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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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10	Paul Andrew Pope,)	No. CIV 10-524-TUC-GEE
11	Plaintiff,)	ORDER
12	vs.)	
13	Michael J. Astrue, Commissioner of)	
14	Social Security,)	
15	Defendant.)	

16

17 The plaintiff filed this action for review of the final decision of the Commissioner for
18 Social Security pursuant to 42 U.S.C. §405(g). The Magistrate Judge presides over this case
19 pursuant to 28 U.S.C. § 636(c) having received the written consent of both parties. *See*
20 *FED.R.CIV.P. 73.*

21 The court concludes the final decision of the Commissioner must be reversed. The
22 Commissioner’s decision is neither supported by substantial evidence nor free from legal error.
23 The case will be remanded for further proceedings.

24

25 PROCEDURAL HISTORY

26 On May 1, 2006, Pope filed an application for disability insurance benefits and
27 supplemental security income. (Tr. 215). He alleged disability beginning on February 1, 2005,
28 due to hepatitis C and “arthritis.” (Tr. 241). His claim was denied initially (Tr. 128-31) and

1 upon reconsideration. (Tr. 132-38). Pope requested review and appeared with counsel at a
2 hearing before Administrative Law Judge (ALJ) Lauren R. Mathon on November 14, 2007. (Tr.
3 40, 140). In her decision, dated April 7, 2008, the ALJ found Pope was not disabled. (Tr. 109-
4 17).

5 Pope appealed to the Appeals Council which granted review, vacated the decision of the
6 ALJ, and remanded for further proceedings. (Tr. 120-22). Pope appeared with counsel at a
7 second hearing before Administrative Law Judge (ALJ) Lauren R. Mathon on October 26, 2009.
8 (Tr. 64). In her decision, dated November 24, 2009, the ALJ again found Pope was not
9 disabled. (Tr. 16-32).

10 Pope appealed, but the Appeals Council denied review making the decision of the ALJ
11 the final decision of the Commissioner. (Tr. 1-4); *Bass v. Social Sec. Admin.*, 872 F.2d 832,
12 833 (9th Cir. 1989). Pope subsequently filed the instant action appealing the Commissioner's
13 final decision. *See* 20 C.F.R. § 422.210(a).

14 15 Claimant's Work History and Medical History

16 Pope left school without a high school diploma after failing to pass the seventh grade
17 three times. (Tr. 71). He worked in a number of custodial, landscape, and labor positions
18 staying 2-3 years at each job. (Tr. 273, 688). He states that most jobs ended because he missed
19 too many days or because of past alcohol problems. (Tr. 688). At his last job, Pope worked as
20 a public school custodian. (Tr. 274). In 2005, he quit work because of pain in his back, arms,
21 and hands. (Tr. 72). His supervisor tried to transfer him to a more sedentary administrative
22 position, but Pope found he was unable to fill out the paperwork. (Tr. 73). He explained: "I
23 couldn't spell. I couldn't write very well." (Tr. 73).

24 In April of 2005, Pope sought treatment from Sam E. Moussa, M.D., for severe fatigue.
25 (Tr. 667-68). Pope was found to have the Hepatitis C antibody, but Moussa found no sign of
26 chronic liver disease. *Id.* Moussa ordered more tests and a liver biopsy. *Id.*

1 In August of 2006, M. David Ben-Asher, M.D., Pope's primary care physician,
2 completed a Medical Source Statement of Ability to do Work-Related Activities (Physical).
3 (Tr. 718-20). Ben-Asher diagnosed chronic low back pain. *Id.* He opined that Pope could lift
4 20 pounds occasionally and 10 pounds frequently. *Id.* He could stand or walk "[a]t least 2
5 hours but less than 6 hours in an 8 hour day." He had no sitting limitations. *Id.* He should
6 never climb and only occasionally balance, stoop, kneel, or crouch. *Id.* He should not work
7 with or around chemicals, dust, fumes, gases, or excessive noise. *Id.*

8 In August of 2006, Noelle Rohen, Ph.D., performed a psychological evaluation for the
9 Arizona DES Disability Determination Service. (Tr. 687-97). Rohen offered the following
10 summary: Axis I: 296.32 Major Depressive Disorder, Recurrent, Moderate; 300.00 Anxiety
11 Disorder NOS; 304.00 Opioid Dependence on Methadone Maintenance; R/O 312.30 Impulse-
12 control Disorder NOS; Axis II: V62.89 Borderline Intellectual Functioning; Axis III: Defer to
13 medical records. *Id.* She found Pope's ability to carry out detailed instructions to be markedly
14 limited. *Id.* She found him moderately limited in his performance of various tasks related to
15 understanding, remembering, and carrying out instructions; sustaining concentration and pace;
16 and social interaction. *Id.*

17 In August of 2006, Paul Tangeman, Ph. D., reviewed the medical record and completed
18 a Psychiatric Review Technique form for the Arizona DES Disability Determination Service.
19 (Tr. 699-712). He diagnosed an affective disorder (depressive syndrome), anxiety-related
20 disorder (NOS), and substance addiction disorder. *Id.* Tangeman proceeded to complete a
21 Mental Residual Functional Capacity Assessment. (Tr. 713-15). He found Pope markedly
22 limited in his ability to carry out detailed instructions. *Id.* He found Pope moderately limited
23 in areas of "understanding and memory," "concentration and persistence," and "social
24 interaction." *Id.* He concluded that Pope "retains the ability to perform simple work activities,
25 with few social demands." *Id.*

26 In September of 2006, Pope was examined by Jeri B. Hassman, M.D., for the Arizona
27 DES Disability Determination Services. (Tr. 741-48). Hassman diagnosed Hepatitis C and
28 status post traumatic amputation, right thumb; GERD; and complaints of low back pain and

1 joint pain in the fingers. *Id.* Hassman found no limitations lasting for 12 continuous months.
2 *Id.*

3 In October of 2006, Pope was referred to Mark J. Iannini, M.D., for evaluation of joint
4 pain. (Tr. 763-65). Iannini assessed generalized osteoarthritis, bilateral carpal tunnel syndrome,
5 bilateral lateral epicondylitis, and chronic pain syndrome. *Id.* Pope returned to Iannini for a
6 follow-up in October of 2007. (Tr. 833). Pope reported good pain control with OxyContin.
7 *Id.* Iannini prescribed a Xylocaine injection, continued pain management with Ben-Asher, the
8 primary care physician, and follow-up on an as needed basis. *Id.*

9 In October of 2008, Eugene Campbell, Ph. D., reviewed the medical record for the
10 Arizona DES Disability Determination Services and completed a Psychiatric Review Technique
11 form. (Tr. 880-93). He diagnosed an affective disorder (depressive d/o). *Id.* He found only
12 mild limitation in activities of daily living; social functioning; and concentration, persistence,
13 or pace. *Id.*

14 In September of 2008, John B. Kurtin, M.D., reviewed the record and completed a
15 Physical Residual Functional Capacity Assessment for the Arizona DES Disability
16 Determination Services. (Tr. 865-72). Kurtin found Pope could lift or carry 20 pounds
17 occasionally and 10 pounds frequently. *Id.* He could stand or walk for at least 2 hours and sit
18 for about 6 hours in an 8-hour day. *Id.* He should never climb ramps, stairs, ladders, ropes, or
19 scaffolds. *Id.* He could occasionally balance, stoop, kneel, or crouch. *Id.*

20 In April of 2009, Ben-Asher completed a Physical Residual Functional Capacity
21 Assessment. (Tr. 999). Ben-Asher opined that Pope could stand for less than one hour and sit
22 for one to two hours. *Id.* With three formal breaks, Pope could stand for less than two hours
23 and sit for less than six hours. *Id.* He was markedly limited in his ability to bend, climb and
24 squat. *Id.*

25 In April of 2009, Bonnie Hoff, nurse practitioner, completed a Mental Residual
26 Functional Capacity Assessment. (Tr. 997-98). Hoff opined that Pope was moderately limited
27 in 14 mental categories in the areas of understanding and memory, concentration and
28 persistence, social interaction, and adaptation. *Id.* She found 10 marked mental health

1 impairments including memory impairment, difficulty concentrating or thinking, and recurrent
2 severe panic attacks. *Id.*

3 In May of 2009, James Armstrong, Ph.D. conducted a psychiatric examination for the
4 Arizona DES Disability Determination Services. (Tr. 937-43). Armstrong's diagnostic
5 impression is as follows:

6 V62.89 Borderline intellectual functioning [Axis II] [IQ=71-84 according to
7 DSM IV; SAIA-III manual lists borderline range of IQ as 70-79]

8 294.9 Cognitive Disorder NOS

9 305.00 Alcohol Abuse. Said to be in remission since age 32

10 311 Depressive Disorder NOS. Moderate

11 307.89 Pain Disorder, Associated with Both Psychological Factors and a General
12 Medical Condition.

13 *Id.* Armstrong found marked impairment in Pope's ability to understand and remember
14 complex instructions; carry out complex instructions; and make judgments on complex work-
15 related decisions. *Id.*

16 On October 26, 2009, Pope appeared with counsel at a hearing before ALJ Lauren R.
17 Mathon. (Tr. 64). Pope testified that he left school after failing to pass the seventh grade three
18 times. (Tr. 71). When he was 15 or 16, he was thrown from a moving vehicle onto his head.
19 (Tr. 72). He worked digging ditches, doing landscaping, and as a custodian. (Tr. 72). He
20 eventually quit his job as a custodian because of pain in his back, arms, and hands. *Id.* He was
21 given a job ordering supplies but he found he could not do the paperwork. (Tr. 73).

22 In addition to his physical impairments, he also suffers from depression. (Tr. 74). He has
23 panic attacks about three times a week. (Tr. 75). He also has problems with his anger. (Tr. 76).

24 Pope takes OxyContin and Percocet for his pain. (Tr. 78). On a good day he can do light
25 housework for five minutes at a time. (Tr. 77-78). On a bad day he takes a hot bath to relax his
26 back. (Tr. 78).

27 Vocational expert Kathleen McAlpine testified that Pope's previous jobs were medium
28 unskilled. (Tr. 87). Assuming Kurtin's assessment of September 2008 was correct, Pope could
work as an assembler and a wrapper. (Tr. 87-88). Assuming Armstrong's assessment were

1 correct, Pope could work as a surveillance systems monitor as well. (Tr. 89-90). Assuming
2 Ben-Asher's assessment of August 2006 was correct, Pope could perform the job of surveillance
3 systems monitor. (Tr. 90). Assuming Hoff's assessment or Ben-Asher's assessment of April
4 2009 was correct, Pope could not maintain employment. (Tr. 91).

5 In her decision, dated November 24, 2009, the ALJ again found Pope was not disabled.
6 (Tr. 16-32). Pope appealed to the Appeals Council and submitted additional medical records
7 from Michael A. Badruddoja, M.D., and Abhay Sanan, M.D. who work at the Center for
8 Neurosciences. (Tr. 1000-26); (Doc. 23, p. 8).

9 In February of 2010, Pope sought treatment for "bilateral hand tingling and numbness"
10 which began in approximately 1998. (Tr. 1000). Sanan noted that Pope's symptoms have
11 progressively worsened and they are exacerbated by repetitive movements. (Tr. 1014). Sanan
12 gave his diagnosis as carpal tunnel syndrome and hyperflexia. (Tr. 1015). He recommended
13 carpal tunnel release but "held off on scheduling the surgery" until a cervical MRI could be
14 performed. *Id.*

15 The Appeals Counsel considered the additional evidence, but denied review. (Tr. 1).

16 17 CLAIM EVALUATION

18 Social Security Administration (SSA) regulations require that disability claims be
19 evaluated pursuant to a five-step sequential process. 20 C.F.R. §§ 404.1520, 416.920; *Baxter*
20 *v. Sullivan*, 923 F.2d 1391, 1395 (9th Cir. 1991). The first step requires a determination of
21 whether the claimant is engaged in substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4),
22 416.920(a)(4). If so, then the claimant is not disabled, and benefits are denied. *Id.* If the
23 claimant is not engaged in substantial gainful activity, the ALJ proceeds to step two which
24 requires a determination of whether the claimant has a "medically severe impairment or
25 combination of impairments." *Id.*

26 In making a determination at step two, the ALJ uses medical evidence to consider
27 whether the claimant's impairment more than minimally limits or restricts his or her "physical
28 or mental ability to do basic work activities." *Id.* If the ALJ concludes the impairment is not

1 severe, the claim is denied. *Id.* Upon a finding of severity, the ALJ proceeds to step three
2 which requires a determination of whether the impairment meets or equals one of several listed
3 impairments that the Commissioner acknowledges are so severe as to preclude substantial
4 gainful activity. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4); 20 C.F.R. Pt. 404, Subpt. P,
5 App.1. If the claimant’s impairment meets or equals one of the listed impairments, then the
6 claimant is presumed to be disabled, and no further inquiry is necessary. *Ramirez v Shalala*,
7 8 F.3d 1449, 1452 (9th Cir. 1993). If the claimant’s impairment does not meet or equal a listed
8 impairment, evaluation proceeds to the next step.

9 The fourth step requires the ALJ to consider whether the claimant has sufficient residual
10 functional capacity¹ (RFC) to perform past work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4).
11 If yes, then the claim is denied. *Id.* If the claimant cannot perform any past work, then the ALJ
12 must move to the fifth step which requires consideration of the claimant’s RFC to perform other
13 substantial gainful work in the national economy in view of claimant’s age, education, and work
14 experience. 20 C.F.R. §§ 404.1520(a)(4); 416.920(a)(4).

15 In determining whether the claimant retains the ability to perform other work, the ALJ
16 may refer to the Medical Vocational Guidelines (“the grids”) promulgated by the SSA. *See* 20
17 C.F.R. Pt. 404, Subpt. P, App.2; *Desrosiers v. Secretary of Health and Human Services*, 846
18 F.2d 573, 576-577 (9th Cir. 1988). The grids categorize jobs according to their exertional
19 requirements such as sedentary work, light work, or medium work. *Tackett v. Apfel*, 180 F.3d
20 1094, 1101 (9th Cir. 1999). The grids calculate whether or not the claimant is disabled based
21 on the claimant’s exertional ability, age, education, and work experience. *Id.* The grids are a
22 valid basis for denying claims where they completely and accurately describe the claimant’s
23 abilities and limitations. *Id.* at 1101-02. If the claimant has only exertional limitations, the
24 claim may be resolved based only on the grids. *Lounsbury v. Barnhart*, 468 F.3d 1111, 1115
25 (9th Cir. 2006).

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28 ¹ Residual functional capacity is defined as that which an individual can still do despite his or
her limitations. 20 C.F.R. §§ 404.1545, 416.945.

1 If the claimant has significant non-exertional limitations, the grids do not apply. *Penny*
2 *v. Sullivan*, 2 F.3d 953, 958-959 (9th Cir.1993). “Non-exertional limitations are limitations that
3 do not directly affect a claimant’s strength.” *Burkhart v. Bowen*, 856 F.2d 1335, 1340 (9th Cir.
4 1988). Mental limitations, for example, are non-exertional. *Id.* at 1340-41. If significant non-
5 exertional limitations prevent the claimant from performing the full range of work in any
6 exertional category, the ALJ must take the testimony of a vocational expert to deny the claim.
7 *Id.* at 1341.

8 If the claimant has both exertional and non-exertional limitations, the ALJ must consult
9 the grids first before considering the testimony of a vocational expert at step five. *Lounsbury*
10 *v. Barnhart*, 468 F.3d 1111, 1115 (9th Cir. 2006). If the grids direct a finding of disability, that
11 finding must be adopted by the Commissioner. *Lounsbury*, 468 F.3d at 1116.

12 13 The ALJ’s Findings

14 At step one of the disability analysis, the ALJ found Pope “has not engaged in substantial
15 gainful activity since February 1, 2005, the alleged onset date” (Tr. 19). At step two, she
16 found Pope has “the following severe impairments: back disorder resulting in chronic back pain;
17 hepatitis C; status post partial amputation of right thumb; cognitive disorder; depressive disorder
18” (Tr. 19). At step three, the ALJ found Pope’s impairments did not meet or equal the
19 criteria for any impairment found in the Listing of Impairments, Appendix 1, Subpart P, of 20
20 C.F.R., Part 404. (Tr. 23). The ALJ then analyzed Pope’s residual functional capacity (RFC).
21 (Tr. 24). She found Pope “has the residual functional capacity to lift and/or carry 10 pounds
22 frequently and 20 pounds occasionally; stand and/or walk (with normal breaks) for at least two
23 hours in an eight-hour workday; sit (with normal breaks) for about six hours in an eight hour
24 day. . . .” (Tr. 24-25). She further found Pope “has certain mental impairments including a
25 marked restriction in the ability to understand and remember and carry out complex
26 instructions.” (Tr. 25). At step four, the ALJ found Pope could not perform his past relevant
27 work. (Tr. 30). At step five, the ALJ found, based on the testimony of the vocational expert
28 that Pope could work as an assembler, wrapper, or surveillance systems monitor. (Tr. 31).

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STANDARD OF REVIEW

An individual is entitled to disability benefits if he or she demonstrates, through medically acceptable clinical or laboratory standards, an inability to engage in substantial gainful activity due to a physical or mental impairment that can be expected to last for a continuous period of at least twelve months. 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). “[A] claimant will be found disabled only if the impairment is so severe that, considering age, education, and work experience, that person cannot engage in any other kind of substantial gainful work which exists in the national economy.” *Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993) (quoting *Marcia v. Sullivan*, 900 F.2d 172, 174 (9th Cir. 1990)).

The findings of the Commissioner are meant to be conclusive. 42 U.S.C. §§ 405(g), 1383(c)(3). The decision to deny benefits “should be upheld unless it contains legal error or is not supported by substantial evidence.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* It is “more than a mere scintilla but less than a preponderance.” *Id.*

“Where evidence is susceptible to more than one rational interpretation, the ALJ’s decision should be upheld.” *Orn*, 495 F.3d at 630. “However, a reviewing court must consider the entire record as a whole and may not affirm simply by isolating a specific quantum of supporting evidence.” *Id.*

In evaluating evidence to determine whether a claimant is disabled, the opinion of a treating physician is entitled to great weight. *Ramirez v. Shalala*, 8 F.3d 1449, 1453-54 (9th Cir. 1993). The Commissioner may reject a treating physician’s uncontradicted opinion only if he sets forth clear and convincing reasons for doing so. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). If the treating physician’s opinion is contradicted by another doctor, the Commissioner may reject that opinion only if he provides specific and legitimate reasons supported by substantial evidence in the record. *Lester*, 81 F.3d at 830. No distinction is drawn “between

1 a medical opinion as to a physical condition and a medical opinion on the ultimate issue of
2 disability.” *Rodriguez v. Bowen*, 876 F.2d 759, 761 n.7 (9th Cir. 1989).

3 “The opinion of an examining physician is, in turn, entitled to greater weight than the
4 opinion of a non[-]examining physician.” *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996).
5 “[T]he Commissioner must provide ‘clear and convincing’ reasons for rejecting the
6 uncontradicted opinion of an examining physician.” *Id.* “[T]he opinion of an examining doctor,
7 even if contradicted by another doctor, can only be rejected for specific and legitimate reasons
8 that are supported by substantial evidence in the record.” *Id.* at 830-31.

9 “Where medical reports are inconclusive, questions of credibility and resolution of
10 conflicts in the testimony are functions solely of the [Commissioner].” *Magallanes*, 881 F.2d
11 747, 751 (9th Cir. 1989) (punctuation omitted). The Commissioner’s finding that a claimant is
12 less than credible, however, must have some support in the record. *See Light v. Social Security*
13 *Administration*, 119 F.3d 789 (9th Cir. 1997).

14 The ALJ need not accept the claimant’s subjective testimony of disability, but if she
15 decides to reject it, “she must provide specific, cogent reasons for the disbelief.” *Lester*, 81
16 F.3d at 834. “Unless there is affirmative evidence showing that the claimant is malingering, the
17 Commissioner’s reasons for rejecting the claimant’s testimony must be clear and convincing.”
18 *Id.* “General findings are insufficient; rather, the ALJ must identify what testimony is not
19 credible and what evidence undermines the claimant’s complaints.” *Id.*

20 21 DISCUSSION

22 Pope argues the decision of the ALJ is not supported by substantial evidence because (1)
23 she improperly discounted his non-exertional limitations including his manual dexterity and
24 mental limitations; (2) she improperly calculated the number of available jobs; and (3) she failed
25 to account for the reduction in occupational base caused by Pope’s mental limitations. He
26 further argues that (4) remand is required to allow the ALJ to review the newly submitted
27 evidence. The court finds the ALJ’s evaluation of Pope’s manual dexterity is not supported by
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1 substantial evidence and remand is necessary for the ALJ to review newly submitted evidence.

2 The court does not reach Pope’s alternative arguments.

3 The record before the ALJ indicates that Pope sought evaluation and treatment from
4 Mark J. Iannini, M.D., for joint pain in 2006 and 2007. (Tr. 763-65). Iannini assessed
5 generalized osteoarthritis, bilateral carpal tunnel syndrome, bilateral lateral epicondylitis, and
6 chronic pain syndrome. *Id.*

7 The ALJ, however, discounted Pope’s allegation of manual impairment because he
8 testified that he continues to drive a manual transmission vehicle and there was “no evidence
9 of follow-up examination or treatment with respect to the complaints of joint pain. . . .” (Tr.
10 26). The fact that the claimant voluntarily ceases medical treatment is some evidence that the
11 impairment is no longer severe. *See Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).
12 Accordingly, the ALJ concluded that Pope does not suffer from a manual impairment.

13 After the ALJ issued her report, however, Pope sought additional treatment from Michael
14 A. Badruddoja, M.D., and Abhay Sanan, M.D. for “bilateral hand tingling and numbness” (Tr.
15 1000-26); (Doc. 23, p. 8). Sanan noted Pope’s hand symptoms have progressively worsened
16 and are exacerbated by repetitive movements. (Tr. 1014). Sanan gave his diagnosis as carpal
17 tunnel syndrome and hyperflexia. (Tr. 1015). He recommend carpal tunnel release but “held
18 off on scheduling the surgery” until a cervical MRI could be performed. *Id.*

19 Based on these new medical records, the court concludes that the ALJ’s decision to
20 discount Pope’s allegation of manual impairment was not based on substantial evidence.
21 Contrary to the ALJ’s assumption, Pope’s joint problems were not in remission. In fact, they
22 were getting progressively worse. The court is aware that it is somewhat problematic to
23 evaluate the ALJ’s decision based on information that was placed in the record almost one year
24 after her decision was issued. (Tr. 4, 32). The Appeals Council, however, was apprised of the
25 new records, and accordingly, this court is permitted to consider it. (Tr. 1); *Harman v. Apfel*,
26 211 F.3d 1172, 1180 (9th Cir. 2000) (“We properly may consider the additional materials
27 because the Appeals Council addressed them in the context of denying Appellant’s request for
28 review.”).

1 The Commissioner argues this court cannot consider evidence submitted for the first time
2 to the Appeals Council when evaluating the decision of the ALJ. (Doc. 26) He further argues
3 remand to consider new evidence is only permitted pursuant to 42 U.S.C. § 405(g) which
4 requires a finding of good cause and materiality (Doc. 26) (*citing Angst v. Astrue*, 351
5 Fed.Appx. 227, 229 (9th Cir. 2009) (Rymer, J., concurring) (unpublished). This court
6 acknowledges that the case law on this issue is somewhat unsettled in the Ninth Circuit.
7 *Contrast Harman v. Apfel*, 211 F.3d 1172, 1180 (9th Cir. 2000) *with Mayes v. Massanari*, 276
8 F.3d 453, 461, n.3 (9th Cir. 2001). Accordingly, the court finds, in the alternative, that remand
9 is appropriate pursuant to 42 U.S.C. § 405(g).

10 Section 405(g) permits the court to “order additional evidence to be taken before the
11 Commissioner of Social Security, but only upon a showing that there is new evidence which is
12 material and that there is good cause for the failure to incorporate such evidence into the record
13 in a prior proceeding. . . .” 42 U.S.C. § 405(g). “To be material under section 405(g), the new
14 evidence must bear directly and substantially on the matter in dispute.” *Mayes*, 276 F.3d at 462
15 (punctuation modified). Moreover, the claimant “must additionally demonstrate that there is
16 a reasonable possibility that the new evidence would have changed the outcome of the
17 administrative hearing.” *Id.* “To demonstrate good cause, the claimant must demonstrate that
18 the new evidence was unavailable earlier.” *Id.* at 463.

19 The additional medical evidence is material and good cause exists for the delay. The
20 evidence is material because it bears directly on Pope’s manual impairment, which the ALJ
21 believed was not significant. The new evidence, to the contrary, indicates that Pope still suffers
22 from some degree of manual impairment which is exacerbated by repetitive movement. And,
23 Pope’s manual impairment must be properly evaluated because two of the three jobs that the
24 vocational expert suggested Pope could still perform, assembler of eye glasses and wrapper,
25 require repetitive fine motor skills. *See Todman v. Astrue*, 2009 WL 874222 (S.D.N.Y. 2009)
26 (noting that the jobs of assembler and electric sealing machine operator “require repetitive
27 fingering and handling”); *Maldonado v. Mathews*, 424 F.Supp. 301, 305 (E.D.N.Y. 1976)
28 (describing the jobs of assembler, polisher, buffer, packer or wrapper as “unskilled, repetitive.”).

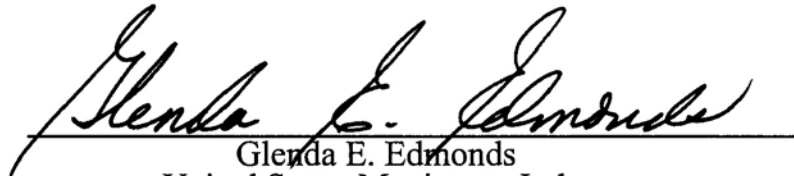
1 The court further finds good cause for not having offered the evidence earlier. In the
2 records themselves, Sanan states that Pope's symptoms have "progressively worsened." (Tr.
3 1014). Accordingly, an examination taken a year earlier, before the ALJ issued her opinion,
4 would not have reflected the same degree of impairment that is indicated in the records.

5 The court finds in the alternative that this case should be remanded to the Commissioner
6 of Social Security for consideration of new medical evidence pursuant to 42 U.S.C. § 405(g).

7
8 IT IS ORDERED that the final decision of the Commissioner is reversed and the case
9 is remanded to the Commissioner of Social Security for consideration of the supplemental
10 medical records.

11 The Clerk of the Court is instructed to enter judgment accordingly and close this case.
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13 DATED this 15th day of September, 2011.

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17 Glenda E. Edmonds
18 United States Magistrate Judge
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