

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 14, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANGELA B.,¹

Plaintiff,

v.

KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 4:21-cv-05134-MKD

ORDER GRANTING
PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT AND
DENYING DEFENDANT’S
MOTION FOR SUMMARY
JUDGMENT

ECF Nos. 14, 18

Before the Court are the parties’ cross-motions for summary judgment. ECF Nos. 14, 18. The Court, having reviewed the administrative record and the parties’ briefing, is fully informed. For the reasons discussed below, the Court grants Plaintiff’s motion, ECF No. 14, and denies Defendant’s motion, ECF No. 18.

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. See LCivR 5.2(c).

1 **JURISDICTION**

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);
3 1383(c)(3).

4 **STANDARD OF REVIEW**

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

16 In reviewing a denial of benefits, a district court may not substitute its
17 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
18 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
19 rational interpretation, [the court] must uphold the ALJ’s findings if they are
20 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674

1 F.3d 1104, 1111 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R. §§
2 404.1502(a), 416.902(a). Further, a district court “may not reverse an ALJ’s
3 decision on account of an error that is harmless.” *Id.* An error is harmless “where
4 it is inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.* at
5 1115 (quotation and citation omitted). The party appealing the ALJ’s decision
6 generally bears the burden of establishing that it was harmed. *Shinseki v. Sanders*,
7 556 U.S. 396, 409-10 (2009).

8 **FIVE-STEP EVALUATION PROCESS**

9 A claimant must satisfy two conditions to be considered “disabled” within
10 the meaning of the Social Security Act. First, the claimant must be “unable to
11 engage in any substantial gainful activity by reason of any medically determinable
12 physical or mental impairment which can be expected to result in death or which
13 has lasted or can be expected to last for a continuous period of not less than twelve
14 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
15 impairment must be “of such severity that he is not only unable to do his previous
16 work[,] but cannot, considering his age, education, and work experience, engage in
17 any other kind of substantial gainful work which exists in the national economy.”
18 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

19 The Commissioner has established a five-step sequential analysis to
20 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§

1 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
2 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
3 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
4 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
5 404.1520(b), 416.920(b).

6 If the claimant is not engaged in substantial gainful activity, the analysis
7 proceeds to step two. At this step, the Commissioner considers the severity of the
8 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
9 claimant suffers from “any impairment or combination of impairments which
10 significantly limits [his or her] physical or mental ability to do basic work
11 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
12 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
13 however, the Commissioner must find that the claimant is not disabled. *Id.*

14 At step three, the Commissioner compares the claimant’s impairment to
15 severe impairments recognized by the Commissioner to be so severe as to preclude
16 a person from engaging in substantial gainful activity. 20 C.F.R. §§
17 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
18 severe than one of the enumerated impairments, the Commissioner must find the
19 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

1 If the severity of the claimant’s impairment does not meet or exceed the
2 severity of the enumerated impairments, the Commissioner must pause to assess
3 the claimant’s “residual functional capacity.” Residual functional capacity (RFC),
4 defined generally as the claimant’s ability to perform physical and mental work
5 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
6 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the
7 analysis.

8 At step four, the Commissioner considers whether, in view of the claimant’s
9 RFC, the claimant is capable of performing work that he or she has performed in
10 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
11 If the claimant is capable of performing past relevant work, the Commissioner
12 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).
13 If the claimant is incapable of performing such work, the analysis proceeds to step
14 five.

15 At step five, the Commissioner considers whether, in view of the claimant’s
16 RFC, the claimant is capable of performing other work in the national economy.
17 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
18 the Commissioner must also consider vocational factors such as the claimant’s age,
19 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
20 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the

1 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
2 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
3 work, the analysis concludes with a finding that the claimant is disabled and is
4 therefore entitled to benefits. *Id.*

5 The claimant bears the burden of proof at steps one through four above.
6 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
7 step five, the burden shifts to the Commissioner to establish that 1) the claimant is
8 capable of performing other work; and 2) such work “exists in significant numbers
9 in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*
10 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

11 **ALJ’S FINDINGS**

12 On February 20, 2014, Plaintiff applied both for Title II disability insurance
13 benefits and Title XVI supplemental security income benefits alleging a disability
14 onset date of March 1, 2013. Tr. 92-93, 226-38, 3253. The applications were
15 denied initially and on reconsideration. Tr. 150-57, 160-70. Plaintiff appeared
16 before an administrative law judge (ALJ) on October 31, 2016. Tr. 37-91. On
17 January 11, 2017, the ALJ denied Plaintiff’s claim. Tr. 15-36. Plaintiff appealed
18 the denial, resulting in a stipulated remand. Tr. 1315-26. On September 9, 2019,
19 Plaintiff appeared before an ALJ for a remand hearing. Tr. 1239-86. On
20 September 26, 2019, the ALJ again denied Plaintiff’s claim. Tr. 1214-38. Plaintiff

1 again appealed the denial, and on August 24, 2020, this Court granted Plaintiff's
2 Motion for Summary Judgment. Tr. 3409-38. On June 16, 2021, Plaintiff
3 appeared for another remand hearing. Tr. 3303-44. Plaintiff again denied
4 Plaintiff's claim on July 27, 2021. Tr. 3250-77.

5 At step one of the sequential evaluation process, the ALJ found Plaintiff,
6 who met the insured status requirements through December 31, 2016, has not
7 engaged in substantial gainful activity since March 1, 2013. Tr. 3256. At step
8 two, the ALJ found that Plaintiff has the following severe impairments:
9 degenerative disc disease/spondylosis, migraines, obesity, sleep disorder,
10 posttraumatic stress disorder, and anxiety. *Id.*

11 At step three, the ALJ found Plaintiff does not have an impairment or
12 combination of impairments that meets or medically equals the severity of a listed
13 impairment. Tr. 3257. The ALJ then concluded that Plaintiff has the RFC to
14 perform light work with the following limitations:

15 [Plaintiff] can occasionally balance, stoop, kneel, crouch, crawl, and
16 climb ramps or stairs; she can never climb ladders, ropes, or scaffolds;
17 she should avoid concentrated exposure to extreme cold, more than
18 moderate exposure to industrial vibration and bright lights, and all
19 exposure to hazards; she can understand, remember, and carry out
20 simple, routine tasks; she can maintain concentration, persistence, or
pace for up to two-hour intervals between standard scheduled breaks;
she would require a predictable work environment with seldom
changes and no fast-paced production rate of pace; she should avoid
all interaction with the public; and she could have only occasional,
superficial interaction (i.e., only non-collaborative, no teamwork) with
co-workers and supervisors.

1 Tr. 3259-60.

2
3 At step four, the ALJ found Plaintiff is unable to perform any of her past
4 relevant work. Tr. 3265. At step five, the ALJ found that, considering Plaintiff's
5 age, education, work experience, RFC, and testimony from the vocational expert,
6 there were jobs that existed in significant numbers in the national economy that
7 Plaintiff could perform, such as photocopy machine operator and routing clerk. Tr.
8 3267. Therefore, the ALJ concluded Plaintiff was not under a disability, as defined
9 in the Social Security Act, from the alleged onset date of March 1, 2013, through
10 the date of the decision. *Id.*

11 Per 20 C.F.R. §§ 404.984, 416.1484, the ALJ's decision following this
12 Court's prior remand became the Commissioner's final decision for purposes of
13 judicial review.

14 **ISSUES**

15 Plaintiff seeks judicial review of the Commissioner's final decision denying
16 her disability insurance benefits under Title II and supplemental security income
17 benefits under Title XVI of the Social Security Act.

1 Plaintiff raises the following issues for review:

- 2 1. Whether the ALJ violated the rule of mandate and law of the case
- 3 doctrines;²
- 4 2. Whether the ALJ properly evaluated the medical opinion evidence;
- 5 3. Whether the ALJ properly evaluated Plaintiff's symptom claims; and
- 6 4. Whether the ALJ conducted a proper step-two analysis.

7 ECF No. 14 at 2.

8 DISCUSSION

9 A. Rule of Mandate and Law of the Case

10 Plaintiff contends the ALJ violated the rule of mandate and law of the case
11 doctrines. ECF No. 14 at 4-20.

12 The law of the case doctrine applies in the Social Security context. *Stacy v.*
13 *Colvin*, 825 F.3d 563, 567 (9th Cir. 2016). Under the law of the case doctrine, a
14 court is precluded from revisiting issues which have been decided, either explicitly
15 or implicitly, in a previous decision of the same court or a higher court. *Hall v.*
16 *City of Los Angeles*, 697 F.3d 1059, 1067 (9th Cir. 2012). The doctrine of the law

17
18 ² Plaintiff did not list this as a separate issue but rather incorporated it in the other
19 issues; as this issue impacts the entirety of the ALJ's decision, the Court addresses
20 it as a separate issue.

1 of the case “is concerned primarily with efficiency, and should not be applied
2 when the evidence on remand is substantially different, when the controlling law
3 has changed, or when applying the doctrine would be unjust.” *Stacy*, 825 F.3d at
4 567.

5 The rule of mandate also applies in Social Security cases. *Id.* at 566-67.
6 “The rule of mandate is similar to, but broader than, the low of the case doctrine.”
7 *Id.* at 568 (quoting *United States v. Cote*, 51 F.3d 178, 181 (9th Cir. 1995)). The
8 rule requires that any district court that has received an appellate court’s mandate
9 not vary or examine the mandate for any purpose, other than executing it. *Hall*,
10 697 F.3d at 1067. The court may decide anything not foreclosed by the mandate
11 but commits error if it takes actions that contradict the mandate. *Id.*

12 The ALJ was instructed to reconsider the step two findings, the opinions of
13 Ms. Pingel, Ms. Castillo, Dr. Wright, and Dr. Cooper, as well as Plaintiff’s
14 symptom claims. Tr. 3422-36. First, this Court ordered:

15 On remand, the ALJ is instructed to reconsider whether Plaintiff’s
16 PTSD is a severe medically determinable impairment . . . If the ALJ
17 finds PTSD is a severe medically determinable impairment, the ALJ is
18 instructed to consider if Plaintiff’s impairments meet or equal Listing
12.15. The ALJ is further instructed to call a psychological expert to
assist with determining Plaintiff’s severe impairments, if she meets or
equals a listing, and what limitations her impairments cause.

19 Tr. 3426.

1 Yet, the ALJ stated, “The District Court did not direct the undersigned to
2 reconsider whether any of the claimant’s physical impairments met or medically
3 equaled a listing, and the undersigned incorporates the findings and discussion at
4 step 3 from the previous Administrative Law Judge decision herein as though fully
5 set forth.” Tr. 3257. This was an error.

6 When considering medical equivalence, the ALJ is required to consider
7 whether the claimant’s impairments medically equal a listing. 20 C.F.R.
8 §§ 404.1526, 416.926. Medical equivalence is not determined in a vacuum- the
9 ALJ may not only look at psychological impairments when analyzing medical
10 equivalence. *See id.* When determining medical equivalence, the ALJ must look
11 at whether the combination of impairments equals a listing, and the ALJ is required
12 to consider “all evidence in your case record about your impairment(s)” and all
13 symptoms, including pain, must be considered. *Id.* At the hearing, the
14 psychological expert testified that Plaintiff’s symptoms did not precisely satisfy the
15 criteria of a listing, Tr. 3312, but she was not asked whether the symptoms equaled
16 a listing. The expert testified “Being in pain can make you anxious in and of itself
17 which is why I think she’s taking both morphine and hydrocodone. But again, I’m
18 not a medical doctor.” Tr. 3321. Despite the expert’s testimony, the ALJ did not
19 account for Plaintiff’s pain symptoms when addressing whether Plaintiff’s
20 impairments together equal a listing. The ALJ erred in failing to follow the

1 remand order, by improperly parsing out Plaintiff’s impairments instead of
2 considering the totality of the evidence when addressing medical equivalence.

3 Next, the Court ordered the ALJ to reconsider the medical opinions of Ms.
4 Pingel, Ms. Castillo, Dr. Wright, and Dr. Cooper. Tr. 3428-32. Despite being
5 ordered to reconsider the medical opinions, the ALJ’s analysis of the medical
6 opinions is largely duplicative of the prior analysis. *Compare* Tr. 1225-28 to Tr.
7 3260-65. The ALJ’s decision to merely copy and paste most of the decision is
8 particularly troublesome considering the passage of almost two years between the
9 hearings, the addition of new medical records, new opinion evidence, new
10 testimony from the Plaintiff, and a new severe impairment. Yet, the majority of
11 the analysis is word-for-word the same as the prior decision.

12 For example, the ALJ copied the prior summary of Ms. Pingel’s opinion.
13 Tr. 1225, 3262. The ALJ copied the analysis, “The undersigned assigns Ms.
14 Pingel’s opinion little weight when considering the evidence as a whole. Ms.
15 Pingel performed her evaluation five months after the claimant’s alleged onset
16 date . . .” *Id.* This Court previously found the ALJ erred in rejecting Ms. Pingel’s
17 opinion, which is based on mental health symptoms, due to its conflict with Ms.
18 Inglin’s opinion, which is based on physical symptoms. Tr. 3431. Yet, the ALJ
19 repeated, “The undersigned notes, that within one month of Ms. Pingel’s
20 evaluation, Barbara Inglin, PA-C, stated that the claimant’s impairments do not

1 limit her from looking for work and that claimant could work at a light exertional
2 level.” Tr. 1225, 3262.

3 The ALJ erred in failing to follow the remand order, including failing to
4 properly consider medical equivalence. The ALJ also erred in recommitting errors
5 this Court had already considered and found to be erroneous.

6 **B. Medical Opinion Evidence**

7 Plaintiff contends the ALJ erred in her consideration of the opinions of Ms.
8 Pingel, Dr. Cooper, Ms. Castillo, Dr. Monis, Dr. Rubio, Dr. Vu, Ms. Inglin, Dr.
9 Comrie, and Dr. Beaty. ECF No. 14 at 11-19. As discussed *supra*, the ALJ failed
10 to follow this Court’s prior order when addressing the medical opinion evidence.

11 There are three types of physicians: “(1) those who treat the claimant
12 (treating physicians); (2) those who examine but do not treat the claimant
13 (examining physicians); and (3) those who neither examine nor treat the claimant
14 [but who review the claimant’s file] (nonexamining [or reviewing] physicians).”
15 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).
16 Generally, a treating physician’s opinion carries more weight than an examining
17 physician’s, and an examining physician’s opinion carries more weight than a
18 reviewing physician’s. *Id.* at 1202. “In addition, the regulations give more weight
19 to opinions that are explained than to those that are not, and to the opinions of
20

1 specialists concerning matters relating to their specialty over that of
2 nonspecialists.” *Id.* (citations omitted).

3 If a treating or examining physician’s opinion is uncontradicted, the ALJ
4 may reject it only by offering “clear and convincing reasons that are supported by
5 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
6 “However, the ALJ need not accept the opinion of any physician, including a
7 treating physician, if that opinion is brief, conclusory and inadequately supported
8 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
9 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or
10 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
11 may only reject it by providing specific and legitimate reasons that are supported
12 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester v. Chater*, 81
13 F.3d 821, 830-31 (9th Cir. 1995)). The opinion of a nonexamining physician may
14 serve as substantial evidence if it is supported by other independent evidence in the
15 record. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

16 *1. Ms. Pingel*

17 Ms. Pingel, a treating nurse practitioner, provided an opinion on Plaintiff’s
18 functioning on August 2, 2013. Tr. 500-05. Ms. Pingel diagnosed Plaintiff with
19 PTSD, generalized anxiety disorder, and panic disorder without agoraphobia. Tr.
20 501. Ms. Pingel opined Plaintiff was unable to work due to mood instability and

1 medication adjustments, and she could not seek work due to her anxiety and lack
2 of trust of others. Tr. 503, 505. The ALJ gave Ms. Pingel’s opinion little weight.
3 Tr. 3262. As Ms. Pingel is not an acceptable medical source, the ALJ was required
4 to give germane reasons to reject the opinion. *See Ghanim v. Colvin*, 763 F.3d
5 1154, 1161 (9th Cir. 2014).

6 This Court previously found the ALJ erred in rejecting Ms. Pingel’s opinion
7 because Ms. Pingel had diagnosed Plaintiff with PTSD; the opinion lacked a length
8 of time Plaintiff would be unable to work; and the opinion was inconsistent with
9 Ms. Inglin’s and Dr. Cooper’s opinions. Tr. 3428-31. The ALJ repeated the error
10 of rejecting Ms. Pingel’s opinion in part because it was inconsistent with Ms.
11 Inglin’s opinion. Tr. 3262.

12 The ALJ also found Ms. Pingel’s opinion was not accompanied by an
13 explanation of limitations that support the opinion. *Id.* The Social Security
14 regulations “give more weight to opinions that are explained than to those that are
15 not.” *Holohan*, 246 F.3d at 1202. “[T]he ALJ need not accept the opinion of any
16 physician, including a treating physician, if that opinion is brief, conclusory and
17 inadequately supported by clinical findings.” *Bray*, 554 at 1228. Ms. Pingel stated
18 Plaintiff had anxiety panic attacks, poor sleep, nightmares, experiences fear,
19 distrust of others, hyper alertness, and mood instability, and her symptoms and
20 medication adjustments prevent her from seeking work. Tr. 503, 505. Ms. Pingel

1 noted Plaintiff's GAF was 55, she was tearful at times, had "fair to good"
2 insight/judgment, a depressed mood, and fair energy/motivation. Tr. 502-03.
3 Thus, the opinion contains an explanation of symptoms and resulting limitations.
4 This was not a germane reason to reject the opinion.

5 Next, the ALJ found Ms. Pingel's opinion was based on a first-time
6 examination, when Ms. Pingel had no longitudinal history of Plaintiff's
7 functioning. Tr. 3262. The number of visits a claimant had with a particular
8 provider is a relevant factor in assigning weight to an opinion. 20 C.F.R. §
9 416.927(c)(1). However, the ALJ gave significant weight to the non-examining
10 State agency sources, who never met Plaintiff. Tr. 3264-65. The ALJ does not
11 offer an explanation as to why she credited opinions of sources who never met
12 Plaintiff over a source who had met Plaintiff on one occasion at the time the
13 opinion was rendered. This was not a germane reason to reject Ms. Pingel's
14 opinion.

15 Lastly, the ALJ found Ms. Pingel's opinion was inconsistent with later
16 medical records. Tr. 3262. A medical opinion may be rejected if it is unsupported
17 by medical findings. *Bray*, 554 F.3d at 1228; *Batson v. Comm'r of Soc. Sec.*
18 *Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004); *Thomas v. Barnhart*, 278 F.3d 947,
19 957 (9th Cir. 2002); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001);
20 *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992). Moreover, an ALJ is not

1 obliged to credit medical opinions that are unsupported by the medical source’s
2 own data and/or contradicted by the opinions of other examining medical sources.
3 *Tommasetti*, 533 F.3d at 1041. The ALJ noted that Ms. Pingel did not repeat her
4 statement that Plaintiff was unable to work in later medical records. Tr. 3262.
5 However, Ms. Pingel also did not indicate any change in Plaintiff’s ability to work.
6 At the only specifically cited appointment, Ms. Pingel noted Plaintiff needed to
7 “work on getting out and interacting with others,” without an “increase in panic
8 attacks.” Tr. 517. The ALJ otherwise cited to exhibits 8F and 10F, without citing
9 to any specific pages. Tr. 3262. Exhibit 8F contains 260 pages, and exhibit 10F
10 contains 101 pages. The ALJ did not offer any explanation as to what
11 inconsistencies exist in the records except the lack of additional mentions of
12 Plaintiff’s inability to work. Without any further explanation, and without citations
13 to any other specific appointments, the Court cannot meaningfully analyze this
14 finding. *See Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003) (“We require
15 the ALJ to build an accurate and logical bridge from the evidence to her
16 conclusions so that we may afford the claimant meaningful review of the SSA’s
17 ultimate findings.”). While Defendant offers citations and explanations, ECF No.
18 18 at 7-8, the Court will not consider *post hoc* rationalization. *See Orn v. Astrue*,
19 495 F.3d 625, 630 (9th Cir. 2007).

1 2. *Other Medical Opinions*

2 Plaintiff also contends the ALJ erred in her consideration of the opinions of
3 Dr. Cooper, Ms. Castillo, Dr. Monis, Dr. Rubio, Dr. Vu, Ms. Inglin, Dr. Comrie,
4 and Dr. Beaty. ECF No. 14 at 13-19. As the Court finds remand for immediate
5 benefits is appropriate for the reasons discussed *supra*, the Court declines to
6 address the remaining medical opinions. *See Hiler v. Astrue*, 687 F.3d 1208, 1212
7 (9th Cir. 2012) (“Because we remand the case to the ALJ for the reasons stated, we
8 decline to reach [plaintiff’s] alternative ground for remand.”).

9 **C. Plaintiff’s Symptom Claims**

10 Plaintiff faults the ALJ for failing to rely on reasons that were clear and
11 convincing in discrediting her symptom claims. ECF No. 14 at 3-11. An ALJ
12 engages in a two-step analysis to determine whether to discount a claimant’s
13 testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at *2.
14 “First, the ALJ must determine whether there is objective medical evidence of an
15 underlying impairment which could reasonably be expected to produce the pain or
16 other symptoms alleged.” *Molina*, 674 F.3d at 1112 (quotation marks omitted).
17 “The claimant is not required to show that [the claimant’s] impairment could
18 reasonably be expected to cause the severity of the symptom [the claimant] has
19 alleged; [the claimant] need only show that it could reasonably have caused some
20 degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

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

12 Factors to be considered in evaluating the intensity, persistence, and limiting
13 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,
14 duration, frequency, and intensity of pain or other symptoms; 3) factors that
15 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
16 side effects of any medication an individual takes or has taken to alleviate pain or
17 other symptoms; 5) treatment, other than medication, an individual receives or has
18 received for relief of pain or other symptoms; 6) any measures other than treatment
19 an individual uses or has used to relieve pain or other symptoms; and 7) any other
20 factors concerning an individual’s functional limitations and restrictions due to

1 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §§
2 404.1529(c), 416.929(c). The ALJ is instructed to “consider all of the evidence in
3 an individual’s record,” to “determine how symptoms limit ability to perform
4 work-related activities.” SSR 16-3p, 2016 WL 1119029, at *2.

5 The ALJ found that Plaintiff’s medically determinable impairments could
6 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff’s
7 statements concerning the intensity, persistence, and limiting effects of her
8 symptoms were not entirely consistent with the evidence. Tr. 3260-61.

9 As the Court finds remand for immediate benefits is appropriate for the
10 reasons discussed *supra*, the Court declines to reach this issue. *See Hiler*, 687 F.3d
11 at 1212 (“Because we remand the case to the ALJ for the reasons stated, we
12 decline to reach [plaintiff’s] alternative ground for remand.”).

13 **D. Step Two**

14 Plaintiff contends that if immediate benefits is not granted, the case should
15 be remanded for a reconsideration of Plaintiff’s arm impairments at step two. ECF
16 No. 14 at 20-21. As the Court finds remand for immediate benefits is appropriate
17 for the reasons discussed *supra*, the Court declines to reach this issue. *See Hiler*,
18 687 F.3d at 1212 (“Because we remand the case to the ALJ for the reasons stated,
19 we decline to reach [plaintiff’s] alternative ground for remand.”).

1 E. Remedy

2 Plaintiff urges this Court to award immediate benefits. ECF No. 14 at 19-
3 20. “The decision whether to remand a case for additional evidence, or simply to
4 award benefits is within the discretion of the court.” *Sprague v. Bowen*, 812 F.2d
5 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*, 761 F.2d 530 (9th Cir. 1985)).
6 When the Court reverses an ALJ’s decision for error, the Court “ordinarily must
7 remand to the agency for further proceedings.” *Leon v. Berryhill*, 880 F.3d 1041,
8 1045 (9th Cir. 2017); *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (“the
9 proper course, except in rare circumstances, is to remand to the agency for
10 additional investigation or explanation”); *Treichler v. Comm’r of Soc. Sec. Admin.*,
11 775 F.3d 1090, 1099 (9th Cir. 2014). However, in a number of Social Security
12 cases, the Ninth Circuit has “stated or implied that it would be an abuse of
13 discretion for a district court not to remand for an award of benefits” when three
14 conditions are met. *Garrison*, 759 F.3d at 1020 (citations omitted). Under the
15 credit-as-true rule, where (1) the record has been fully developed and further
16 administrative proceedings would serve no useful purpose; (2) the ALJ has failed
17 to provide legally sufficient reasons for rejecting evidence, whether claimant
18 testimony or medical opinion; and (3) if the improperly discredited evidence were
19 credited as true, the ALJ would be required to find the claimant disabled on
20 remand, the Court will remand for an award of benefits. *Revels v. Berryhill*, 874

1 F.3d 648, 668 (9th Cir. 2017). Even where the three prongs have been satisfied,
2 the Court will not remand for immediate payment of benefits if “the record as a
3 whole creates serious doubt that a claimant is, in fact, disabled.” *Garrison*, 759
4 F.3d at 1021. Here, the Court finds that each of the credit-as-true factors is
5 satisfied and that remand for the calculation and award of benefits is warranted.

6 As to the first element, administrative proceedings are generally useful
7 where the record “has [not] been fully developed,” *Id.* at 1020, there is a need to
8 resolve conflicts and ambiguities, *Andrews*, 53 F.3d at 1039, or the “presentation
9 of further evidence . . . may well prove enlightening” in light of the passage of
10 time, *I.N.S. v Ventura*, 537 U.S. 12, 18 (2002). *Cf. Nguyen v. Chater*, 100 F.3d
11 1462, 1466-67 (9th Cir. 1996) (remanding for ALJ to apply correct legal standard,
12 to hear any additional evidence, and resolve any remaining conflicts); *Byrnes v.*
13 *Shalala*, 60 F.3d 639, 642 (9th Cir. 1995) (same); *Dodrill*, 12 F.3d 918, 919 (9th
14 Cir. 1993) (same); *Bunnell v. Sullivan*, 947 F.2d 341, 348 (9th Cir. 1991) (en banc)
15 (same).

16 Here, the record has been fully developed. There is ample medical evidence
17 in the record, spanning the entire relevant adjudicative period. There are multiple
18 disabling opinions in file. Plaintiff has testified at multiple hearings. There is no
19 further need for development.

1 As to the second prong, as discussed *supra*, the ALJ failed to provide legally
2 sufficient reasons, supported by substantial evidence, to reject Ms. Pingel’s
3 opinion. Therefore, the second prong of the credit-as-true rule is met.

4 The third prong of the credit-as-true rule is satisfied because if Plaintiff’s
5 symptom claims or the medical opinion evidence were credited as true, the ALJ
6 would be required to find Plaintiff disabled.

7 Finally, the record as a whole does not leave serious doubt as to whether
8 Plaintiff is disabled. *Garrison*, 759 F.3d at 1021. Moreover, the credit-as-true rule
9 is a “prophylactic measure” designed to motivate the Commissioner to ensure that
10 the record will be carefully assessed and to justify “equitable concerns” about the
11 length of time which has elapsed since a claimant has filed their application.
12 *Treichler*, 775 F.3d at 1100 (internal citations omitted). In *Vasquez*, the Ninth
13 Circuit exercised its discretion and applied the “credit as true” doctrine because of
14 Claimant’s advanced age and “severe delay” of seven years in her application.
15 *Vasquez*, 572 F.3d at 593-94. Here, the delay of over nine years from the date of
16 the application makes it appropriate for this Court to exercise its discretion and
17 apply the “credit as true” doctrine pursuant to Ninth Circuit precedent.

18 Defendant contends a remand for another hearing is necessary because of
19 conflicting medical opinions. ECF No. 18 at 16. There have been three
20 opportunities for the medical opinion evidence to be properly considered, and two

1 opportunities for the ALJ to remedy errors made in the prior hearings. Due to the
2 ALJ's disregard of this Court's prior remand orders, the Court declines to give a
3 fourth opportunity for the medical opinions to be weighed. As the credit-as-true
4 doctrine is a prophylactic rule, immediate benefits are appropriate in this case.

5 **CONCLUSION**

6 Having reviewed the record and the ALJ's findings, the Court concludes the
7 ALJ's decision is not supported by substantial evidence and is not free of harmful
8 legal error. Accordingly, **IT IS HEREBY ORDERED:**

9 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is **GRANTED**.

10 2. Defendant's Motion for Summary Judgment, **ECF No. 18**, is **DENIED**.

11 3. The Clerk's Office shall enter **JUDGMENT** in favor of Plaintiff
12 **REVERSING** and **REMANDING** the matter to the Commissioner of Social
13 Security for immediate calculation and award of benefits.

14 The District Court Executive is directed to file this Order, provide copies to
15 counsel, and **CLOSE THE FILE**.

16 DATED August 14, 2023.

17 *s/Mary K. Dimke*
18 MARY K. DIMKE
19 UNITED STATES DISTRICT JUDGE
20