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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CHRISTOPHER DOUGLAS H.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

NO. 2:22-CV-0121-TOR

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 9, 10. Plaintiff is represented by Jordan Goddard. Defendant is represented by SAUSA Benjamin J. Groebner. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court **GRANTS** Plaintiff's Motion and **DENIES** Defendant's Motion.

**JURISDICTION**

The Court has jurisdiction pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT ~ 1

1 **STANDARD OF REVIEW**

2 A district court’s review of a final decision of the Commissioner of Social  
3 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is  
4 limited: the Commissioner’s decision will be disturbed “only if it is not supported  
5 by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153,  
6 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). “Substantial evidence” means  
7 relevant evidence that “a reasonable mind might accept as adequate to support a  
8 conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated differently,  
9 substantial evidence equates to “more than a mere scintilla[,] but less than a  
10 preponderance.” *Id.* (quotation and citation omitted). In determining whether this  
11 standard has been satisfied, a reviewing court must consider the entire record as a  
12 whole rather than searching for supporting evidence in isolation. *Id.*

13 In reviewing a denial of benefits, a district court may not substitute its  
14 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,  
15 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one  
16 rational interpretation, [the court] must uphold the ALJ’s findings if they are  
17 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674  
18 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an  
19 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless  
20 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”

1 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s  
2 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*  
3 *Sanders*, 556 U.S. 396, 409-10 (2009).

#### 4 **FIVE STEP SEQUENTIAL EVALUATION PROCESS**

5 A claimant must satisfy two conditions to be considered “disabled” within  
6 the meaning of the Social Security Act. First, the claimant must be unable “to  
7 engage in any substantial gainful activity by reason of any medically determinable  
8 physical or mental impairment which can be expected to result in death or which  
9 has lasted or can be expected to last for a continuous period of not less than 12  
10 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s  
11 impairment must be “of such severity that [he or she] is not only unable to do [his  
12 or her] previous work[,] but cannot, considering [his or her] age, education, and  
13 work experience, engage in any other kind of substantial gainful work which exists  
14 in the national economy.” 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

15 The Commissioner has established a five-step sequential analysis to  
16 determine whether a claimant satisfies the above criteria. *See* 20 §  
17 404.1520(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s  
18 work activity. 20 C.F.R. § 404.1520(a)(4)(i). If the claimant is engaged in  
19 “substantial gainful activity,” the Commissioner must find that the claimant is not  
20 disabled. 20 C.F.R. § 404.1520(b).

1           If the claimant is not engaged in substantial gainful activities, the analysis  
2 proceeds to step two. At this step, the Commissioner considers the severity of the  
3 claimant’s impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers  
4 from “any impairment or combination of impairments which significantly limits  
5 [his or her] physical or mental ability to do basic work activities,” the analysis  
6 proceeds to step three. 20 C.F.R. § 404.1520(c). If the claimant’s impairment  
7 does not satisfy this severity threshold, however, the Commissioner must find that  
8 the claimant is not disabled. *Id.*

9           At step three, the Commissioner compares the claimant’s impairment to  
10 several impairments recognized by the Commissioner to be so severe as to  
11 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §  
12 404.1520(a)(4)(iii). If the impairment is as severe or more severe than one of the  
13 enumerated impairments, the Commissioner must find the claimant disabled and  
14 award benefits. 20 C.F.R. § 404.1520(d).

15           If the severity of the claimant’s impairment does meet or exceed the severity  
16 of the enumerated impairments, the Commissioner must pause to assess the  
17 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),  
18 defined generally as the claimant’s ability to perform physical and mental work  
19 activities on a sustained basis despite his or her limitations (20 C.F.R. §  
20 404.1545(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

1 At step four, the Commissioner considers whether, in view of the claimant's  
2 RFC, the claimant is capable of performing work that he or she has performed in  
3 the past ("past relevant work"). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is  
4 capable of performing past relevant work, the Commissioner must find that the  
5 claimant is not disabled. 20 C.F.R. § 404.1520(f). If the claimant is incapable of  
6 performing such work, the analysis proceeds to step five.

7 At step five, the Commissioner considers whether, in view of the claimant's  
8 RFC, the claimant is capable of performing other work in the national economy.  
9 20 C.F.R. § 404.1520(a)(4)(v). In making this determination, the Commissioner  
10 must also consider vocational factors such as the claimant's age, education and  
11 work experience. *Id.* If the claimant is capable of adjusting to other work, the  
12 Commissioner must find that the claimant is not disabled. 20 C.F.R. §  
13 404.1520(g)(1). If the claimant is not capable of adjusting to other work, the  
14 analysis concludes with a finding that the claimant is disabled and is therefore  
15 entitled to benefits. *Id.*

16 The claimant bears the burden of proof at steps one through four above.  
17 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to  
18 step five, the burden shifts to the Commissioner to establish that (1) the claimant is  
19 capable of performing other work; and (2) such work "exists in significant  
20

1 numbers in the national economy.” 20 C.F.R. § 404.1560(c)(2); *Beltran v. Astrue*,  
2 700 F.3d 386, 389 (9th Cir. 2012).

### 3 **ALJ’S FINDINGS**

4 On December 6, 2017, Plaintiff filed an application for Title II disability  
5 insurance benefits, alleging an onset date of August 22, 2016. Tr. 306-07. The  
6 application was denied initially, and on reconsideration. Tr. 164. Plaintiff  
7 appeared at a hearing before an administrative law judge (“ALJ”) on January 8,  
8 2020. Tr. 69-109. On February 5, 2020, the ALJ denied Plaintiff’s claim. Tr.  
9 164-177. The Appeals Council remanded the matter back to the ALJ on August  
10 18, 2020. Tr. 185-87. Thereafter, the ALJ held another hearing on January 6,  
11 2021. Tr. 110-137. On April 6, 2021, the ALJ denied Plaintiff’s claim. Tr. 25-48.

12 As a threshold matter, the ALJ found Plaintiff met the insured status  
13 requirements of the Social Security Act through December 31, 2020. Tr. 30. At  
14 step one of the sequential evaluation analysis, the ALJ found Plaintiff had not  
15 engaged in substantial gainful activity from August 22, 2016, the alleged onset  
16 date, through December 31, 2020, the date last insured. Tr. 31. At step two, the  
17 ALJ found Plaintiff had the following severe impairments: lumbar spine  
18 degenerative disc disease; cervical spine degenerative disc disease; right shoulder  
19 degenerative joint disease; and bilateral carpal tunnel syndrome. *Id.* At step three,  
20 the ALJ found Plaintiff did not have an impairment or combination of impairments

1 that meets or medically equals the severity of a listed impairment. Tr. 33. The  
2 ALJ then found Plaintiff had the RFC to perform sedentary work with the  
3 following exceptions:

4 [Plaintiff] can never crawl or climb ladders, ropes, or scaffolds; occasionally  
5 stoop, kneel, crouch, and flights of stairs; occasionally reach overhead, but  
6 never lift over 5 pounds overhead bilaterally; frequently handle, finger, and  
7 feel objects bilaterally; avoid extreme cold, excessive vibration, and  
8 unprotected heights; and perform only simple, routine, unskilled tasks due to  
9 physical impairments.

8 *Id.*

9 At step four, the ALJ found Plaintiff was not capable of performing any past  
10 relevant work. Tr. 39. At step five, the ALJ found that, considering Plaintiff's  
11 age, education, work experience, and residual functional capacity, there were other  
12 jobs that existed in significant numbers in the national economy that Plaintiff could  
13 perform through the date last insured, such as call out operator, charge account  
14 clerk, semi-conductor bonder, and surveillance system monitor. Tr. 40-41. The  
15 ALJ concluded Plaintiff was not under a disability, as defined in the Social  
16 Security Act, from August 22, 2016, the alleged onset date, through December 31,  
17 2020, the date last insured. Tr. 41.

18 On April 7, 2022, the Appeals Council denied review, Tr. 1-5, making the  
19 ALJ's decision the Commissioner's final decision for purposes of judicial review.  
20 *See* 20 C.F.R. §§ 404.981, 422.210.

1 **ISSUES**

2 Plaintiff seeks judicial review of the Commissioner’s final decision denying  
3 him disability insurance benefits under Title II of the Social Security Act. Plaintiff  
4 raises the following issues for this Court’s review:

- 5 1. Whether the ALJ failed to resolve apparent conflicts between the  
6 testimony of the vocational expert and the Dictionary of Occupational  
7 Titles (DOT);  
8 2. Whether the ALJ failed to properly consider the restrictions on Plaintiff’s  
9 use of his hands and arms assessed at an independent medical  
10 examination;  
11 3. Whether the ALJ failed to provide clear and convincing reasons for  
12 rejecting Plaintiff’s testimony concerning his ability to use his hands and  
13 arms; and  
14 4. Whether the ALJ failed to properly consider statements from Plaintiff’s  
15 wife.

16 ECF No. 9 at 2.

17 **DISCUSSION**

18 **A. Vocational Expert Testimony and Dictionary of Occupational Titles**

19 Plaintiff contends the ALJ did not resolve the apparent conflicts between the  
20 vocational expert’s testimony and the Dictionary of Occupational Titles as to Level  
3 Reasoning and the ability to lift up to 10 pounds.

The Defendant acknowledges the apparent conflict between the functional  
capacity to perform simple, repetitive tasks and the demands of Level 3 Reasoning



1 for the call out operator, charge account clerk, and surveillance system monitor and  
2 concedes the ALJ made a mistake finding Plaintiff could perform these jobs  
3 without getting vocational expert testimony to explain this apparent conflict. ECF  
4 No. 10 at 11-12.

5       However, the Defendant contends Plaintiff has not shown “harmful error.”  
6 The ALJ and vocational expert identified another job Plaintiff could perform,  
7 semi-conductor bonder. ECF No. 12-13. Plaintiff contends that sedentary work  
8 necessarily involves lifting more than 5 pounds overhead so he is unable to work  
9 as a semi-conductor bonder. However, there is nothing in the DOT that describes  
10 the job duties of a semi-conductor bonder which requires overhead lifting. The  
11 ALJ found Plaintiff could perform sedentary work “but never lift over 5 pounds  
12 overhead bilaterally.” The ALJ asked the vocational expert whether Plaintiff  
13 would be able to perform jobs when adding the additional limitation of occasional  
14 handling, fingering and feeling objects with the right dominant hand. Tr. 41. The  
15 vocational expert only testified that an individual would be able to perform the jobs  
16 of call out operator and surveillance system monitor, not semi-conductor bonder.  
17 *Id.*

18       Thus, given Defendant’s concessions as to the ALJ’s mistake, this matter  
19 must be remanded on this issue to resolve the conflicts.

1       **B. Medical Opinion of Dr. Miner**

2           Plaintiff contends that the ALJ’s conclusion conflicts with Dr. Miner’s  
3 opinion and substantial evidence does not support rejecting her opinion. ECF No.  
4 9 at 7-8.

5           As an initial matter, for claims filed on or after March 27, 2017, new  
6 regulations apply that change the framework for how an ALJ must evaluate  
7 medical opinion evidence. 20 C.F.R. § 416.920c(c); *see also Revisions to Rules*  
8 *Regarding the Evaluation of Medical Evidence*, 2017 WL 168819, 82 Fed. Reg.  
9 5844-01 (Jan. 18, 2017). The ALJ applied the new regulations because Plaintiff  
10 filed his Title II claim after March 27, 2017.

11           Under the new regulations, the ALJ will no longer “give any specific  
12 evidentiary weight ... to any medical opinion(s).” *Revisions to Rules*, 2017 WL  
13 168819, 82 Fed. Reg. 5844-01, 5867-68. Instead, an ALJ must consider and  
14 evaluate the persuasiveness of all medical opinions or prior administrative medical  
15 findings from medical sources. 20 C.F.R. § 416.920c(a)-(b). The factors for  
16 evaluating the persuasiveness of medical opinions and prior administrative medical  
17 findings include supportability, consistency, relationship with the claimant,  
18 specialization, and “other factors that tend to support or contradict a medical  
19 opinion or prior administrative medical finding” including but not limited to  
20 “evidence showing a medical source has familiarity with the other evidence in the

1 claim or an understanding of our disability program’s policies and evidentiary  
2 requirements.” 20 C.F.R. § 416.920c(c)(1)-(5).

3 The ALJ is required to explain how the most important factors,  
4 supportability and consistency, were considered. 20 C.F.R. § 416.920c(b)(2).

5 These factors are explained as follows:

6 (1) *Supportability*. The more relevant the objective medical evidence and  
7 supporting explanations presented by a medical source are to support his  
8 or her medical opinion(s) or prior administrative medical finding(s), the  
9 more persuasive the medical opinions or prior administrative medical  
10 finding(s) will be.

11 (2) *Consistency*. The more consistent a medical opinion(s) or prior  
12 administrative medical finding(s) is with the evidence from other medical  
13 sources and nonmedical sources in the claim, the more persuasive the  
14 medical opinion(s) or prior administrative medical finding(s) will be.

15 20 C.F.R. § 416.920c(c)(1)-(2).

16 The ALJ may, but is not required to, explain how “the other most persuasive  
17 factors in paragraphs (c)(3) through (c)(5)” were considered. 20 C.F.R.

18 § 416.920c(c)(b)(2). However, where two or more medical opinions or prior

19 administrative findings “about the same issue are both equally well-supported ...

20 and consistent with the record ... but are not exactly the same,” the ALJ is required

to explain how “the most persuasive factors” were considered. 20 C.F.R.

§ 416.920c(c)(b)(2).

1           These regulations displace the Ninth Circuit’s standard that require an ALJ  
2 to provide “specific and legitimate” reasons for rejecting an examining doctor’s  
3 opinion. *Woods v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). As a result, the  
4 ALJ’s decision for discrediting any medical opinion “must simply be supported by  
5 substantial evidence.” *Id.*

6           While the ALJ found Dr. Miner’s opinion to be partially persuasive, her  
7 opinion was based on temporary restrictions and encroached on issues reserved for  
8 the Commissioner. Tr. 38. Dr. Miner’s opinion only concerned temporary  
9 restrictions but the ALJ was presented with evidence of disability that had already  
10 lasted longer than 12 months. The ALJ did not address or resolve this apparent  
11 issue.

12           Accordingly, this issue must be resolved on remand.

### 13           **C. Plaintiff’s Symptom Testimony**

14           Plaintiff contends the ALJ failed to rely on clear and convincing reasons to  
15 discredit his symptom testimony. ECF No. 9 at 8-18.

16           An ALJ engages in a two-step analysis to determine whether to discount a  
17 claimant’s testimony regarding subjective symptoms. SSR 16-3p, 2016 WL  
18 1119029, at \*2. “First, the ALJ must determine whether there is ‘objective  
19 medical evidence of an underlying impairment which could reasonably be  
20 expected to produce the pain or other symptoms alleged.’” *Molina*, 674 F.3d at

1 1112 (quoting *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). “The  
2 claimant is not required to show that [the claimant’s] impairment ‘could reasonably  
3 be expected to cause the severity of the symptom [the claimant] has alleged; [the  
4 claimant] need only show that it could reasonably have caused some degree of the  
5 symptom.’” *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter v. Astrue*, 504 F.3d  
6 1028, 1035-36 (9th Cir. 2007)).

7 Second, “[i]f the claimant meets the first test and there is no evidence of  
8 malingering, the ALJ can only reject the claimant’s testimony about the severity of  
9 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the  
10 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations  
11 omitted). General findings are insufficient; rather, the ALJ must identify what  
12 symptom claims are being discounted and what evidence undermines these claims.  
13 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*  
14 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently  
15 explain why he or she discounted claimant’s symptom claims). “The clear and  
16 convincing [evidence] standard is the most demanding required in Social Security  
17 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*  
18 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

19 Factors to be considered in evaluating the intensity, persistence, and limiting  
20 effects of a claimant’s symptoms include: (1) daily activities; (2) the location,

1 duration, frequency, and intensity of pain or other symptoms; (3) factors that  
2 precipitate and aggravate the symptoms; (4) the type, dosage, effectiveness, and  
3 side effects of any medication an individual takes or has taken to alleviate pain or  
4 other symptoms; (5) treatment, other than medication, an individual receives or has  
5 received for relief of pain or other symptoms; (6) any measures other than  
6 treatment an individual uses or has used to relieve pain or other symptoms; and (7)  
7 any other factors concerning an individual's functional limitations and restrictions  
8 due to pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at \*7-\*8; 20  
9 C.F.R. § 404.1529(c). The ALJ is instructed to “consider all of the evidence in an  
10 individual's record,” “to determine how symptoms limit ability to perform work-  
11 related activities.” SSR 16-3p, 2016 WL 1119029, at \*2.

12 The ALJ found Plaintiff's impairments could reasonably be expected to  
13 cause the alleged symptoms; however, Plaintiff's statements concerning the  
14 intensity, persistence, and limiting effects of those symptoms were not entirely  
15 consistent with the medical evidence and other evidence in the record. Tr. 34.

16 First the ALJ observed that Plaintiff testified to being very limited by pain  
17 and other symptoms yet did not obtain treatment from August 2016 until January  
18 2018. Tr. 34. Next, Plaintiff obtained shoulder surgery in April 2018 and reported  
19 in May 2018 that his pain was resolving and his shoulder motion was “much  
20 improved” although not normal. Tr. 35.

1 Next, the ALJ noted that it was “an interesting coincidence, the claimant was  
2 also involved in a worker’s compensation lawsuit, with an examination related to  
3 this in January 2019, where the examiner noted a history of left shoulder and lower  
4 back problems, but “no medical evidence or data to support progression of  
5 disability.” *Id.* Subsequent examinations demonstrated no significant  
6 abnormalities or neurological compromise of the bilateral shoulders or lumbar  
7 spine and despite Plaintiff’s complaint of constant pain and numbness in his hands,  
8 examination in 2020 have shown good range of motion of the elbows, wrists and  
9 hands. *Id.*

10 The ALJ recounted numerous other examinations that “document no  
11 significant abnormality that would result in a more restrictive residual functional  
12 capacity than outlined above; i.e., normal full range of motion of all joints, no focal  
13 neurologic deficits, normal sensation, normal reflexes, normal attention span and  
14 concentration. . .” Tr. 36.

15 The ALJ also recounted Plaintiff’s “reasonably high-functioning activities of  
16 daily living during the period relevant to this adjudication are also not supportive  
17 of his allegation of total disability under the Social Security Act. For example, he  
18 has reported doing outdoor chores and activities, cooking, cleaning, shopping, and  
19 driving; putting away logs in the woodshed although he complained of dropping  
20 the logs due to his hand symptoms; able to perform all self-care, do cooking and

1 light housekeeping; taking care of the house by himself after his wife left for a job;  
2 despite pacing himself, prepares meals, does lawn care, sweeps, does dishes, dusts,  
3 general cleaning and repair, drives, shops, handles his own finances, reads, walks,  
4 plays chess, goes hunting and fishing, walks his dog, does gaming online, rarely  
5 spends time with others in person; plays chess and goes to BBQs, does some  
6 cleaning at his own pace, sweeps a little bit, does some laundry, puts dishes in the  
7 dishwasher but not pots and pans, paints or makes music to distract himself from  
8 the pain, and described himself as a “computer guy” as opposed to being athletic.  
9 Tr. 37 (internal citations omitted).

10 The ALJ concluded that “claimant’s allegations of debilitating limitations  
11 (e.g., constant pain, unable to use arms or hands, needs help with personal hygiene)  
12 are inconsistent with the claimant’s admitted activities and the objective medical  
13 records. Notably, most exams show very little, if any, objective evidence of  
14 abnormality. Most of the abnormal findings are subjective (e.g., subjectively  
15 decreased sensation, subjective reports of painful range of motion, weakness due to  
16 subjective pain, etc., and the imaging does not show evidence to support his  
17 subjective complaints. Ultimately, although I accept the claimant’s allegations that  
18 his symptoms limit his functional capacity to a mild-to moderate degree, his  
19 allegations are not consistent with the record as a whole to the extent that his  
20 capacity is so limited that he is unable to engage in substantial gainful activity



1 consistent with the residual functional capacity outlined herein.” Tr. 37

2 An ALJ may not discredit a claimant’s symptom testimony and deny  
3 benefits solely because the degree of the symptoms alleged is not supported by  
4 objective medical evidence. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir.  
5 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991); *Fair v. Bowen*,  
6 885 F.2d 597, 601 (9th Cir. 1989); *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir.  
7 2005). However, the objective medical evidence is a relevant factor, along with  
8 the medical source’s information about the claimant’s pain or other symptoms, in  
9 determining the severity of a claimant’s symptoms and their disabling effects.  
10 *Rollins*, 261 F.3d at 857; 20 C.F.R. § 404.1529(c)(2).

11 The ALJ found that Plaintiff’s symptom allegations were inconsistent with  
12 his daily activities. The ALJ may consider a claimant’s activities that undermine  
13 reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can spend a substantial  
14 part of the day engaged in pursuits involving the performance of exertional or non-  
15 exertional functions, the ALJ may find these activities inconsistent with the  
16 reported disabling symptoms. *Fair*, 885 F.2d at 603; *Molina v. Astrue*, 674 F.3d  
17 1104, 1113 (9th Cir. 2012). “While a claimant need not vegetate in a dark room in  
18 order to be eligible for benefits, the ALJ may discredit a claimant’s testimony  
19 when the claimant reports participation in everyday activities indicating capacities  
20 that are transferable to a work setting” or when activities “contradict claims of a

1 totally debilitating impairment.” *Molina*, 674 F.3d at 1112-13.

2 The Ninth Circuit has cautioned against reliance on “certain daily activities,  
3 such as grocery shopping, driving a car, or limited walking for exercise” to  
4 discount a plaintiff’s symptom allegations. *Vertigan v. Halter*, 260 F.3d 1044,  
5 1050 (9th Cir. 2001).

6 Here, the ALJ lumped Plaintiff’s daily activities all together and found  
7 Plaintiff could perform these activities without analyzing each statement and  
8 observing that Plaintiff (and his wife) qualified each of his activities to such an  
9 extent that they became meaningless. Plaintiff never claimed to have spent a  
10 substantial part of his day performing these activities. Moreover, the ALJ did not  
11 evaluate the pain Plaintiff complained of nor spent any time discussing its cause,  
12 such as Lyme Disease or other causes. Plaintiff’s expressed limitations on his  
13 activities completely discounted the heavy reliance the ALJ placed on them.

14 Accordingly, substantial evidence does not support the ALJ’s rejection of  
15 Plaintiff’s impairments and pain. This issue must be remanded for a full analysis.

16 **D. Statements of Plaintiff’s Wife**

17 Plaintiff contends the ALJ did not properly consider the Plaintiff’s wife’s  
18 letter describing her observations. ECF No. 9 at 18-20.

19 The ALJ found these lay witness statements unpersuasive for the same  
20 reasons he found the claimant’s subjective complaints to be not fully consistent

1 with the objective medical evidence. Tr. 39. For the reasons stated above, this  
2 issue must be reevaluated upon remand.

3 **CONCLUSION**

4 Having reviewed the record and the ALJ's findings, this Court concludes  
5 that the ALJ's decision is not supported by substantial evidence nor free of harmful  
6 legal error.

7 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 8 1. Plaintiff's Motion for Summary Judgment (ECF No. 9) is **GRANTED**.  
9 2. Defendant's Motion for Summary Judgment (ECF No. 10) is **DENIED**.  
10 3. This case is **REVERSED** and **REMANDED** pursuant to sentence four  
11 of 42 U.S.C. § 405(g) for further administrative proceedings in  
12 accordance with this Order.  
13 4. Upon proper presentation, this Court will consider Plaintiff's application  
14 for costs, expenses, and reasonable attorney's fees under the Equal  
15 Access to Justice Act, 28 U.S.C. § 2412(a),(d).

16 The District Court Executive is directed to enter this Order, enter judgment  
17 accordingly, furnish copies to counsel, and **close the file**.

18 DATED December 27, 2022.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge