

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN A. BRADLEY,  
Plaintiff,  
v.  
CAROLYN W. COLVIN, Acting  
Commissioner of Social Security  
Defendant.

No. 2:15-cv-1026-EFB

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying his application for a period of disability and Disability Insurance Benefits (“DIB”) under Titles II of 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 applications for a period of disability and DIB, alleging that he had been disabled since February 5, 2008. Administrative Record (“AR”) 147-148. His application was denied initially and upon reconsideration. *Id.* at 82-86, 90-94. On July 31, 2013, a hearing was held before administrative law judge (“ALJ”) David M. Blume. *Id.* at 36-64. Plaintiff was represented by counsel at the hearing, at which he testified. *Id.*

1 On April 18, 2011, the ALJ issued a decision finding that plaintiff was not disabled under  
2 sections 216(i) and 223(d) of the Act.<sup>1</sup> *Id.* at 15-21. The ALJ made the following specific  
3 findings:

- 4 1. The claimant last met the insured status requirements of the Social Security Act on  
5 September 30, 2011.
- 6 2. The claimant did not engage in substantial gainful activity during the period from  
7 November 17, 2009, through his date last insured of September 30, 2011 (20 CFR  
8 404.1571 *et seq.*).

9 \* \* \*

10  
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.*

1 3. Through the date last insured, the claimant had the following severe impairments: carpal  
2 tunnel syndrome, degenerative disc disease of the lumbar and cervical spine, status post  
3 bilateral shoulders arthroplasty (20 CFR 404.1520(c)).

4 \* \* \*

5 4. Through the date last insured, the claimant did not have an impairment or combination of  
6 impairments that met or medically equaled the severity of one of the listed impairments in  
7 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525 and 404.1526).

8 \* \* \*

9 5. After careful consideration of the entire record, the undersigned finds that, through the  
10 date last insured, the claimant has the residual functional capacity to perform light work  
11 as defined in 20 CFR 404.1567(b) except the claimant could occasionally climb  
12 ramps/stairs, kneel, stoop, crouch, and crawl. He could not climb ladders/ropes/scaffolds.  
13 He could not reach overhead reaching [sic] but could frequently handle, finger, feel. He  
14 had to avoid hazards such as heights, moving machinery.

15 \* \* \*

16 6. Through the date last insured, the claimant was capable of performing past relevant work  
17 as a contractor (DOT 182.167-010, SVP 7, light exertion.), construction superintendent  
18 (DOT 182.167-026, SVP 7, light exertion). This work did not require the performance of  
19 work-related activities precluded by the claimant's residual functional capacity (20 CFR  
20 404.1565).

21 \* \* \*

22 7. Alternatively, the claimant could do other work.

23 \* \* \*

24 8. The claimant was not been under a disability, as defined in the Social Security Act, at any  
25 time from November 17, 2009, through September 30, 2011, the date last insured (20 CFR  
26 404.1520(f)).

27 *Id.* at 17-21.

28 Plaintiff's request for Appeals Council review was denied on March 12, 2015, leaving the  
ALJ's decision as the final decision of the Commissioner. *Id.* at 1-6.

//////

//////

//////

1 II. LEGAL STANDARDS

2 The Commissioner's decision that a claimant is not disabled will be upheld if the findings  
3 of fact are supported by substantial evidence in the record and the proper legal standards were  
4 applied. *Schneider v. Comm'r of the Soc. Sec. Admin.*, 223 F.3d 968, 973 (9th Cir. 2000);  
5 *Morgan v. Comm'r of the Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Tackett v. Apfel*,  
6 180 F.3d 1094, 1097 (9th Cir. 1999).

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

13 "The ALJ is responsible for determining credibility, resolving conflicts in medical  
14 testimony, and resolving ambiguities." *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir.  
15 2001) (citations omitted). "Where the evidence is susceptible to more than one rational  
16 interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be upheld."  
17 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

18 III. ANALYSIS

19 Plaintiff argues that the ALJ erred by (1) failing to provide any explanation for how he  
20 assessed plaintiff's RFC, and (2) not adequately explaining why plaintiff did not meet the listings  
21 at the third step of the sequential evaluation. ECF No. 16 at 4-6.

22 Turning to plaintiff's first argument, the ALJ determined that plaintiff maintained the RFC  
23 to perform light work, but with some postural, manipulative, and environmental limitations. AR  
24 18. Plaintiff argues that it is "literally true" that the ALJ's "decision contains no explanation for  
25 its residual functional capacity" determination. ECF No. 16.

26 An individual's RFC is the most he can perform despite his limitations. 20 C.F.R.  
27 § 404.1545. In assessing a claimant's RFC, the ALJ is required to consider all medically  
28 determined impairments and relevant medical evidence. 20 C.F.R. 404.1545(a)(2)-(3). "The

1 RFC assessment must include a narrative discussion describing how the evidence supports each  
2 conclusion, citing specific medical facts (e.g., laboratory findings) and nonmedical evidence (e.g.,  
3 daily activities, observations). “ SSR 69-8p.

4 The ALJ’s decision includes a narrative discussion, but it is devoid of any explanation for  
5 how plaintiff’s RFC was assessed. The narrative includes a brief summary of plaintiff’s  
6 allegations of disabling pain, as well as an explanation for why the ALJ concluded that plaintiff’s  
7 complaints were not fully credible. AR 19. However, it contains virtually no discussion of  
8 plaintiff’s impairments or medical records. The only statement regarding plaintiff’s medical  
9 records is that “[t]reatment notes repeatedly show that the claimant demonstrated physical  
10 examinations that showed claimant alert, well appearing, and in no significant distress.” AR 19.  
11 This limited statement, however, provides no insight into how the ALJ determined that plaintiff  
12 could perform light work with some postural, manipulative, and environmental limitations. Nor  
13 does the ALJ’s rejection of plaintiff’s subjective complaint shed any light of how the ALJ arrived  
14 at plaintiff’s RFC.<sup>2</sup> The lack of discussion is surprising in a case with an administrative record  
15 spanning more than 600 pages of medical records. *Id.* at 235-861.<sup>3</sup>

16 The Commissioner attempts to compensate for the decision’s shortcomings by citing to  
17 various portions of the record that might have been relied upon by the ALJ in making an RFC  
18 determination. However, in assessing whether the ALJ properly determined plaintiff’s RFC  
19 determination, the court is limited to the explanation provided by the ALJ. *See Bray v. Comm’r*  
20 *Soc. Sec. Admin.*, 554 F.3d 1219, 1225 (9th Cir. 2009) (“Long-standing principles of

---

21  
22 <sup>2</sup> As suggested by plaintiff, it is possible that the ALJ never finished his decision and  
23 inadvertently issued an incomplete draft. ECF No. 20 at 1-2. In addition to containing no  
24 explanation for how the RFC was determined, the decision also includes the following incomplete  
25 sentence: “of any mental health symptoms, treatment or continued mental health care.” AR 19.  
26 The incomplete sentence follows the ALJ’s explanation for why he discredited plaintiff’s  
subjective complaints. Perhaps the ALJ intended to follow his credibility determination with an  
explanation of the medical evidence. Regardless, the RFC narrative is insufficient to support the  
RFC determination.

27 <sup>3</sup> To be sure, not all of the medical evidence concerns the relevant time period of  
28 November 17, 2009, through September 30, 2011. But the ALJ’s written decision must include a  
discussion of the relevant medical evidence. *See* 20 C.F.R. 404.1545(a)(2)-(3).

1 administrative law require [the court] to review the ALJ’s decision based on the reasoning and  
2 factual findings offered by the ALJ—not post hoc rationalizations that attempt to intuit what the  
3 adjudicator may have been thinking.”); *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003) (a  
4 district court is “constrained to review the reasons the ALJ asserts”); *Barbato v. Comm’r Soc.*  
5 *Sec. Admin.*, 923 F. Supp. 1273, 1276 n.2 (“If the decision on its face does not adequately explain  
6 how a conclusion was reached, that alone is grounds for remand. And that is so even if [the  
7 Administration] can offer proper post hoc explanations for such unexplained conclusions.”). The  
8 decision fails to provide any explanation at all for how the RFC determination was reached, and  
9 therefore this matter must be remanded for further proceedings. <sup>4</sup>

10 IV. CONCLUSION

11 Accordingly, it is hereby ORDERED that:

- 12 1. Plaintiff’s motion for summary judgment is granted;
- 13 2. The Commissioner’s cross-motion for summary judgment is denied;
- 14 3. The matter is remanded for further proceedings consistent with this order; and
- 15 4. The Clerk is directed to enter judgment in plaintiff’s favor.

16 DATED: September 26, 2016.

17   
18 EDMUND F. BRENNAN  
19 UNITED STATES MAGISTRATE JUDGE

20  
21  
22  
23  
24  
25  
26  
27 \_\_\_\_\_  
28 <sup>4</sup> Because the case must be remanded for further consideration, the court declines to  
address plaintiff’s additional argument.