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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KAELONI DALE MARKS,  
  
Plaintiff,  
  
v.  
  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
  
Defendant.

No. 2:16-cv-1701-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 of the Social Security Act. The parties’ cross-motions for summary judgment are pending. 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 October 2, 2009. Administrative Record (“AR”) 247-248. Plaintiff’s application was denied initially and upon reconsideration. *Id.* at 158-161, 163-167. On August 31, 2015 and February 2, 2016, hearings were held before administrative law judge (“ALJ”) Peter F. Belli. *Id.* at 37-125. Plaintiff appeared without counsel at the first hearing. *Id.* at 37-94. However, she was

1 represented by a non-attorney representative at the second hearing, at which she provided further  
2 testimony and a vocational expert also testified. *Id.*

3 On March 25, 2016, the ALJ issued a decision finding that plaintiff was not disabled  
4 under sections 216(i) and 223(d) of the Act.<sup>1</sup> *Id.* at 18-29. The ALJ made the following specific  
5 findings:

- 6 1. The claimant meets the insured status requirements of the Social Security Act through  
7 December 31, 2014.
- 8 2. The claimant did not engaged in substantial gainful activity during the period from her  
9 alleged onset date of October 2, 2009 through her date last insured on December 31, 2014  
10 (20 CFR 404.1571 *et seq.*).

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:  
2 interstitial cystitis, degenerative arthritis, posttraumatic stress disorder (PTSD), and major  
3 depression (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 had the residual functional capacity to perform light work  
11 as defined in 20 CFR 404.1567(b). Specifically, the claimant could lift and/or carry ten  
12 pounds frequently, twenty pounds occasionally; she could stand and/or walk for six hours  
13 out of an eight-hour workday; she could sit for eight hours out of an eight-hour workday  
14 with the option to stand every thirty to forty minutes; she is not to climb ladders, ropes or  
15 scaffolds; she could occasionally stoop, crawl, kneel and crouch; she is limited to simple  
16 instructions with occasional detailed instructions and simple workplace changes; and she  
17 could have frequent interaction with the public, co-workers and supervisors.

18 \* \* \*

19 6. Through the date last insured, the claimant was capable of performing past relevant work  
20 as a claims clerk I and II. This work did not require the performance of work-related  
21 activities (20 CFR 404.1565).

22 \* \* \*

23 7. The claimant was not under a disability, as defined in the Social Security Act, at any time  
24 from October 2, 2009, the alleged onset date, through December 31, 2014, the date last  
25 insured (20 CFR 404.1520(f)).

26 *Id.* at 20-29.

27 Plaintiff's request for Appeals Council review was denied on June 23, 2016, leaving the  
28 ALJ's decision as the final decision of the Commissioner. *Id.* at 1-4.

## 29 II. LEGAL STANDARDS

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

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1 *Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Tackett v. Apfel*,  
2 180 F.3d 1094, 1097 (9th Cir. 1999).

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

9 “The ALJ is responsible for determining credibility, resolving conflicts in medical  
10 testimony, and resolving ambiguities.” *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir.  
11 2001) (citations omitted). “Where the evidence is susceptible to more than one rational  
12 interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.”  
13 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

### 14 III. ANALYSIS

15 Plaintiff argues that the ALJ erred by (1) failing to consider the impact her psoriatic  
16 arthritis had on her ability to work, (2) rejecting her subjective statements absent sufficient  
17 reasons, (3) finding she has the residual functional capacity to perform light work, and (4) relying  
18 on the vocational expert’s testimony to find that she could perform past prior work. ECF No. 15-  
19 1 at 21-32. Plaintiff also argues that (5) the Appeals Council erred by failing to consider new and  
20 material evidence. *Id.* at 32-34.

#### 21 A. The ALJ Failed to Consider Plaintiff’s Psoriatic Arthritis

22 Plaintiff first argues that the ALJ erred by failing to consider evidence showing that she  
23 has psoriatic arthritis. ECF No. 15-1 at 21-26. She contends that as a result, the ALJ failed to  
24 consider how this medical impairment impacted her ability to work. *Id.* at 25-26. She also argues  
25 that the ALJ failed to satisfy his duty of fully developing the record concerning this impairment.  
26 *Id.*

27 In determining whether a claimant is disabled, the ALJ is required to consider all the  
28 evidence of record. 20 C.F.R. § 404.1520(a)(3); *see Ghanim v. Colvin*, 763 F.3d 1154, 1166 (9th

1 Cir. 2014) (“In determining a claimant’s residual functional capacity, the ALJ must consider all  
2 of a claimant’s medical determinable impairments, including those that are not severe.”) *Smolen*  
3 *v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (if one severe impairment exists, all medically  
4 determinable impairments must be considered in the remaining steps of the sequential  
5 evaluation). Although the ALJ is not required to discuss every piece of evidence in the record,  
6 the ALJ “must explain why probative evidence has been rejected.” *Vincent v. Heckler*, 739 F.2d  
7 1393, 1394-95 (9th Cir. 1984) (quotations omitted); see *Howard ex rel. v. Barnhart*, 341 F.3d  
8 1006, 1012 (9th Cir. 2003) (ALJ is not required to “discuss evidence that is neither significant nor  
9 probative.”).

10 Treatment records show that in June 2014, plaintiff experienced pain and stiffness in the  
11 joints in her hands, with puffy fingers and metacarpophalangeal joints (“MCP”). AR 975. At that  
12 time, plaintiff’s treating physician, Dr. Badour, suggested a referral to rheumatology, noting  
13 concerns that plaintiff’s symptoms were caused by psoriatic arthritis or another inflammatory  
14 process. *Id.* In August 2014, plaintiff again complained of pain in her MCPs. AR 972-973. In  
15 her left hand she had swelling and pain in her joints, with stiffness noted on range of motion. *Id.*  
16 at 973. Dr. Badour noted that her symptoms were likely caused by an inflammatory process and  
17 that plaintiff was waiting to see a rheumatologist. *Id.* at 974.

18 The following week, plaintiff was seen by Dr. Michael Barger for a rheumatology  
19 consultative evaluation. *Id.* at 918-922. Plaintiff reported chronic joint pain that had worsened  
20 over the past 6 to 8 months, which caused difficulty gripping and decreased range of motion. *Id.*  
21 at 918-919. On exam, she presented with lesions over her extremities and had a rash that  
22 appeared typical of psoriasis. *Id.* at 918, 921. There was “tenderness diffusely in the bilateral  
23 upper and lower extremities but also tenderness in the bilateral wrists” and finger joints, with  
24 swelling and decreased range of motion. *Id.* at 921. On September 19, 2014, Dr. Barger stated,  
25 “I think that [plaintiff has] a diagnosis of arthralgia and degenerative arthritis,” which may be  
26 chronic. *Id.* at 938. Dr. Barger observed that radiography showed degenerative changes in the  
27 hands, shoulders, and hips. *Id.* However, subsequent medical records indicate that Dr. Badour’s  
28 initial hypothesis did not prove to be entirely accurate.

1 In early 2015, plaintiff began receiving treatment from Stanford Health Care. In March  
2 2015, Dr. Matthew Baker, a Rheumatology Fellow, stated that plaintiff “clearly has an  
3 inflammatory polyarthritis, but it is difficult to hone in on an exact constellation of symptoms  
4 given her” chronic and widespread pain. *Id.* at 959. He also noted that there was no doubt that  
5 her “bilateral wrists and MCPs have active synovitis.” *Id.* Two months later, however, Dr. Baker  
6 determined that plaintiff had psoriatic arthritis. Although the diagnosis was not obtained until  
7 mid-2015, after plaintiff’s date last insured, Dr. Baker explained that:

8 It has been clear from the beginning that she has an inflammatory  
9 polyarthritis, but it was initially difficult to hone in on an exact  
10 diagnosis. Now with the psoriasis diagnosis on biopsy and basic  
11 survey for malignancy . . . and infection . . . being negative, we feel  
comfortable with the diagnosis of psoriatic arthritis versus  
seronegative rheumatoid arthritis.

12 AR 1454.

13 In his decision, the ALJ commented on Dr. Badour’s earlier, September 19, 2014,  
14 treatment note hypothesizing a diagnosis of arthralgia and degenerative arthritis. The ALJ also  
15 observed that bilateral x-rays of plaintiff’s hand showed only minimal spurring of the left  
16 carpometacarpal joint. But the ALJ failed to address any other treatment notes regarding  
17 plaintiff’s hand and joint pain, and did not take account of the impact this impairment had on  
18 plaintiff’s ability to work.<sup>2</sup>

19 The Commissioner contends, however, that ALJ was not required to address the medical  
20 records concerning the treatment and diagnosis of psoriatic arthritis. The Commissioner argues  
21 that the records concerning the treatment and diagnosis of this impairment occurred after the date  
22 plaintiff was last insured, and therefore are not probative. ECF No. 16 at 6; *see Armstrong v.*  
23 *Comm’r of Soc. Sec. Admin.*, 160 F.3d 587, 589 (9th Cir. 1998) (to obtain DIB under Title II, a

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24  
25 <sup>2</sup> Although the ALJ considered degenerative arthritis, that is not the same as psoriatic  
26 arthritis. “Psoriatic arthritis is a chronic inflammatory arthritis that occurs in people with  
27 psoriasis of the skin or nails.” The Merck Manual of Diagnosis and Therapy, 344 (19th ed.  
28 2011). It is most prevalent in the fingers and toes, where inflammation “may lead to sausage-  
shaped deformities.” *Id.* Degenerative, or Osteoarthritis is “characterized by disruption and  
potential loss of joint cartilage along with other joint changes, including bone hypertrophy.” *Id.*  
at 345.

1 claimant must establish disability prior to the date last insured). The argument, however, unduly  
2 focuses on the date plaintiff's physicians were finally able to discern and diagnosis the causes of  
3 plaintiff's impairment, and not when those impairments began.

4 The record demonstrates that in June 2014, prior to the date last insured, Dr. Badour  
5 suspected that plaintiff had psoriatic arthritis or another inflammatory process and suggested a  
6 referral to rheumatology. AR 975. Medical records from August 2014, reflect plaintiff's reports  
7 of chronic joint pain that had worsened over the prior 6 to 8 months and was limiting her range of  
8 motion and impairing her ability to grip objects. *Id.* at 918-919. Although a diagnosis was not  
9 obtained until June 2015, these records reflect that plaintiff's psoriatic arthritis imposed  
10 limitations prior the December 31, 2014 date last insured.

11 Moreover, the failure to consider such evidence was not harmless. The ALJ concluded  
12 that plaintiff retained the ability to perform her prior work as a claims clerk I and II. AR 28.  
13 Both these positions require frequent handling. *See* Claims Clerk I, DOT 241.362-010, 1991 WL  
14 672250; Claims Clerk II, DOT 205.367-018, 1991 WL 671716. As indicated above, the medical  
15 records concerning plaintiff's psoriatic arthritis reflect that the disease impairs plaintiff's ability  
16 to use her hands.

17 Accordingly, the medical records concerning plaintiff's psoriatic arthritis were probative  
18 to the period at issue. As the ALJ failed to explain why such probative evidence was rejected, the  
19 ALJ's RFC determination cannot be sustained. Accordingly, the matter must be remanded for the  
20 ALJ to consider how plaintiff's psoriatic arthritis impacted plaintiff's ability to work.<sup>3</sup> *See*  
21 *Dominguez v. Colvin*, 808 F.3d 403, 407 (9th Cir. 2015) ("A district court may reverse the  
22 decision of the Commissioner of Social Security, with or without remanding the cause for a  
23 rehearing, but the proper course, except in rare circumstances, is to remand to the agency for  
24 additional investigation or explanation.").

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27 <sup>3</sup> As the matter must be remanded for further consideration of the medical evidence of  
28 record, the court declines to address plaintiff's remaining arguments.


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IV. CONCLUSION

Accordingly, it is hereby ORDERED that:

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

DATED: September 28, 2017.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE