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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SABRINA LYNN FRENCH,  
Plaintiff,  
v.  
CAROLYN W. COLVIN, Acting  
Commissioner of Social Security  
Defendant.

No. 2:15-cv-743-EFB

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying her application for a period of disability and Disability Insurance Benefits (“DIB”) under Titles II the Social Security Act. The parties have filed cross-motions for summary judgment. For the reasons discussed below, plaintiff’s motion for summary judgment is granted, the Commissioner’s motion is denied, and the matter is remanded for further proceedings.

I. BACKGROUND

Plaintiff filed an application for a period of disability and DIB, alleging that she had been disabled since January 12, 2013. Administrative Record (“AR”) 190-199. Plaintiff’s application was denied initially and upon reconsideration. *Id.* at 123-126, 133-137. On December 2, 2014, a hearing was held before administrative law judge (“ALJ”) Odell Grooms. *Id.* at 21-99. Plaintiff was represented by counsel at the hearing, at which she and a vocational expert testified. *Id.*

1 On December 24, 2014, the ALJ issued a decision finding that plaintiff was not disabled  
2 under sections 216(i) and 223(d) of the Act.<sup>1</sup> *Id.* at 10-17. The ALJ made the following specific  
3 findings:

- 4 1. The claimant meets the insured status requirements of the Social Security Act through  
5 December 31, 2016.
- 6 2. The claimant has not engaged in substantial gainful activity since January 12, 2013, the  
7 alleged onset date (20 CFR 404.1571 *et seq.*).

8 \* \* \*

- 9 3. The claimant has the following severe impairments: lumbar/sacral facet arthropathy and  
10 lumbarized S1 (20 CFR 404.1520(c)).

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11 <sup>1</sup> Disability Insurance Benefits are paid to disabled persons who have contributed to the  
12 Social Security program, 42 U.S.C. §§ 401 *et seq.* Supplemental Security Income (“SSI”) is paid  
13 to disabled persons with low income. 42 U.S.C. §§ 1382 *et seq.* Under both provisions,  
14 disability is defined, in part, as an “inability to engage in any substantial gainful activity” due to  
15 “a medically determinable physical or mental impairment.” 42 U.S.C. §§ 423(d)(1)(a) &  
16 1382c(a)(3)(A). A five-step sequential evaluation governs eligibility for benefits. *See* 20 C.F.R.  
17 §§ 423(d)(1)(a), 416.920 & 416.971-76; *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). The  
18 following summarizes the sequential evaluation:

19 Step one: Is the claimant engaging in substantial gainful  
20 activity? If so, the claimant is found not disabled. If not, proceed  
21 to step two.

22 Step two: Does the claimant have a “severe” impairment?  
23 If so, proceed to step three. If not, then a finding of not disabled is  
24 appropriate.

25 Step three: Does the claimant’s impairment or combination  
26 of impairments meet or equal an impairment listed in 20 C.F.R., Pt.  
27 404, Subpt. P, App.1? If so, the claimant is automatically  
28 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.

*Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

The claimant bears the burden of proof in the first four steps of the sequential evaluation  
process. *Yuckert*, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential  
evaluation process proceeds to step five. *Id.*

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4. The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, and 404.1526).

\* \* \*

5. After careful consideration of the entire record, I find that the claimant has the residual functional capacity to perform light work as defined in 20 CFR 404.1567(b) except the claimant can frequently climb ramps and/or stairs, can occasionally climb ladders, ropes and/or scaffolds, can frequently stoop, kneel, crouch and/crawl.

\* \* \*

6. The claimant is capable of performing past relevant work as a sales clerk and waitperson. This work does not require the performance of work-related activities precluded by the claimant's residual functional capacity (20 CFR 404.1565).

\* \* \*

7. The claimant has not been under a disability, as defined in the Social Security Act, from January 12, 2013, through the date of this decision (20 CFR 404.1520(f)).

*Id.* at 12-17.

Plaintiff's request for Appeals Council review was denied on January 30, 2015, leaving the ALJ's decision as the final decision of the Commissioner. *Id.* at 1-4.

## II. LEGAL STANDARDS

The Commissioner's decision that a claimant is not disabled will be upheld if the findings of fact are supported by substantial evidence in the record and the proper legal standards were applied. *Schneider v. Comm'r of the Soc. Sec. Admin.*, 223 F.3d 968, 973 (9th Cir. 2000); *Morgan v. Comm'r of the Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).

The findings of the Commissioner as to any fact, if supported by substantial evidence, are conclusive. *See Miller v. Heckler*, 770 F.2d 845, 847 (9th Cir. 1985). Substantial evidence is more than a mere scintilla, but less than a preponderance. *Saelee v. Chater*, 94 F.3d 520, 521 (9th Cir. 1996). "It means such evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consol. Edison Co. v. N.L.R.B.*, 305 U.S. 197, 229 (1938)).

1 “The ALJ is responsible for determining credibility, resolving conflicts in medical  
2 testimony, and resolving ambiguities.” *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir.  
3 2001) (citations omitted). “Where the evidence is susceptible to more than one rational  
4 interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.”  
5 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

6 III. ANALYSIS

7 Plaintiff argues that the ALJ erred by (1) failing to consider a VA disability determination  
8 finding her 60 percent disabled; (2) failing to find that her ankle strain, knee strain, and carpal  
9 tunnel syndrome were severe impairments at step-two; and (3) discrediting her testimony without  
10 providing legally sufficient reasons. ECF No. 12 at 15-30.

11 Plaintiff first contends that the ALJ failed to consider a VA disability determination  
12 assessing her RFC. *Id.* at 15-18. An ALJ is required to consider a VA rating. *McCartey v.*  
13 *Massanari*, 298 F.3d 1072, 1075 (9th Cir. 2002). “While a VA disability decision does not  
14 necessarily compel the SSA to reach an identical result, the ALJ must consider the VA’s finding  
15 in reaching his decision, because of the similarities between the VA disability program and the  
16 Social Security disability program.” *Hiler v. Astrue*, 687 F.3d 1208, 1211 (9th Cir. 2012).  
17 “However, [b]ecause the standards for evaluating disability under the two programs is not  
18 identical, . . . the ALJ may give less weight to a VA disability rating if he gives persuasive,  
19 specific, valid reasons for doing so that are supported by the record.” *McCartey*, 298 F.3d at  
20 1075; *see also Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 695 (9th Cir. 2009).

21 The VA issued a decision finding that plaintiff was 60 percent disabled as of September 7,  
22 2012, due to lumbar degenerative joint and disc disease with intervertebral disc syndrome and  
23 radiculopathy, bilateral knee strain with shin splints and tibial stress fractures, and bilateral  
24 chronic ankle strain with stress fractures. AR 296-299.

25 The ALJ’s decision does not even reference the VA’s disability determination; much less  
26 provide a “persuasive, specific, valid reasons” for not according it great weight. The  
27 Commissioner concedes this point, but argues that any error in failing to address the VA’s  
28 disability rating was harmless because the ALJ “was clearly aware of Plaintiff’s treatment at the

1 VA and provided legally valid bases for finding Plaintiff not disabled . . . .” ECF No. 13 at 23;  
2 *see Lockwood v. Comm’r Soc. Sec.*, 616 F.3d 1068, 1071 (9th Cir. 2010) (“We must uphold an  
3 ALJ’s decision so long as it is supported by substantial evidence and not based on legal error.  
4 Further, even if the ALJ erred, we will uphold the decision so long as the error was harmless.”)  
5 (citation omitted). In advancing this argument, the Commissioner cites to various portions of the  
6 record that purportedly support the ALJ’s RFC determination. *Id.* at 23-24.

7 The problem with this argument is that the ALJ made no reference to the VA’s disability  
8 rating, let alone relied on any of the evidence cited by the Commissioner as a basis for according  
9 it reduced weight. This court’s review is limited to the rationale provided by the ALJ. *See Bray*  
10 *v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1225 (9th Cir. 2009) (“Long-standing principles  
11 of administrative law require [the court] to review the ALJ’s decision based on the reasoning and  
12 factual findings offered by the ALJ—not post hoc rationalizations that attempt to intuit what the  
13 adjudicator may have been thinking.”); *Ceguerra v. Sec’y of Health & Human Servs.*, 933 F.2d  
14 735, 738 (9th Cir. 1991) (“A reviewing court can evaluate an agency’s decision only on the  
15 grounds articulated by the agency.”). The ALJ’s decision simply ignores the evidence and,  
16 accordingly, the Commissioner’s post-hoc rationalization cannot excuse the ALJ’s failure to  
17 explain why this evidence was rejected.

18 Furthermore, the VA determination included additional impairments that were not  
19 discussed by the ALJ. The VA determined that plaintiff was 60 percent disabled due in part to  
20 bilateral knee strain with shin splints and tibial stress fractures, and bilateral chronic ankle strain  
21 with stress fractures. AR 298-299. VA records also indicate that these impairments precluded  
22 plaintiff from sitting, standing, and walking for extended periods of time/distance, limitations at  
23 odds with the ALJ’s RFC determination. *Id.* at 553. The ALJ’s decision provides no explanation  
24 for why the impairments to plaintiff’s knees and ankles did not impact her ability to perform  
25 substantial gainful activity. Indeed, the ALJ’s RFC determination focused almost exclusively on  
26 medical records concerning plaintiff’s back impairments, with virtually no discussion of medical  
27 records concerning other impairments.

28 ////

1           Accordingly, the court cannot find that the ALJ's failure to address VA disability  
2 determination was harmless. The matter must therefore be remanded to the Commissioner for  
3 consideration of this evidence.<sup>2</sup>

4 IV.    CONCLUSION

5           Accordingly, it is hereby ORDERED that:

- 6           1. Plaintiff's motion for summary judgment is granted;
- 7           2. The Commissioner's cross-motion for summary judgment is denied;
- 8           3. The matter is remanded for further proceedings consistent with this order; and
- 9           4. The Clerk is directed to enter judgment in the plaintiff's favor.

10 DATED: September 22, 2016.

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12 EDMUND F. BRENNAN  
13 UNITED STATES MAGISTRATE JUDGE  
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28           <sup>2</sup> Because remand is necessary for further consideration of the evidence of record, the court declines to address plaintiff's additional arguments.