

1 WO  
2  
3  
4  
5

6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8 Rick Andrews,  
9

10 Plaintiff,

11 v.

12 Commissioner of the Social Security  
13 Administration,

14 Defendant.  
15  
16

No. CV-19-05247-PHX-ESW

**ORDER**

17  
18 On July 23, 2020, the Court issued an Order reversing the Social Security  
19 Administration's ("Social Security") denial of Plaintiff's application for disability  
20 insurance benefits and remanding the matter to the Commissioner of Social Security for  
21 an immediate award of benefits. (Doc. 28). Pending before the Court is the  
22 Commissioner's "Motion to Alter or Amend Judgment Pursuant to Federal Rule of Civil  
23 Procedure 59(e)" (Doc. 30). Plaintiff has filed a Response (Doc. 33), to which the  
24 Commissioner has replied (Doc. 34).

25 Under Rule 59(e) of the Federal Rules of Civil Procedure, a party may file a  
26 "motion to alter or amend a judgment." The Ninth Circuit has explained that  
27 [s]ince specific grounds for a motion to amend or alter are not  
28 listed in the rule, the district court enjoys considerable  
discretion in granting or denying the motion." McDowell v.

1 Calderon, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (en banc)  
2 (per curiam) (internal quotation marks omitted). But  
3 amending a judgment after its entry remains “an  
4 extraordinary remedy which should be used sparingly.” Id.  
5 (internal quotation marks omitted). In general, there are four  
6 basic grounds upon which a Rule 59(e) motion may be  
7 granted: (1) if such motion is necessary to correct manifest  
8 errors of law or fact upon which the judgment rests; (2) if  
9 such motion is necessary to present newly discovered or  
previously unavailable evidence; (3) if such motion is  
necessary to prevent manifest injustice; or (4) if the  
amendment is justified by an intervening change in  
controlling law. Id.

10 Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011). Rule 59(e) “may not be  
11 used to relitigate old matters, or to raise arguments or present evidence that could have  
12 been made prior to the entry of judgment.” Exxon Shipping Co. v. Baker, 554 U.S. 471,  
13 485 n.5 (2008) (citation omitted). A Rule 59(e) “motion is not a substitute for appeal and  
14 does not allow the unhappy litigant to reargue the case.” Bollenbacher v. Comm'r of Soc.  
15 Sec., 621 F. Supp. 2d 497, 501 (N.D. Ohio 2008).

16 In its July 23, 2020 Order, the Court concluded that the Administrative Law Judge  
17 (“ALJ”) discounted Plaintiff’s symptom testimony without providing specific and  
18 legitimate reasons supported by substantial evidence. (Doc. 28 at 6-10). The Order  
19 recounts that Plaintiff testified that as a result of his pain, he needs to lay down or recline  
20 for more than a couple of hours a day. (Id. at 11) (citing A.R. 55). At the administrative  
21 hearing, the VE testified that an individual who “needed unscheduled breaks to recline  
22 for two hours or more in addition to the typical breaks in a normal day” would not be able  
23 to sustain employment. (A.R. 60-61). The Court found that the VE’s testimony  
24 establishes that if Plaintiff’s testimony was credited as true, the ALJ would be required to  
25 find that Plaintiff is disabled. (Doc. 28 at 11). The Commissioner asserts that the Court  
26 committed clear error by remanding the matter for an award of benefits instead of further  
27 proceedings. (Doc. 30).

1           The Commissioner asserts that “Plaintiff’s statement about needing to lay down or  
2 recline for more than a couple hours a day is insufficient—as a matter of law—for a  
3 disability finding.” (Doc. 30 at 7). According to the Commissioner, “Plaintiff’s  
4 statement that he needed to recline or lay down, even if credited as true, would not  
5 require an ALJ to find Plaintiff disabled. It would have to be considered in the context of  
6 all the evidence of record, including the inconsistent medical opinions.” (Doc. 34 at 8)  
7 (emphasis in original). Yet as the Ninth Circuit “held in *Lingenfelter v. Astrue*, 504 F.3d  
8 1028, 1041 (9th Cir. 2007), a claimant’s testimony alone may establish disability and an  
9 entitlement to benefits.” *Rawa v. Colvin*, 672 F. App’x 664, 668 (9th Cir. 2016)  
10 (emphasis in original). In *Lingenfelter*, the Ninth Circuit remanded the case to Social  
11 Security for an award of benefits when the claimant testified that he needed to lie down  
12 throughout the day due to his impairment, and the VE testified that such a limitation  
13 would prevent sustained work. 504 F.3d at 1033, 1041; see also *Rawa*, 672 F. App’x at  
14 668-69 (“*Rawa* testified that, due to pain and muscle weakness, she needed to rest for  
15 seven hours out of an eight hour work day and to lie down frequently. At *Rawa*’s  
16 hearing, the VE explicitly found that such a limitation would preclude employment.  
17 Thus, if credited as true, *Rawa*’s testimony regarding her severe pain and debilitating  
18 symptoms would require the ALJ to conclude that she was in fact disabled.”); *Moisa v.*  
19 *Barnhart*, 367 F.3d 882, 885–87 (9th Cir. 2004) (remanding for award of benefits when a  
20 claimant’s symptom testimony was credited as true). The Court affirms its finding that  
21 the VE’s testimony establishes that if Plaintiff’s testimony was credited as true, the ALJ  
22 would be required to find that Plaintiff is disabled.

23           The Commissioner also asserts that the Court failed to adequately analyze whether  
24 there are any outstanding issues on which further administrative proceedings would be  
25 useful. (*Id.* at 4-8). The Commissioner does not argue that the record is incomplete.  
26 Instead, the Commissioner argues that there are a number of inconsistencies in the record  
27 that should be addressed by the ALJ. The Court affirms its finding that the record in this  
28

1 matter is fully developed.<sup>1</sup> “Given this fully developed record, the admission of more  
2 evidence would not be ‘enlightening,’ Treichler, 775 F.3d at 1101, and ‘remand for the  
3 purpose of allowing the ALJ to have a mulligan [does not qualify] as a remand for a  
4 ‘useful purpose,’ Garrison, 759 F.3d at 1021.” Henderson v. Berryhill, 691 F. App’x  
5 384, 386 (9th Cir. 2017) (citing Treichler v. Comm’r of Soc. Sec. Admin., 775 F.3d 1090,  
6 1100 (9th Cir. 2014) and Garrison v. Colvin, 759 F.3d 995, 1021 (9th Cir. 2014)).  
7 Further, although there may be some doubt in the record as to whether Plaintiff is  
8 disabled, the Court affirms its finding that there is not “serious doubt.” (Doc. 23 at 10).

9 Because (i) the ALJ failed to provide legally sufficient reasons for discounting  
10 Plaintiff’s symptom testimony, (ii) the record is fully developed and there are no  
11 outstanding issues that must be resolved before a disability determination can be made  
12 (i.e. further administrative proceedings would not be useful), (iii) crediting Plaintiff’s  
13 testimony as true would require the ALJ to find Plaintiff disabled on remand, and (iv)  
14 there is not “serious doubt” as to whether Plaintiff is disabled, the Court did not commit  
15 clear error by exercising its discretion to remand this case for an award of benefits. See  
16 Garrison, 759 F.3d at 1020 (noting that the Ninth Circuit has “stated or implied that it  
17 would be an abuse of discretion for a district court not to remand for an award of benefits  
18 when all of these conditions are met”). The Court concludes that the Commissioner has  
19 not presented a valid basis for granting Rule 59(e) relief. Accordingly,

20 **IT IS ORDERED** denying the Commissioner’s “Motion to Alter or Amend  
21 Judgment Pursuant to Federal Rule of Civil Procedure 59(e)” (Doc. 30).

22 Dated this 16th day of October, 2020.

23 

24 \_\_\_\_\_  
25 Honorable Eileen S. Willett  
26 United States Magistrate Judge

27 \_\_\_\_\_  
28 <sup>1</sup> This finding is implicit in the Court’s statement “After examining the record, the  
Court finds no outstanding issues of fact to be resolved through further proceedings.”  
(Doc. 30 at 11).