

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF CALIFORNIA

3  
4 BELEN MARY FAJARDO,  
5 Plaintiff,  
6 v.  
7 COMMISSIONER OF SOCIAL  
8 SECURITY,  
9 Defendant.

Case No. 1:16-cv-01784-EPG  
FINAL JUDGMENT AND ORDER  
REGARDING PLAINTIFF'S SOCIAL  
SECURITY COMPLAINT

10 This matter is before the Court on Plaintiff's complaint for judicial review of an  
11 unfavorable decision of the Commissioner of the Social Security Administration regarding his  
12 applications for supplemental security income and disability insurance benefits. The parties have  
13 consented to entry of final judgment by the United States Magistrate Judge under the provisions  
14 of 28 U.S.C. § 636(c) with any appeal to the Court of Appeals for the Ninth Circuit.

15 At the hearing on October 31, 2017, the Court heard from the parties and, having  
16 reviewed the record, administrative transcript, the briefs of the parties, and the applicable law,  
17 finds as follows:

18 For the reasons announced by the Court on the record at the conclusion of the parties' oral  
19 argument on October 31, 2017, the Court finds that the decision of the Commissioner of Social  
20 Security should be reversed and the case should be remanded for further proceedings.

21 Plaintiff applied for disability, disability insurance benefits, and supplemental security  
22 income on May 10, 2012, alleging a disability onset date of May 15, 2011. The disability onset  
23 date was later amended to January 1, 2013.

24 On August 21, 2012, Emmanuel Fabella, M.D., administered a consultative internal  
25 medicine examination of Plaintiff. AR 380-385. Dr. Fabella observed that Plaintiff had low back  
26 pain with evidence of paralumbar strain and right paralumbar tenderness, as well as apparent  
27 history of lumbosacral spine x-ray in 2011 showing "some arthritis." AR 384. Dr. Fabella also  
28 observed right lateral thigh pain. *Id.* Based on these impressions, Dr. Fabella opined as to

1 Plaintiff's physical limitations. *Id.*

2 Doctors E. Wong, M.D. and A. Nasrabadi, M.D. served as the Commissioner's non-  
3 examining physicians with respect to Plaintiff's disability application. On October 4, 2012, Dr.  
4 Wong opined as to Plaintiff's physical residual functioning capacity ("RFC"). AR 80-82. On  
5 March 19, 2013, Dr. Nasrabadi also opined as to Plaintiff's physical RFC. AR 124-126. Drs.  
6 Wong and Nasrabadi's medical opinions concerning Plaintiff's physical limitations were based  
7 upon Plaintiff's spine disorder.

8 In the summer of 2013, Plaintiff sustained a right foot injury diagnosed as fracture  
9 dislocation of right Lisfranc joint, which required surgical repair with pins and other hardware.  
10 AR 640, 646. A February 5, 2014 x-ray revealed a Lisfranc fracture-dislocation, and orthopedic  
11 consultation was recommended. AR 548-49. On February 28, 2014, Plaintiff reported pain with  
12 weight-bearing and ambulation problems to Dr. Shah, who recommended a revision surgery on  
13 the right foot. AR 486-87. Plaintiff again reported problems to Dr. Shah with weight-bearing and  
14 ambulation persisting as of March 21, 2014. AR 563. Plaintiff reported 10 out of 10 pain in her  
15 foot and low back again on June 13, 2014. AR 492.

16 On November 5, 2014, Plaintiff testified before the ALJ. She testified that her back, right  
17 foot pain and anemia conditions were disabling. AR 45-46. Plaintiff stated that she believed her  
18 right foot would heal after surgery, but it did not. AR 51. She consistently has pain in the right  
19 foot and swells up to the point where she cannot wear shoes. AR 51-52. Standing on the foot  
20 makes the pain excruciating, and the injury prevents her "from doing a whole bunch of things."  
21 AR 53. She testified that she could only stand on the foot for 5-10 minutes at a time and cannot  
22 walk for 15 minutes without experiencing the pain. AR 57.

23 At step two, the ALJ found severe impairments significantly limiting Plaintiff's ability to  
24 work in the form of cervical and lumbosacral degenerative disc disease and right foot disorder.  
25 AR 17. Based on these impairments, the ALJ formulated an RFC finding that Plaintiff has ability  
26 to:

27 perform sedentary work as defined in 20 CFR § 404.1567(a) and 416.967(a)  
28 except the claimant can occasionally stoop, crawl, and climb ramps and stairs, but

1 she cannot climb ropes, ladders or scaffolds; she can frequently balance; and she  
2 must avoid working around unprotected heights and moving mechanical parts, and  
she cannot perform commercial driving.

3 AR 20, 22 (stating that Plaintiff “is limited to sedentary work with postural and environmental  
4 limitations due to back pain and foot pain secondary to a history of mild degenerative disc disease  
5 and Lisfranc fracture of the right foot.”)

6 In discussing his RFC formulation, the ALJ gave limited weight to the medical opinion of  
7 Dr. Fabella (summarized above) because “the recent evidence of claimant’s foot fracture and  
8 cervical spinal degenerative disc disease support further limitations in the claimant’s ability to lift  
9 and stand/walk.” AR 22. The ALJ further applied reduced weight to Drs. Wong and Nasrabadi’s  
10 medical opinions concerning Plaintiff’s physical limitations inter alia due to Plaintiff’s recent and  
11 non-healing right foot injury. AR 24.

12 The Court recognizes that “Residual functional capacity is an administrative finding  
13 reserved to the Commissioner.” *Lynch Guzman v. Astrue*, 365 F. App’x 869, 870 (9th Cir. 2010)  
14 (citing 20 C.F.R. § 404.1527(e)(2)). The ALJ’s RFC determination should be affirmed “if the  
15 ALJ applied the proper legal standard and his decision is supported by substantial evidence.”  
16 *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005).

17 The Court also recognizes that the ALJ did attempt to take into account the right foot  
18 injury by imposing the sedentary limitation. While this could possibly be an accurate functioning  
19 limitation to impose, the limitations caused by the right foot injury could also demand greater  
20 than a sedentary limitation. Prior to the right foot injury, Plaintiff’s disability application had  
21 been based entirely on her spine disorder and associated back pain. As discussed above, every  
22 doctor that issued a medical opinion regarding Plaintiff’s work-related limitations did so prior to  
23 the right foot injury. Thus, there was insufficient evidence in the record discussing the actual  
24 physical limitations resulting from the right foot injury.

25 Accordingly, the Court finds that, in the absence of a medical opinion(s) describing actual  
26 work-related limitations concerning the right foot injury, the ALJ’s RFC determination was not  
27 based on substantial evidence. The Court remands the case for additional development regarding  
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1 work-related limitations resulting from the right foot injury.

2 Accordingly, the Court GRANTS Plaintiff's appeal from the administrative decision of  
3 the Commissioner of Social Security and the case is remanded to the Social Security  
4 Administration. The Clerk of the Court is DIRECTED to enter judgment in favor of Plaintiff and  
5 against Defendant Nancy A. Berryhill, Acting Commissioner of Social Security.

6 IT IS SO ORDERED.  
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8 Dated: November 9, 2017

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE

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