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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Clara Frances Walker-Earnest,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-16-00642-TUC-EJM

ORDER

15
16 Plaintiff Clara Frances Walker-Earnest (“Walker-Earnest”) brought this action
17 pursuant to 42 U.S.C. § 405(g) seeking judicial review of a final decision by the
18 Commissioner of Social Security (“Commissioner”). Walker-Earnest raises one issue on
19 appeal: Whether the ALJ committed harmful error by finding that Walker-Earnest was
20 not disabled where application of the agency’s medical-vocational guidelines would
21 direct a finding of disability. (Doc. 14). The Commissioner concedes that the ALJ’s
22 decision is not supported by substantial evidence. (Doc. 20 at 1). Thus, the only issue
23 before the Court is whether this case should be reversed and remanded for an award of
24 benefits, or for further administrative proceedings.

25 Before the Court are Walker-Earnest’s Opening Brief, Defendant’s Response, and
26 Walker-Earnest’s Reply. (Docs. 14, 20, & 21). The United States Magistrate Judge has
27 received the written consent of both parties and presides over this case pursuant to 28
28 U.S.C. § 636(c) and Rule 73, Federal Rules of Civil Procedure. For the reasons stated

1 below, the Court finds that this matter should be reversed and remanded for further
2 administrative proceedings.

3 **I. Procedural History**

4 Walker-Earnest filed an application for Disability Insurance Benefits (“DIB”) on
5 August 25, 2012. (Administrative Record (“AR”) 32, 78). Walker-Earnest alleged
6 disability beginning January 5, 2012 based on hepatitis C, degenerative disc disease in
7 the cervical and lumbar spine, arthritis, PTSD, anxiety, suicidal thoughts, homicidal
8 thoughts, pain, stiffness, extreme fatigue, and balance issues. (AR 78–79). Walker-
9 Earnest’s application was denied upon initial review (AR 77) and on reconsideration (AR
10 93). A hearing was held on December 16, 2014 (AR 48), after which ALJ Larry Johnson
11 found, at Step Four, that Walker-Earnest was not disabled because she was able to
12 perform her PRW as computer data entry (AR 41–42). On July 29, 2016 the Appeals
13 Council denied Walker-Earnest’s request to review the ALJ’s decision. (AR 1).

14 Walker-Earnest’s date last insured (“DLI”) for DIB purposes is December 31,
15 2016. (AR 78). Thus, in order to be eligible for benefits, Walker-Earnest must prove that
16 she was disabled during the time period of her alleged onset date (“AOD”) of January 5,
17 2012 and her DLI of December 31, 2016.

18 **II. Factual History¹**

19 Walker-Earnest was born on December 3, 1953, making her 58 at the AOD of her
20 disability. (AR 78). Walker-Earnest earned a G.E.D. and a bachelor’s degree. (AR 173).
21 She worked for 18 years doing computer data entry for the county government. (AR 174,
22 184).

23 **A. Medical Testimony**

24 On February 24, 2013 Walker-Earnest saw Dr. Jeri Hassman for a physical
25 medicine consultation. (AR 452). Walker-Earnest reported that she left her job because
26 she had enough points to retire, plus she was becoming less sharp and having mid and

27 ¹ While the Court has reviewed the entirety of the record in this matter, the
28 following summary includes only the information most pertinent to the claim at issue in
this appeal.

1 low back pain, pain down her right upper extremity, and pain down her right leg. (AR
2 452). Walker-Earnest also stated that she had PTSD from a very bad childhood and a
3 very aggressive supervisor. Dr. Hassman documented an unremarkable physical exam of
4 the cervical, thoracic, and lumbar spine, mild generalized weakness of both upper
5 extremities, mild stiffness with ambulation, and multiple psychiatric conditions including
6 PTSD, anxiety, and suicidal and homicidal thoughts. (AR 455). Dr. Hassman also
7 completed a Medical Source Statement and opined that Walker-Earnest's conditions
8 would not impose limitations for 12 months. (AR 456).

9 On March 19, 2013 Walker-Earnest saw Dr. Andrew Jones for a psychological
10 evaluation. (AR 463). Walker-Earnest stated that she applied for disability because of
11 anxiety, depression, and back pain, and that her last job ended because she retired. Dr.
12 Jones noted that Walker-Earnest had low energy, dysphoric mood, and a flat affect, and
13 scored 30 out of 30 on the Mini Mental State Exam. (AR 464). He diagnosed PTSD;
14 major depressive disorder, recurrent, severe; back pain; hepatitis C; and neck pain. (AR
15 465). Dr. Jones also completed a Medical Source Statement and opined that Walker-
16 Earnest's condition would impose limitations for 12 months. (AR 466). He found she had
17 no limitations in understanding and memory, but that she was most likely moderately
18 limited in her ability to complete a normal workday without interruptions from
19 psychologically-based symptoms. Dr. Jones also stated that Walker-Earnest was
20 moderately limited in her ability to respond appropriately to criticism from supervisors
21 and in her ability to get along with coworkers.

22 A letter dated November 6, 2013 from Tides of Change Center of Wellness states
23 that Walker-Earnest had been a client since January 2012 and that she continued to suffer
24 from anxiety and depression and had panic attacks on a regular basis. (AR 468).

25 On November 25, 2013 nurse practitioner Kathleen Oldfather completed a
26 Medical Assessment of the Patient's Ability to Perform Work Related Activity form. (AR
27 469). Oldfather opined that Walker-Earnest had severe impairments in the following
28 areas: ability to relate to other people, degree of restriction of daily activities,

1 deterioration of personal habits, constriction of interests, understand, carry out, and
2 remember instructions, respond appropriately to supervision and co-workers, respond to
3 customary work pressures, perform complex tasks, repetitive tasks, and varied tasks, and
4 complete a normal workday/workweek without interruption from psychologically-based
5 symptoms. (AR 469–70). Oldfather also opined that Walker-Earnest had a moderately
6 severe impairment in her ability to perform simple tasks, and stated that her limitations
7 would last for 12 months or longer. (AR 470).

8 A health record dated November 6, 2014 from Dr. Sullivan and nurse practitioner
9 Oldfather lists Walker-Earnest’s active problems as: dissociative personality disorder,
10 interpersonal problems, major depressive affective disorder recurrent episode, panic
11 disorder, unspecified personality disorder, bipolar I disorder, and borderline personality
12 disorder. (AR 548).

13 A letter dated November 23, 2014 from Twila R. Christman, LCSW, states that
14 Walker-Earnest has been a client since January 2012 and suffers from anxiety and
15 depression. (AR 547). Christman stated that Walker-Earnest continued to deal with her
16 psychiatric issues and was making progress, but would continue to need treatment for an
17 extended period of time.

18 On December 8, 2014 Dr. William Sullivan completed a Medical Assessment of
19 the Patient’s Ability to Perform Work Related Activity form. (AR 583). He found
20 Walker-Earnest had mild impairment in the following areas: ability to understand, carry
21 out, and remember instructions, and ability to perform simple tasks. (AR 583–84). He
22 also found moderate impairment in the following areas: ability to relate to other people,
23 restriction of daily activities, and ability to perform complex tasks, repetitive tasks, and
24 varied tasks. He also found she had moderately severe impairment in the following areas:
25 deterioration in personal habits, constriction of interests, ability to respond appropriately
26 to supervision and co-workers, and ability to complete a normal workday/workweek
27 without interruptions from psychologically-based symptoms. Dr. Sullivan further found
28 that Walker-Earnest was severely impaired in her ability to respond to customary work

1 pressures, and stated that her limitations would last for 12 months or longer.

2 On December 15, 2014 Dr. Caryl S. Brailsford-Gorman completed a Pain
3 Functional Capacity (RFC) Questionnaire. (AR 585). She reported that Walker-Earnest
4 had moderately severe pain, defined as “pain seriously affects ability to function.” As to
5 whether the degree of pain could reasonably be expected to result from clinical or
6 diagnostic findings, Dr. Brailsford-Gorman did not check “yes” or “no,” but wrote
7 “probably with anxiety overly amplicating [illegible].” She further opined that Walker-
8 Earnest’s pain was frequently severe enough to interfere with her attention and
9 concentration, and that based on her subjective complaints and MRI findings, Walker-
10 Earnest frequently experienced deficiencies of concentration, persistence, or pace. (AR
11 585–86).

12 Dr. Brailsford-Gorman also completed a Medical Assessment of Ability to
13 Perform Work Related Physical Activities form. (AR 587). She noted that based on
14 Walker-Earnest’s subjective complaints, she had the following exertional limitations:
15 occasionally and frequently lift less than 10 pounds, stand/walk less than 2 hours, sit less
16 than 6 hours, and must alternate sitting with standing every 15 minutes. Dr. Brailsford-
17 Gorman also reported that Walker-Earnest had no postural or environmental limitations,
18 and was limited to occasionally using both hands for handling, fine manipulation, feeling,
19 and reaching. (AR 588–89). Dr. Brailsford-Gorman stated that these limitations were
20 supported by Walker-Earnest’s report of her activities, and the MRIs of her cervical and
21 lumbar spine. (AR 589).

22 B. State Agency Findings

23 On March 27, 2013 DDS examiner Victoria Wall made an initial determination
24 that Walker-Earnest was not disabled. (AR 77). Wall noted that a finding about capacity
25 for PRW was not made, but that “this information is not material because all potentially
26 applicable Medical-Vocational guidelines would direct a finding of ‘not disabled’ given
27 the individual’s age, education, and RFC. Therefore, the individual can adjust to other
28 work.” (AR 90). Wall further opined that Walker-Earnest could perform work where

1 interpersonal contact was incidental (such as assembly work), where “tasks should be no
2 more complex than those learned and performed by rote, with few variables and little
3 judgment, and supervision required is simple, direct, and concrete. This constitutes
4 unskilled work.” (AR 91). Wall further noted that Walker-Earnest had no physical
5 restrictions, that she could not perform her PRW and the skills did not transfer, and that
6 there were other sedentary jobs that did not exceed her functional assessment.

7 Dr. Howard Atkins completed a psychiatric review and opined that Walker-
8 Earnest’s mental impairments were severe. (AR 86). He found that Walker-Earnest had
9 mild restrictions in ADL, moderate difficulties in maintaining social functioning,
10 moderate difficulties in maintaining concentration, persistence, or pace, and no repeated
11 episodes of decompensation. (AR 86–87). Dr. Atkins opined that Walker-Earnest had no
12 limitations in understanding and memory but did have sustained concentration and pace
13 limitations. (AR 89). Specifically, she was moderately limited in her ability to carry out
14 detailed instructions, maintain attention and concentration for extended periods, and
15 complete a normal workday and workweek without interruption from psychologically
16 based symptoms. Dr. Atkins also found that Walker-Earnest was moderately limited in
17 her ability to interact with the general public, accept instructions and respond
18 appropriately to criticism from supervisors, get along with coworkers or peers, and
19 maintain socially appropriate behavior. (AR 89–90). Dr. Atkins concluded that Walker-
20 Earnest retained the capacity to understand, remember, and carry out detailed and
21 complex instructions, relate appropriately to coworkers, supervisors, and the general
22 public on a brief and superficial basis, utilize reasonable judgment in a work setting, and
23 sustain the level of attention and concentration necessary to complete a routine workday
24 without significant interruptions from psychologically-based symptoms. (AR 90).

25 On reconsideration, Walker-Earnest was again found not disabled on September 6,
26 2013. (AR 93). DDS examiner Stephen Dellinger again noted that a finding about
27 Walker-Earnest’s capacity to perform her PRW was not made, but that she could adjust
28 to other work. (AR 107). Dellinger opined that Walker-Earnest was not limited to

1 unskilled work, and that she could perform semi-skilled work where interpersonal contact
2 was routine but superficial (such as grocery checker), where tasks would be no more
3 complex than those learned by experience, and where little supervision was required for
4 routine tasks but detailed supervision was required for non-routine tasks. (AR 108–09).
5 Dellinger further noted that Walker-Earnest could not perform her PRW and that the
6 skills did not transfer, but that there were other sedentary, unskilled jobs she could
7 perform. (AR 109). Dr. Jerry Henderson reaffirmed Dr. Atkins’ psychiatric assessment
8 (AR 104, 106–07).

9 C. Plaintiff’s Testimony

10 On a Disability Report dated October 19, 2012 Walker-Earnest reported that her
11 last job was doing computer data entry work for the government. (AR 174). She spent 7.5
12 hours of the workday sitting, walking, and standing, and 8 hours writing, typing, or
13 handling small objects. She also spent 25% of her time supervising one other person. On
14 a Work History Report, Walker-Earnest stated that she spent 1 hour per day supervising
15 one other person. (AR 185). On both forms she reported that her job required technical
16 knowledge and skills, writing and completing reports, and that she used machines, tools,
17 or equipment. (AR 174, 185).

18 D. ALJ’s Findings

19 The ALJ found that Walker-Earnest had the severe impairments of hepatitis C,
20 osteoarthritis, degenerative disc disease, affective disorder, and anxiety disorder. (AR
21 34). The ALJ noted that these impairments constituted more than slight abnormalities and
22 caused more than a minimal effect on Walker-Earnest’s ability to do work activities.

23 The ALJ also considered the Paragraph B criteria set out in the social security
24 disability regulations for evaluating mental disorders. *See* 20 C.F.R. Pt. 404, Subpt. P,
25 App. 1 § 12.00. The ALJ found Walker-Earnest had mild restrictions in ADL, moderate
26 difficulties in social functioning, mild difficulties maintaining concentration, persistence,
27 or pace, and had no episodes of decompensation of an extended duration. (AR 35–36).
28 Because Walker-Earnest did not have at least two “marked” limitations, the Paragraph B

1 criteria were not satisfied.²

2 The ALJ gave substantial weight to the state agency reviewing physician's
3 assessment, to the extent that the opinion supported the ALJ's RFC assessment. (AR 41).

4 The ALJ gave great weight to Dr. Hassman's opinion because it was consistent
5 with the totality of the evidence at the time of the evaluation. (AR 41).

6 The ALJ gave partial weight to Dr. Jones' opinion because it was only partially
7 consistent with the evidence of record. (AR 41). The ALJ specifically noted that although
8 Walker-Earnest had conflicts with another individual at her last job, it was not indicative
9 of an inability to function in a job setting in computer data entry.

10 The ALJ gave little weight to nurse practitioner Oldfather's opinion because it was
11 too restrictive and not supported by her treatment notes. (AR 41).

12 The ALJ gave partial weight to Dr. Sullivan's opinion because it was overstated
13 and not consistent with the treatment records, and partial weight to Dr. Brailsford-
14 Gorman's opinion because it was based entirely on subjective complaints. (AR 41).

15 The ALJ found that Walker-Earnest had the RFC to perform the full range of light
16 work: she could sit for 6 hours; walk/stand for 6 hours; understand, remember, and carry
17 out detailed and complex instructions; relate appropriately to co-workers, supervisors,
18 and the general public on a brief and superficial basis; and sustain the level of attention
19 and concentration necessary to complete a routine workday of detailed and complex tasks
20 without significant interruptions from psychologically-based symptoms. (AR 36).

21 The ALJ found that Walker-Earnest could perform her PRW doing computer data
22 entry as generally performed. (AR 41–42). The ALJ therefore concluded Walker-Earnest
23 was not disabled. (AR 42).

24 **III. Standard of Review**

25 The Commissioner employs a five-step sequential process to evaluate SSI and
26 DIB claims. 20 C.F.R. §§ 404.920, 416.1520; *see also Heckler v. Campbell*, 461 U.S.

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28 ² To satisfy the paragraph B criteria, the mental disorder must result in "extreme"
limitation of one, or "marked" limitation of two, of the four areas of mental functioning.
20 C.F.R. Pt. 404, Subpt. P, App. 1 § 12.00.

1 458, 460–462 (1983). To establish disability the claimant bears the burden of showing
2 she (1) is not working; (2) has a severe physical or mental impairment; (3) the
3 impairment meets or equals the requirements of a listed impairment; and (4) the
4 claimant’s RFC precludes her from performing her past work. 20 C.F.R. §§
5 404.920(a)(4), 416.1520(a)(4). At Step Five, the burden shifts to the Commissioner to
6 show that the claimant has the RFC to perform other work that exists in substantial
7 numbers in the national economy. *Hoopai v. Astrue*, 499 F.3d 1071, 1074 (9th Cir. 2007).
8 If the Commissioner conclusively finds the claimant “disabled” or “not disabled” at any
9 point in the five-step process, she does not proceed to the next step. 20 C.F.R. §§
10 404.920(a)(4), 416.1520(a)(4).

11 Here, Walker-Earnest was denied at Step Four of the evaluation process. Step Four
12 requires a determination of whether the claimant has sufficient RFC to perform past
13 work. 20 C.F.R. §§ 404.1520(e), 416.920(e). RFC is defined as that which an individual
14 can still do despite her limitations. 20 C.F.R. §§ 404.1545, 416.945. An RFC finding is
15 based on the record as a whole, including all physical and mental limitations, whether
16 severe or not, and all symptoms. Social Security Ruling (SSR) 96-8p. If the ALJ
17 concludes the claimant has the RFC to perform past work, the claim is denied. 20 C.F.R.
18 §§ 404.1520(f), 416.920(f).

19 The findings of the Commissioner are meant to be conclusive. 42 U.S.C. §§
20 405(g), 1383(c)(3). The court may overturn the decision to deny benefits only “when the
21 ALJ’s findings are based on legal error or are not supported by substantial evidence in the
22 record as a whole.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001). Finally,
23 “[a] claimant is not entitled to benefits under the statute unless the claimant is, in fact,
24 disabled, no matter how egregious the ALJ’s errors may be.” *Strauss v. Comm’r Soc.*
25 *Sec.*, 635 F.3d 1135, 1138 (9th Cir. 2011).

26 **IV. Analysis**

27 The limited issue in this appeal is whether this matter should be remanded for
28 further administrative proceedings or for an award of benefits. Walker-Earnest argues

1 that, “[a]ssuming the agency’s own findings, Walker-Earnest is entitled to a finding of
2 disability based on the agency’s own regulations, the medical vocational guidelines,
3 commonly known as the ‘grids,’ 20 C.F.R. Pt. 404, Subpt. P, App. 2.” (Doc. 1 at 3).
4 Walker-Earnest states that she grids at 202.06 on Table No. 2, which directs that where a
5 person is of advanced age, has a high school education or more that does not provide for
6 direct entry into skilled work, and who did skilled or semiskilled work but does not have
7 transferrable skills, then the person is disabled. *Id.* Walker-Earnest claims that at both the
8 initial and reconsideration levels, the state agency found that she could not perform her
9 PRW and that she did not have transferrable skills. *Id.* at 5. Walker-Earnest further argues
10 that the ALJ mischaracterized her PRW as only data entry, because the work was more
11 complex than just data entry and it also included supervision. *Id.*

12 The Commissioner concedes that the ALJ’s decision is not supported by
13 substantial evidence, but argues that the proper remedy is to remand for further
14 administrative proceedings because the ALJ failed to either call a vocational expert
15 (“VE”) or consult the Dictionary of Occupational Titles (“DOT”) when he made his Step
16 Four finding that Walker-Earnest could perform her PRW as generally performed. (Doc.
17 20 at 3). Thus, the Commissioner argues, because the ALJ did not make clear what the
18 requirements of computer data entry are as generally performed, the ALJ did not make
19 sufficient findings to determine whether Walker-Earnest could perform this job. *Id.* The
20 Commissioner contends that testimony from a VE is needed to determine whether
21 Walker-Earnest can perform either her PRW or adjust to other work. *Id.* at 4. The
22 Commissioner further argues that VE testimony is required to determine whether Walker-
23 Earnest has any transferrable skills before the grids can be applied to result in a finding of
24 disability. *Id.* at 5. The Commissioner concludes that remanding for an award of benefits
25 would be improper where there is no VE testimony and no job identified in the DOT,
26 where no Step Five finding was made because the ALJ found Walker-Earnest not
27 disabled at Step Four, and because VE testimony is required to determine whether
28 Walker-Earnest has any transferrable skills. *Id.* at 5.

1 A. Grids

2 “In determining whether a claimant is disabled, the ALJ will usually refer to the
3 grids The grids correlate a claimant’s age, education, previous work experience, and
4 residual functional capacity to direct a finding of either disabled or not disabled.” *Cooper*
5 *v. Sullivan*, 880 F.2d 1152, 1155 (9th Cir. 1989). “The grids are applied at the fifth step
6 of the analysis under 20 C.F.R. § 404.1520.” *Lounsbury v. Barnhart*, 468 F.3d 1111,
7 1114 (9th Cir. 2006). As explained by the court in *Tacket v. Apfel*, 180 F.3d 1094, 1101
8 (9th Cir. 1999):

9 The Guidelines present, in table form, a short-hand method
10 for determining the availability and numbers of suitable jobs
11 for a claimant. These tables are commonly known as “the
12 grids.” The grids categorize jobs by their physical-exertional
13 requirements . . . Each grid presents various combinations of
14 factors relevant to a claimant’s ability to find work. The
15 factors in the grids are the claimant’s age, education, and
16 work experience. For each combination of these factors, e.g.,
17 fifty years old, limited education, and unskilled work
18 experience, the grids direct a finding of either “disabled” or
19 “not disabled” based on the number of jobs in the national
20 economy in that category of physical-exertional requirements.

21 This approach allows the Commissioner to streamline the
22 administrative process and encourages uniform treatment of
23 claims.

24 (internal citations omitted). However, “[t]he ALJ may rely on the grids alone to show the
25 availability of jobs for the claimant ‘only when the grids accurately and completely
26 describe the claimant’s abilities and limitations.’” *Id.* at 1102 (quoting *Jones v. Heckler*,
27 760 F.2d 993, 998 (9th Cir. 1985)). If the claimant suffers from non-exertional limitations
28 not contemplated by the grids, then the ALJ must call a VE at Step Five to determine
whether the claimant is disabled. *Id.*

29 At the hearing before the ALJ, Walker-Earnest’s attorney noted the following:

30 I wanted to point out the grids issue. . . . if she’s limited to
31 sedentary work and unskilled work with the mental health,
32 then she grids. So her past relevant work is sedentary, but it’s-
33 - I’m going to assume our VE is going to talk to us about a
34 higher skill level that was government data . . . entry . . . if
35 she’s limited to sedentary, unskilled work, she grids. She’s 55
36 plus.

1 (AR 50–51). The ALJ then commented: “If this is one of those cases where she can’t do
2 her past work, then there probably isn’t any other work out there and the grids are going
3 to take the case away.” (AR 51).

4 Later in the hearing, the ALJ stated:

5 Well, this is one of those cases where the VE’s not going to
6 help me a heck of a lot so -- because she can’t do her past
7 work pretty much . . . it sounded like it was pretty skilled. . . .
8 what I’m saying is, her work was skilled -- So I guess what it
9 boils down to if she can’t do her past work, then the grids are
10 going to pretty much take the case away so I’ve just got to
11 look through it and see what I think of the case.

12 (AR 75). At the ALJ’s request, Walker-Earnest’s attorney stipulated that her past work
13 was skilled work. (AR 75).

14 In his written decision, the ALJ found that Walker-Earnest was limited to brief and
15 superficial contact with coworkers, supervisors, and the general public—a non-exertional
16 mental impairment. *See Cooper*, 880 F.2d at 1155 n.7. “[W]here a person with exertional
17 and non-exertional limitations is ‘disabled’ under the grids, there is no need to examine
18 the effect of the non-exertional limitations. But if the same person is not disabled under
19 the grids, the non-exertional limitations must be examined separately.” *Lounsbury*, 468
20 F.3d at 1116. Thus, if Walker-Earnest were to be found not disabled based on the grids,
21 the ALJ would need to separately consider how the limitation to superficial contact with
22 coworkers, supervisors, and the public might impact her ability to work. *See Lounsbury*,
23 468 F.3d at 1115 (“the grids are predicated on a claimant suffering from an impairment
24 which manifests itself by limitations in meeting the strength requirements of jobs
25 (‘exertional limitations’); they may not be fully applicable where the nature of a
26 claimant’s impairment does not result in such limitations (‘non-exertional limitations’).
27 The reason for this limitation on the grids’ application is that, despite having the residual
28 functional capacity to perform a full range of unskilled occupations at a given exertional
level, a claimant may not be able to adjust to these jobs because of non-exertional
limitations. . . . non-exertional impairments . . . may, if sufficiently severe, limit a
claimant’s functional capacity in ways not contemplated by the grids.” (internal

1 quotations omitted)); *but see Lounsbury*, 468 F.3d at 1115 n.2 (“*Tackett’s* bar on
2 exclusive reliance on the grids is limited by its requirement that the nonexertional
3 impairments invoked must be significant enough to limit further the range of work
4 permitted by exertional limitations before precluding application of the grids.”).

5 Here, it is unclear whether the ALJ’s finding that Walker-Earnest was limited to
6 brief and superficial contact with supervisors, coworkers, and the public is a non-
7 exertional impairment significant enough to limit the range of work available to her such
8 that application of the grids would be inappropriate. Thus, the undersigned finds that
9 remand for further proceedings is appropriate so that a VE may testify as to whether
10 Walker-Earnest’s non-exertional impairments would require a finding of disability.

11 **B. Transferability of Skills**

12 Walker-Earnest contends that she grids at Rule 202.06, but that rule assumes that
13 the claimant does not have any transferrable skills. If Rule 202.06 applies, then the
14 claimant is found disabled and the inquiry stops. Conversely, the Commissioner contends
15 that no transferability finding has been made here, and that if Walker-Earnest does have
16 transferrable skills, Rule 202.07 applies and mandates a finding of not disabled.

17 Although both of the DDS examiners noted on the initial and reconsideration
18 decisions that Walker-Earnest had no transferrable skills, the ALJ did not make any
19 specific findings during the hearing or in his written decision as to whether Walker-
20 Earnest had transferrable skills or not. Without a specific finding by the ALJ on this
21 issue, the Court is unable to determine whether Rule 202.06 or Rule 202.07 applies.³

22
23 ³ The undersigned also notes that in *Lounsbury*, 468 F.3d at 1116–17, the court
found that although the claimant gridded at Rule 202.07,

24 The ALJ misapplied Rule 202.07 by failing to consider fully
25 the effect of Rule 202.00(c). Footnote (2) to Rule 202.07
26 explicitly incorporates language from Rule 202.00(c) that
27 expands the circumstances under which claimants with
transferrable skills can be found disabled. Rule 202.00(c)
provides:

28 (c) However, for individuals of advanced age who can
no longer perform vocationally relevant past work and
who have a history of unskilled work experience, or

1 Accordingly, remand for further proceedings is appropriate so that the ALJ can take
2 testimony from a VE as to whether Walker-Earnest has any transferrable skills.

3 C. Past Relevant Work

4 In addition to Walker-Earnest's argument that the grids mandate a finding of
5 disability, she also argues that the ALJ's finding that she could return to her PRW doing
6 computer data entry is inconsistent with the ALJ's finding that she was limited to
7 interacting with coworkers, supervisors, and the general public on a brief and superficial
8 basis because her PRW included supervising others. (Doc. 14 at 6; AR 36).

9 Pursuant to SSR 00-4P, "[i]n making disability determinations, [the Commissioner
10 relies] primarily on the DOT . . . for information about the requirements of work in the
11 national economy." *Id.* at *2. The DOT is used at Steps Four and Five of the sequential
12 evaluation process, and VEs are most often used to provide evidence at a hearing before
13 an ALJ. *Id.* Because the "DOT lists maximum requirements of occupations as generally
14 performed, not the range of requirements of a particular job as it is performed in specific
15 settings[,]" a VE can "provide more specific information about jobs or occupations than
16 the DOT." *Id.* at *3. Where the ALJ's Step-Four finding rests on a determination that a

17
18 who have *only skills that are not readily transferrable*
19 *to a significant range of semi-skilled or skilled work*
20 *that is within the individual's functional capacity, or*
21 *who have no work experience, the limitations in*
22 *vocational adaptability represented by functional*
23 *restriction to light work warrant a finding of disabled.*

24 (emphasis added)

25 Under Rule 202.00(c), although Lounsbury has some
26 transferrable skills, she will be disabled if those skills "are not
27 readily transferrable to a significant range of semi-skilled or
28 skilled work."

29 The court then determined that the claimant's skills would not transfer to a
30 significant range of work, and thus Rule 202.00(c) directed a finding of disability.

31 In the present matter, following the court's reasoning in *Lounsbury*, the ALJ must
32 first determine whether Walker-Earnest has transferrable skills and correspondingly
33 whether she grids at Rule 202.06 or Rule 202.07. If Walker-Earnest does have
34 transferrable skills, she will still be found disabled unless those skills are readily
35 transferrable to a significant range of work.

1 claimant can perform her PRW as generally performed, the ALJ must consult either the
2 DOT or a VE to determine the “functional demands and job duties of the occupation as
3 generally required by employers throughout the national economy.” *Pinto v. Massanari*,
4 249 F.3d 840, 845 (9th Cir. 2001) (quoting SSR 82-61). Further, while “the best source
5 for how a job is generally performed is usually the [DOT,] . . . [f]inding that a claimant
6 has the capacity to do past relevant work on the basis of a generic occupational
7 classification of the work is likely to be fallacious and unsupportable.” *Id.* at 845–46
8 (quoting SSR 82-61).

9 Here, in the ALJ’s written decision, he found that Walker-Earnest was not
10 disabled because she was capable of performing her PRW doing computer data entry, as
11 that work is generally performed. (AR 41). However, the ALJ did not classify the
12 exertional or skill requirement of this work, nor did he cite any testimony from the VE in
13 support of this finding (as there was no VE testimony), or any provision in the DOT.
14 Thus, there is no testimony or other evidence cited in the ALJ’s decision as to what the
15 requirements of computer data entry are, and whether this work requires supervising
16 others, or even whether Walker-Earnest’s PRW is properly classified as computer data
17 entry work.

18 While Walker-Earnest focuses on the fact that her past work involved supervising
19 others, the ALJ found that she could perform her PRW as *generally* performed, not
20 *actually* performed. *See Pinto*, 249 F.3d at 845 (“We have never required explicit
21 findings at step four regarding a claimant’s past relevant work both as generally
22 performed *and* as actually performed. The vocational expert merely has to find that a
23 claimant can or cannot continue his or her past relevant work . . . ”). It is certainly
24 possible that computer data entry work (assuming this is the correct description of
25 Walker-Earnest’s PRW), as generally performed, does not include supervisory
26 responsibilities and involves only brief and superficial contact with others. However,
27 because the ALJ failed to take any VE testimony on this issue or cite any applicable
28 provision in the DOT, the undersigned cannot determine whether the ALJ’s finding that

1 Walker-Earnest could perform her PRW as generally performed is inconsistent with the
2 finding that she was limited to brief and superficial contact with others. Accordingly,
3 remand for further proceedings is required.

4 **V. Conclusion**

5 A federal court may affirm, modify, reverse, or remand a social security case. 42
6 U.S.C. § 405(g). Absent legal error or a lack of substantial evidence supporting the ALJ's
7 findings, this Court is required to affirm the ALJ's decision. After considering the record
8 as a whole, this Court simply determines whether there is substantial evidence for a
9 reasonable trier of fact to accept as adequate to support the ALJ's decision. *Valentine*,
10 574 F.3d at 690.

11 “[T]he decision whether to remand the case for additional evidence or simply to
12 award benefits is within the discretion of the court.” *Rodriguez v. Bowen*, 876 F.2d 759,
13 763 (9th Cir.1989) (quoting *Stone v. Heckler*, 761 F.2d 530, 533 (9th Cir.1985)).
14 “Remand for further administrative proceedings is appropriate if enhancement of the
15 record would be useful.” *Benecke v. Barnhart*, 379 F.3d 587, 593 (9th Cir. 2004).
16 Conversely, remand for an award of benefits is appropriate where:

17 (1) the ALJ failed to provide legally sufficient reasons for
18 rejecting the evidence; (2) there are no outstanding issues that
19 must be resolved before a determination of disability can be
20 made; and (3) it is clear from the record that the ALJ would
be required to find the claimant disabled were such evidence
credited.

21 *Benecke*, 379 F.3d at 593 (citations omitted). Where the test is met, “we will not remand
22 solely to allow the ALJ to make specific findings.... Rather, we take the relevant
23 testimony to be established as true and remand for an award of benefits.” *Id.* (citations
24 omitted); *see also Lester v. Chater*, 81 F.3d 821, 834 (9th Cir.1995).

25 “[T]he required analysis centers on what the record evidence shows about the
26 existence or non-existence of a disability.” *Strauss v. Comm. Soc. Sec. Admin.*, 635 F.3d
27 1135, 1138 (9th Cir. 2011). “Administrative proceedings are generally useful where the
28 record has not been fully developed, there is a need to resolve conflicts and ambiguities,
or the presentation of further evidence may well prove enlightening in light of the

1 passage of time.” *Treichler v. Comm. Soc. Sec. Admin.*, 775 F.3d 1090, 1101 (9th Cir.
2 2014) (internal quotations and citations omitted). “Where there is conflicting evidence,
3 and not all essential factual issues have been resolved, a remand for an award of benefits
4 is inappropriate.” *Id.* “In evaluating [whether further administrative proceedings would be
5 useful, the Court considers] whether the record as a whole is free from conflicts,
6 ambiguities, or gaps, whether all factual issues have been resolved, and whether the
7 claimant’s entitlement to benefits is clear under the applicable legal rules.” *Id.* at 1103–
8 04.

9 In this case, significant factual issues remain that make remanding for an award of
10 benefits inappropriate. First, because there was no testimony from a VE or citation to the
11 DOT, it is unclear whether the ALJ properly classified Walker-Earnest’s PRW as
12 computer data entry. Likewise, it is unclear what the exertion and skill requirements of
13 that work are, and whether Walker-Earnest was able to perform it as generally performed.
14 Second, the ALJ failed to make a finding as to whether Walker-Earnest has transferrable
15 skills or not, which prevents this Court from determining whether grid rule 202.06 or
16 202.07 applies. Third, because the ALJ determined that Walker-Earnest was not disabled
17 at Step Four, there was no Step Five finding made. If Walker-Earnest cannot perform her
18 PRW but does have transferrable skills, then VE testimony is required to determine
19 whether those skills are readily transferrable to a significant range of other work existing
20 in the national economy. *See Tackett v. Apfel*, 180 F.3d 1094, 1100–01 (9th Cir. 1999)
21 (“There are two ways for the Commissioner to meet the burden of showing that there is
22 other work in ‘significant numbers’ in the national economy that claimant can perform:
23 (a) by the testimony of a vocational expert, *or* (b) by reference to the Medical-Vocational
24 Guidelines . . .”). While “[t]estimony of a VE . . . as to the claimant’s particular
25 limitations is not an absolute-requirement if it is clear from the record that the claimant is
26 unable to perform gainful employment in the national economy,” in this case the Court
27 finds that the record is not clear and further administrative proceedings are required.
28 *Stewart v. Colvin*, 16 F.Supp.3d 1209, 1217 (D. Or. April 15, 2014) (internal quotations

1 and citation omitted); *see also Bunnell v. Barnhart*, 336 F.3d 1112, 1116 (9th Cir. 2003)
2 (“[N]o vocational expert has been called upon to consider all of the testimony that is
3 relevant to the case . . . [and] in cases where the vocational expert has failed to address a
4 claimant’s limitations as established by improperly discredited evidence, we consistently
5 have remanded for further proceedings rather than payment of benefits.” (internal
6 quotations and citation omitted)); *Johnson v. Shalala*, 60 F.3d 1428, 1436 (9th Cir. 1995)
7 (“the use of vocational experts is particularly important where ‘the issue in determining
8 whether you are disabled is whether your work skills can be used in other work and the
9 specific occupations in which they can be used, or there is a similarly complex issue’”
10 (quoting 20 C.F.R. § 404.1566(e)); *Treichler*, 775 F.3d at 1105 (“Where, as in this case,
11 an ALJ makes a legal error, but the record is uncertain and ambiguous, the proper
12 approach is to remand the case to the agency.”).

13 Accordingly,

14 **IT IS HEREBY ORDERED** that the Commissioner’s decision in regard to
15 Plaintiff’s applications for disability insurance benefits under Title II of the Social
16 Security Act be REVERSED and REMANDED to the Commissioner of Social Security
17 for further administrative proceedings consistent with this decision, including a new
18 hearing and a new decision.

19 This Court hereby reverses the Commissioner’s decision under sentence four of 42
20 U.S.C. §405(g) with a remand of the cause to the Commissioner for further proceedings.
21 *See Melkonyan v. Sullivan*, 501 U.S. 89 (1991).

22 **IT IS FURTHER ORDERED** the Clerk of the Court shall enter judgment, and
23 close its file on this matter.

24 Dated this 18th day of October, 2017.

25
26 
27 Eric J. Markovich
28 United States Magistrate Judge