



1 initially and on reconsideration. AR 341-43; 348-53. On January 17, 2018, ALJ Jane A.  
2 Maccione presided over the hearing on plaintiff's challenge to the disapprovals. AR 253-310  
3 (transcript). Plaintiff, who appeared with her counsel Eric Patrick, was present at the hearing.  
4 AR 256. Cathleen Spencer, a Vocational Expert ("VE"), also testified. Id.

5 On July 17, 2018, the ALJ found plaintiff "not disabled" under Sections 216(i) and 223(d)  
6 of Title II of the Act, 42 U.S.C. §§ 416(i), 423(d). AR 16-30 (decision), 31-36 (exhibit list). On  
7 July 5, 2019, the Appeals Council denied plaintiff's request for review, leaving the ALJ's  
8 decision as the final decision of the Commissioner of Social Security. AR 1-5.

9 Plaintiff filed this action on August 27, 2019. ECF No. 1; see 42 U.S.C. § 405(g). The  
10 parties consented to the jurisdiction of the magistrate judge. ECF No. 19. The parties' cross-  
11 motions for summary judgment, based upon the Administrative Record filed by the  
12 Commissioner, have been fully briefed. ECF Nos. 14 (plaintiff's summary judgment motion), 19  
13 (Commissioner's summary judgment motion).

## 14 II. FACTUAL BACKGROUND

15 Plaintiff was born in 1970, and accordingly was, at age 30, a younger person under the  
16 regulations at the alleged onset date.<sup>3</sup> AR 419. Plaintiff has four or more years of college,  
17 completed in 1993, and can communicate in English. AR 505, 507. Plaintiff obtained her real  
18 estate license in 2003. AR 507. She has past work as a sensory specialist for consumer products,  
19 real estate worker, in home care worker, and dog walker. Id. Plaintiff sustained a gunshot wound  
20 to the head in 2001, which caused visual field and neurocognitive impairments. AR 23.

## 21 III. LEGAL STANDARDS

22 The Commissioner's decision that a claimant is not disabled will be upheld "if it is  
23 supported by substantial evidence and if the Commissioner applied the correct legal standards."  
24 Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1011 (9th Cir. 2003). "The findings of the  
25 Secretary as to any fact, if supported by substantial evidence, shall be conclusive . . . ." Andrews  
26 v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995) (quoting 42 U.S.C. § 405(g)).

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28 <sup>3</sup> See 20 C.F.R. § 404.1563(c) ("younger person").

1 Substantial evidence is “more than a mere scintilla,” but “may be less than a  
2 preponderance.” Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012). “It means such  
3 evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson v.  
4 Perales, 402 U.S. 389, 401 (1971) (internal quotation marks omitted). “While inferences from the  
5 record can constitute substantial evidence, only those ‘reasonably drawn from the record’ will  
6 suffice.” Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006) (citation omitted).  
7 Although this court cannot substitute its discretion for that of the Commissioner, the court  
8 nonetheless must review the record as a whole, “weighing both the evidence that supports and the  
9 evidence that detracts from the [Commissioner’s] conclusion.” Desrosiers v. Secretary of HHS,  
10 846 F.2d 573, 576 (9th Cir. 1988); Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985) (“The  
11 court must consider both evidence that supports and evidence that detracts from the ALJ’s  
12 conclusion; it may not affirm simply by isolating a specific quantum of supporting evidence.”).

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  
15 Cir. 2001). “Where the evidence is susceptible to more than one rational interpretation, one of  
16 which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.” Thomas v. Barnhart,  
17 278 F.3d 947, 954 (9th Cir. 2002). However, the court may review only the reasons stated by the  
18 ALJ in his decision “and may not affirm the ALJ on a ground upon which he did not rely.” Orn  
19 v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007); Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir.  
20 2003) (“It was error for the district court to affirm the ALJ’s credibility decision based on  
21 evidence that the ALJ did not discuss”).

22 The court will not reverse the Commissioner’s decision if it is based on harmless error,  
23 which exists only when it is “clear from the record that an ALJ’s error was ‘inconsequential to the  
24 ultimate nondisability determination.’” Robbins v. Soc. Sec. Admin., 466 F.3d 880, 885 (9th Cir.  
25 2006) (quoting Stout v. Comm’r, Soc. Sec. Admin., 454 F.3d 1050, 1055 (9th Cir. 2006)); see  
26 also Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005).

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1 IV. RELEVANT LAW

2 Disability Insurance Benefits and Supplemental Security Income are available for every  
3 eligible individual who is “disabled.” 42 U.S.C. §§ 402(d)(1)(B)(ii) (DIB), 1381a (SSI). Plaintiff  
4 is “disabled” if she is “unable to engage in substantial gainful activity due to a medically  
5 determinable physical or mental impairment . . . .” Bowen v. Yuckert, 482 U.S. 137, 140 (1987)  
6 (quoting identically worded provisions of 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A)).

7 The Commissioner uses a five-step sequential evaluation process to determine whether an  
8 applicant is disabled and entitled to benefits. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4);  
9 Barnhart v. Thomas, 540 U.S. 20, 24-25 (2003) (setting forth the “five-step sequential evaluation  
10 process to determine disability” under Title II and Title XVI). The following summarizes the  
11 sequential evaluation:

12 Step one: Is the claimant engaging in substantial gainful activity? If  
13 so, the claimant is not disabled. If not, proceed to step two.

14 20 C.F.R. § 404.1520(a)(4)(i), (b).

15 Step two: Does the claimant have a “severe” impairment? If so,  
16 proceed to step three. If not, the claimant is not disabled.

17 Id. §§ 404.1520(a)(4)(ii), (c).

18 Step three: Does the claimant’s impairment or combination of  
19 impairments meet or equal an impairment listed in 20 C.F.R., Pt. 404,  
20 Subpt. P, App. 1? If so, the claimant is disabled. If not, proceed to  
21 step four.

22 Id. §§ 404.1520(a)(4)(iii), (d).

23 Step four: Does the claimant’s residual functional capacity make him  
24 capable of performing his past work? If so, the claimant is not  
25 disabled. If not, proceed to step five.

26 Id. §§ 404.1520(a)(4)(iv), (e), (f).

27 Step five: Does the claimant have the residual functional capacity  
28 perform any other work? If so, the claimant is not disabled. If not,  
the claimant is disabled.

Id. §§ 404.1520(a)(4)(v), (g).

The claimant bears the burden of proof in the first four steps of the sequential evaluation  
process. 20 C.F.R. §§ 404.1512(a) (“In general, you have to prove to us that you are blind or

1 disabled”), 416.912(a) (same); Bowen, 482 U.S. at 146 n.5. However, “[a]t the fifth step of the  
2 sequential analysis, the burden shifts to the Commissioner to demonstrate that the claimant is not  
3 disabled and can engage in work that exists in significant numbers in the national economy.” Hill  
4 v. Astrue, 698 F.3d 1153, 1161 (9th Cir. 2012); Bowen, 482 U.S. at 146 n.5.

#### 5 V. THE ALJ’s DECISION

6 The ALJ made the following findings:

7 1. The claimant meets the insured status requirements of the Social  
8 Security Act on December 31, 2018.

9 2. [Step 1] The claimant has not engaged in substantial gainful  
10 activity since March 16, 2001, the alleged onset date (20 CFR  
11 404.1571 *et seq.*).

12 3. [Step 2] The claimant has the following severe impairments:  
13 neurocognitive impairment secondary to traumatic brain injury; loss  
14 of peripheral vision in the left eye; and insomnia (20 CFR  
15 404.1520(c)).

16 4. [Step 3] The claimant does not have an impairment or combination  
17 of impairments that meets or medically equals the severity of one of  
18 the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1  
19 (20 CFR 404.1520(d), 404.1525 and 404.1526).

20 5. [Residual Functional Capacity (“RFC”)] After careful  
21 consideration of the entire record, the undersigned finds that the  
22 claimant has the residual functional capacity to perform a full range  
23 of work at all exertional levels but with the following non-exertional  
24 limitations: she is limited to jobs that do not require peripheral vision  
25 on the left side or unrestricted field of vision in the left eye. She is  
26 limited to simple, routine tasks and simple workplace decisions  
27 (defined in the Dictionary of Occupational Titles as Specific  
28 Vocational Preparation levels (SVP) 1 and 2). She is limited to a  
low-stress work environment, defined as involving a structured work  
environment with little change to the setting and routine, and work  
that does not involved a significant problem-solving component. She  
is limited to brief and superficial interaction with the public. She is  
limited to work that does not require the hands to work  
independently, in the sense of on two different tasks. She must be  
protected from workplace hazards, such as unprotected heights and  
dangerous moving mechanical parts. She requires written  
instructions to be posted or must be permitted to carry written  
instructions. She also requires a relaxed production pas, defined as  
capable of maintaining 95% of normal production rate.

6. [Step 4] The claimant has no past relevant work (20 CFR  
404.1565).

1 7. [Step 5] The claimant was born [in 1970] and was 30 years old,  
2 which is defined as a younger individual age 18-49, on the alleged  
disability onset date (20 CFR 404.1563).

3 8. [Step 5, continued] The claimant has at least a high school  
4 education and is able to communicate in English (20 CFR 404.1564).

5 9. [Step 5, continued] Transferability of job skills is not an issue  
6 because the claimant does not have past relevant work (20 CFR  
404.1568).

7 10. [Step 5, continued] Considering the claimant's age, education,  
8 work experience, and residual functional capacity, there are job that  
exist in significant numbers in the national economy that the claimant  
can perform (20 CFR 404.1569 and 404.1569(a)).

9 11. The claimant has not been under a disability, as defined in the  
10 Social Security Act, from March 16, 2001, through the date of this  
decision (20 CFR 404.1520(g)).

11 AR 19-29. As noted, the ALJ concluded that plaintiff was "not disabled" under Title II of the  
12 Act. AR 29.

## 13 VI. ANALYSIS

14 Plaintiff alleges that the ALJ failed to give reasons supported by substantial evidence for  
15 rejecting the opinions of examining physician Dr. David O' Grady. ECF No. 14. Plaintiff asks  
16 the undersigned to reverse and award benefits. Id. at 18.

### 17 A. The Medical Evidence

18 The ALJ considered the medical opinions of (1) neurologic consultative examiner Farah  
19 M. Rana, M.D., (2) two state agency medical consultants, (3) examining psychologist David O.  
20 Grady, (4) consultative mental health examiner Patricia Spivey, Psy. D., and (5) treating  
21 physician Shree Lakshmi K. Bhaskar, M.D. AR 25-26. Plaintiff, who sustained a gunshot wound  
22 to the head in 2001, complains of impaired vision in the left eye, cognitive problems including  
23 trouble organizing, planning, completing detailed tasks, concentrating, paying attention,  
24 understanding and remembering information, following instructions, multitasking, maintaining  
25 pace, dealing with stress, handling changes in routine, controlling impulses, and sleeping. AR 23,  
26 274-80, 284, 290-92. She alleges that she needs to nap often during the day and take many  
27 breaks, and that her medications cause side effects including fatigue, dry mouth, headache,  
28 concentration problem, and sleep problems. Id.

1           The ALJ gave great weight to the opinion of Dr. Rana, who conducted a neurological  
2 examination on June 10, 2014 and concluded that plaintiff had no physical limitations but should  
3 avoid activities requiring visual precision. AR 25, 682-84. The ALJ gave some weight to the  
4 consultative medical consultants, who opined that plaintiff did not have any physical restrictions,  
5 finding that they did not adequately consider plaintiff's vision loss in the left eye. AR 25, 312-22,  
6 328-38. The ALJ gave little weight to the opinion of mental consultative examiner Dr. Spivey,  
7 who opined that plaintiff had no significant mental limitations, finding this conclusion in conflict  
8 with the neuropsychological findings in the medical record. AR 25, 685-88. The ALJ also gave  
9 little weight to treating physician Dr. Bhaskar, who concluded that plaintiff was unable to return  
10 to work, could not stay on task, and would have difficulty maintaining focus and handling stress.  
11 AR 26, 675-76. The ALJ found Dr. Bhaskar's opinion contradicted by psychological tests done  
12 during the adjudicative period, plaintiff's activities of daily living, plaintiff's ability to drive  
13 without restrictions, and plaintiff's work activities after the alleged onset date. AR 26.

14           Dr. O'Grady examined plaintiff on August 27, 2015. He found that plaintiff could  
15 perform simple and routine tasks, but she would have serious difficulty completing a normal  
16 workday or workweek without interruptions from psychologically based symptoms, maintaining  
17 appropriate behavior, paying attention for more than 2 hours at a time, taking appropriate  
18 precautions for normal hazards, and completing tasks in a timely manner. AR 25, 1463-71, 2314-  
19 16. The ALJ gave great weight to the portion of the opinion stating plaintiff could perform  
20 simple and routine tasks. AR 26. However, the ALJ gave little weight to the remainder of Dr.  
21 O'Grady's opinion, finding as follows:

22           However, the portion of the opinion regarding the claimant's  
23 difficulty completing a normal workday or workweek, handling  
24 social interaction, maintaining attention, adapting to hazards, and  
25 completing tasks in a timely manner is given little weight because it  
26 is contradicted by the generally adequate emotional and behavioral  
27 functioning that the claimant exhibited during the adjudicative  
28 period, as discussed in detail above (Exhibits 2F, SF, 7F, SF, 9F, 10F,  
11F, 12F, and 13F). This portion of the opinion is also contradicted  
by the claimant's generally adequate attention span (Exhibits SF,  
9F/6, 9F/22, 9F/107, 9F/141, 9F/169-170, 11F/S, and 13F). In  
addition, the claimant generally can carry out tasks adequately when  
she uses written reminders such as lists and schedules (Exhibit 13F/5  
and hearing testimony). Furthermore, this portion of the opinion is

1 inconsistent with the claimant's generally adequate social activities  
2 and her work activities after the alleged onset date (Exhibits 6D-10D,  
3 SF, 13F, and hearing testimony). Finally, Dr. Grady stated that the  
4 claimant was permanently disabled, but this statement is contradicted  
5 by the medical evidence as discussed above and a finding of  
6 disability is an ultimate issue that is reserved to the commissioner (20  
7 CFR 404.1527(e)).

8 AR 26.

9 B. Principles Governing the ALJ's Consideration of Medical Opinion Evidence

10 The weight given to medical opinions depends in part on whether they are proffered by  
11 treating, examining, or non-examining professionals.<sup>4</sup> Lester v. Chater, 81 F.3d 821, 834 (9th  
12 Cir. 1995), as amended (Apr. 9, 1996), as amended (Apr. 9, 1996).

13 Those physicians with the most significant clinical relationship with  
14 the claimant are generally entitled to more weight than those  
15 physicians with lesser relationships. As such, the ALJ may only  
16 reject a treating or examining physician's uncontradicted medical  
17 opinion based on clear and convincing reasons. Where such an  
18 opinion is contradicted, however, it may be rejected for specific and  
19 legitimate reasons that are supported by substantial evidence in the  
20 record.

21 Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008) (internal citations  
22 omitted). "The general rule is that conflicts in the evidence are to be resolved by the Secretary  
23 and that his determination must be upheld when the evidence is susceptible to one or more  
24 rational interpretations." Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987).

25 However, when the ALJ resolves conflicts by rejecting the opinion of an examining  
26 physician in favor of the conflicting opinion of another physician (including another examining  
27 physician), he must give "specific and legitimate reasons" for doing so. Regennitter v. Comm'r of  
28 Soc. Sec. Admin., 166 F.3d 1294, 1298-99 (9th Cir. 1999) ("Even if contradicted by another  
doctor, the opinion of an examining doctor can be rejected only for specific and legitimate  
reasons that are supported by substantial evidence in the record.").

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<sup>4</sup> There have been recent updates to the rules on medical sources; this section of the code applies to claims filed before March 27, 2017. See 20 C.F.R. § 404.1527. Plaintiff's claims were filed prior to 2017 and are therefore not impacted by the changes.

1 C. The ALJ Did Not Err in Assigning Little Weight to Portions of Dr. O’Grady’s Opinion

2 As discussed above, the ALJ accorded partial weight to Dr. O’Grady’s opinion. AR 26.  
3 Upon careful review of the opinion and the record, the undersigned finds the ALJ’s conclusion is  
4 supported by substantial evidence and the ALJ therefore did not err. The ALJ acted within her  
5 discretion by crediting some parts of Dr. O’Grady’s opinion and not others; “[i]t is not necessary  
6 to agree with everything an expert witness says in order to hold that his testimony contains  
7 ‘substantial evidence.’” Magallanes v. Bowen, 881 F.2d 747, 753 (9th Cir. 1989) (citations  
8 omitted). The ALJ found Dr. O’Grady’s opinion that plaintiff could perform simple work was  
9 consistent with neuropsychological test results, and thus entitled to weight because consistent  
10 with the record. AR 26; see 20 C.F.R. § 404.1527(c)(4) (ALJ considers how consistent an  
11 opinion is with the other evidence in the record); Thomas, 278 F.3d at 957 (non-treating source  
12 opinion is substantial evidence where it is supported by independent evidence in the record).

13 The ALJ gave little weight to other parts of Dr. O’Grady’s opinion, including his  
14 conclusion that plaintiff would have difficulty completing a normal workday and workweek,  
15 handling social interaction, maintaining attention, completing tasks in a timely manner, finding  
16 these conclusions inconsistent with her functioning, her attention span, her ability to complete  
17 tasks with written reminders or instructions, and her social activities and work activity. AR 26;  
18 see 20 C.F.R. § 404.1527(c)(4); Ford v. Saul, 950 F.3d 1141, 1156 (9th Cir. 2020) (affirming  
19 ALJ’s rejection of an examining source’s opinion for being inconsistent with the claimant’s  
20 performance at work and other activities); Batson v. Comm’r of Soc. Sec. Admin., 359 F.3d  
21 1190, 1195 (9th Cir. 2004) (affirming ALJ’s rejection of opinions for being inconsistent with  
22 treatment notes and other assessments of the claimant’s functioning); Rollins v. Massanari, 261  
23 F.3d 853, 856 (9th Cir. 2001) (affirming ALJ’s rejection of an opinion for being inconsistent with  
24 treatment notes and with the claimant’s activities).

25 Plaintiff takes issue with the ALJ’s citation to entire exhibits to support her conclusions.  
26 Given the detailed discussion of the medical record earlier in the decision, this was not error.  
27 Although pin citations would have been helpful, the ALJ did provide support in the record for her  
28 conclusions both by referencing the exhibits when discussing Dr. O’Grady’s opinion and by

1 discussing the medical history in detail before reaching opinion evidence. For example, the ALJ  
2 noted earlier in her decision that plaintiff had numerous neuropsychological and psychological  
3 evaluations with test results showing generally mild deficits. See AR 20-21, 24, 26 (citing  
4 Exhibits 2F 14-15, 8F, 11F 143-44, 13F); see also AR 633-34, 686- 87, 1228-29, 1468-70. The  
5 ALJ also cited evidence that plaintiff had no memory impairment in January 2018. See AR 20,  
6 24 (citing 18F3); see also AR 2316. The ALJ cited mental status exams and remarks from  
7 medical records that consistently showed normal fund of knowledge, a pleasant, polite, and  
8 cooperative demeanor, and normal thought process, normal thought content, normal alertness and  
9 orientation, adequate insight, and adequate judgment. AR 20, 21, 22, 24, 26 (citing 2F, 5F, 7F,  
10 8F, 9F, 10F, 11F, 13F, 16F, 19F); see also AR 632-33, 683, 694, 710, 720, 725, 730, 747, 752,  
11 761, 766, 771, 776, 781, 787, 795, 811, 829, 857, 907, 934-35, 948, 959, 967, 969, 970, 972, 973,  
12 975, 978, 980, 987, 992, 994, 996, 999, 1468, 1900, 1997, 2004, 2068.

13 The ALJ also found Dr. O’Grady’s conclusions inconsistent with plaintiff’s social  
14 activities and work life, which included passing a real estate licensing examination and working  
15 briefly as a realtor, assisting an elderly man with household chores, working a two-year contract  
16 for Clorox, and teaching weekly religion classes. See AR 26 (citing the report of Dr. Spivey [AR  
17 685-88], the report of Dr. O’Grady [AR 2314-16], and testimony from the hearing [AR 260-70]).  
18 An ALJ may consider a plaintiff’s activities of daily living in making her determinations. See  
19 Valentine v. Comm’r Soc. Sec. Admin., 574 F.3d 685, 693 (9th Cir. 2009). The records cited by  
20 the ALJ here provided ample evidence to support her finding.

21 Finally, plaintiff’s references a post-decision opinion from Kristin Jacobson Para, Psy.D.  
22 (ECF No. 14 at 15-16), but fails to identify a basis for remand. Dr. Para’s opinion (AR 245-252),  
23 which was issued three months after the ALJ’s decision and accepted into the record by the  
24 Appeals Council, is part of the record before the undersigned. See Brewes v. Comm’r of Soc.  
25 Sec. Admin., 682 F.3d 1157, 1163 (9th Cir. 2012). However, an opinion that post-dates an ALJ’s  
26 decision is “less persuasive.” See Macri v. Chater, 93 F.3d 540, 544 (9th Cir. 1996). The Ninth  
27 Circuit has continued to apply this rule even after the decision in Brewes. See Berkebile v.  
28 Berryhill, 714 F. App’x 649, 651 (9th Cir. 2017) (unpublished) (applying the Macri rule post-

1 Brewes and rejecting argument that a treating source opinion submitted after the ALJ's decision  
2 provided a basis for remand). Here, Dr. Para's assessment does not alter the outcome because her  
3 conclusions were admittedly not based on a "comprehensive neuropsych evaluation" but instead a  
4 "brief cognitive screening" (AR 247). Accordingly, Dr. Para's opinion does not affect the  
5 sufficiency of the ALJ's basis for her conclusions. Dr. Para's opinion, which plaintiff obtained  
6 only after receiving an unfavorable decision from the ALJ, therefore does not provide a basis for  
7 remand.

8 VII. CONCLUSION

9 For the reasons set forth above, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff's motion for summary judgment (ECF No. 14), is DENIED;  
11 2. The Commissioner's cross-motion for summary judgment (ECF No. 16), is

12 GRANTED;

- 13 3. The Clerk of the Court shall enter judgment for defendant, and close this case.

14 DATED: October 14, 2020

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16 ALLISON CLAIRE  
17 UNITED STATES MAGISTRATE JUDGE  
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