

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

Sep 27, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SHAWN S.,

Plaintiff,

v.

KILOLO KIJAKAZI,
ACTING COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

No. 1:22-CV-3039-JAG

ORDER GRANTING
PLAINTIFF’S MOTION
FOR SUMMARY JUDGMENT
AND REMANDING FOR A
FINDING OF DISABILITY

ECF Nos. 14, 17, 18

BEFORE THE COURT is Plaintiff’s Motion for Summary Judgment, ECF No. 14, Defendant’s Motion for Remand, ECF No. 17, and Plaintiff’s Motion to Remand for Benefits, ECF No. 18. Attorney James Tree represents Shawn S. (Plaintiff); Special Assistant United States Attorney Jamala Edwards represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6.

After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Plaintiff’s Motion for Summary Judgment; **DENIES** Defendant’s Motion for Remand; **GRANTS** Plaintiff’s Motion to Remand for Benefits; and **REMANDS** the matter to the Commissioner for a finding of disability pursuant to 42 U.S.C. § 405(g).

I. JURISDICTION

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2 Plaintiff filed applications for benefits in February 2016, alleging disability
3 since April 8, 2015. Tr. 180-87. The applications were denied initially and upon
4 reconsideration. Administrative Law Judge (ALJ) Meyers held a hearing on
5 October 13, 2017, and issued an unfavorable decision on April 30, 2018.
6 Tr. 12-32. This Court subsequently remanded the matter. Tr. 559-79. The ALJ
7 held a second hearing on December 2, 2021, and issued an unfavorable decision on
8 January 12, 2022. Tr. 478-500. Plaintiff appealed this final decision of the
9 Commissioner on March 23, 2022. ECF No. 1.¹

II. LEGAL STANDARDS

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11 The district court may “revers[e] the decision of the Commissioner of Social
12 Security, with or without remanding the cause for a rehearing.” 42 U.S.C.
13 § 405(g). Whether to reverse and remand for further proceedings or to calculate
14 and award benefits is a decision within the discretion of the district court. *See*
15 *Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000); *Smolen v. Chater*, 80 F.3d
16 1273, 1292 (9th Cir. 1996).

17
18 Under the credit-as-true rule, a remand for benefits is proper where: 1) the
19 ALJ has failed to provide legally sufficient reasons for rejecting evidence, whether
20 claimant testimony or medical opinion; 2) the record has been fully developed and
21 further administrative proceedings would serve no useful purpose; and 3) if the
22 improperly discredited evidence were credited as true, the ALJ would be required

23
24 ¹ The parties agree that a remand is necessary and dispute only the appropriate
25 remedy (*i.e.*, a remand for further proceedings or a finding of disability).

26 Accordingly, the Court dispenses with a recitation of the administrative sequential
27 evaluation process and the ALJ’s decision. The Court also assumes the parties’
28 familiarity with the record.

1 to find the claimant disabled on remand. *Revels v. Berryhill*, 874 F.3d 648, 668
2 (9th Cir. 2017). Even where the three prongs have been satisfied, however, the
3 Court will not remand for immediate payment of benefits if “the record as a whole
4 creates serious doubt that a claimant is, in fact, disabled.” *Garrison v. Colvin*, 759
5 F.3d 995, 1021 (9th Cir. 2014).

6 III. DISCUSSION

7 A. The ALJ Failed to Provide Legally Sufficient Reasons for 8 Rejecting Evidence.

9 The parties agree the ALJ erred by erroneously assessing the medical
10 opinion evidence, Plaintiff’s testimony, and the lay witness testimony. *See* ECF
11 No. 17, 18. Accordingly, the parties do not dispute that one step of the credit-as-
12 true rule has been met—the ALJ failed to provide legally sufficient reasons for
13 rejecting evidence. The Court agrees and finds error on these issues.

14 The parties dispute, however, whether the remaining steps of the credit-as-
15 true rule are satisfied—that is, whether further proceedings are necessary to resolve
16 ambiguities in the record, *see Treichler v. Comm’r of Soc. Sec.*, 775 F.3d 1090,
17 1100-01 (9th Cir. 2014), and whether, if credited, erroneously discounted evidence
18 pellucidly affirms that Plaintiff is disabled, *see Garrison*, 759 F.3d at 1021.

19 Plaintiff argues the undisputed errors in this case warrant remand for an immediate
20 award of benefits. ECF No. 14, 18. The Commissioner, however, seeks remand of
21 this matter for a new hearing to enable the Commissioner to reevaluate particular
22 record evidence and issue a new decision. ECF No. 17.

23 B. The Record is Fully Developed and Further Administrative 24 Proceedings Would Serve No Useful Purpose.

25 The Commissioner argues a remand for further proceedings is appropriate
26 because there are “unresolved issues that must be evaluated and the record does not
27 clearly require a finding of disability.” ECF No. 17 at 3. The Commissioner avers
28 evidence concerning Plaintiff’s activities “suggests he has greater functional

1 abilities than he has admitted” and must be reweighed in the first instance by the
2 ALJ upon remand. ECF No. 17 at 6-9. Specifically, the Commissioner contends
3 that Plaintiff’s ability to manage his finances, cook meals, take care of his children,
4 play videogames, drive a car, and follow a triathlon training program is
5 inconsistent with his alleged difficulty concentrating, remembering, and
6 completing tasks and calls into question whether Plaintiff is disabled. ECF No. 17
7 at 6-7. The Commissioner insists resolving these “conflicts” requires a “highly
8 fact specific evaluation[.]” ECF No. 17 at 7-8.

9 In response, Plaintiff argues the “conflict” relied upon by the Commissioner
10 “has already been resolved by this Court: the ALJ previously cited such evidence
11 [in the first decision], which was not clear and convincing under *Garrison*[.]” ECF
12 No. 18 at 4 (citing Tr. 570-76). Plaintiff argues because the Commissioner failed
13 to object to a remand for benefits on grounds not “based on findings already
14 considered and rejected,” no further proceedings are required and a remand for
15 benefits is appropriate. ECF No. 18 at 5.

16 The Court agrees with Plaintiff. The ALJ’s evaluation of Plaintiff’s
17 testimony contravened the clear mandate of this Court’s prior remand order and
18 consisted of near-verbatim findings. *See* Tr. 572-76; *compare* Tr. 21-24 with Tr.
19 486-91. As Plaintiff correctly notes, *see* ECF No. 14 at 4; ECF No. 18 at 4-5, this
20 Court had already determined these findings were legally deficient and
21 unsupported. Contrary to the Commissioner’s contention, the issue of whether
22 Plaintiff’s activities undermine his allegations has already been decided and a
23 remand for reevaluation of this evidence is precluded by the doctrine of the law of
24 the case. *See Stacy v. Colvin*, 825 F.3d 563, 567 (9th Cir. 2016).

25 The Court acknowledges that the application of this doctrine is discretionary,
26 *see United States v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000) (citing
27 *United States v. Mills*, 810 F.2d 907, 909 (9th Cir. 1987)), but finds that no valid
28

1 exceptions are present here, *see Stacy*, 825 F.3d at 567 (a court may exercise its
2 discretion to depart from the law of the case doctrine “when the evidence on
3 remand is substantially different, when the controlling law has changed, or when
4 applying the doctrine would be unjust.”) (citing *Merritt v. Mackey*, 932 F.2d 1317,
5 1320 (9th Cir. 1991)). Accordingly, a remand for a reconsideration of this
6 evidence is both unwarranted and precluded.

7 Further, the Court discerns no ambiguities in the record that would
8 necessitate a remand for further proceedings. Indeed, the Court notes that the
9 Commissioner does not dispute that the ALJ failed to properly evaluate the
10 opinions of Plaintiff’s treating providers or the lay testimony and, critically, does
11 not proffer the need for reevaluation of this evidence as a ground to object to
12 Plaintiff’s motion for a remand for benefits. Accordingly, the Court concludes that
13 this step of the credit-as-true rule is satisfied. *See Garrison*, 759 F.3d at 1021
14 (holding that the district court abused its discretion in remanding for further
15 proceedings rather than immediate payment of benefits because a remand to allow
16 ALJ a “mulligan” does not qualify as a “useful purpose” under the credit-as-true
17 rule).

18
19 **C. When the Improperly Discredited Evidence is Credited as True,**
20 **the ALJ Would be Required to Find the Claimant Disabled on**
21 **Remand.**

22 The Court also finds that, if credited, the erroneously discounted evidence
23 would necessarily lead to a finding of disability on remand. In particular, the
24 opinions of Plaintiff’s treating providers, if credited, are wholly consistent with
25 disability. The Commissioner does not suggest otherwise. Both vocational experts
26 testified an off-task rate above 10% per work day would preclude employment.
27 Tr. 85-86, 515. Dr. Wey opined Plaintiff would be off-task at least 30% of a work
28

1 day. Tr. 722. Similarly, ARNP Dunbar opined Plaintiff would be off-task between
2 21-30% of a work day. Tr. 726. On this basis, Plaintiff would be found disabled.

3 The Court concludes this last step of the credit-as-true rule is satisfied. *See,*
4 *e.g., Hoffschneider v. Kijakazi*, 2022 WL 3229989, at *3 (9th Cir. Aug. 10, 2022)
5 (unpublished) (“Once the improperly discredited evidence is credited as true, the
6 vocational expert's testimony forecloses a determination that Hoffschneider can
7 work.”) (citing *Reddick v. Chater*, 157 F.3d 715, 729-30 (9th Cir. 1998)); *Moe v.*
8 *Berryhill*, 731 F. App’x 588, 592 (9th Cir. 2018) (finding third step of credit-as-
9 true satisfied because “Moe’s long-term counselor, Mr. Glenn, concluded that Moe
10 would miss four days of work per month and have significant problems with
11 authority and supervisors. Other medical opinions corroborated these conclusions.
12 The vocational expert testified that someone who missed work 20% of the time or
13 more would be unemployable.”); *Werlein v. Berryhill*, 725 F. App’x 534, 536-37
14 (9th Cir. 2018) (“The VE’s testimony at the hearing on this issue is clear,
15 unopposed, and uncontradicted: a limitation of missing 8 to 10 work days per
16 month would ‘definitely’ preclude employment. Such a finding by the VE is a
17 sufficient basis upon which to remand for determination of benefits.”).

18 **D. The Court Has No Serious Doubt that Plaintiff is Disabled.**

19 Finally, the Court further has no serious doubts as to whether Plaintiff is
20 disabled, and finds that the delay since Plaintiff applied for disability nearly seven
21 years ago and the passing of the date last insured over three years ago also weigh
22 in favor of a finding of disability. Under these extraordinary circumstances, the
23 Court exercises its discretion to remand this matter for a finding of disability.

24 **IV. CONCLUSION**

25 Having reviewed the record and the ALJ’s findings, the Commissioner’s
26 final decision is **REVERSED** and this case is **REMANDED** for a finding of
27 disability under sentence four of 42 U.S.C. § 405(g).
28

1 Therefore, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is
3 **GRANTED.**

4 2. Defendant's Motion for Remand, **ECF No. 17**, is **DENIED.**

5 3. Plaintiff's Motion to Remand for Benefits, **ECF No. 18**, is
6 **GRANTED.**

7 4. The District Court Executive is directed to file this Order and provide
8 a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for
9 Plaintiff and the file shall be **CLOSED.**

10 **IT IS SO ORDERED.**

11 DATED September 27, 2023.





JAMES A. GOEKE
UNITED STATES MAGISTRATE JUDGE