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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

<b>CATHLEEN ALCALA HEBERT,</b>	)	<b>NO. CV 16-4901-KS</b>
	)	
<b>Plaintiff,</b>	)	<b>MEMORANDUM OPINION AND ORDER</b>
<b>v.</b>	)	
	)	
<b>NANCY A. BERRYHILL, Acting</b>	)	
<b>Commissioner of Social Security,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

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**INTRODUCTION**

Plaintiff filed a Complaint on July 5, 2016, seeking review of the Commissioner’s denial of her application for Title II disability insurance benefits (“DIB”). (*See* Dkt. No. 1.) On November 29, 2016, defendant filed an Answer to plaintiff’s Complaint. (Dkt. No. 13.) All parties have consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. (*See* Dkt. Nos. 9, 10, 11.) On February 22, 2017, the parties filed a Joint Stipulation (“Joint Stip.”) setting forth the issues and contentions in the case. (*See* Dkt. No. 17.) Plaintiff seeks an order reversing the Commissioner’s decision and

1 remanding this case for an award of benefits, or, in the alternative, remanding for further  
2 proceedings. (See Joint Stip. at 23.) Defendant requests that the decision be affirmed, or the  
3 case remanded to the Agency for further administrative development. (See Joint Stip. at 24-  
4 25.) The Court has taken the matter under submission without oral argument.

## 6 SUMMARY OF ADMINISTRATIVE PROCEEDINGS

7  
8 On February 1, 2013, plaintiff filed her application for DIB, alleging a disability onset  
9 date of January 29, 2012 due to rheumatoid arthritis (“RA”). (See AR 20, 65.) Plaintiff was  
10 born on July 1, 1952, and at the time of her disability onset date she was 59 years old. (See  
11 AR 52, 62, 65.)

12  
13 After initial denials, a hearing was held before an Administrative Law Judge (“ALJ”)  
14 on September 8, 2014. (AR 20.) Also appearing at that hearing were a medical expert,  
15 Dr. Hugh Savage (“ME”), and a vocational expert, Dr. June Hagen (“VE”). (See AR 20, 32.)  
16 Plaintiff was represented at the hearing by “a non-attorney representative.” (AR 20.) At the  
17 time of the hearing, plaintiff was 62 years old.<sup>1</sup> (AR 52.)

18  
19 The ME testified that, based on his review of the record, plaintiff “has rheumatoid  
20 arthritis primarily affecting the right hand and is status-post surgical procedure involving  
21 silastic arthroplasty of the carpal joint in the right hand.” (AR 36.) The ME confirmed that  
22 plaintiff has had a surgery to replace joints in her right hand, surgery on her left ankle and her  
23 right foot, and two shoulder surgeries. (AR 37.) However, the ME opined that plaintiff’s  
24 conditions did not meet or equal any listed impairment. (See AR 37-40.) The ME testified  
25 that “I think essentially it’s a pain case, Judge,” and he said “this calls for an overview in a  
26

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27 <sup>1</sup> Plaintiff was age 59 at the disability onset date of January 29, 2012 and thus classified as a “person of advanced age”  
28 under agency guidelines. See 20 C.F.R. § 404.1563(d). At age 62, her age at the time of the hearing, plaintiff was  
considered a person “closely approaching retirement age.” *Id.* at § 404.1563(d)(4).

1 case pain [sic] why the severity of the limitations indicated may not be fully apparent on the  
2 data but it may be . . . that there's far more than is mentioned in the strict data that  
3 I reviewed." (AR 39.)  
4

5 The ME also testified about his opinion of plaintiff's vocational restrictions, and he  
6 said that surgeries have been "quite effective," but plaintiff could not do light work and  
7 would be restricted to sedentary work. (See AR 40-41.) The ME also opined that "I don't  
8 think she could do keyboard activity continuously or even frankly [sic]," and he said "I think  
9 it would be occasional." (AR 41-42.)  
10

11 The VE testified that plaintiff's past relevant work ("PRW") could be classified as a  
12 "manager, personnel," which is listed in the Dictionary of Occupational Titles ("DOT") as  
13 job no. 166.117-018. (AR 48.) The VE noted that "[m]ost of the places [plaintiff] worked  
14 she described it as sedentary and the most recent one she described it as light as performed."  
15 (AR 48.)  
16

17 The ALJ gave the VE a hypothetical for limited light work with "only occasional  
18 keyboarding and no forceful use [of the hands] like ripping [sic], grasping or torquing," and  
19 avoiding "[f]ine detailed work." (AR 49.) The VE opined that, with that hypothetical,  
20 plaintiff could do her past relevant jobs, noting that at one job plaintiff "did writing or typing  
21 two hours a day," and at another job plaintiff did writing or typing for "two-and-a-half hours  
22 a day." (See AR 49-50.) The VE opined that plaintiff's PRW involved "probably more  
23 mouse work than anything . . . [and] although there's some typing, it's not like production  
24 typing." (AR 50.) The VE also confirmed to the ALJ that her description of plaintiff's PRW  
25 was "consistent with the way . . . it's typically performed." (AR 51.)  
26

27 After the ME had testified and the VE had initially testified, Plaintiff testified at the  
28 hearing. (See AR 51 *et seq.*) Plaintiff testified that she was 62 years old at the time of the

1 hearing, and she said she had graduated from high school and gone on to take a few junior  
2 college classes. (AR 52.) Plaintiff testified that in her last job she worked at a company  
3 called “Elite Aviation” in “HR and payroll.” (AR 55-56.) Before that, she had a number of  
4 jobs, and at all of them she was a “human resources manager” and did “payroll.” (See AR  
5 56-57.)

6  
7 She said she had surgery on the joints in her right hand in January 2012, and  
8 apparently she left her job after that. (See AR 52-53.) She attempted to return to work in  
9 April 2012, after her surgery, and she worked again for four or five weeks, but she had what  
10 she described as a “severe rheumatic flare-up” and “Dr. Sussman” (her treating  
11 rheumatologist) “put me out on leave,” and she left her job around the end of May or early  
12 June in 2012. (See AR 52-53.) Plaintiff testified that Dr. Sussman told her “you can’t be in  
13 an environment like that. It will create issues with your arthritis.” (AR 53.) Plaintiff filed a  
14 Workers’ Compensation claim with her last employer, and that claim was eventually settled,  
15 and plaintiff received a monetary payment. (AR 53; *see also* AR 59, 169.)

16  
17 In response to questioning from her representative, plaintiff testified that she could  
18 only type “[a] line or two,” and she said that “after a minute or two I start getting severe []  
19 pain shooting up these two joints on my left hand [sic], first finger and second finger,” and  
20 she would have to stop. (AR 57-58.) Plaintiff also said her arthritis limits her ability to use a  
21 smartphone because her hand starts hurting as she holds it, but she admitted that she has a  
22 headset, saying “I have one I could use,” but she did not definitively say if she had ever used  
23 it. (See AR 58.) Plaintiff said that “with my joint replacement, my fingers move up and  
24 down to grasp something large,” but “[t]hey don’t spread sideways to reach a key like you  
25 have to do when you’re typing.” (AR 59.) She said she could only type for a few minutes  
26 before pain sets in. (AR 59.)

1 Plaintiff testified that she could not go back to the type of work she was doing as a  
2 “human resources manager” because “nowadays” it required too much typing and use of a  
3 mouse and repetitive computer use, and that aggravated the joints in her hand. (AR 54.) In  
4 particular, plaintiff said that “in my position as a human resources manager, . . . I’m required  
5 to be on the computer and typing or doing a mouse a lot during the day because I also did the  
6 payroll.” (AR 54.) Plaintiff said “my doctor at one point had mentioned that he felt that the  
7 repetitive use of the computer and the mouse probably is what aggravated the joints in this  
8 hand [sic; assumedly her right hand] because it was so much worse in this hand [sic].” (AR  
9 54.) Plaintiff said to the ALJ: “you can look – actually see today my wrist is very swollen  
10 compared to this one. My right thumb is extremely swollen . . . that I would’ve had to call in  
11 sick today. There was no way I could go to work and be on a computer all day.” (AR 54-55.)  
12 She said “if I sit down now to type two lines to a personal email or something, I get severe  
13 pains in these two fingers,” and she said “the constant repetitive motion of a mouse will cause  
14 my wrist to swell . . . .” (AR 54.) Plaintiff testified that she has “ongoing” problems with  
15 rheumatoid arthritis flare-ups and she said “it has progressively gotten worse.” (AR 55.)

16  
17 After plaintiff’s testimony, plaintiff’s representative asked the VE whether, with “the  
18 RFC that was in the first hypothetical,” and with a restriction that “the person should avoid  
19 typing,” plaintiff would be able to perform her PRW, and the VE said “no.” (See AR 62.)  
20 The VE also confirmed that anything more than “occasional typing” would be precluded.  
21 (AR 62.)

### 22 23 **SUMMARY OF ADMINISTRATIVE DECISION**

24  
25 On October 14, 2014, the ALJ issued an opinion denying plaintiff’s application for  
26 DIB at step four of the five-step sequential evaluation. (See AR 20-26.) The ALJ found that  
27 plaintiff had not engaged in substantial gainful activity since January 29, 2012, plaintiff’s  
28 alleged onset of disability date. (See AR 20-26.)

1           The ALJ found that plaintiff had four severe impairments: (1) rheumatoid arthritis; (2)  
2 metacarpal joint surgery of the right hand; (3) “status post 2 right shoulder surgeries”; and (4)  
3 post right and left ankle surgeries. (AR 22.)  
4

5           The ALJ summarized plaintiff’s testimony at the hearing by noting that she stopped  
6 working due to a stressful work environment, which caused her to have flare-ups of her  
7 rheumatoid arthritis, and she subsequently filed a Workers’ Comp claim. (See AR 23.) The  
8 ALJ noted that plaintiff said her arthritis has gotten progressively worse, and she experiences  
9 pain when she uses a computer for even a few minutes. (See AR 23.) However, the ALJ  
10 found plaintiff’s statements about the intensity, persistence, and limiting effects of her  
11 symptoms “not entirely credible.” (AR 24.) In particular, the ALJ credited the testimony  
12 from the ME, Dr. Savage, who found that plaintiff was capable of performing a restricted  
13 range of light work. (AR 25.) The ALJ noted that plaintiff indicated in a report dated  
14 April 15, 2013 that “she was able to run errands, use the computer, perform light cooking,  
15 care for her pets, perform most of her own personal self-care functions, do the laundry, drive  
16 a car, shop, and handle her own finances.” (AR 25, citing Exhibit 6E [AR 208-15].)  
17 Accordingly, the ALJ found Dr. Savage’s assessment of plaintiff’s abilities to be consistent  
18 with plaintiff’s description of her daily functioning. (AR 25.) The ALJ said that “[t]herefore,  
19 the weight of the evidence clearly does not support the extreme limitations alleged by the  
20 claimant and her treating physicians.” (AR 25.)  
21

22           The ALJ went on to find that plaintiff has the residual functional capacity (“RFC”) to  
23 perform light work with certain restrictions which precluded “any work involving lifting or  
24 carrying more than 10 pounds; lifting more than 5 pounds over the shoulder with the right  
25 upper extremity; more than frequent reaching, handling or fingering; more than occasional  
26 keyboarding; any fine detailed manipulative work; and any work involving forceful use of the  
27 upper extremities.” (AR 23.)  
28

1 Based on the VE's testimony, the ALJ found that plaintiff has the RFC to perform her  
2 PRW as a "personnel manager," DOT no. 166.117-018, which the ALJ described as  
3 "sedentary to light as actually performed." (AR 25.) The ALJ also stated that, based on the  
4 VE's testimony, plaintiff "would be capable of returning to her past relevant work as she  
5 actually performed it, and as it is generally performed in the economy." (AR 25.) The ALJ  
6 found that the VE's testimony was in accordance with the DOT. (AR 26, citing SSR 00-4p.)  
7 Thus, the ALJ denied plaintiff's application at step four of the sequential evaluation, and did  
8 not proceed to step five. (*See* AR 26.)  
9

#### 10 DISPUTED ISSUES

11 The Joint Stipulation of the parties presents the following disputed issues:  
12

13 (1) Whether the ALJ properly evaluated the opinion from Dr. Edward Haronian, a  
14 treating physician who saw plaintiff four times in connection with her Workers'  
15 Compensation claim; and  
16

17 (2) Whether the ALJ properly evaluated plaintiff's testimony and statements about  
18 her ability to type, use a keyboard and computer, and perform her past relevant work as a  
19 personnel manager. (*See* Joint Stip. at 4.)  
20

21 Plaintiff argues that the ALJ's errors warrant reversal and an immediate  
22 award of benefits, or alternatively, remand for further administrative proceedings.  
23 (Joint Stip. at 23.) Defendant maintains that the ALJ's decision is free of legal error  
24 and should be affirmed. (*Id.* at 24.) Further, Defendant contends that this case does  
25 not present the type of rare circumstance where the "credit-as-true" doctrine applies,  
26 therefore, if any reversible error is found, the appropriate remedy is to remand the  
27 matter for further proceedings. (*Id.*)  
28

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## STANDARD OF REVIEW

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2  
3 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to  
4 determine whether it is free from legal error and supported by substantial evidence in the  
5 record as a whole. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). “Substantial evidence is  
6 ‘more than a mere scintilla but less than a preponderance; it is such relevant evidence as a  
7 reasonable mind might accept as adequate to support a conclusion.’” *Gutierrez v. Comm’r of*  
8 *Soc. Sec.*, 740 F.3d 519, 522-23 (9th Cir. 2014) (internal citations omitted). “Even when the  
9 evidence is susceptible to more than one rational interpretation, we must uphold the ALJ’s  
10 findings if they are supported by inferences reasonably drawn from the record.” *Molina v.*  
11 *Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012).

12  
13 Although this Court cannot substitute its discretion for the Commissioner’s, the Court  
14 nonetheless must review the record as a whole, “weighing both the evidence that supports and  
15 the evidence that detracts from the [Commissioner’s] conclusion.” *Lingenfelter v. Astrue*,  
16 504 F.3d 1028, 1035 (9th Cir. 2007) (internal quotation marks and citation omitted);  
17 *Desrosiers v. Sec’y of Health and Hum. Servs.*, 846 F.2d 573, 576 (9th Cir. 1988). “The ALJ  
18 is responsible for determining credibility, resolving conflicts in medical testimony, and for  
19 resolving ambiguities.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

20  
21 The Court will uphold the Commissioner’s decision when the evidence is susceptible  
22 to more than one rational interpretation. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir.  
23 2005). However, the Court may review only the reasons stated by the ALJ in his decision  
24 “and may not affirm the ALJ on a ground upon which he did not rely.” *Orn*, 495 F.3d at 630;  
25 *see also Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). The Court will not reverse  
26 the Commissioner’s decision if it is based on harmless error, which exists if the error is  
27 “‘inconsequential to the ultimate nondisability determination,’ or if despite the legal error,  
28



1 ‘the agency’s path may reasonably be discerned.’” *Brown-Hunter v. Colvin*, 806 F.3d 487,  
2 492 (9th Cir. 2015) (internal citations omitted).

## 3 4 DISCUSSION

### 5 6 **I. Disputed Issue No. 2: Plaintiff’s Credibility About Pain, Computer Use**

7  
8 The Court will consider Disputed Issue No. 2 here first, since, as discussed below, the  
9 Court finds that issue dispositive.

10  
11 Plaintiff argues that the ALJ improperly discounted the credibility of plaintiff’s  
12 testimony and her statements in the record about her ability to do her past relevant work and,  
13 in particular, her ability to type and use a computer. (*See* Joint Stip. at 12-17, 21-22.)  
14 Plaintiff argues that the ALJ improperly and unconvincingly relied on plaintiff’s activities of  
15 daily living to find that her testimony about her inability to perform her past relevant work  
16 was not credible. (*See* Joint Stip. at 14-15.) Plaintiff also complains that the ALJ also  
17 improperly rejected plaintiff’s testimony because it was not supported by the medical  
18 evidence in the record. (*See* Joint Stip. at 14.) In related arguments in support of Disputed  
19 Issue No. 1, plaintiff argues that the ALJ did not properly credit notes from plaintiff’s treating  
20 Workers’ Compensation physician, Dr. Edward Haronian, who opined that plaintiff “should  
21 not type” and should “avoid typing.” (*See* Joint Stip. at 5-7; *see also* AR 520-27.) Plaintiff  
22 argues that, because the ALJ’s reasons for rejecting plaintiff’s testimony about her pain and  
23 her inability to effectively type and use a computer were not sufficiently “clear and  
24 convincing,” the ALJ’s credibility analysis is flawed. (*See* Joint Stip. at 13-14, citing  
25 *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 693 (9th Cir. 2009).)

26  
27 Defendant argues that the record shows “consistent evidence of improvement, well-  
28 controlled symptoms, and satisfaction with the progress of treatment,” and defendant argues

1 that this evidence “undermine[s] plaintiff’s allegations of disabling symptoms.” (Joint Stip.  
2 at 118-19, citing AR 267, 364, 390, 404, 423, 502, 517, 543, and 548.) Defendant also argues  
3 that the ALJ legitimately found that plaintiff’s treatment “was generally conservative,” and  
4 that it was “effective in resolving her complaints.” (Joint Stip. at 18, citing AR 23-24.)  
5

#### 6 **A. Applicable Law**

7

8 The determination of credibility and the resolution of conflicts in the testimony are  
9 functions reserved to the ALJ. *Morgan v. Comm’r of Soc. Sec.*, 169 F.3d 595, 599 (9th Cir.  
10 1999); *Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir. 1996). In general, an ALJ’s assessment of  
11 credibility should be given great weight. *Nyman v. Heckler*, 779 F.2d 528, 531 (9th Cir.  
12 1985). *See also Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (“An ALJ cannot be  
13 required to believe every allegation of disabling pain, or else disability benefits would be  
14 available for the asking [].”).  
15

16 To determine whether a claimant’s testimony regarding subjective pain or symptoms is  
17 credible, an ALJ must engage in a two-step analysis. *Lingenfelter*, 504 F.3d at 1035-36.  
18 First, the ALJ must determine whether the claimant has presented objective medical evidence  
19 of an underlying impairment “which could reasonably be expected to produce the pain or  
20 other symptoms alleged.” *Lingenfelter*, 504 F.3d at 1036 (quoting *Bunnell v. Sullivan*, 947  
21 F.2d 341, 344 (9th Cir.1991) (en banc) (internal quotation marks omitted)). Second, if the  
22 claimant meets this first test, and there is no evidence of malingering, “the ALJ can reject the  
23 claimant’s testimony about the severity of her symptoms only by offering specific, clear and  
24 convincing reasons for doing so.” *Lingenfelter*, 504 F.3d at 1036 (citing *Smolen v. Chater*, 80  
25 F.3d 1273, 1281 (9th Cir. 1996)).  
26

27 When analyzing a claimant’s subjective symptoms of pain, the ALJ may consider  
28 factors relevant to the symptoms such as, *inter alia*, the claimant's daily activities;

1 precipitating and aggravating factors; the type, dosage, effectiveness and side effects of  
2 medication; treatment, other than medication, that the claimant receives or has received for  
3 relief of pain or other symptoms; or any other measures that the claimant has used to relieve  
4 pain or symptoms. See 20 C.F.R. § 404.1529. The ALJ may employ “ordinary techniques of  
5 credibility evaluation,” such as prior inconsistent statements concerning symptoms, testimony  
6 that appears less than candid, or unexplained or inadequately explained failure to seek  
7 treatment or follow a prescribed course of treatment, in assessing a claimant’s credibility. See  
8 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008) (citations omitted).

9  
10 However, once a claimant has presented medical evidence of an underlying  
11 impairment, the ALJ may not discredit the claimant’s testimony regarding subjective pain and  
12 other symptoms merely because the symptoms, as opposed to the impairments, are  
13 unsupported by objective medical evidence. *Lingenfelter*, 504 F.3d at 1035-36; *Reddick v.*  
14 *Chater*, 157 F.3d 715, 722 (9th Cir. 1998). “[T]he ALJ can reject the claimant’s testimony  
15 about the severity of [her] symptoms only by offering specific, clear and convincing reasons  
16 for doing so.” *Lingenfelter*, 504 F.3d at 1036 (quoting *Smolen v. Chater*, 80 F.3d 1273, 1281  
17 (9th Cir. 1996).)

18  
19 The claimant has the burden at step four to prove that she cannot perform her past  
20 relevant work, either as she “actually performed” it, or as it is “generally performed” in the  
21 national economy. See *Stacy v. Colvin*, 825 F.3d 563, 569-70 (9th Cir. 2016) (citing, *inter*  
22 *alia*, *Lewis v. Barnhart*, 281 F.3d 1081, 1083 (9th Cir. 2002)); see also SSR 82-61. The  
23 Ninth Circuit has said that “the ‘generally performed test’ is designed for situations where a  
24 claimant’s past job was especially demanding when compared with industry standards.”  
25 *Stacy*, 825 F.3d at 569 (citation omitted). Furthermore, an ALJ may not classify a past  
26 occupation at step four “according to the least demanding function.” *Stacy*, *id.* (citations  
27 omitted).

1           **B.     Analysis**

2  
3           The Court finds that the ALJ has not provided sufficiently “specific, clear and  
4 convincing reasons” for discounting plaintiff’s credibility and rejecting plaintiff’s particular  
5 complaints here.

6  
7           Because the ALJ denied plaintiff’s application at step four, and found that plaintiff  
8 could perform her PRW as she actually performed it and as it is generally performed, the  
9 specific credibility questions relevant here concern plaintiff’s reasons for leaving her last job,  
10 and her assertions that she cannot type, use a keyboard, or operate a computer well enough to  
11 work as a personnel manager. In other words, the salient issue is whether plaintiff can  
12 perform the typing, keyboarding, and computer demands of her PRW.

13  
14           As noted, the ALJ found that plaintiff’s medically determinable impairments could  
15 reasonably be expected to cause her alleged symptoms. (AR 24.) However, the ALJ found  
16 that plaintiff was “not entirely credible” for a number of reasons. Among those, the ALJ  
17 noted that Dr. Sussman, the treating rheumatologist, had commented that plaintiff’s RA was  
18 “well under control with medication,” and he set forth “generally benign clinical findings.”  
19 (AR 25.) The ALJ opined that records from Dr. Richard Landers, plaintiff’s primary care  
20 physician, showed “conservative” treatment, “mainly for various gastrointestinal complaints.”  
21 (AR 25.) The ALJ also noted that plaintiff’s activities of daily living showed that she  
22 plaintiff “able to run errands, use the computer, perform light cooking, care for her pets,  
23 perform most of her own personal self-care functions, do the laundry, drive a car, shop, and  
24 handle her own finances.” (AR 25, citing Exhibit 6E [AR 208-15].) The ALJ relied on the  
25 opinion of the ME, Dr. Savage, saying that “his assessment is consistent with the claimant’s  
26 own description of her daily functioning.” (AR 25.) The ALJ further determined that an  
27 opinion from Dr. James Wickman, a State agency medical consultant, that allowed for light  
28 exertion and no more than “occasional handling and fingering,” contributed to “the weight of

1 the evidence” that did not “support the extreme limitations alleged by the claimant and her  
2 treating physicians.” (AR 25.)

3  
4 The Court, however, finds that none of the reasons advanced by the ALJ are specific,  
5 clear, and convincing to show that plaintiff retains the ability to do her past relevant work  
6 and, in particular, to meet the typing, keyboarding, and computer use demands of her PRW,  
7 either as she actually performed it or as the DOT describes it.

8  
9 First, the ALJ made no mention that plaintiff was malingering when she stopped  
10 working at her former job. Records show a clear history of rheumatoid arthritis in both  
11 hands, and surgery on the right hand, followed later by an RA flareup that led to plaintiff  
12 leaving her job after an unsuccessful attempt at returning to work around May or June 2012.  
13 Plaintiff’s treating orthopedic surgeon, Dr. Adam Dietz, opined in November 2013 that  
14 plaintiff could *not* do “simple grasping” or “fine manipulation” with either hand, and could  
15 not use her hands for “repetitive motion tasks” such as “writing, typing, assembly, etc.” (AR  
16 426.) In January 2014, plaintiff’s treating rheumatologist, Dr. Sussman, offered the same  
17 evaluation, stating that plaintiff could not do “simple grasping” or “fine manipulation” with  
18 either hand, and could not use her hands for “repetitive motion tasks” such as “writing,  
19 typing, assembly, etc.” (AR 447.) Plaintiff’s treating WC physician, Dr. Haronian, told her  
20 in February 2014, after her second examination with him, that she “should not type,” and Dr.  
21 Haronian went on, following two subsequent examinations in April and June 2014, to tell her  
22 that she should “avoid typing.” (See AR 525, 522, 520.)

23  
24 Defendant complains that Dr. Haronian’s instruction to “avoid typing” is conclusory  
25 (see Joint Stip. at 8-9), but in this context it is relevant to plaintiff’s own subjective  
26 complaints. Moreover, the Court notes that when plaintiff’s representative asked the VE at  
27 the hearing whether plaintiff could perform her PRW with a restriction to “avoid typing,” the  
28 VE apparently found the question sufficiently specific to answer that such a restriction would

1 preclude plaintiff's PRW. (See AR 62.) Together, all of these findings support plaintiff's  
2 credibility regarding her complaints that she suffers from RA pain that precludes typing and  
3 computer use, and the ALJ did not specifically address any of them.  
4

5 Furthermore, the ALJ did not challenge any of plaintiff's assertions about what she  
6 actually did at her PRW. Most significantly, plaintiff testified that her PRW was stressful,  
7 which could lead to RA flareups, and she said that at her PRW she was not only a human  
8 resources manager but she "did the payroll" as well. (See AR 54.) She testified that her  
9 PRW required her "to be on the computer and typing or doing a mouse a lot during the day,"  
10 and the "repetitive motions" contributed to her RA flareups. (AR 54.)  
11

12 The ALJ's findings about plaintiff's daily activities are also not specific, clear, and  
13 convincing reasons to undermine plaintiff's credibility about her ability to handle the typing,  
14 keyboarding, and computer requirements of her PRW as she actually performed it. The  
15 ALJ's findings that plaintiff was able to run errands, perform light cooking, care for her pets,  
16 care for herself, drive a car, and handle her own finances do not address plaintiff's ability to  
17 type or use a computer, which is the salient issue in determining whether plaintiff can return  
18 to her PRW. The ALJ's finding in her list of daily activities that plaintiff can still "use the  
19 computer" is conclusory and unsupported, and in particular does not explain how plaintiff's  
20 ability to use a computer for intermittent personal purposes would transfer to her PRW and  
21 allow her to meet the typing and keyboarding demands of her PRW. See *Fair v. Bowen*, 885  
22 F.2d 597, 603 (9th Cir. 1989) (home activities must be transferable to work setting in order to  
23 discredit claimant's allegations of disabling excess pain). Indeed, when asked at the hearing  
24 about her PRW as she actually performed it, plaintiff explained:  
25

26 Well, in my position as a human resources manager, . . . I'm required to be on  
27 the computer and typing or doing a mouse a lot during the day because I also  
28 did the payroll. So I had to enter all the data into the payroll system which was

1 all based on the internet. And my doctor at one point had mentioned that he felt  
2 that the repetitive use of the computer and the mouse probably is what  
3 aggravated the joints in this hand because it was so much worse than this hand.  
4

5 (AR 54.) The ALJ offers no explanation at all, much less specific clear and convincing  
6 reasons, why this testimony is not credible or how it is contradicted by the record medical  
7 evidence. In sum, the ALJ has not shown by specific, clear, and convincing reasons that  
8 plaintiff has the ability to return to her PRW and perform the typing, keyboard, and computer  
9 demands of that job as she “actually” performed it.  
10

11 The ALJ also found that plaintiff could perform the personnel manager, DOT no.  
12 166.117-018, as it was “generally performed” in the national economy. The Court’s review  
13 of that DOT job description reveals that it entails, among other things, the following: plans  
14 and carries out policies relating to all phases of personnel activity; keeps record of insurance  
15 coverage, pension plan, and personnel transactions; prepares budget of personnel operations;  
16 writes notices for employees separating with cause; prepares reports and recommends  
17 procedures to reduce absenteeism; and may administer manual and dexterity tests to  
18 applicants. *See* DOT no. 166.117-018. The job description also states “[m]ay prepare budget  
19 of personnel operations, using computer terminal.” *See id.* The job description also states  
20 that it is “sedentary work,” for which “occasional” activity is defined as “up to 1/3 of the  
21 time,” and “frequent” activity is defined as “from 1/3 to 2/3 of the time. *See id.* The job  
22 description also states that “fingering” is required “frequently,” and “[e]xists from 1/3 to 2/3  
23 of the time.” *See id.*  
24

25 At the hearing, the VE testified that most of plaintiff’s past jobs were as a personnel  
26 manager, which the VE thought were “sedentary” jobs based on plaintiff’s descriptions, and  
27 plaintiff’s last, most recent job was “light as performed” per plaintiff’s description. (AR 48.)  
28 The ALJ presented a hypothetical to the VE that included “occasional keyboarding.” (AR

1 49.) The VE stated that “the only thing that is of issue here is the keyboarding.” (AR 50.)  
2 However, the VE noted that plaintiff had stated in her applications that at one job (apparently  
3 “Job Title No. 1” in the record) she did writing or typing for “two hours a day,” and at “job  
4 two” (apparently “Job Title No. 2” in the record) plaintiff did the same thing for “two-and-a-  
5 half hours a day.” (AR 50, citing Exhibit 7E [AR 216-23].)  
6

7 The Court’s own review of the record reveals, however, that the ALJ has again not  
8 provided specific, clear, and convincing reasons for relying on the VE’s testimony and  
9 discounting plaintiff’s credibility. The forms that the VE referred to, for “Jobs No. 1 and 2,”  
10 do not support the finding that plaintiff can do “occasional keyboarding,” that, is keyboarding  
11 for up to 1/3 of an 8-hour day (or, logically, about 2.66 hours in an eight-hour day). Rather,  
12 the forms ask “how many total hours each day did you . . . [w]rite, type or handle small  
13 objects?” (*See, e.g.*, AR 217, 219.) “Job No. 1” apparently refers to plaintiff’s last job at  
14 Elite Aviation, where she worked from March 2007 until she stopped working, and she states  
15 she did “writing, typing, or handling small objects” for 2 hours a day in that job. (*See* AR  
16 216-17.) “Job No. 2” apparently refers to the job that plaintiff had before her job at Elite  
17 Aviation, a job where she worked for about five months, and where she did “writing, typing,  
18 or handling small objects” for 2-1/2 hours a day. (*See* AR 216, 218.) Accordingly, since the  
19 forms list writing, typing, and handling small objects together and in the alternative, it is  
20 uncertain how much of the two or two-and-a-half hours total plaintiff devoted to each of the  
21 three tasks. In any event, it is certain that the two or two-and-a-half hours still does not rise  
22 to the 2.66 hours that plaintiff must be capable of in order to have the capacity for  
23 “occasional” typing, keyboarding, and computer use.  
24

25 Furthermore, it is unclear just how much time “typing, keyboarding, and computer  
26 use” the DOT no. 166.117-018 personnel job requires. As far as the Court is aware, the DOT  
27 job description does not list those specific categories or state time requirements for any of  
28 those specific activities. The job description only sets forth an introductory paragraph which,



1 as noted above, describes activities such as keeping records, preparing reports, and possible  
2 use of a computer terminal. Since the ALJ did not clear up these ambiguities with the VE, the  
3 VE's testimony does not constitute the "specific, clear, and convincing" reasons needed to  
4 discredit plaintiff's complaints about the effect that her RA has on her typing and computer  
5 use.

6  
7 For all of these reasons, the Court finds that the ALJ did not provide "specific, clear,  
8 and convincing" reasons for discounting plaintiff's credibility and the ALJ's denial at step  
9 four is not supported by substantial evidence in the record.

10  
11 **II. Disputed Issue No. 1: Records from WC Treating Physician Dr. Haronian**

12  
13 Because the ALJ's analysis of plaintiff's credibility was not supported by the required  
14 "specific, clear, and convincing reasons," it cannot be said that, based on the current record,  
15 that plaintiff can do her past relevant work. Plaintiff also argues in Disputed Issue No. 1 that  
16 the ALJ did not properly reject the opinion from her treating Workers' Compensation  
17 physician, Dr. Edward Haronian, who opined that plaintiff should "avoid typing." (*See R*  
18 *520-27.*) Since Dr. Haronian's opinion regarding typing is only relevant now to the analysis  
19 at step four about whether plaintiff can do her PRW, Disputed Issue No. 1 is moot at present.  
20 Accordingly, the Court declines to consider Disputed Issue No. 1 at this time.

21  
22 **IV. Remanded for Further Proceedings Is Warranted**

23  
24 Because the ALJ erred at step four, the ALJ did not proceed to a step five analysis  
25 about whether plaintiff can do other jobs that exist in significant numbers in the national  
26 economy. Further, the record is not fully developed with respect to how much typing or  
27 keyboard work the DOT no. 166.117-018 personnel job requires. As a result, the Court  
28 cannot definitely determine that plaintiff is disabled. Thus, this case does not present the rare

1 circumstance where a remand for immediate benefits is required. Rather, the Court finds that  
2 remand for further proceedings is the appropriate remedy here. *See Treichler v. Comm'r of*  
3 *Soc. Sec.*, 775 F.3d 1090, 1100 (9th Cir. Dec. 24, 2014) (remand for an award of benefits is  
4 only appropriate in “rare circumstances,” where record has been thoroughly developed and no  
5 useful purpose would be served by further administrative proceedings).

6  
7 **CONCLUSION**  
8

9 For the reasons stated above, IT IS ORDERED that the decision of the Commissioner  
10 is REVERSED, and this case is REMANDED for further proceedings consistent with this  
11 Memorandum Opinion and Order.

12  
13 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of this  
14 Memorandum Opinion and Order and the Judgment on counsel for plaintiff and for  
15 defendant.

16  
17 LET JUDGMENT BE ENTERED ACCORDINGLY.  
18

19 Date: May 8, 2017



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21 KAREN L. STEVENSON  
22 UNITED STATES MAGISTRATE JUDGE  
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