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

KELLY J. M.,<sup>1</sup>

Plaintiff,

v.

KILOLO KIJAKAZI, Acting  
Commissioner of Social Security,

Defendant.

Case No. 5:20-cv-02035-AFM

**MEMORANDUM OPINION AND  
ORDER AFFIRMING DECISION  
OF THE COMMISSIONER**

Plaintiff filed this action seeking review of the Commissioner's final decision denying her application for supplemental security income. In accordance with the case management order, the parties have filed briefs addressing the merits of the disputed issues. The matter is now ready for decision.

**BACKGROUND**

On September 14, 2017, Plaintiff filed an application for supplemental security income. (AR 15.) Plaintiff's application was denied initially and on reconsideration. On February 21, 2020, Plaintiff appeared with counsel at a hearing conducted before

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<sup>1</sup> Plaintiff's name has been partially redacted in accordance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 an Administrative Law Judge (“ALJ”). At the hearing, Plaintiff and a vocational  
2 expert (“VE”) testified. (AR 36-63.) On March 31, 2020, the ALJ issued a decision  
3 denying Plaintiff’s claims. (AR 12-35.)<sup>2</sup> The Appeals Council denied review,  
4 rendering the ALJ’s decision the final decision of the Commissioner. Plaintiff now  
5 seeks judicial review of the Commissioner’s decision.

### 6 **DISPUTED ISSUES**

- 7 1. Whether the ALJ failed to fully and fairly develop the record by not  
8 obtaining consultative examinations.
- 9 2. Whether the ALJ failed to properly consider degenerative changes of  
10 Plaintiff’s right shoulder.

### 11 **STANDARD OF REVIEW**

12 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to  
13 determine whether the Commissioner’s findings are supported by substantial  
14 evidence and whether the proper legal standards were applied. *See Treichler v.*  
15 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014). Substantial  
16 evidence means “more than a mere scintilla” but less than a preponderance. *See*  
17 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Lingenfelter v. Astrue*, 504 F.3d  
18 1028, 1035 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a  
19 reasonable mind might accept as adequate to support a conclusion.” *Richardson*, 402  
20 U.S. at 401. In the social security context, the substantial evidence threshold is “not

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21  
22 <sup>2</sup> The five-step sequential evaluation process was followed in the ALJ’s decision here and consists  
23 of the following: Step one: Is the claimant engaging in substantial gainful activity? If so, the  
24 claimant is found not disabled. If not, proceed to step two. Step two: Does the claimant have a  
25 “severe” impairment? If so, proceed to step three. If not, then a finding of not disabled is  
26 appropriate. Step three: Does the claimant’s impairment or combination of impairments meet or  
27 equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1? If so, the claimant is  
28 automatically determined disabled. If not, proceed to step four. Step four: Is the claimant capable  
of performing his past work? If so, the claimant is not disabled. If not, proceed to step five. Step  
five: Does the claimant have the residual functional capacity to perform any other work? If so, the  
claimant is not disabled. If not, the claimant is disabled. *See Lester v. Chater*, 81 F.3d 821, 828  
n.5 (9th Cir. 1995).

1 high.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153 (2019). This Court must review the  
2 record as a whole, weighing both the evidence that supports and the evidence that  
3 detracts from the Commissioner’s conclusion. *Lingenfelter*, 504 F.3d at 1035. Where  
4 evidence is susceptible of more than one rational interpretation, the Commissioner’s  
5 decision must be upheld. *See Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).

## 6 DISCUSSION

### 7 I. Whether the ALJ Sufficiently Developed the Record.

8 Plaintiff contends that the ALJ erred by not sufficiently developing the record.  
9 In particular, Plaintiff argues that issues regarding her severe pain and her shoulder  
10 impairments required the ALJ to obtain consultative examinations. After review of  
11 the record and the ALJ’s decision, the Court is not persuaded by Plaintiff’s  
12 arguments.

13 The ALJ “is not a mere umpire” at an administrative proceeding. *Higbee v.*  
14 *Sullivan*, 975 F.2d 558, 561 (9th Cir. 1992) (per curiam); *see also Sims v. Apfel*, 530  
15 U.S. 103, 110-111 (2000) (“Social Security proceedings are inquisitorial rather than  
16 adversarial.”). Thus, an ALJ has a “duty to fully and fairly develop the record and to  
17 assure that the claimant’s interests are considered.” *Tonapetyan v. Halter*, 242 F.3d  
18 1144, 1150 (9th Cir. 2001) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1288 (9th Cir.  
19 1996)). This duty arises when the evidence in the record is ambiguous or is  
20 “inadequate to allow for a proper evaluation.” *Mayes v. Massanari*, 276 F.3d 453,  
21 459-460 (9th Cir. 2001). “An ALJ’s duty to develop the record further is triggered  
22 only when there is ambiguous evidence or when the record is inadequate to allow for  
23 proper evaluation of the evidence.” *Mayes*, 276 F.3d at 460. *See also* 20 C.F.R.  
24 § 404.1519a (a consultative examination should be purchased when additional  
25 evidence is needed which is not in the medical record; there is a conflict,  
26 inconsistency, ambiguity or insufficiency in the evidence which must be resolved; or  
27 when there is an indication that there is a change in a claimant’s condition which is  
28 likely to affect their ability to work).

1 Here, the record does not reveal ambiguity or insufficient evidence that  
2 prevented proper evaluation of the evidence by the ALJ. With regard to the issue of  
3 her severe pain, Plaintiff points to records from 2017 (*e.g.*, AR 690, 980, 988, 993-  
4 994) that refer to questions about the source of the pain and the possibility of somatic  
5 symptom disorder (*i.e.*, excessive focus on physical symptoms, such as pain, that  
6 causes emotional distress). However, later treatment records from 2018 and 2019  
7 (*e.g.*, AR 1112-1142; 1155; 1251-1259) clearly state that Plaintiff has small fiber  
8 neuropathy, and the ALJ found this to be a severe impairment at Step Two of the  
9 sequential evaluation (AR 17). In addition, at the beginning of the administrative  
10 hearing, Plaintiff’s counsel presented the issue to the ALJ as whether “[t]he physical  
11 problems suffered by [Plaintiff] would impact her ability to work at this time.” (AR  
12 42.) The ALJ’s decision fully reviews numerous medical records regarding  
13 Plaintiff’s pain assertions, and there has been no showing of ambiguity that would  
14 necessitate a consultative examination on this subject. As a further argument,  
15 Plaintiff contends that the ALJ should have obtained a consultative examination  
16 regarding her right shoulder impairment. But the medical record was clear that  
17 Plaintiff has degenerative changes in that shoulder, which the ALJ found to be severe  
18 at Step Two. (AR 17.) Although Plaintiff argues that a consultative examination was  
19 needed to determine if a limitation on reaching should have been included in the  
20 residual functional capacity (“RFC”) finding, the ALJ limited Plaintiff to light work  
21 (including limits on lifting) after analysis of medical records regarding Plaintiff’s  
22 condition including her shoulder and extremities, and there has been no showing of  
23 an ambiguity in the evidence regarding the shoulder impairment that required further  
24 development of the record by the ALJ.<sup>3</sup>

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26 <sup>3</sup> It is also noted that the ALJ kept the record open for two weeks following the February 21, 2020  
27 administrative hearing for submission of additional medical records and a statement from Plaintiff’s  
28 mother. (AR 62.) After that occurred, Plaintiff’s counsel wrote to the ALJ, stating “This will  
confirm that our office has now submitted all requested medical evidence . . . and the record is now  
complete to the best of our knowledge . . . I respectfully request that the post development period

1 **II. Whether the ALJ Properly Considered Degenerative Changes in**  
2 **Plaintiff's Right Shoulder.**

3 In her second issue, Plaintiff contends that the ALJ did not make a proper  
4 assessment of Plaintiff's RFC. At Step Two of the sequential evaluation, the ALJ  
5 determined that the plaintiff's degenerative changes of the right shoulder were a  
6 severe impairment but, according to Plaintiff, the ALJ erred by failing to provide  
7 limitations in the RFC related to this impairment.

8 A claimant's RFC is the most a claimant can still do despite his limitations.  
9 *Smolen v. Chater*, 80 F.3d 1273, 1291 (9th Cir. 1996) (citing 20 C.F.R.  
10 §§ 404.1545(a); 416.945(a)); Social Security Ruling ("SSR") 96-8p (an RFC  
11 assessment is ordinarily the "maximum remaining ability to do sustained work  
12 activities in an ordinary work setting on a regular and continuing basis," meaning "8  
13 hours a day, for 5 days a week, or an equivalent work schedule"). In determining a  
14 claimant's RFC, the ALJ must consider all relevant evidence in the record, including  
15 both medical evidence and opinions. *See Robbins v. Soc. Sec. Admin.*, 466 F.3d 880,  
16 883 (9th Cir. 2006); 20 C.F.R. §§ 404.1545(a)(3). If an RFC assessment conflicts  
17 with an opinion from a medical source, the ALJ "must explain why the opinion was  
18 not adopted." *Wiles v. Berryhill*, 2017 WL 5186333, at \*3 (C.D. Cal. Nov. 8, 2017)  
19 (quoting SSR 96-8p); *see also Vincent v. Heckler*, 739 F.2d 1393, 1394-1395 (9th  
20 Cir. 1984) (explaining that an ALJ is not required to discuss all the evidence  
21 presented, but must explain the rejection of uncontroverted medical evidence, as well  
22 as significant probative evidence). After consideration the record, the ALJ's RFC –  
23 and any resulting hypothetical presented to a vocational expert – "must set out *all* the  
24 limitations and restrictions of the particular claimant." *Valentine v. Comm'r Social*  
25 *Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009) (citation omitted, emphasis in  
26 original).

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28 be closed, and the case proceed to decision." (AR 314.) Plaintiff did not seek to submit additional  
evidence to the Appeals Council.

1 In the present case, the ALJ found that one of Plaintiff’s severe impairments  
2 was “degenerative changes of the right shoulder.” (AR 17.) After a review of the  
3 medical record, the ALJ also made the following finding regarding Plaintiff’s RFC:

4 After careful consideration of the entire record, I find that the claimant  
5 has the residual functional capacity to perform light work as defined in  
6 20 CFR 416.967(b), consisting of lifting or carrying no more than  
7 twenty pounds with frequent lifting or carrying of objects weighing up  
8 to ten pounds. The claimant is able to sit for six hours in an eight-hour  
9 workday and stand or walk for six hours in an eight-hour workday. The  
10 claimant can occasionally balance, stoop, kneel, crouch, crawl, and  
11 climb ramps and stairs, but never climb ladders, ropes, or scaffolds or  
12 work at unprotected heights. [AR 21.]

13 While the RFC limited Plaintiff to light work and to frequent lifting and carrying of  
14 objects weighing no more ten pounds, Plaintiff urges the ALJ should have included  
15 a further limitation (such as a reaching limitation) directed to Plaintiff’s upper  
16 extremities – because of a January 2018 MRI. (AR 1003-1004.)

17 The Court does not agree with Plaintiff’s contention and concludes that the  
18 ALJ’s RFC finding was appropriate and supported by substantial evidence. An  
19 impairment is “severe” at Step Two if it more than minimally affects a claimant’s  
20 ability to perform basic work activities. *See* SSR 85-28. Based on this standard, the  
21 ALJ properly found that January 2018 MRI findings showed a “severe” right  
22 shoulder impairment. In reaching the RFC finding, the ALJ’s decision at AR 23  
23 discussed the January 2018 MRI findings regarding Plaintiff’s right shoulder (AR  
24 1003-1004), including a small interstitial tear and a number of other mild findings.  
25 The ALJ’s decision also referred to subsequent July 2018 clinical findings that  
26 “confirmed normal tone in all extremities with no atrophy. [AR 939.] While manual  
27 motor testing could not be tested due to ‘poor effort,’ clinical findings confirmed at  
28 least antigravity in all muscles. [*Id.*]” (AR 23.) In addition, the ALJ credited the

1 opinion of state agency consultant E. Christian, M.D., who had reviewed the medical  
2 records available at the time the doctor's opinion was provided – including the  
3 January 2018 MRI of Plaintiff's right shoulder. Dr. Christian opined that Plaintiff  
4 could perform light work with the same lifting limitations as the ALJ later included  
5 in the RFC. (AR 76-87.) The medical records cited by the ALJ and the opinion of  
6 Dr. Christian are substantial evidence supporting the ALJ's RFC, and they did not  
7 require the inclusion of further limitations as to Plaintiff's upper extremities.  
8 Moreover, it is significant that Plaintiff does not point to any medical source opinion  
9 that contradicts this RFC or that adds shoulder-related limitations.

10 **ORDER**

11 IT IS THEREFORE ORDERED that Judgment be entered affirming the  
12 decision of the Commissioner of Social Security and dismissing this action with  
13 prejudice.

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15 DATED: 9/15/2022



16  
17 ALEXANDER F. MacKINNON  
18 UNITED STATES MAGISTRATE JUDGE  
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