

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 13 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

TERRI SUE TYE,

Plaintiff-Appellant,

v.

KILOLO KIJAKAZI, Acting Commissioner  
of Social Security,

Defendant-Appellee.

No. 21-35639

D.C. No. 3:19-cv-02034-MK

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
Mustafa T. Kasubhai, Magistrate Judge, Presiding

Submitted December 9, 2022\*\*  
Seattle, Washington

Before: McKEOWN, MILLER, and MENDOZA, Circuit Judges.

Plaintiff-Appellant Terri Tye appeals the district court's order remanding her case to the Social Security Administration ("SSA") for further administrative proceedings. We review the district court's decision for abuse of discretion.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Tye argues that the district court abused its discretion in remanding her case for further proceedings rather than remanding for an immediate award of benefits. We have established a “credit-as-true rule” to determine when it is appropriate to remand for an immediate payment of benefits. *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014). Under this rule we ask whether: “(1) the record has been fully developed and further administrative proceedings would serve no useful purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting evidence, whether claimant testimony or medical opinion; and (3) if the improperly discredited evidence were credited as true, the ALJ would be required to find the claimant disabled on remand.” *Id.*

To determine if further proceedings would be useful, “we consider whether the record as a whole is free from conflicts, ambiguities, or gaps, whether all factual issues have been resolved, and whether the claimant’s entitlement to benefits is clear under the applicable legal rules.” *Treichler*, 775 F.3d at 1103–04. We remand for an immediate award of benefits only in “rare circumstances.” *Id.* at 1101.

We cannot say that the district court abused its discretion in remanding Tye’s claims for further proceedings. Further proceedings would, at a minimum,

serve the useful purpose of reconciling inconsistencies in the medical record and determining Tye's disability onset date, if any.

Further proceedings are necessary to properly weigh and resolve conflicts among the medical opinions. For example, Dr. Tippett, Tye's treating physician, opined that Tye's mental health limitations would lead her to miss five or more days of work each month and be "off task" for more than 30 percent of the workday. In contrast, consultative psychologist Dr. Whitehead opined that Tye's impairments affected her abilities to work, but only mildly, moderately, or not at all. Similarly, the state psychologist, on review of the record, determined that Tye's impairments were non-severe. Given these conflicts, further proceedings are necessary for the ALJ to properly evaluate Dr. Tippett's opinion and resolve the conflicts between her opinion and those of Dr. Whitehead and the state psychologist. *See Dominguez v. Colvin*, 808 F.3d 403, 407 (9th Cir. 2015) (affirming remand for further proceedings where, among other reasons, there were conflicts between the treating physician's opinion and other medical opinions).

Furthermore, Tye's disability onset date, if any, is ambiguous. In her SSI and SSD claims, Tye alleges June 1, 2011 as her disability onset date. But Tye asks this Court to credit Dr. Tippett's testimony as true and establish a disability onset date of *at least* June 29, 2018. Moreover, there are ambiguities in the record as to when Tye began experiencing disabling symptoms. The first mention of mental

health issues in the medical record is in late 2015. Dr. Tippett first saw Tye in 2016, and while she opined in 2018 that Tye’s symptoms were “longstanding,” she did not specify a particular onset date. This ambiguity is precisely the type of issue that should be resolved by the ALJ on remand. *See Luna v. Astrue*, 623 F.3d 1032, 1035 (9th Cir. 2010) (affirming remand for further proceedings where “[t]he ALJ did not reach the issue of when [plaintiff’s] disability began, and the evidence she want[ed] credited d[id] not identify a particular onset date”).

Finally, Tye asks us to find that the district court erred in declining to address whether the ALJ de facto reopened her previous claim. The district court determined that resolution of this issue was not necessary in light of its decision to remand Tye’s case for further proceedings. We decline to disrupt this determination and prospectively reach this hypothetical issue.

**AFFIRMED.**