

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jun 19, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SHEILA J.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 1:18-cv-03157-JTR

ORDER GRANTING, IN PART,  
PLAINTIFF’S MOTION FOR  
SUMMARY JUDGMENT AND  
REMANDING FOR ADDITIONAL  
PROCEEDINGS

**BEFORE THE COURT** are cross-motions for summary judgment. ECF No. 13, 17. Attorney D. James Tree represents Sheila J. (Plaintiff); Special Assistant United States Attorney Michael S. Howard represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 8. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS, IN PART**, Plaintiff’s Motion for Summary Judgment; **DENIES** Defendant’s Motion for Summary Judgment; and **REMANDS** the matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).

**JURISDICTION**

Plaintiff filed an application for Disability Insurance Benefits on July 3, 2014, alleging disability since June 21, 2014, due to PTSD, bipolar, diabetes, high

1 blood pressure, and obesity. Tr. 180. The application was denied initially and  
2 upon reconsideration. Tr. 75-77, 83-90. Administrative Law Judge (ALJ)  
3 Timothy Mangrum held a hearing on February 22, 2017, Tr. 32-51, and issued an  
4 unfavorable decision on April 19, 2017, Tr. 15-24. Plaintiff requested review of  
5 the ALJ's decision from the Appeals Council. Tr. 149-52. The Appeals Council  
6 denied Plaintiff's request for review on June 20, 2018. Tr. 1-6. The ALJ's April  
7 2017 decision thus became the final decision of the Commissioner, which is  
8 appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this  
9 action for judicial review on August 16, 2018. ECF No. 1, 4.

### 10 **STATEMENT OF FACTS**

11 Plaintiff was born in 1969 and was 45 years old as of her alleged onset date.  
12 Tr. 52. She has some college education in business, Tr. 624, and worked as a  
13 housekeeper, care provider, and produce sorter prior to filing for disability. Tr.  
14 192-97. She experienced significant trauma from sexual assault and the loss of  
15 several pregnancies. Tr. 624.

16 On June 21, 2014, the alleged onset date, Plaintiff was psychiatrically  
17 hospitalized due to acute altered mental state, following escalating manic  
18 symptoms for the previous three weeks. Tr. 280. She reported having had one or  
19 two similar episodes each year since she was a teenager, though previous episodes  
20 had not been as extreme, and she never sought mental health treatment previously.  
21 Tr. 280. Plaintiff experienced two more episodes resulting in psychiatric  
22 hospitalization during the pendency of her claim. Tr. 335, 789. At the hearing  
23 Plaintiff testified she had experienced some improvement in her condition, but she  
24 still had good and bad days, with the bad days leading her to stay in bed three or  
25 four days out of the week. Tr. 39-42.

### 26 **STANDARD OF REVIEW**

27 The ALJ is responsible for determining credibility, resolving conflicts in  
28 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,

1 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed de novo, with  
2 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
3 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
4 only if it is not supported by substantial evidence or if it is based on legal error.  
5 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
6 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
7 1098. Put another way, substantial evidence is such relevant evidence as a  
8 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*  
9 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one  
10 rational interpretation, the Court may not substitute its judgment for that of the  
11 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,  
12 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the  
13 administrative findings, or if conflicting evidence supports a finding of either  
14 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*  
15 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision  
16 supported by substantial evidence will be set aside if the proper legal standards  
17 were not applied in weighing the evidence and making the decision. *Brawner v.*  
18 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

### 19 **SEQUENTIAL EVALUATION PROCESS**

20 The Commissioner has established a five-step sequential evaluation process  
21 for determining whether a person is disabled. 20 C.F.R. § 404.1520(a). *Bowen v.*  
22 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of  
23 proof rests upon the claimant to establish a prima facie case of entitlement to  
24 disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a  
25 claimant establishes that a physical or mental impairment prevents the claimant  
26 from engaging in past relevant work. 20 C.F.R. § 404.1520(a)(4). If a claimant  
27 cannot perform past relevant work, the ALJ proceeds to step five, and the burden  
28 shifts to the Commissioner to show that (1) the claimant can make an adjustment to

1 other work; and (2) the claimant can perform specific jobs which exist in the  
2 national economy. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190,  
3 1193-1194 (2004). If a claimant cannot make an adjustment to other work in the  
4 national economy, the claimant will be found disabled. 20 C.F.R. §  
5 404.1520(a)(4)(v).

### 6 **ADMINISTRATIVE DECISION**

7 On April 19, 2017, the ALJ issued a decision finding Plaintiff was not  
8 disabled as defined in the Social Security Act.

9 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
10 activity since June 21, 2014, the alleged onset date. Tr. 17.

11 At step two, the ALJ determined Plaintiff had the following severe  
12 impairments: depression and bipolar disorder. *Id.*

13 At step three, the ALJ found Plaintiff did not have an impairment or  
14 combination of impairments that met or medically equaled the severity of one of  
15 the listed impairments. Tr. 18-19.

16 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found  
17 Plaintiff could perform work at all exertional levels, with the following limitations:

18 She should avoid concentrated exposure to hazards such as heights,  
19 heavy machinery, humidity, wetness, extremes of temperature, and  
20 vibrations. She is limited to jobs of an SVP of 1, 2, or 3. She is  
21 limited to simple, work-related instructions with few changes to the  
22 work setting. She can have occasional contact with supervisors and  
23 coworkers. She can have no contact with the public. She would be  
24 off-task and not productive up to 10 percent of the workday.

25 Tr. 19.

26 At step four, the ALJ found Plaintiff was capable of performing her past  
27 relevant work as a produce sorter and a cleaner housekeeper. Tr. 23.

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1 The ALJ thus concluded Plaintiff was not under a disability within the  
2 meaning of the Social Security Act at any time from June 21, 2014, the alleged  
3 onset date, through the date of the ALJ's decision, April 19, 2017. Tr. 24.

#### 4 ISSUES

5 The question presented is whether substantial evidence supports the ALJ's  
6 decision denying benefits and, if so, whether that decision is based on proper legal  
7 standards.

8 Plaintiff contends the ALJ erred by (1) using the incorrect date last insured;  
9 (2) omitting impairments at step two; (3) failing to make sufficient findings at step  
10 three; (4) improperly assessing Plaintiff's allegations; and (5) improperly  
11 evaluating the opinion evidence.

#### 12 DISCUSSION

##### 13 1. Plaintiff's subjective allegations

14 Plaintiff contends the ALJ erred by improperly rejecting her subjective  
15 complaints. ECF No. 13 at 13-15.

16 It is the province of the ALJ to make credibility determinations. *Andrews v.*  
17 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). However, the ALJ's findings must be  
18 supported by specific, cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231  
19 (9th Cir. 1990). Once the claimant produces medical evidence of an underlying  
20 medical impairment, the ALJ may not discredit testimony as to the severity of an  
21 impairment merely because it is unsupported by medical evidence. *Reddick v.*  
22 *Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence of  
23 malingering, the ALJ's reasons for rejecting the claimant's testimony must be  
24 "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir.  
25 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). "General findings are  
26 insufficient: rather the ALJ must identify what testimony is not credible and what  
27 evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*  
28 *Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

1 The ALJ concluded Plaintiff’s medically determinable impairments could  
2 reasonably be expected to cause her alleged symptoms; however, Plaintiff’s  
3 statements concerning the intensity, persistence and limiting effects of those  
4 symptoms were not entirely consistent with the medical and other evidence of  
5 record. Tr. 20. The ALJ found the record demonstrated some “brief periods of  
6 decompensation” related to periods of medication noncompliance, but found that  
7 the record generally showed improvement in functioning with treatment. Id. The  
8 ALJ further noted that Plaintiff had received no mental health treatment prior to  
9 her June 2014 hospitalization, and that mental status evaluations throughout the  
10 record were largely unremarkable. Tr. 21-22.

11 Evidence of improvement in a claimant’s condition must be read in context  
12 of the entire record. “It is error to reject a claimant’s testimony merely because  
13 symptoms wax and wane in the course of treatment.” *Garrison v. Colvin*, 759 F.3d  
14 995, 1017 (9th Cir. 2014); see also *Holohan v. Massanari*, 246 F.3d 1195, 1205  
15 (9th Cir. 2001) (“That a person who suffers from severe panic attacks, anxiety, and  
16 depression makes some improvement does not mean that the person’s impairments  
17 no longer seriously affect her ability to function in a workplace.”). Plaintiff was  
18 psychologically hospitalized three times during the relevant period at issue, at  
19 times displaying acute psychosis or severe suicidal ideation. Tr. 280-81, 335, 789.  
20 She was stabilized sufficiently each time to be discharged, yet continued to  
21 experience depression and some suicidal thoughts, and would have good and bad  
22 days. Tr. 39-40, 700-01, 713, 818. Though she did improve from the acute  
23 episodes, her conditions continued to be present and impact her daily functioning.  
24 Therefore, this was not a clear and convincing basis upon which to reject  
25 Plaintiff’s subjective allegations.

26 The fact that the record contains no mental health treatment prior to the  
27 alleged onset date is irrelevant. Plaintiff did not claim to be disabled until her first  
28 inpatient hospitalization for acute altered mental state, which is fully documented.

1 Tr. 280. The ALJ failed to offer any explanation for why he considered her lack of  
2 treatment when she was not claiming disability to undermine her later claims of  
3 disability.

4 To the extent the ALJ indicates Plaintiff's allegations are not supported by  
5 the objective evidence, this alone is an insufficient basis upon which to reject her  
6 statements. Reddick, 157 F.3d at 722. Defendant asserts the ALJ was justified in  
7 relying in part on the lack of support from the objective evidence because he also  
8 found Plaintiff's testimony inconsistent with her activities. ECF No. 17 at 4-5.  
9 However, the ALJ did not offer this as a basis for questioning Plaintiff's  
10 allegations. The Court will review only the reasons provided by the ALJ and "may  
11 not affirm the ALJ on a ground upon which he did not rely." Orn v. Astrue, 495  
12 F.3d 625, 630 (9th Cir. 2007).

13 Upon remand, the ALJ shall re-evaluate Plaintiff's statements and testimony.  
14 The ALJ shall reassess what statements, if any, are not consistent with the medical  
15 evidence and other evidence in the record, and what specific evidence undermines  
16 those statements.

## 17 **2. Medical opinion evidence**

18 Plaintiff argues the ALJ erred in his evaluation of the medical opinion  
19 evidence, giving insufficient weight to the treating sources, erroneously attributing  
20 a statement from Plaintiff to a medical provider, and issuing an RFC without  
21 sufficient justification. ECF No. 13 at 15-21.

### 22 **A. Dr. Caryn Jackson, MD**

23 Plaintiff argues the ALJ failed to provide sufficient reasons for rejecting Dr.  
24 Jackson's opinions, and failed to account for the fact that Dr. Jackson deferred to  
25 Plaintiff's mental health providers with respect to her functional abilities. ECF No.  
26 13 at 16-17.

27 In a disability proceeding, the courts distinguish among the opinions of three  
28 types of acceptable medical sources: treating physicians, physicians who examine

1 but do not treat the claimant (examining physicians) and those who neither  
2 examine nor treat the claimant (nonexamining physicians). *Lester v. Chater*, 81  
3 F.3d 821, 830 (9th Cir. 1996). A treating physician’s opinion generally carries  
4 more weight than an examining physician’s opinion, and an examining physician’s  
5 opinion is given more weight than that of a nonexamining physician. *Benecke v.*  
6 *Barnhart*, 379 F.3d 587, 592 (9th Cir. 2004); *Lester*, 81 F.3d at 830.

7         When a treating physician’s opinion is not contradicted by another  
8 physician, the ALJ may reject the opinion by citing “clear and convincing”  
9 reasons; when a treating physician’s opinion is contradicted by another physician,  
10 the ALJ is only required to provide “specific and legitimate reasons,” based on  
11 substantial evidence, to reject the opinion. *Andrews v. Shalala*, 53 F.3d 1035, 1041  
12 (9th Cir. 1995). The specific and legitimate standard can be met by the ALJ setting  
13 out a detailed and thorough summary of the facts and conflicting clinical evidence,  
14 stating his interpretation thereof, and making findings. *Magallanes*, 881 F.2d at  
15 751. The ALJ is required to do more than offer his conclusions, he “must set forth  
16 his interpretations and explain why they, rather than the doctors’, are correct.”  
17 *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988). The ALJ must also set  
18 forth the reasoning behind his or her decisions in a way that allows for meaningful  
19 review. *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (finding a  
20 clear statement of the agency’s reasoning is necessary because the Court can affirm  
21 the ALJ’s decision to deny benefits only on the grounds invoked by the ALJ).

22         Plaintiff’s treating doctor, Caryn Jackson, MD, offered two statements in  
23 support of Plaintiff’s claim. Tr. 593-94, 599-600. In November 2015 she  
24 completed a form noting Plaintiff’s diagnosis of bipolar disorder, but deferred  
25 assessment of functional limitations to Plaintiff’s mental health provider, other  
26 than to indicate that she believed it was more probable than not that Plaintiff would  
27 miss work twice per month if attempting to work full time. Tr. 593-94. In a July  
28 2016 opinion, Dr. Jackson noted Plaintiff’s diagnoses to include bipolar disorder,



1 hyposomnia, morbid obesity, diabetes, and osteoarthritis of the lumbar spine. Tr.  
2 599. She opined full time work would be physically and mentally difficult for  
3 Plaintiff, and that Plaintiff would likely worsen over time. Tr. 600.

4 The ALJ gave these opinions little weight, noting Dr. Jackson had a minimal  
5 treatment relationship with Plaintiff, and finding the opinions to be vague,  
6 speculative, unexplained, and lacking in support in the record. Tr. 22. These are  
7 all relevant factors for the ALJ to have considered. Notably, Dr. Jackson stated in  
8 the first opinion “I have not seen her much at all.” Tr. 593. It is appropriate for an  
9 ALJ to consider the nature and length of the treatment relationship. 20 C.F.R. §  
10 404.1527(c)(2). Furthermore, the regulations note that the Commissioner will  
11 generally give more weight to opinions that are well-explained. 20 C.F.R. §  
12 404.1527(c)(3). Dr. Jackson offered no explanation for her opinion that Plaintiff  
13 would miss work on a regular basis, or what evidence she relied on in concluding  
14 full time work would cause Plaintiff’s conditions to worsen. Tr. 594, 600. The  
15 ALJ’s analysis is sufficient.

16 However, as this claim is being remanded for further proceedings, the ALJ  
17 will consider the record as a whole in completing the sequential evaluation process.

18 **B. Joanna Kass, ARNP**

19 Plaintiff argues the ALJ erred in rejecting the opinion from Plaintiff’s  
20 treating ARNP, Joanna Kass, by failing to address portions of the opinion and  
21 offering insufficient reasons for the rejection. ECF No. 13 at 17-19.

22 An ALJ may discount the opinion of an “other source,” such as a nurse  
23 practitioner, if he provides “reasons germane to each witness for doing so.”  
24 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

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1 On June 8, 2016, Nurse Kass completed a form opinion regarding Plaintiff's  
2 functioning. Tr. 595-97. She noted numerous moderate and marked limitations<sup>1</sup> in  
3 Plaintiff's ability to understand and remember, sustain concentration and  
4 persistence, maintain social interaction, and adapt to situations. Tr. 595-96. She  
5 opined Plaintiff was severely limited<sup>2</sup> in her ability to complete a normal workday  
6 and workweek without interruptions from psychologically based symptoms and to  
7 perform at a consistent pace without an unreasonable number and length of rest  
8 periods. Tr. 596. She further opined Plaintiff met the criteria for the mental  
9 listings, and that she would be off-task over 30% of the workday and miss four or  
10 more days of work per month. Tr. 597.

11 The ALJ offered a brief summary of this opinion, and gave it little weight,  
12 noting the opinion to be lacking in specific support or explanation for the degree of  
13 limitations opined, and finding the records to not document the level of impairment  
14 noted by Nurse Kass. Tr. 22. A lack of explanation and support in an opinion is a  
15 germane reason for giving it little weight. 20 C.F.R. § 404.1527(c)(3). Nurse Kass  
16 did not explain any of her answers or indicate the basis for her opinions. The ALJ  
17 did not err.

18 However, on remand, the ALJ will consider the entire record in completing  
19 the sequential evaluation process.

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21 <sup>1</sup> The form defined moderate limitation as “significant interference with  
22 basic work-related activities i.e., unable to perform the described mental activity  
23 for at least 20% of the workday up to 33% of the workday” and defined marked  
24 limitation as “very significant interference with basic work-related activities i.e.,  
25 unable to perform the described mental activity for more than 22% of the  
26 workday.” Tr. 595.

27 <sup>2</sup> The form defined severely limited as “inability to perform one or more  
28 basic work-related activities.” Tr. 595.

1           **C. Shane Anderson, Pharm.D.**

2           Plaintiff argues the ALJ mis-read the record and attributed statements to Mr.  
3 Anderson<sup>3</sup> that were actually statements made by Plaintiff. ECF No. 13 at 16.

4           In January 2015, at a medication management visit, Mr. Anderson noted:  
5 “Sheila is a complex client given recent psych hospitalizations, side effect  
6 concerns, and physical health issues such as diabetes. In the meantime, she plans  
7 on applying for SSI and continuing in therapy. However, if she does not receive  
8 SSI and continues feeling as stable as she is now then she may go back to work.”  
9 Tr. 851-52.

10          Plaintiff argues this was not an endorsement of an ability to work by Mr.  
11 Anderson, but rather his recounting of Plaintiff’s prospective plans. ECF No. 13 at  
12 16. Defendant argues the ALJ neither accepted nor rejected the statement but  
13 found it consistent with the longitudinal record. ECF No. 17 at 13-14.

14          The Court finds the ALJ’s interpretation of the record is reasonable. “When  
15 the evidence is susceptible to more than one rational interpretation, we must  
16 uphold the ALJ’s findings if they are supported by inferences reasonably drawn  
17 from the record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Any  
18 error in the ALJ’s analysis is ultimately harmless, as Mr. Anderson did not offer a  
19 specific functional assessment, and the notation about returning to work was  
20 theoretical and premised on continued stability.

21           **D. The RFC**

22          Plaintiff asserts the ALJ erred in ostensibly giving the most weight to the  
23 reviewing consultant, Dr. Bailey, and yet adopting numerous greater limitations  
24 with seemingly no evidentiary basis. ECF No. 13 at 19-20. Defendant asserts the  
25 ALJ’s RFC formulation is consistent with Dr. Bailey’s opinion. ECF No. 17 at 14-  
26 15.

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<sup>3</sup> This provider has a Pharm.D. degree.

1 The Court finds no error in the ALJ assigning great weight to Dr. Bailey's  
2 opinion, yet still finding additional limitations to be warranted. However, the  
3 Court finds the ALJ failed to adequately explain the basis for finding Plaintiff  
4 would be off-task and not productive up to ten percent of the workday. Tr. 19. In  
5 completing the five-step sequential process, the ALJ must identify a claimant's  
6 functional limitations and assess her work-related abilities on a function-by-  
7 function basis, and include a narrative discussion describing how the evidence  
8 supports the determination. 20 C.F.R. § 404.1545; Social Security Ruling 96-8p.

9 The ALJ rejected Plaintiff's subjective testimony and the opinions of her  
10 treating sources finding she would be off-task or absent; no other evidence speaks  
11 to this issue directly. It is therefore unclear what the ALJ's basis for the off-task  
12 limitation was, other than the vocational expert's testimony that any more than ten  
13 percent of off-task time on an ongoing basis would lead to termination of  
14 employment. Accordingly, the Court finds the ALJ's RFC determination lacks  
15 adequate explanation to show that it is supported by substantial evidence in the  
16 record. On remand, the ALJ shall reformulate the RFC and include a discussion of  
17 how the evidence supports the RFC.

### 18 **3. Date Last Insured**

19 Plaintiff asserts the ALJ erred in using the incorrect date last insured in  
20 portions of his discussion. ECF No. 13 at 6-7.

21 Plaintiff's insured status for Disability Insurance Benefits extended through  
22 June 30, 2017. Tr. 160. The ALJ acknowledged this date in Finding #1, Tr. 17,  
23 and adjudicated the claim through the date of the decision, April 19, 2017. Tr. 15,  
24 24.

25 Plaintiff is correct that in the body of the decision the ALJ referenced the  
26 incorrect date last insured. Tr. 19 ("Her date last insured is June 30, 2016."). The  
27 ALJ also referred to "treatment notes after the date last insured," which, as of the  
28 date of the decision, had not yet occurred. Tr. 21. The Court finds these errors

1 inconsequential to the outcome, as the ALJ discussed all relevant records and  
2 opinion evidence, and issued a decision covering the entire relevant period through  
3 the date of adjudication. As this claim is being remanded to address other errors,  
4 the entire relevant period through the correct date last insured will be evaluated,  
5 and the ALJ should clearly specify which period of time is being considered.

6 **4. Step two findings**

7 Plaintiff asserts the ALJ erred in failing to consider some of Plaintiff's  
8 conditions at step two, specifically her lumbar back condition, her psychotic  
9 disorder, and PTSD. ECF No. 13 at 7-9. Plaintiff contends the conditions are  
10 medically established and contribute to Plaintiff's inability to work, and thus  
11 should have been found severe. *Id.*

12 The step-two analysis is "a de minimis screening device used to dispose of  
13 groundless claims." *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005). An  
14 impairment is "not severe" if it does not "significantly limit" the ability to conduct  
15 "basic work activities." 20 C.F.R. § 404.1522(a). Basic work activities are  
16 "abilities and aptitudes necessary to do most jobs." 20 C.F.R. § 404.1522(b). "An  
17 impairment or combination of impairments can be found not severe only if the  
18 evidence establishes a slight abnormality that has no more than a minimal effect on  
19 an individual's ability to work." *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.  
20 1996) (internal quotation marks omitted). Step two is merely a threshold  
21 determination meant to screen out weak claims. *Bowen v. Yuckert*, 482 U.S. 137,  
22 146-47 (1987).

23 Even if the ALJ's failure to list Plaintiff's back disorder and other mental  
24 impairments as severe was error, the error would be harmless because step two was  
25 resolved in Plaintiff's favor, and Plaintiff fails to identify any credited limitation  
26 associated with those conditions that was not considered by the ALJ and  
27 incorporated into the RFC finding. *See Stout v. Comm'r of Soc. Sec. Admin.*, 454  
28 F.3d 1050, 1055 (9th Cir. 2006); *Burch v. Barnhart*, 400 F.3d 676, 682 (9th Cir.

1 2005). However, because the claim is being remanded on other bases, the ALJ will  
2 reconsider the entire record and make additional step two findings as warranted.

3 **5. Step three findings**

4 Plaintiff argues the ALJ failed to properly assess the Listings at step three.  
5 ECF No. 13 at 9-13. Specifically, Plaintiff asserts the ALJ erred in his analysis of  
6 the “B Criteria” and failed to offer any explanation for his finding that Plaintiff did  
7 not meet the “C Criteria” of the mental listings. *Id.*

8 A claimant is considered disabled at step three when her impairment meets  
9 the durational requirement and her impairment meets or equals a listed impairment  
10 in Appendix 1. 20 C.F.R. § 404.1520(d). “An ALJ must evaluate the relevant  
11 evidence before concluding that a claimant’s impairments do not meet or equal a  
12 listed impairment.” *Lewis v. Apfel*, 236 F.3d 503, 512 (9th Cir. 2001). However,  
13 the ALJ is not required to state why a claimant fails to satisfy every criteria of the  
14 listing if they adequately summarize and evaluate the evidence. See *Gonzalez v.*  
15 *Sullivan*, 914 F.2d 1197, 1200-01 (9th Cir. 1990); *Lewis*, 236 F.3d at 512.

16 At step three the ALJ found Plaintiff’s conditions did not meet or medically  
17 equal Listing 12.04. Tr. 18-19. The ALJ discussed in detail the requirements of  
18 Listing 12.00 and the relevant “B criteria.” Tr. 18. He also stated, “In this case,  
19 the evidence fails to establish the presence of the ‘paragraph C’ criteria.” Tr. 19.

20 With respect to the assessment of the B criteria, Plaintiff has failed to show  
21 that the ALJ erred in his evaluation of the evidence. The ALJ discussed at length  
22 each of the B criteria and the evidence he relied on in reaching the ratings in the  
23 various categories. Tr. 18. Though Plaintiff encourages a different interpretation  
24 of the record, the ALJ’s conclusions are supported by substantial evidence. *Batson*  
25 *v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004) (“if evidence  
26 exists to support more than one rational interpretation, we must defer to the  
27 Commissioner’s decision”).

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1 With respect to the C criteria, the ALJ failed to explain his conclusion that  
2 the criteria were not met. Tr. 19. “A boilerplate finding is insufficient to support a  
3 conclusion that a claimant’s impairment” does not meet or equal a listed  
4 impairment. Lewis, 236 F.3d at 512. On remand, the ALJ will reconsider the  
5 record as a whole and explain his findings at each step of the sequential process.

### 6 CONCLUSION

7 Plaintiff argues the ALJ’s decision should be reversed and remanded for the  
8 payment of benefits. The Court has the discretion to remand the case for additional  
9 evidence and findings or to award benefits. Smolen v. Chater, 80 F.3d 1273, 1292  
10 (9th Cir. 1996). The Court may award benefits if the record is fully developed and  
11 further administrative proceedings would serve no useful purpose. Id. Remand is  
12 appropriate when additional administrative proceedings could remedy defects.  
13 Rodriguez v. Bowen, 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court  
14 finds that further development is necessary for a proper determination to be made.

15 The ALJ’s RFC determination is not supported by substantial evidence and  
16 must be reevaluated. On remand, the ALJ shall reevaluate Plaintiff’s subjective  
17 complaints, reassess the medical evidence, formulate a new RFC, obtain  
18 supplemental testimony from a vocational expert, if necessary, and take into  
19 consideration any other evidence or testimony relevant to Plaintiff’s disability  
20 claim.

21 Accordingly, **IT IS ORDERED:**

22 1. Plaintiff’s Motion for Summary Judgment, **ECF No. 13**, is  
23 **GRANTED, IN PART.**

24 2. Defendant’s Motion for Summary Judgment, **ECF No. 17**, is  
25 **DENIED.**

26 3. The matter is **REMANDED** to the Commissioner for additional  
27 proceedings consistent with this Order.

28 4. An application for attorney fees may be filed by separate motion.

1 The District Court Executive is directed to file this Order and provide a copy  
2 to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and  
3 the file shall be **CLOSED**.

4 **IT IS SO ORDERED.**

5 DATED June 19, 2019.

A handwritten signature in black ink, appearing to be "M" or "Rodgers".

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JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE