, 23 2024 hearing testimony that he had never been fired from a job or had issues with an employer. 24 AR 1070-71. The court finds that the ALJ clearly and convincingly explained why Plaintiff's

25 September 2017 statement that he has "conflict with his supervisors" should not be credited. The

26 court finds that the ALJ has not met the "clear and convincing" standard with respect to any other 27 part of his statements or testimony. C. The ALJ's Paragraph C and RFC Findings 1 Plaintiff argues the ALJ erred by finding his impairments do not meet or equal a listing and 2 in determining Plaintiff's RFC. As the reasoning for these findings turns in large part on the ALJ's 3 consideration of the medical opinions and Plaintiff's credibility, any decision on these arguments 4 is premature. 5 D. Remedy 6 Plaintiff argues that the court should reverse the decision of the Commissioner and remand 7 with instructions to award benefits. Mot. 19. Plaintiff argues that the ALJ should have credited 8 Plaintiff's testimony and the opinion of Dr. Walser, and if the ALJ did so, Plaintiff would have 9 been found disabled according to Listing 12.04 of the Adult Listing of

Impairments. Plaintiff also asserts that the ALJ should have included Plaintiff's moderate limitations in the ability to complete a normal workday or workweek without interruptions and to perform at a consistent pace without an unreasonable number and length of rest periods, and if the ALJ did so, Plaintiff would have been found disabled according to the Vocational Expert's testimony at the February 21, 2024 hearing. AR 1089. As such, Plaintiff contends there are no outstanding issues of fact which would be resolved by further development of the record. "When the ALJ denies benefits and the court finds error, the court ordinarily must remand to the agency for further proceedings before directing an award of benefits." *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017). However, under the "credit-as-true" rule, the court may grant a direct award of benefits if three conditions are satisfied. *Id.* The first condition is that the "ALJ has failed to provide legally sufficient reasons for rejecting evidence, whether claimant testimony or medical opinion." *Washington v. Kijakazi*, 72 F.4th 1029, 1041 (9th Cir. 2023) (citing *Treichler*, 775 F.3d at 1100–01). Second, the court must determine "whether the record has been fully developed, whether there are outstanding issues that must be resolved before a determination of disability can be made, and whether further administrative proceedings would be useful." *Id.* (citing *Treichler*, 775 F.3d at 1101). And third, if "no outstanding issues remain and further proceedings would not be useful," the court has discretion to find the "relevant testimony credible as a matter of law." *Id.* (citing *Treichler*, 775 F.3d at 1101). If there are still outstanding issues that must be resolved. Although the ALJ failed to specifically identify it, there may be evidence in the record that contradicts Plaintiff's testimony and the opinion of Dr. Walser. There also may be evidence that supports the ALJ's RFC finding even with Plaintiff's moderate limitations. "Where, as in this case, an ALJ makes a legal error, but the record is uncertain and ambiguous, the proper approach is to remand the case to the agency." *Treichler*, 775 F.3d at 1105. The court finds that remand for further proceedings is appropriate. On remand, in addition to Plaintiff's credibility and the medical opinions, the ALJ shall also determine whether reconsideration of the other issues raised by Plaintiff is required as well.

10 V. CONCLUSION

11 For the reasons stated above, the Court GRANTS Plaintiff's motion, DENIES Defendant's 12 cross-motion and REVERSES the ALJ's decision. This case is REMANDED for further 13 administrative proceedings consistent with this order. The Court shall enter a separate judgment, 14 after which the Clerk of Court shall terminate the case. 15 16 IT IS SO ORDERED. 17 Dated: September 24, 2025 18 _____ 19 Donna M. Ryu 20 Chief Magistrate Judge 21 22 23 24 25 26 27