

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

THOMAS S.,¹

6:19-cv-1808-BR

Plaintiff,

OPINION AND ORDER

v.

COMMISSIONER, SOCIAL
SECURITY ADMINISTRATION,

Defendant.

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¹ In the interest of privacy this Court uses only the first name and the initial of the last name of the nongovernmental party in this case.

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BROWN, Senior Judge.

Plaintiff Thomas S. seeks judicial review of a final decision of the Commissioner of the Social Security Administration (SSA) in which he denied Plaintiff's application for Disability Insurance Benefits (DIB) under Title II of the Social Security Act. This Court has jurisdiction to review the Commissioner's final decision pursuant to 42 U.S.C. § 405(g).

For the reasons that follow, the Court **REVERSES** the decision of the Commissioner and **REMANDS** this matter pursuant to sentence four of 42 U.S.C. § 405(g) for the immediate calculation and award of benefits.

ADMINISTRATIVE HISTORY

Plaintiff filed an application for DIB on August 11, 2016, alleging a disability onset date of August 2, 2016. Tr. 138-39.¹ The application was denied initially and on reconsideration. An

¹ Citations to the official transcript of record filed by the Commissioner on March 18, 2020, are referred to as "Tr."

Administrative Law Judge (ALJ) held a hearing on October 15, 2018. Tr. 27-47. Plaintiff was represented at the hearing. Plaintiff and a vocational expert (VE) testified.

The ALJ issued a decision on November 27, 2018, in which she found Plaintiff was not disabled, and, therefore, Plaintiff is not entitled to benefits. Tr. 15-22. Pursuant to 20 C.F.R. § 404.984(d), that decision became the final decision of the Commissioner on September 25, 2019, when the Appeals Council denied Plaintiff's request for review. Tr. 1-6. See *Sims v. Apfel*, 530 U.S. 103, 106-07 (2000).

BACKGROUND

Plaintiff was born on June 6, 1960, and was 58 years old at the time of the hearing. Tr. 138. Plaintiff completed high school and one year of college. Tr. 32. Plaintiff has past relevant work experience as a police officer; detective; and "sales rep[resentative], boats and marine supplies." Tr. 40.

Plaintiff alleges disability due to "post C4-6 cervical fusion and discectomy," "post bilateral rotator cuff repair," "arthritis C7 with numbness in hands," depression, and "chronic headaches." Tr. 163.

Except when noted Plaintiff does not challenge the ALJ's summary of the medical evidence. After carefully reviewing the medical records, this Court adopts the ALJ's summary of the

medical evidence. See Tr. 20-21.

STANDARDS

The initial burden of proof rests on the claimant to establish disability. *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012). To meet this burden a claimant must demonstrate his inability "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . . has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). The ALJ must develop the record when there is ambiguous evidence or when the record is inadequate to allow for proper evaluation of the evidence. *McLeod v. Astrue*, 640 F.3d 881, 885 (9th Cir. 2011) (quoting *Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001)).

The district court must affirm the Commissioner's decision if it is based on proper legal standards and the findings are supported by substantial evidence in the record as a whole. 42 U.S.C. § 405(g). See also *Brewes v. Comm'r of Soc. Sec. Admin.*, 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Molina*, 674 F.3d. at 1110-11 (quoting *Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009)). "It is more than a mere scintilla [of

evidence] but less than a preponderance." *Id.* (citing *Valentine*, 574 F.3d at 690).

The ALJ is responsible for determining credibility, resolving conflicts in the medical evidence, and resolving ambiguities. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009). The court must weigh all of the evidence whether it supports or detracts from the Commissioner's decision. *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008). Even when the evidence is susceptible to more than one rational interpretation, the court must uphold the Commissioner's findings if they are supported by inferences reasonably drawn from the record. *Ludwig v. Astrue*, 681 F.3d 1047, 1051 (9th Cir. 2012). The court may not substitute its judgment for that of the Commissioner. *Widmark v. Barnhart*, 454 F.3d 1063, 1070 (9th Cir. 2006).

DISABILITY ANALYSIS

I. The Regulatory Sequential Evaluation

The Commissioner has developed a five-step sequential inquiry to determine whether a claimant is disabled within the meaning of the Act. *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007). See also 20 C.F.R. § 404.1520. Each step is potentially dispositive.

At Step One the claimant is not disabled if the Commissioner

determines the claimant is engaged in substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(I). See also *Keyser v. Comm'r of Soc. Sec.*, 648 F.3d 721, 724 (9th Cir. 2011).

At Step Two the claimant is not disabled if the Commissioner determines the claimant does not have any medically severe impairment or combination of impairments. 20 C.F.R. §§ 404.1509, 404.1520(a)(4)(ii). See also *Keyser*, 648 F.3d at 724.

At Step Three the claimant is disabled if the Commissioner determines the claimant's impairments meet or equal one of the listed impairments that the Commissioner acknowledges are so severe as to preclude substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(iii). See also *Keyser*, 648 F.3d at 724. The criteria for the listed impairments, known as Listings, are enumerated in 20 C.F.R. part 404, subpart P, appendix 1 (Listed Impairments).

If the Commissioner proceeds beyond Step Three, he must assess the claimant's residual functional capacity (RFC). The claimant's RFC is an assessment of the sustained, work-related physical and mental activities the claimant can still do on a regular and continuing basis despite his limitations. 20 C.F.R. § 404.1520(e). See also Social Security Ruling (SSR) 96-8p. "A 'regular and continuing basis' means 8 hours a day, for 5 days a week, or an equivalent schedule." SSR 96-8p, at *1. In other words, the Social Security Act does not require complete

incapacity to be disabled. *Taylor v. Comm'r of Soc. Sec. Admin.*, 659 F.3d 1228, 1234-35 (9th Cir. 2011) (citing *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)).

At Step Four the claimant is not disabled if the Commissioner determines the claimant retains the RFC to perform work he has done in the past. 20 C.F.R. § 404.1520(a)(4)(iv). See also *Keyser*, 648 F.3d at 724.

If the Commissioner reaches Step Five, he must determine whether the claimant is able to do any other work that exists in the national economy. 20 C.F.R. § 404.1520(a)(4)(v). See also *Keyser*, 648 F.3d at 724-25. Here the burden shifts to the Commissioner to show a significant number of jobs exist in the national economy that the claimant can perform. *Lockwood v. Comm'r Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). The Commissioner may satisfy this burden through the testimony of a VE or by reference to the Medical-Vocational Guidelines set forth in the regulations at 20 C.F.R. part 404, subpart P, appendix 2. If the Commissioner meets this burden, the claimant is not disabled. 20 C.F.R. § 404.1520(g)(1).

ALJ'S FINDINGS

At Step One the ALJ found Plaintiff did not engage in substantial gainful activity after his August 2, 2016, alleged onset date. Tr. 17.

At Step Two the ALJ found Plaintiff has the severe impairments of degenerative disc disease of the cervical and lumbar spine, bilateral median neuropathy, "bilateral carpal tunnel syndrome (status post release surgery of right)," "collapse fracture at L1 of lumbar spine," and recurrent left-shoulder rotator-cuff tear. Tr. 17-18.

At Step Three the ALJ concluded Plaintiff's medically determinable impairments do not meet or medically equal one of the listed impairments in 20 C.F.R. part 404, subpart P, appendix 1. Tr. 18. The ALJ found Plaintiff has the RFC to perform light work with the following limitations:

[Plaintiff] is limited to no more than occasional climbing of ramps or stairs and no climbing of ladders, ropes, or scaffolds. [Plaintiff] is limited to occasional stooping, kneeling, crouching, and crawling. He is limited to occasional bilateral overhead reach and frequent bilateral reach in other directions. [Plaintiff] is limited to frequent bilateral handling and fingering. [Plaintiff] must avoid concentrated exposure to workplace hazards such as unprotected heights and moving machinery.

Tr. 18.

At Step Four the ALJ found Plaintiff can perform his past relevant work as "a sales representative, boats and marine supplies." Tr. 22. Accordingly, the ALJ concluded Plaintiff is not disabled.

DISCUSSION

Plaintiff contends the ALJ erred when she (1) improperly classified Plaintiff's past relevant work at Step Four; (2) partially rejected Plaintiff's testimony; (3) partially rejected the lay-witness statement of Plaintiff's wife, Stephanie S.; (4) partially rejected the opinion of Yaw Sarpong, M.D., treating physician; and (5) posed an incomplete hypothetical to the VE.²

I. The ALJ erred at Step Four when she classified Plaintiff's past relevant work as sales representative, boat and marine supplies.

Plaintiff alleges the ALJ erred at Step Four when she classified Plaintiff's past relevant work as "sales representative, boats and marine supplies."

At Step Four the claimant is not disabled if the Commissioner determines the claimant retains the RFC to perform work he has done in the past. 20 C.F.R. § 404.1520(a)(4)(iv). *See also Keyser*, 648 F.3d at 724.

At the hearing the ALJ asked the VE to "summarize [Plaintiff's] vocational background." Tr. 39. The VE testified Plaintiff's past relevant work included police officer, detective, and "sales rep, boats and marine supplies." Tr. 40.

² Because the Court concludes the ALJ erred at Step Four when she improperly classified Plaintiff's past relevant work as sales representative, boat and marine supplies, and, as a result, this case is remanded for the immediate award of benefits and the Court does not address Plaintiff's other allegations of error.

The VE stated he "believe[d] the best DOT for [the job of sales representative, boats and marine supplies] is 273.357-018 . . . skilled, SVP 5, light per DOT, performed both heavy and medium." Tr. 40. In her decision the ALJ relied on the VE's testimony and concluded Plaintiff could perform his past relevant work that the ALJ classified as "sales representative, boats and marine supplies] DOT # 273.356-018, SVP 5, light (performed at medium and heavy per the [VE's] testimony)." Tr. 22.

Plaintiff asserts the ALJ erred at Step Four when she classified Plaintiff's past relevant work as sales representative, boats and marine supplies because that job encompasses only half of Plaintiff's work duties and "does not capture the half of his duties involving warehouse work," which was much more physically demanding. Pl.'s Brief at 10. Plaintiff contends his work with boat and marine supplies was, in fact, a composite³ of the jobs of sales representative, boats and marine supplies and warehouse worker.

The *Dictionary of Occupational Titles* (DOT) describes the job of sales representative, boats and marine supplies as follows:

Sells boats and marine equipment and supplies,
such as fixtures, pumps, instruments, cordage,

³ A composite job is one that "has significant elements of two or more occupations and therefore has no counterpart in the DOT." *Albritten v. Berryhill*, No. CV 17-0925-JPR, 2018 WL 3032860, at *4 (C.D. Cal. June 14, 2018).

paints, and motor parts: Shows boat on sales floor or shows catalog pictures and blueprints. Explains construction and performance of boat and differences between various types of marine equipment. Advises boat owners on selection of new equipment and problems pertaining to repairs. Performs other duties as described under SALES REPRESENTATIVE (retail trade; wholesale tr.) Master Title. May demonstrate boat in water. May arrange for delivery, registration, and inspection of boat. May sell water-sports equipment, such as water skis and scuba gear. May sell marine equipment and supplies, except boats, and be designated Sales Representative, Marine Supplies (retail trade; wholesale tr.).

DOT # 273.357-018. The VE testified sales representative, boats and marine supplies is a light-level job as generally performed and medium-to-heavy level as actually performed. The DOT describes the job of warehouse worker as a medium-exertional level job that includes the following:

Performs any combination of following tasks to receive, store, and distribute material, tools, equipment, and products within establishments: Reads production schedule, customer order, work order, shipping order, or requisition to determine items to be moved, gathered, or distributed. Conveys materials and items from receiving or production areas to storage or to other designated areas by hand, hand truck, or electric hand truck. Sorts and places materials or items on racks, shelves, or in bins according to predetermined sequence, such as size, type, style, color, or product code. Sorts and stores perishable goods in refrigerated rooms. Fills requisitions, work orders, or requests for materials, tools, or other stock items and distributes items to production workers or assembly line. Assembles customer orders from stock and places orders on pallets or shelves, or conveys orders to packing station or shipping department. Marks materials with identifying information, using stencil, crayon, or other marking device. Opens bales, crates, and

other containers, using hand tools. Records amounts of materials or items received or distributed. Weighs or counts items for distribution within plant to ensure conformance to

company standards. Arranges stock parts in specified sequence for assembly by other workers.

DOT # 922.687-058.

According to Plaintiff, when the ALJ found at Step Four that Plaintiff's past relevant work was that of a sales representative, the ALJ effectively found Plaintiff could perform only the "least demanding aspect of his past job," which is impermissible when evaluating a composite job.

"At step four, a claimant has the burden to prove that he cannot perform his past relevant work 'either as actually performed or as generally performed in the national economy.'" *Stacy v. Colvin*, 825 F.3d 563, 569 (9th Cir. 2016) (quoting *Lewis v. Barnhart*, 281 F.3d 1081, 1083 (9th Cir. 2002)). When evaluating a claimant's ability to perform past relevant work, "ALJs may use either the 'actually performed test' or the 'generally performed test.'" *Stacy*, 825 F.3d at 569 (quoting SSR 82-61, 1982 WL 31387 (1982)).

When "defining a claimant's past relevant work as actually performed, the ALJ may use 'a properly completed vocational report' and 'the claimant's own testimony.'" *Albritten v. Berryhill*, No. CV 17-0925-JPR, 2018 WL 3032860, at *3 (C.D. Cal. June 14, 2018) (quoting *Pinto v. Massanari*, 249 F.3d 840, 845 (9th

Cir. 2001)). "To ascertain the requirements of occupations as generally performed in the national economy, the ALJ may rely on VE testimony or information from the DOT." *Albritten*, 2018 WL 3032860, at *3 (citations omitted).

SSR 82-61 explains the "generally performed test" as follows:

A former job performed by the claimant may have involved functional demands and job duties significantly in excess of those generally required for the job by other employers throughout the national economy. Under this test, if the claimant cannot perform the excessive functional demands and/or job duties actually required in the former job but can perform the functional demands and job duties as generally required by employers throughout the economy, the claimant should be found to be "not disabled."

"Thus, the 'generally performed test' is designed for situations [in which] a claimant's past job was especially demanding when compared with industry standards." *Stacy*, 825 F.3d at 569 (citing *Jack v. Colvin*, No. CV 14-08464 RAO, 2015 WL 5567748 (C.D. Cal. Sept. 22, 2015) (past work was properly categorized as "athletic director" at a sedentary level of exertion even though the claimant actually performed the job at a heavy level of exertion)).

"Regardless [whether the ALJ applies the 'generally performed test' or the 'actually performed test'] at step 4, the ALJ may not classify a past occupation 'according to the least demanding function.'" *Stacy*, 825 F.3d at 569 (quoting *Carmickle*

v. Comm'r, SSA, 533 F.3d 1155, 1166 (9th Cir. 2008), and *Valencia v. Heckler*, 751 F.2d 1082, 1086 (9th Cir. 1985)). For example, in *Carmickle* the plaintiff's past relevant work was as a construction supervisor, but "only 20 percent of [his] duties . . . involved supervision; the remainder of his time was spent performing manual labor." *Stacy*, 825 F.3d at 569 (citing *Carmickle*, 533 F.3d at 1166). The Ninth Circuit held the ALJ erred when he "categoriz[ed] the [plaintiff's] job as 'a purely supervisory position.'" *Id.* (quoting *Carmickle*, 533 F.3d at 1166). Similarly, in *Valencia* the Ninth Circuit concluded the ALJ erred when he classified the plaintiff's past work as a "tomato sorter," which "involv[ed] only light exertion because the [plaintiff] was actually an 'agricultural laborer' who mostly performed other, medium exertion tasks." *Stacy*, 825 F.3d at 569-70 (quoting *Valencia*, 751 F.2d at 1086). In *Vertigan v. Halter*, 260 F.3d 1044, 1051 (9th Cir. 2001), the Ninth Circuit concluded the ALJ erred when he categorized the plaintiff's "past work as a cashier when she was actually a pharmacy clerk and cashier work was only 'a small part of her job.'" *Stacy* 825 F.3d at 570.

The Ninth Circuit noted in *Stacy* that "[r]econciling the 'generally performed' test with the *Valencia* line of cases is difficult but not impossible." 825 F.3d at 570. Ultimately the Ninth Circuit concluded in *Stacy* that "*Valencia* and its progeny do not apply in cases . . . [when] (1) the 'least demanding

function' is a task that the claimant actually performed most of the time; and (2) the DOT defines the claimant's past job as requiring only that least demanding function." *Id.* "Thus, an ALJ errs at step four by (1) classifying a past composite job according to its least demanding function [when] that function was performed less than half of the time, and (2) determining that a claimant is able to perform past relevant work because [he] is capable of that isolated function." *Murray v. Comm'r of Soc. Sec. Admin.*, No. CV-17-01802-PHX-DGC, 2018 WL 2002227, at *2 (D. Ariz. Apr. 30, 2018) (citations omitted).

Plaintiff noted in his Work History Report that he frequently lifted 50 pounds or more in his job as a sales representative; walked five hours; stood two hours; wrote, typed, or handled small objects [for] two hours; and spent 30 minutes climbing, reaching, kneeling, crouching, crawling, and handling large objects. Tr. 189. Plaintiff stated he also assisted customers with purchases, ran the cash register, stocked shelves, assisted with the check-in of freight items, swept and mopped floors, emptied trash, and cleaned bathrooms. At the hearing Plaintiff testified he helped customers on the sales floor in his sales representative job, stocked shelves, and "moved freight . . . for shipping." Tr. 37. Plaintiff stated his job involved heavy lifting as well as a great deal of running up and down the stairs:

They have a mezzanine warehouse there with no elevator. And, you're required to go up and down the stairs without items constantly, all day long, and then still stock shelves. And, you're lifting freight items, helping bring stuff into the store to put on the shelves. . . . [Y]ou're up constantly on the go. . . . There's very, very few breaks during the day and you're just in constant motion. You're helping customers on the sales floor or stocking shelves or moving freight either up stairs or back down stairs for stocking items for shipping.

Tr. 36-37. Plaintiff testified he worked in the warehouse "approximately 50 percent of the time." As to Plaintiff's sales representative job, the VE testified: "I believe the best DOT for that is 273.357-018, . . . skilled, SVP 5, light per DOT, performed both heavy and medium." Tr. 40. As noted, the ALJ concluded Plaintiff could do his past relevant work of sales representative as that job is generally performed in the national economy.

The Court finds the reasoning in *Valencia* and its progeny together with the Ninth Circuit's reasoning in *Stacy* apply here because the record does not reflect "the least demanding function" of Plaintiff's past relevant work (*i.e.*, sales representative) was a task that Plaintiff "actually performed most of the time." Here the ALJ concluded Plaintiff could perform his past relevant work based on the least demanding task, but the record reflects Plaintiff performed the least demanding task no more than 50 percent of the time. The Court, therefore, concludes the ALJ erred at Step Four when she classified

Plaintiff's past relevant work as sales representative, boat and marine supplies as that job is generally performed in the economy.

The Court also concludes the ALJ's error was not harmless. The ALJ found Plaintiff could perform a reduced level of light work, but the VE testified the job of sales representative, boat and marine supplies as Plaintiff performed it was medium and/or heavy work. Plaintiff, therefore, could not perform his past relevant work as sales representative, boat and marine supplies. The ALJ also found Plaintiff could not perform his other past work as a police officer. In addition, the ALJ did not make any findings at Step Five and, therefore, did not identify any other work that Plaintiff could do nor find Plaintiff had any transferable skills. See, e.g., *Tommasetti*, 533 F.3d at 1042 ("Although the ALJ's step four determination constitutes error, it is harmless error in light of the ALJ's alternative finding at step five."); *Lamb v. Colvin*, No. 1:13-cv-00137 GSA, 2014 WL 3894919, at *6 (E.D. Cal. Aug. 4, 2014) ("[H]ad the ALJ proceeded to step five of the sequential disability analysis, the Court possibly could have found the step-four error to be harmless.").

II. Remand

The decision whether to remand for further proceedings or for immediate payment of benefits generally turns on the likely

utility of further proceedings. *Harman v. Apfel*, 211 F.3d 1172, 1179 (9th Cir. 2000). When "the record has been fully developed and further administrative proceedings would serve no useful purpose, the district court should remand for an immediate award of benefits." *Benecke v. Barnhart*, 379 F.3d 587, 593 (9th Cir. 2004). The decision whether to remand this case for further proceedings or for the payment of benefits is a decision within the discretion of the court. *Harman*, 211 F.3d 1178.

The decision whether to remand for further proceedings or for immediate payment of benefits generally turns on the likely utility of further proceedings. *Id.* at 1179. The court may "direct an award of benefits where the record has been fully developed and where further administrative proceedings would serve no useful purpose." *Smolen*, 80 F.3d at 1292.

The Ninth Circuit has established a three-part test "for determining when evidence should be credited and an immediate award of benefits directed." *Harman*, 211 F.3d at 1178. The Court should grant an immediate award of benefits when:

- (1) the ALJ has failed to provide legally sufficient reasons for rejecting . . . evidence,
- (2) there are no outstanding issues that must be resolved before a determination of disability can be made, and
- (3) it is clear from the record that the ALJ would be required to find the claimant disabled were such evidence credited.

Id. The second and third prongs of the test often merge into a single question: Whether the ALJ would have to award benefits if

the case were remanded for further proceedings. *Id.* at 1178 n.2.

The Court has already concluded the ALJ erred when she found Plaintiff could perform his past relevant work as sales representative, boat and marine supplies as that job is generally performed in the economy. The ALJ did not proceed to Step Five and, therefore, did not identify any other work that Plaintiff could do nor find Plaintiff had any transferable skills. The record reflects Plaintiff was 56 years old on his alleged onset date, and, therefore, he was a person of "advanced age." 20 C.F.R. §§ 404.1563(e), 416.963(e). As noted, Plaintiff has a high-school education, and the ALJ found Plaintiff could only perform a reduced range of light work. Under similar circumstances the Ninth Circuit and district courts in the Ninth Circuit have held plaintiffs are disabled based on 20 C.F.R. § 404, Subpart P, Appendix 2, Rule 202.06. *See, e.g., Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1229 (9th Cir. 2009) ("The issue of transferability of skills is dispositive, as Bray is now 58 years old, and thus should be considered in the 'advanced age' category. According to the grids, a 58-year-old with Bray's limitations who lacks transferable skills qualifies as disabled."); *Barnes v. Berryhill*, 895 F.3d 702, 706-07 (9th Cir. 2018) (The court contrasted the facts in *Barnes* with those in *Bray* in which the claimant "was a few weeks shy of 55 at the time of her ALJ hearing, had a high school education, and had past

relevant work that was skilled or semiskilled. Her RFC limited her to light work with additional restrictions. Grid rule 202.06 states that a person of 'advanced age' who has a high school education and skilled or semi-skilled work experience but no transferable skills is disabled." The *Barnes* court concluded "the court properly found in *Bray* that the plaintiff was disabled."); *Kevin M. v. Comm'r of Soc. Sec.*, No. C19-993-MLP, 2020 WL 747850, at *3 (W.D. Wash. Feb. 14, 2020) (the court remanded for an immediate award of benefits on the ground that the "grid under medical vocational rule 202.06 . . . appl[ied]" and the plaintiff was disabled because he "could not do past relevant work, he has no transferable skills from the collections clerk job," and he was of advanced age). Based on these cases, the Court concludes Plaintiff is disabled and that this matter, therefore, should not be remanded for further proceedings. See *Schneider v. Comm'r*, 223 F.3d 968 (9th Cir. 2000). See also *Reddick*, 157 F.3d at 729 ("We do not remand this case for further proceedings because it is clear from the administrative record that Claimant is entitled to benefits."); *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989) (judgment for the claimant is appropriate when remand for further proceedings would only delay the receipt of benefits).

Accordingly, the Court remands this matter for the immediate calculation and award of benefits to Plaintiff.

CONCLUSION

For these reasons, the Court **REVERSES** the decision of the Commissioner and **REMANDS** this matter pursuant to sentence four of 42 U.S.C. § 405(g) for the immediate calculation and award of benefits.

IT IS SO ORDERED.

DATED this 2nd day of October, 2020.

/s/ Anna J. Brown

ANNA J. BROWN
United States Senior District Judge