

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

**Hector R.S. v. Leland Dudek, Acting Commissioner of Social Security
Administration**

Hector R.S. · No. 2:23-cv-07047-SP · Decided March 24, 2025

OPINION

Hector Ramos Sanchez v. Martin O'Malley

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 11 Hector R.S.,) Case No. 2:23-cv-07047-SP 12) Plaintiff,) 13)

v.) MEMORANDUM OPINION AND

14) ORDER

LELAND DUDEK, Acting) 15 Commissioner of Social Security) Administration,) 16)
Defendant.) 17)) 18 19 I.

20 INTRODUCTION

21 On August 25, 2023, plaintiff Hector R.S. filed a complaint against defendant, the 22
Commissioner of the Social Security Administration (“Commissioner”), seeking a review 23 of a
denial of an application for a period of disability and disability insurance benefits 24 (“DIB”). The
parties have briefed the issues in dispute, and the court deems the matter 25 suitable for
adjudication without oral argument. 26 Plaintiff presents two disputed issues for decision: (1)
whether the administrative 27 law judge (“ALJ”) failed to properly evaluate the medical opinion
of treating physician 28 Dr. Barry Rosenblum; and (2) whether the ALJ failed to properly evaluate
plaintiff’s 1 subjective symptom testimony. Plaintiff’s Memorandum in Support of the Petition for
2 Review (“P. Mem.”) at 3-9; see Defendant’s Brief (“D. Mem.”) at 2-8. 3 Having carefully
studied the parties’ memoranda, the Administrative Record 4 (“AR”), and the decision of the ALJ,
the court concludes that, as detailed herein, the ALJ 5 erred in evaluating the medical opinion of
Dr. Rosenblum and improperly discounted 6 plaintiff’s subjective symptom testimony.
Consequently, the court remands the matter to 7 the Commissioner in accordance with the
principles and instructions stated in this 8 Memorandum Opinion and Order. 9 II.

10 FACTUAL AND PROCEDURAL BACKGROUND

11 Plaintiff was 44 years old on his alleged disability onset date, March 31, 2020. AR 12 at 69. He
completed high school and has past relevant work as a mechanical drafter. AR 13 at 44, 48. 14 On
April 5, 2021, plaintiff filed an application for a period of disability and DIB 15 due to a lumbar

disc ailment. AR at 70. The Commissioner denied plaintiff's application 16 initially and upon reconsideration, after which plaintiff filed a request for a hearing. AR 17 at 83-87, 95-100, 119-21. 18 On June 27, 2022, plaintiff, represented by counsel, appeared and testified at a 19 hearing before the ALJ. AR at 30, 32-43. The ALJ also heard testimony from June 20 Hagen, a vocational expert. AR at 43-52. On September 30, 2022, the ALJ denied 21 plaintiff's claim for benefits. AR at 10-18. 22 Applying the well-known five-step sequential evaluation process, the ALJ found, 23 at step one, that plaintiff had not engaged in substantial gainful activity since March 31, 24 2020, the alleged onset date. AR at 13. 25 At step two, the ALJ found plaintiff suffered from the severe impairments of 26 degenerative disc disease of the lumbar spine and obesity. Id. 27 28 1 At step three, the ALJ found plaintiff's impairments, whether individually or in 2 combination did not meet or medically equal one of the listed impairments set forth in 20 3 C.F.R. part 404, Subpart P, Appendix 1. Id. 4 The ALJ then assessed plaintiff's residual functional capacity ("RFC") and 5 determined plaintiff could perform sedentary work with the limitations that plaintiff can: 6 lift and carry ten pounds occasionally and less than ten pounds frequently; stand and/or 7 walk two hours in an eight-hour workday with the use of cane for ambulation and 8 balance; kneel, crouch, crawl, and climb ramps or stairs; never climb ladders, ropes, or 9 scaffolds; never work at unprotected heights; and never work around moving mechanical 10 parts. AR at 14. 11 The ALJ found, at step four, that plaintiff was capable of performing his past 12 relevant work as a mechanical drafter. AR at 18. Consequently, the ALJ determined 13 plaintiff did not suffer from a disability as defined by the Social Security Act ("Act"). Id. 14 Plaintiff filed a timely request for review of the ALJ's decision, which the Appeals 15 Council denied. AR at 1-3. The ALJ's decision stands as the final decision of the 16 Commissioner. 17 III.

18 STANDARD OF REVIEW

19 This court is empowered to review decisions by the Commissioner to deny 20 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security 21 Administration must be upheld if they are free of legal error and supported by substantial 22 evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001) (as amended). But 23 if the court determines the ALJ's findings are based on legal error or are not supported by 24 substantial evidence in the record, the court may reject the findings and set aside the 25 decision to deny benefits. *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); 26 *Tonapetyan v. Halter*, 242 F.3d 1144, 1147 (9th Cir. 2001). 27 "Substantial evidence is more than a mere scintilla, but less than a preponderance." 28 *Aukland*, 257 F.3d at 1035. Substantial evidence is such "relevant evidence which a 1 reasonable person might accept as adequate to support a conclusion." *Reddick v. Chater*, 2 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276 F.3d at 459. To determine whether 3 substantial evidence supports the ALJ's finding, the reviewing court must review the 4 administrative record as a whole, "weighing both the evidence that supports and the 5 evidence that detracts from the ALJ's conclusion." *Mayes*, 276 F.3d at 459. The ALJ's 6 decision "cannot be affirmed simply by isolating a specific quantum of supporting 7 evidence." *Aukland*, 257 F.3d at 1035 (internal

quotation marks and citation omitted). If 8 the evidence can reasonably support either affirming or reversing the ALJ's decision, the 9 reviewing court "may not substitute its judgment for that of the ALJ." Id. (internal 10 quotation marks and citation omitted). 11 IV.

12 DISCUSSION

13 A. The ALJ Erred in Evaluating Dr. Rosenblum's Opinion 14 Plaintiff contends the ALJ improperly evaluated the medical opinion of treating 15 physician Dr. Barry Rosenblum. P. Mem. at 3-7. In particular, plaintiff argues the ALJ's 16 supportability and consistency analysis was flawed and not supported by the record. 17 Residual functional capacity is what one can "still do despite [his or her] 18 limitations." 20 C.F.R. § 404.1545(a)(1). The evidence an ALJ relies on in an RFC 19 assessment includes medical evidence and opinions. 20 C.F.R. §§ 404.1545(a)(3). An 20 ALJ considers the persuasiveness of the medical opinions and findings based on five 21 factors: (1) supportability; (2) consistency; (3) relationship with the claimant; (4) 22 specialization; and (5) other factors that tend to support or contradict the medical opinion. 23 20 C.F.R. § 404.1520c(b)-(c). The most important of these factors are supportability and 24 consistency. 20 C.F.R. § 404.1520c(b)(2). 25 The ALJ "must 'articulate . . . how persuasive' [he or she] finds 'all of the medical 26 opinions' from each doctor or other source . . . and 'explain how [he or she] considered 27 the supportability and consistency factors' in reaching these findings." Woods v. 28 Kijakazi, 32 F.4th 785, 792 (9th Cir. 2022) (quoting 20 C.F.R. § 404.1520c(b)(2)). The 1 ALJ may, but generally is not required to, explain how she or he considered the other 2 three factors. 20 C.F.R. § 404.1520c(b)(2). But when two or more medical opinions 3 "about the same issue are both equally well-supported . . . and consistent with the record 4 . . . but are not exactly the same," the ALJ is then required to explain how "the other most 5 persuasive factors in paragraphs (c)(3) through (c)(5)" were considered. 20 C.F.R. § 6 404.1520c(b)(3). 7 Dr. Rosenblum has been treating plaintiff for lumbar pain since November 17, 8 2003. AR at 413. According to Dr. Rosenblum, plaintiff has had "intermittent 9 exacerbations of pain since 2014," and had been treating the pain with IcyHot patches 10 and Celebrex, a non-steroidal anti-inflammatory ("NSAID") pain reliever. AR at 408, 11 413. Dr. Rosenblum stated plaintiff had an electromyogram and nerve conduction study 12 (EMG/NCS) in February 2020, which indicated plaintiff had lumbar radiculopathy with 13 denervation. AR at 408. He also noted plaintiff has had at least two epidural shots as of

14 January 2021, but they did not significantly alleviate his pain. Id. Dr. Rosenblum stated 15 that plaintiff reported severe back pain that had not improved over the course of several 16 follow-up visits throughout 2021 and 2022. AR at 358, 364, 421, 458, 464. He also 17 noted plaintiff reported a number of medications and other medical interventions 18 including NSAID pain relievers, gabapentin, tramadol, physical therapy, and acupuncture 19 had not improved his lower back pain. AR at 358, 364, 421. 20 On August 25, 2021 and May 17, 2022, Dr. Rosenblum completed a medical 21 opinion form for plaintiff. AR at 413-417, 503-07. The opinions are largely the same, 22 with some greater or additional restrictions in the later opinion. Dr.

Rosenblum noted 23 plaintiff experienced constant pain, a limited range of motion, and an unstable gait. AR 24 at 413, 503. He reported plaintiff had an MRI of his lumbar region, which was abnormal. 25 Id. Dr. Rosenblum opined plaintiff required hourly unscheduled breaks lasting 15 26 minutes per hour. AR at 414, 504. Dr. Rosenblum found plaintiff required the use of a 27 cane to stand and walk as a result of his back pain and imbalance, and by May 2022 28 found plaintiff could only sit less than two hours in a workday for 20 minutes at a time 1 and could only stand or walk less than two hours in a workday for 15 minutes at a time. 2 AR at 415, 504-05. He opined plaintiff could lift less than 10 pounds frequently, lift 10 3 pounds occasionally, and by May 2022 never lift 20 pounds. AR at 415, 505. Dr. 4 Rosenblum also opened plaintiff would be off task approximately 25% or more of the 5 time at work and may be absent more than four days per month due to his impairments. 6 AR at 416, 506. 7 In reaching his RFC determination, the ALJ found Dr. Rosenblum's opinion to be 8 unpersuasive, particularly his opinions that plaintiff would be off task 25% or more of the 9 time, absent from work more than 4 days per month, and required hourly breaks. AR at 10 17. The ALJ explained he found Dr. Rosenblum's opinion to be unpersuasive because it 11 was not well-supported and was inconsistent with other medical evidence. Id. Plaintiff 12 contends that the ALJ erred by failing to adequately articulate his reasons for rejecting 13 Dr. Rosenblum's opinion. P. Mem. at 3. 14 The ALJ first reasoned Dr. Rosenblum's opinion was not supported because "there 15 were insufficient references to medically acceptable objective clinical findings." AR at 16 17. The ALJ noted for many of the limitations he rejected, Dr. Rosenblum simply 17 checked a box on the opinion form, providing no explanation as to why those limitations 18 were medically indicated. AR at 17, 504-06. As the Ninth Circuit has explained, an 19 "ALJ may permissibly reject check-off reports that do not contain any explanation of the 20 bases of their conclusions." *Ford v. Saul*, 950 F.3d 1141, 1155 (9th Cir. 2020) (quoting 21 *Molina v. Astrue*, 674 F.3d 1104 (9th Cir. 2012) (cleaned up)). While plaintiff argues 22 that Dr. Rosenblum did explain the basis of his conclusions on the form by citing 23 plaintiff's abnormal lumbar MRI, chronic pain, and decreased range of motion, the form 24 itself provides no explanation as to how he reached his conclusion that the particular 25 limitations in question were necessary. See AR 413-17, 503-07. 26 Even so, Dr. Rosenblum also indicated on the form opinions that he considered a 27 number of factors in reaching his conclusions, including his experience treating plaintiff 28 over time, plaintiff's response to treatment, and the consistency between plaintiff's 1 complaints and his abnormal lumbar MRI. AR at 416, 506. As discussed above, Dr. 2 Rosenblum's treatment notes in the record include objective evidence of lumbar 3 radiculopathy with denervation, and also reflect plaintiff's struggles to treat his pain over 4 time. The ALJ specifically characterized plaintiff's treatment as being "limited and 5 conservative," and found this treatment does not support Dr. Rosenblum's opinion. AR 6 at 17. Contrary to the ALJ's assertions, plaintiff's course of treatment was not 7 conservative. Plaintiff attempted several different types of treatments including epidural 8 shots, physical therapy, NSAID pain relievers, opioid pain relievers, and gabapentin, 9 none of which

proved effective. See AR at 464. Courts have routinely found that a 10 combination of epidural injections and strong pain relievers does not constitute 11 “conservative treatment.” *Garrison v. Colvin*, 759 F.3d 995, 1015, n.20 (9th Cir. 2014); 12 see also *Christine G. v. Saul*, 402 F. Supp. 3d 913, 926 (C.D. Cal. 2019) (collecting 13 cases). Based on plaintiff’s multiple epidurals and use of tramadol alone, the ALJ’s 14 characterization of plaintiff’s treatments as “conservative” is inappropriate. The ALJ’s 15 reasoning that Dr. Rosenblum’s opinion was not supported by the medical evidence was 16 thus flawed. 17 The ALJ also reasoned that Dr. Rosenblum’s opinion was inconsistent with other 18 medical and nonmedical sources, including the consultative exam performed by Dr. Yu. 19 AR at 16-17. Dr. Yu found plaintiff walked with a right-sided limp and had a relatively 20 normal cervical and thoracic spine. AR at 511-12. Dr. Yu also found that plaintiff had 21 significant lumbosacral guarding, pain, and limited range of motion in the lumbar spine, 22 though no muscle atrophy. AR at 512-13. Dr. Yu opined plaintiff is able to stand, walk, 23 and sit for six hours out of an eight-hour day and only requires a cane for walking long 24 distances. AR at 513-514. Dr. Rosenblum’s opinion that plaintiff can only sit and stand 25 or walk for less than two hours out of an eight-hour day and needs hourly 15-minute 26 breaks is markedly more limited than Dr. Yu’s conclusions. Compare AR 504-06, with 27 AR 513-14. There are therefore significant inconsistencies between Dr. Rosenblum’s 28 and Dr. Yu’s opinions. 1 Nonetheless, on balance, the ALJ’s evaluation of Dr. Rosenblum’s opinion 2 contains errors, particularly in his supportability analysis. The ALJ must reconsider Dr. 3 Rosenblum’s opinion on remand. 4 B. The ALJ Improperly Assessed Plaintiff’s Subjective Complaints 5 Plaintiff argues the ALJ failed to properly evaluate plaintiff’s subjective symptom 6 testimony. P. Mem. at 7-9. In particular, plaintiff states the ALJ failed to provide clear 7 and convincing reasons for discounting plaintiff’s testimony regarding his lower back 8 pain and other symptoms. Id. 9 The court looks to Social Security Ruling (“SSR”) 16-3p for guidance on 10 evaluating plaintiff’s alleged symptoms. In adopting SSR 16-3p, the Social Security 11 Administration sought to “clarify that subjective symptom evaluation is not an 12 examination of an individual’s character.” SSR 16-3p, 2017 WL 5180304, at *2 (Oct. 13 25, 2017). 14 [SSR 16-3p] makes clear what our precedent already required: that 15 assessments of an individual’s testimony by an ALJ are designed to evaluate 16 the intensity and persistence of symptoms after the ALJ finds that the 17 individual has a medically determinable impairment(s) that could reasonably 18 be expected to produce those symptoms, and not to delve into wide-ranging 19 scrutiny of the claimant’s character and apparent truthfulness. 20 *Trevizo v. Berryhill*, 871 F.3d 664, 678 n.5 (9th Cir. 2017) (cleaned up). 21 To evaluate a claimant’s symptom testimony, the ALJ engages in a two-step 22 analysis. *Christine G.*, 402 F. Supp. 3d at 921 (citing *Trevizo*, 871 F.3d at 678). First, 23 the ALJ must determine whether the claimant produced objective medical evidence of an 24 underlying impairment that could reasonably be expected to produce the symptoms 25 alleged. Id. Second, if the claimant satisfies the first step and there is no evidence of 26 malingering, the ALJ must evaluate the intensity and persistence of the claimant’s 27 symptoms and determine the extent to which they limit her ability

to perform work- 28 related activities. Id. 1 In assessing intensity and persistence, the ALJ may consider: the claimant's daily 2 activities; the location, duration, frequency, and intensity of the symptoms; precipitating 3 and aggravating factors; the type, dosage, effectiveness, and side effects of medication 4 taken to alleviate the symptoms; other treatment received; other measures used to relieve 5 the symptoms; and other factors concerning the claimant's functional limitations and 6 restrictions due to the symptoms. Id. (citing 20 C.F.R. § 416.929); SSR 16-3p at *4; 7 *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). To reject the claimant's subjective 8 symptom statements at step two, the ALJ must provide "specific, clear, and convincing" 9 reasons, supported by substantial evidence in the record, for doing so. *Burrell v. Colvin*, 10 775 F.3d 1133, 1136-37 (9th Cir. 2014); *Smolen*, 80 F.3d at 1281, 1283-84. 11 At the first step, the ALJ found plaintiff's medically determinable impairments 12 could reasonably be expected to cause plaintiff's alleged symptoms. AR at 14. At the 13 second step, because the ALJ did not find any evidence of malingering, the ALJ was 14 required to provide clear and convincing reasons for discounting plaintiff's testimony. 15 The ALJ found plaintiff's statements concerning the intensity, persistence, and limiting 16 effects of his symptoms were "not entirely consistent with the medical evidence and other 17 evidence in the record." AR at 14-15. 18 Although the ALJ was somewhat oblique in his reasoning for discounting 19 plaintiff's testimony, he indicated he found plaintiff's claimed subjective symptoms were 20 not credible because he received non-aggressive, conservative treatment. AR at 16-17. 21 But as explained above, plaintiff's course of treatment was not conservative. While it is 22 true some courts view the use of epidural injections as conservative, many of those cases 23 involve only occasional or even a single epidural injection. See, e.g., *Jones v. Comm'r of 24 Soc. Sec.*, 2014 WL 228590, at *7 (E.D. Cal. Jan. 21, 2014) (occasional use of epidural 25 injections in conjunction with massages and anti-inflammatory medications could be 26 considered conservative); *Veliz v. Colvin*, 2015 WL 1862924, at *8 (C.D. Cal. Apr. 23, 27 2015) (single steroid injection did not undermine ALJ's finding that plaintiff received 28 conservative treatment); *Gonzales v. Colvin*, 2015 WL 685347, at *11 (C.D. Cal. Feb. 18, 1 2015) (treatment consisting of medication and a single steroid injection was 2 conservative). Many other courts have found that the use of epidurals in conjunction 3 with other treatments should not be considered conservative. See e.g., *Virginia M. v. 4 Saul*, 2019 WL 13071985 at *8 (C.D. Cal. Aug. 5, 2019) (periodic epidural injections do 5 not constitute conservative treatment); *Rawa v. Colvin*, 672 Fed. App'x 664, 667 (9th Cir. 6 2016) (multiple epidural injections combined with pain medications are "neither routine 7 nor conservative"); *Veronica S. v. Comm'r of Soc. Sec.*, 2023 WL 5208803, at *6 (C.D. 8 Cal. Aug. 14, 2023) (combination of epidural injections and facet point cervical 9 injections is not conservative treatment). 10 Here, plaintiff's records indicate that he has received lumbar acupuncture, 11 chiropractic care, physician therapy, as well as two epidural injections, none of which 12 alleviated his symptoms. AR at 464. Significantly, plaintiff did not receive additional 13 epidural injections because the first two did not improve his symptoms. Id. Plaintiff has 14 been prescribed Celebrex (an NSAID pain reliever), gabapentin

(used to relieve 15 neuropathic pain), and tramadol (an opioid pain reliever) to alleviate his lower back pain. 16 Id. Plaintiff was also recommended bilateral facet blockers but was waiting for insurance 17 authorization before proceeding. Id. As such, plaintiff's treatments are not properly 18 characterized as conservative in nature. 19 The ALJ also indicated he found plaintiff's subjective symptoms were not 20 supported by objective medical evidence. AR 15-17. In particular, the ALJ noted that 21 although plaintiff had some abnormalities, such as disc protrusions and facet 22 hypertrophy, "there is no significant objective evidence of sensory loss or motor 23 weakness." AR at 16. The ALJ also noted plaintiff's most recent MRI shows that his 24 condition is not worsening. Id. This objective evidence may reasonably be found to 25 contradict plaintiff's subjective testimony, but the court will not analyze it further. An 26 ALJ "may not reject a claimant's subjective complaints based solely on a lack of 27 objective medical evidence to fully corroborate the alleged severity of pain." *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991); see also *Burch v. Barnhart*, 400 F.3d 676, 1 680 (9th Cir. 2005). Apart from his determination that plaintiff received only 2 conservative treatment, which was not a clear and convincing reason to discount 3 plaintiff's testimony, the ALJ gave no other reason except the purported lack of objective 4 evidentiary support. This was insufficient. 5 Accordingly, the ALJ erred in discounting plaintiff's testimony. 6 V.

7 REMAND IS APPROPRIATE

8 The decision whether to remand for further proceedings or reverse and award 9 benefits is within the discretion of the district court. *McAllister v. Sullivan*, 888 F.2d 599, 10 603 (9th Cir. 1989). Typically, in accordance with the "ordinary remand rule," the 11 reviewing court will remand to the Commissioner for additional investigation or 12 explanation upon finding error by the ALJ. *Treichler v. Comm'r of Soc. Sec.*, 775 F.3d 13 1090, 1099 (9th Cir. 2014). Nonetheless, it is appropriate for the court to exercise its 14 discretion to direct an immediate award of benefits where: "(1) the record has been fully 15 developed and further administrative proceedings would serve no useful purpose; (2) the 16 ALJ has failed to provide legally sufficient reasons for rejecting evidence, whether 17 claimant testimony or medical opinions; and (3) if the improperly discredited evidence 18 were credited as true, the ALJ would be required to find the claimant disabled on 19 remand." *Garrison*, 759 F.3d at 1020 (setting forth three-part credit-as-true standard for 20 remanding with instructions to calculate and award benefits). But where there are 21 outstanding issues that must be resolved before a determination can be made, or it is not 22 clear from the record that the ALJ would be required to find a plaintiff disabled if all the 23 evidence were properly evaluated, remand for further proceedings is appropriate. See 24 *Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004); *Harman v. Apfel*, 211 F.3d 25 1172, 1179-80 (9th Cir. 2000). In addition, the court must "remand for further 26 proceedings when, even though all conditions of the credit-as-true rule are satisfied, an 27 evaluation of the record as a whole creates serious doubt that a claimant is, in fact, 28 disabled." *Garrison*, 759 F.3d at 1021. Here, remand is required because the ALJ failed to properly consider plaintiff's 2 subjective symptoms,

and also erred in evaluating Dr. Rosenblum's medical opinion. On 3 ||remand, the ALJ shall reassess Dr. Rosenblum's opinion in terms of its supportability and 4 || consistency. The ALJ shall also reconsider plaintiffs subjective complaints and either 5 || credit his testimony or provide clear and convincing reasons supported by substantial 6 || evidence for rejecting it. The ALJ shall then proceed through steps two, three, four, and 7 || five to determine what work, if any, plaintiff was capable of performing. 8 VI.

9 CONCLUSION

10 IT IS THEREFORE ORDERED that Judgment shall be entered REVERSING the 11 decision of the Commissioner denying benefits, and REMANDING the matter to the 12 ||Commissioner for further administrative action consistent with this decision. 13 14 || Dated: March 24, 2025 LRP 16 SHERIPYM

17 United States Magistrate Judge 18 19 20 21 22 23 24 25 26 27 28 12