

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 CHRISTINE REDLINGSHAFER,

8 Plaintiff,

9 v.

10 CAROLYN COLVIN, Acting  
11 Commissioner of Social Security,

12 Defendant.

No.: 4:15-CV-5048-EFS

**ORDER GRANTING IN PART AND DENYING  
IN PART PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT AND DENYING  
DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT**

13  
14 Before the Court are cross-summary-judgment motions. ECF Nos. 11 &  
15 12. Plaintiff Christine Redlingshafer appeals the Administrative Law  
16 Judge's (ALJ) denial of benefits. ECF No. 11. Ms. Redlingshafer contends  
17 the ALJ erred because she 1) improperly rejected the opinions of Ms.  
18 Redlingshafer's medical care providers, 2) improperly rejected Ms.  
19 Redlingshafer's subjective complaints, and 3) failed to properly  
20 identify specific jobs, available in significant numbers in the national  
21 economy, which Ms. Redlingshafer could perform given her impairments.  
22 ECF No. 11 at 7. The Commissioner of Social Security ("Commissioner")  
23 asks the Court to affirm the ALJ's decision that Ms. Redlingshafer is  
24 capable of performing substantial gainful activity in a field for which  
25 a significant number of jobs exist in the national economy. ECF No. 12  
26 at 1. After reviewing the record and relevant authority, the Court is  
27  
28

ORDER - 1

1 fully informed. For the reasons set forth below, the Court remands for  
2 further proceedings.

3 **A. Statement of Facts<sup>1</sup>**

4 Ms. Redlingshafer was born in 1968. Transcript of admin. hrg.  
5 ("Tr.") at 47. She has a limited education having only completed up  
6 through half of seventh grade and never having obtained her GED. Tr. at  
7 32. Ms. Redlingshafer has been diagnosed with a number of physical  
8 conditions including degenerative disc disease, state-post discectomy,  
9 asthma, and chronic obstructive pulmonary disease, as well as some  
10 psychological conditions including depression and anxiety. Tr. 11, 15-  
11 18, 358-365, 369-370, 401, 403, 410, 416, 419-424, 453, 459, 476, & 496-  
12 497. At one point, she received surgery on her lower back in an attempt  
13 to alleviate the pain. Tr. at 34. It helped for about a year and then  
14 the pain came back. *Id.*

15  
16 According to Ms. Redlingshafer's own testimony, she experiences  
17 significant back pain on a daily basis. Tr. at 37. She claims the pain  
18 is so bad that she can't get out of bed four or five days a month and  
19 requires help from her boyfriend to do so. Tr. at 36. She can't sit or  
20 stand for more than a few minutes without her back tightening up and the  
21 pain escalating. Tr. at 32-33. Ms. Redlingshafer spends her days  
22 crocheting (her primary hobby) and watching television. Tr. at 36-37.  
23 Some days she will visit with her daughter who comes over to help her  
24 clean. Tr. at 37. There is evidence in the record, however, of Ms.

25  
26 \_\_\_\_\_  
27 <sup>1</sup> The facts are only briefly summarized. Detailed facts are  
28 contained in the administrative hearing transcript, the ALJ's decision,  
the parties' briefs, and the underlying records.

1 Redlingshafer living a somewhat active lifestyle, such as taking walks  
2 to and from the library, playing with her granddaughter, playing with  
3 her dog, and taking a road trip to California to visit family. Tr. at  
4 475-476.

5 Ms. Redlingshafer has a very limited employment history. Tr. at 38  
6 & 350. She worked as a warehouse worker from 1986 to 1999. Tr. at 43.  
7 Apparently, she worked one other job in 1999 for approximately one week.  
8 Tr. at 38. Since 1999, Ms. Redlingshafer has not been employed. *Id.*

9  
10 **B. Procedural History**

11 On October 11, 2011, Ms. Redlingshafer protectively applied for  
12 supplemental security income alleging a number of physical disabilities.  
13 Tr. at 226-34. Her alleged onset date is December 30, 1999. *Id.*

14 On February 14, 2012, Ms. Redlingshafer's claim was denied. Tr. at  
15 9. On May 4, 2012, reconsideration was denied. *Id.* On February 26, 2014,  
16 an administrative hearing was held before ALJ Cecilia LaCara at which  
17 Ms. Redlingshafer and an independent vocational expert, Daniel Labrosse,  
18 both testified. Tr. 28-46. The ALJ determined that Ms. Redlingshafer has  
19 the severe impairments of degenerative disc disease of the lumbar spine  
20 status post discectomy, asthma, chronic obstructive pulmonary disease,  
21 depression, and anxiety. Tr. at 11. The ALJ proceeded to find that Ms.  
22 Redlingshafer's impairments do not meet or medically equal the severity  
23 of any listed impairments. *Id.* Despite her impairments, the ALJ  
24 ultimately found that Ms. Redlingshafer has the residual functional  
25 capacity to perform sedentary work as defined, except that she is  
26 further limited to occasional climbing of ramps or stairs; occasional  
27 balancing, stooping, kneeling, crouching, and crawling; no climbing of  
28

1 ladders, ropes, or scaffolds; avoiding concentrated exposure to extreme  
2 cold, excessive vibration and airborne irritants, such as odors, fumes,  
3 dusts, gases, and poorly-ventilated areas; and avoiding concentrated  
4 exposure to hazardous machinery. Tr. at 14-15. Ms. Redlingshafer was  
5 further found to be limited to repetitive tasks involving only  
6 occasional interaction with the general public and coworkers. Tr. at 15.  
7

8 Based on this assessment, which was presented to the vocational  
9 expert, and based on Ms. Redlingshafer's age, education, work  
10 experience, and residual functional capacity, the ALJ concluded Ms.  
11 Redlingshafer can perform jobs that exist in significant numbers in the  
12 national economy, such as document preparer, addresser, and escort  
13 vehicle driver, and is not disabled as defined by the Social Security  
14 Act. Tr. at 19.

15 The Appeals Council denied review of the ALJ's decision. Tr. at 1-  
16 7. Thereafter, Ms. Redlingshafer filed this lawsuit, appealing the ALJ's  
17 decision. ECF No. 1. The parties then filed the instant summary-judgment  
18 motions. ECF Nos. 11 & 12.  
19

### 20 **C. Disability Determination**

21 A "disability" is defined as the "inability to engage in any  
22 substantial gainful activity by reason of any medically determinable  
23 physical or mental impairment which can be expected to result in death  
24 or which has lasted or can be expected to last for a continuous period  
25 of not less than twelve months." 42 U.S.C. §§ 423(d)(1)(A),  
26 1382c(a)(3)(A). The decision-maker uses a five-step sequential  
27 evaluation process to determine whether a claimant is disabled. 20  
28 C.F.R. §§ 404.1520, 416.920.

1 Step one assesses whether the claimant is engaged in substantial  
2 gainful activities during the relevant period. If she is, benefits are  
3 denied. 20 C.F.R. §§ 404.1520(b), 416.920(b). If she is not, the  
4 decision-maker proceeds to step two.

5 Step two assesses whether the claimant has a medically severe  
6 impairment or combination of impairments. 20 C.F.R. §§ 404.1520(c),  
7 416.920(c). If the claimant does not have a severe impairment or  
8 combination of impairments, the disability claim is denied. If the  
9 impairment is severe, the evaluation proceeds to the third step.  
10

11 Step three compares the claimant's impairment with a number of  
12 listed impairments acknowledged by the Commissioner to be so severe as  
13 to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(d), 404  
14 Subpt. P App. 1, 416.920(d). If the impairment meets or equals one of  
15 the listed impairments, the claimant is conclusively presumed to be  
16 disabled. If the impairment does not meet or equal one of the listed  
17 impairments, the evaluation proceeds to the fourth step.  
18

19 Step four assesses whether the impairment prevents the claimant  
20 from performing work she has performed in the past. This includes  
21 determining the claimant's residual functional capacity. 20 C.F.R. §§  
22 404.1520(e), 416.920(e). If the claimant is able to perform her previous  
23 work, she is not disabled. If the claimant cannot perform this work, the  
24 evaluation proceeds to the fifth step.

25 Step five, the final step, assesses whether the claimant can  
26 perform other work in the national economy in view of her age,  
27 education, and work experience. 20 C.F.R. §§ 404.1520(f), 416.920(f);  
28 see *Bowen v. Yuckert*, 482 U.S. 137 (1987).

1           The burden of proof shifts during this sequential disability  
2 analysis. The claimant has the initial burden of establishing a prima  
3 facie case of entitlement to disability benefits. *Rhinehart v. Finch*,  
4 438 F.2d 920, 921 (9th Cir. 1971). The claimant meets this burden if she  
5 establishes that a physical or mental impairment prevents her from  
6 engaging in his previous occupation. The burden then shifts to the  
7 Commissioner to show 1) the claimant can perform other substantial  
8 gainful activity, and 2) that a "significant number of jobs exist in the  
9 national economy" which the claimant can perform. *Kail v. Heckler*, 722  
10 F.2d 1496, 1498 (9th Cir. 1984). A claimant is disabled only if her  
11 impairments are of such severity that she is not only unable to do her  
12 previous work but cannot, considering her age, education, and work  
13 experiences, engage in any other substantial gainful work which exists  
14 in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

16 **D. Standard of Review**

17           On review, the court considers the record as a whole, not just the  
18 evidence supporting the ALJ's decision. *Weetman v. Sullivan*, 877 F.2d  
19 20, 22 (9th Cir. 1989) (quoting *Kornock v. Harris*, 648 F.2d 525, 526  
20 (9th Cir. 1980)). The court upholds the ALJ's determination that the  
21 claimant is not disabled if the ALJ applied the proper legal standards  
22 and there is substantial evidence in the record as a whole to support  
23 the decision. *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983)  
24 (citing 42 U.S.C. § 405(g)); *Brawner v. Sec'y of Health & Human Servs.*,  
25 839 F.2d 432, 433 (9th Cir. 1987) (recognizing that a decision supported  
26 by substantial evidence will be set aside if the proper legal standards  
27 were not applied in weighing the evidence and making the decision).  
28

1 Substantial evidence is more than a mere scintilla, *Sorenson v.*  
2 *Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975), but less than a  
3 preponderance, *McAllister v. Sullivan*, 888 F.2d 599, 601-02 (9th Cir.  
4 1989); *Desrosiers v. Sec'y of Health & Human Servs.*, 846 F.2d 573, 576  
5 (9th Cir. 1988). "It means such relevant evidence as a reasonable mind  
6 might accept as adequate to support a conclusion." *Richardson v.*  
7 *Perales*, 402 U.S. 389, 401 (1971) (citations omitted). "[S]uch  
8 inferences and conclusions as the [ALJ] may reasonably draw from the  
9 evidence" will also be upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293  
10 (9th Cir. 1965). If the evidence supports more than one rational  
11 interpretation, the court must uphold the ALJ's decision. *Allen v.*  
12 *Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).

14 **E. Analysis**

15 The Court addresses each of Ms. Redlingshafer's challenges to the  
16 ALJ's decision.

17 **1. Treating Physicians**

18 Ms. Redlinshafer contends that the ALJ failed to properly consider  
19 the opinions of two of her medical care providers: Dr. Marie Ho, MD, and  
20 Mr. Ovidio B. Demiar, PAC. ECF No. 11 at 9.

21 **a. Dr. Marie Ho, MD**

22 As to Dr. Ho, who conducted an orthopedic consultative evaluation  
23 of Ms. Redlingshafer, the ALJ assigned "little weight" to Dr. Ho's  
24 opinions given that she was a one-time examining practitioner and,  
25 therefore, her insight into Ms. Redlingshafer's physical functioning was  
26 limited. Tr. at 17. The ALJ further noted that Dr. Ho's functional  
27  
28

1 evaluation essentially said that Ms. Redlingshafer could not work a full  
2 eight-hour workday. Tr. at 17.

3       There are three type of physicians: treating physicians, examining  
4 physicians, and nonexamining physicians. *Lester v. Chater*, 81 F.3d 821,  
5 830 (9th Cir. 1995). "As a general rule, more weight should be given to  
6 the opinion of a treating source than to the opinion of doctors who do  
7 not treat the claimant." *Id.* The ALJ must provide "clear and convincing"  
8 reasons for rejecting a treating or examining physician's opinions and  
9 may not reject such opinions without providing "specific and legitimate  
10 reasons" supported by substantial evidence in the record for so doing.  
11 *Id.*

12  
13       Ms. Redlingshafer argues that the ALJ improperly "rejected" the  
14 opinion of Dr. Ho without meeting the standard required in *Lester*. ECF  
15 No. 11 at 10. Ms. Redlingshafer, however, mischaracterizes the ALJ's  
16 decision. The ALJ did not reject Dr. Ho's opinion. Tr. at 17. In fact,  
17 the ALJ considered Dr. Ho's opinion of Ms. Redlingshafer's functional  
18 limitations in her decision. The ALJ, however, simply gave less weight  
19 to Dr. Ho's opinion and found it "less persuasive" because she was only  
20 a one-time examining physician and not a treating physician. Tr. at 17.  
21 This approach is exactly what *Lester* instructs an ALJ to do. *Lester*, 81  
22 F.3d at 830 ("[M]ore weight should be given to the opinion of a treating  
23 source than to the opinion of doctors who do not treat the claimant.").  
24 The Court finds that the ALJ did not err in giving less weight to Dr.  
25 Ho's opinion than she would to a treating physician's opinions.  
26

27               **b. Mr. Ovidio Demiar, PAC**  
28



1 As to Mr. Demiar, the ALJ assigned "little weight" to his opinion  
2 because "Mr. Demiar is not an acceptable medical source capable of  
3 establishing a severe medically determinable impairment or functional  
4 limitations that may result therefrom." Tr. at 18. "[O]nly licensed  
5 physicians and certain other qualified specialists are considered  
6 acceptable medical sources." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th  
7 Cir. 2012) (internal quotes omitted). Physician's assistants are defined  
8 as "other sources," and are not entitled to the same deference as  
9 acceptable medical sources. *Id.*

11 Ms. Redlingshafer argues that the ALJ improperly "rejected" Mr.  
12 Demiar's opinion. ECF No. 11 at 11. Again, the ALJ did not reject the  
13 opinion. Tr. at 18. The ALJ simply gave less weight to Mr. Demiar's  
14 opinion than he did to the other medical experts because he was not  
15 considered an acceptable medical source. Instead, the ALJ gave greater  
16 weight to the opinions of Dr. Alex Fischer, Dr. Dan Donahue, Dr. Alnoor  
17 Virji, and Dr. Wayne Hurley. Tr. at 18. These doctors, although they  
18 were nonexamining medical experts, are considered acceptable medical  
19 sources and each gave medical reports consistent with each other as to  
20 Ms. Redlingshafer's functional limitations. Tr. at 18.

22 The Court finds that the ALJ did not err in giving less weight to  
23 Mr. Demiar's opinion, as an "other source," and more weight to the  
24 "acceptable medical sources."

## 25 **2. Ms. Redlingshafer's Subjective Complaints**

26 Ms. Redlingshafer argues the ALJ failed to provide valid reasons  
27 for considering her testimony regarding the severity and limiting  
28 effects of her impairments as less than credible.

1 A two-step analysis is used by the ALJ to assess whether a  
2 claimant's testimony regarding subjective pain or symptoms is credible.  
3 *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014). Step one  
4 requires the ALJ to determine whether the claimant presented objective  
5 medical evidence of an impairment, which could reasonably be expected to  
6 produce some degree of the pain or other symptoms alleged. *Lingenfelter*  
7 *v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007); *Smolen v. Chater*, 80  
8 F.3d 1273, 1282 (9th Cir. 1996). Objective medical evidence of the pain  
9 or fatigue, or the severity thereof, need not be provided by the  
10 claimant. *Garrison*, 759 F.3d at 1014. If the claimant satisfies the  
11 first step of this analysis, and there is no evidence of malingering,  
12 the ALJ must accept the claimant's testimony about the severity of his  
13 symptoms unless the ALJ provides specific, clear, and convincing reasons  
14 for rejecting the claimant's symptom-severity testimony. *Id.* An ALJ is  
15 not "required to believe every allegation of disabling pain" or other  
16 non-exertional impairment. *Orn v. Astrue*, 495 F.3d 625, 635 (9th Cir.  
17 2007). However, to discredit a claimant's testimony when a medical  
18 impairment has been established, the ALJ must provide specific, cogent  
19 reasons for the disbelief. *Id.* Factors that an ALJ may consider in  
20 weighing a claimant's credibility include reputation for truthfulness,  
21 inconsistencies in testimony or between testimony and conduct, daily  
22 activities, and unexplained, or inadequately explained, failure to seek  
23 treatment or follow a prescribed course of treatment. *Id.*

26 Here, there were inconsistencies in Ms. Redlingshafer's own  
27 testimony as between her testimony and her daily conduct. While before  
28 the ALJ, Ms. Redlingshafer testified that she could not stand for more

1 than four minutes without having to sit or lie down. Tr. at 33. She also  
2 testified that she could not sit for more than five minutes without  
3 having to stand up. *Id.* Later during the hearing, Ms. Redlingshafer  
4 testified that she could sit for thirty minutes without needing to stand  
5 up. Tr. at 39. She then testified that she could not walk more than a  
6 half block before stopping. *Id.* She testified that three days per week  
7 her pain level is at a "ten" and that many days per month she could not  
8 get out of bed. Tr. at 40. The ALJ recognized Ms. Redlingshafer's pain  
9 and found that the impairments could reasonably be expected to cause the  
10 alleged symptoms. Tr. at 15. However, the ALJ did not find Ms.  
11 Redlingshafer's statements regarding "intensity, persistence, and  
12 limiting effects" of these symptoms entirely credible for a number of  
13 reasons. Tr. at 15.

15 First, the ALJ noted the number of physical activities that Ms.  
16 Redlingshafer admitted to her medical providers as having done. *Id.* For  
17 instance, Ms. Redlingshafer helped her significant other with yard work  
18 by raking leaves for 20 minutes. *Id.* She physically played with both her  
19 granddaughter and her dog. Ms. Redlingshafer also testified that she  
20 took a road trip to California to visit family. *Id.* The ALJ found that  
21 these activities contradicted Ms. Redlingshafer's testimony that she  
22 could not sit or stand for more than about five minutes. Ms.  
23 Redlingshafer also reported that she would occasionally walk to the  
24 library and back, which contradicts the testimony that she can't walk  
25 for more than half a block. Tr. at 16. The contradictions in testimony  
26 and conduct, coupled with the severe descriptions by Ms. Redlingshafer  
27  
28

1 of her symptoms, led the ALJ to find that her credibility was undercut  
2 in the appeal. Tr. at 16.

3       There is also evidence in the record of Ms. Redlingshafer  
4 inadequately explaining, a failure follow a prescribed course of  
5 treatment. Tr. at 16. Ms. Redlingshafer's medical history shows that she  
6 was discharged from her physical therapy treatment program for "lack of  
7 compliance." *Id.* The ALJ found this was another reason why Ms.  
8 Redlingshafer's testimony was less than credible. *Id.* Ms. Redlingshafer  
9 offers a number of plausible explanations to this Court as to why she  
10 may have missed physical therapy but all are speculation and none of  
11 them are supported by evidence in the record. ECF No. 11 at 18.

12       To clarify, the ALJ never found that Ms. Redlingshafer was not  
13 credible as to the existence of her impairments. Tr. at 15. In fact, the  
14 ALJ thoroughly analyzed the medical record before finding that Ms.  
15 Redlingshafer does in fact have degenerative disc disease of the lumbar  
16 spine status post discectomy. Tr. at 11. The ALJ found only Ms.  
17 Redlingshafer's testimony regarding the "intensity, persistence, and  
18 limiting effects" of the symptoms was not credible because it was  
19 contradicted by the medical records, by Ms. Redlingshafer's own  
20 testimony, and by Ms. Redlingshafer's own conduct.

### 21       **3. Specific Jobs in the National Economy**

22       Finally, Ms. Redlingshafer contends that the ALJ failed to provide  
23 an accurate and complete hypothetical to the vocation expert and,  
24 therefore, the ALJ did not sufficiently determine whether there jobs are  
25 available in the national economy in significant number that Ms.  
26 Redlingshafer can perform. ECF No. 11 at 20.

1 In posing the hypothetical to the vocational expert, the ALJ  
2 stated:

3 Let's assume that we have an individual who is of  
4 the same age, education, and work experience as  
5 that of the claimant, who is able to perform  
6 sedentary work with the following limitations.  
7 This person is limited to the occasional climbing  
8 of ramps or stairs; no climbing of ladders,  
9 ropes, or scaffolds; occasional balancing,  
10 stooping, kneeling, crouching, and crawling.  
11 Further, this person is to avoid concentrated  
12 exposure to extreme cold, excessive vibration,  
13 irritants such as fumes, odors, dust, gases and  
14 poorly ventilated areas; is to avoid concentrated  
15 exposure to hazardous machinery. Further, this  
16 person is limited to simple, routine and  
17 repetitive tasks and is to only have occasional  
18 interaction with the general public and  
19 coworkers. Could an individual with these  
20 limitations be able to perform any of the  
21 claimant's past work as actually and customarily  
22 performed per the DOT?

23 Tr. at 43-44. In response, the vocational expert responded, "No." The  
24 ALJ then asked the vocational expert, "Would there be any other jobs  
25 that this hypothetical individual could perform with the limitations  
26 that I stated that exist in the national economy?" The expert responded,  
27 "Yeah," and then proceeded to list a number of jobs that the  
28 hypothetical person could perform. In the third and final hypothetical,  
the ALJ asked the vocational expert to consider the same person as  
before. This time, however, the ALJ asked the vocation expert to factor  
in that due to the "person's physical conditions and associated pain and  
. . . depression, this person cannot sustain sufficient concentration,  
persistence or pace on a regular and continuing basis for eight hours a  
day, five days a week for a full 40 hour workweek or equivalent  
schedule." Tr. at 45. The ALJ then asked whether such a person could

1 perform any of the claimant's previous jobs or if there are any jobs in  
2 the national economy for such a person. *Id.* The vocational expert  
3 responded, "No." This third hypothetical was the only one of the three  
4 that factored in psychological impairments.

5 Ms. Redlingshafer believes the first hypothetical was improper  
6 because it did not factor in Dr. Cooper's determination that Ms.  
7 Redlingshafer would need "close supervision" to ensure that tasks would  
8 be completed correctly. ECF No. 11 at 19. She also contends that the ALJ  
9 failed to incorporate Dr. Ho's and Mr. Dormiar's descriptions of her  
10 functional limitations. *Id.* As to the latter point, the Court has  
11 already ruled on whether the ALJ properly considered Dr. Ho's and Mr.  
12 Dormair's opinions. The ALJ acted properly in giving those opinions less  
13 weight for the above stated reasons. As to the first point, the Court  
14 does find that the ALJ failed to properly form a hypothetical that fully  
15 reflects Ms. Redlingshafer's limitations.  
16

17 "If an ALJ finds a severe impairment at step two, that impairment  
18 must be considered in the remaining steps of the sequential analysis."  
19 *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009).  
20 If the hypothetical posed to the vocation expert "does not reflect all  
21 the claimant's limitations, we have held that the expert's testimony has  
22 no evidentiary value to support a finding that the claimant can perform  
23 jobs in the national economy. *DeLorme v. Sullivan*, 924 F.2d 841, 850  
24 (9th Cir. 1991).  
25

26 At step two of the analysis, the ALJ found that Ms. Redlingshafer  
27 suffered from both depression and anxiety in addition to her physical  
28 impairments. Tr. at 11. When the ALJ posed three hypotheticals to the

1 vocational expert, only to the second one did the vocational expert  
2 suggest jobs that Ms. Redlingshafer could perform given her impairments.  
3 Tr. at 44-45. However, Ms. Redlingshafer's mental impairments—depression  
4 and anxiety—were not included until the third hypothetical. After this  
5 third hypothetical, the vocational expert said that there weren't any  
6 jobs in the national economy for a person with those impairments. Tr. at  
7 44-45. This hypothetical, however, included significant functional  
8 limitations resulting from mental-health impairments, which the ALJ  
9 ultimately did not include in her step-two analysis.  
10

11 In short, the vocational expert's testimony, evidencing that there  
12 are jobs in the national economy that someone with Ms. Redlingshafer's  
13 impairments could perform, was in response to a hypothetical that did  
14 not include the mental impairments the ALJ found Ms. Redlingshafer to  
15 have. Tr. at 44-45. In contrast, the vocational expert's testimony,  
16 evidencing that there are not jobs in the national economy that someone  
17 with Ms. Redlingshafer's impairments could perform, was in response to a  
18 hypothetical which included functional limitations beyond what Ms.  
19 Redlingshafer was ultimately found to have. No hypothetical included the  
20 mental impairments and corresponding functional limitations that Ms.  
21 Redlingshafer was found to have. Because an incomplete hypothetical "has  
22 no evidentiary value," the Commissioner did not prove that a significant  
23 number of jobs exist in the national economy which the claimant can  
24 perform. Therefore, the Court remands the case back to the ALJ to  
25 determine whether there are a significant number of jobs that exist in  
26 the national economy that someone with Ms. Redlingshafer's physical and  
27 mental impairments could perform.  
28

1 **C. Conclusion**

2 For the above-given reasons, the Court remands the case for  
3 further proceedings. Although the Court finds the ALJ erred, it is not  
4 clear from the record, as it currently stands, whether there are a  
5 significant number of jobs existing in the national economy that Ms.  
6 Redlingshafer could perform. The ALJ shall pose a complete hypothetical  
7 to a vocational expert, factoring both her physical and mental  
8 impairments, and shall make such a determination.  
9

10 The Court finds that the ALJ did not err in weighing the opinions  
11 of the medical experts. Therefore, the ALJ does not need to reevaluate  
12 or reweigh the medical opinions. The Court further finds that the ALJ  
13 did not act improperly in determining that Ms. Redlingshafer's testimony  
14 less than credible. Therefore, the ALJ does not need to reconsider Ms.  
15 Redlingshafer's testimony.  
16

17 Accordingly, **IT IS HEREBY ORDERED:**

- 18 1. Ms. Redlingshafer's Motion for Summary Judgment, **ECF No. 11**,  
19 is **GRANTED IN PART** (remand) **and DENIED IN PART** (no immediate  
20 award of benefits).
- 21 2. The Commissioner's Motion for Summary Judgment, **ECF No. 12**,  
22 is **DENIED**.
- 23 3. This matter is **REMANDED** to the Commissioner for additional  
24 proceedings consistent with this Order.
- 25 4. The Clerk's Office is to enter **Judgment** in favor of Ms.  
26 Redlingshafer.
- 27 5. An application for attorney fees may be filed by separate  
28 motion by Ms. Redlingshafer.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

6. The case shall be **CLOSED**.

**IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and provide copies to counsel and ALJ Cecilia LaCara.

**DATED** this 24<sup>th</sup> day of February 2016.

\_\_\_\_\_s/Edward F. Shea\_\_\_\_\_  
EDWARD F. SHEA  
Senior United States District Judge