

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

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LENA CORTEZ,

Plaintiff,

v.

CAROLYN COLVIN, Commissioner of  
Social Security,

Defendant.

CASE NO. 15-0373 RJB

ORDER ADOPTING REPORT AND  
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge J. Richard Creatura. Dkt. 14. The Court has considered the Report and Recommendation, objections, and the remaining file.

On December 9, 2015, the Report and Recommendation was issued, recommending that this case for social security disability benefits be remanded for further proceedings. Dkt. 14. The facts and procedural history are in the Report and Recommendation (Dkt. 14, at 1-4) and are adopted here.

1           **Report and Recommendation.** The Report and Recommendation urges a finding that  
2 the Commissioner erred in omitting lupus and chronic pain as severe impairments and failed to  
3 include these impairments in the formulation of Plaintiff’s residual functioning capacity  
4 (“RFC”). Dkt. 14.

5           **Objections.** The Commissioner objects, arguing that the Administrative Law Judge’s  
6 (“ALJ”) decision regarding whether Plaintiff had lupus and chronic pain was a finding of fact  
7 and that as such, the Court can only review to determine “whether the record ‘yields such  
8 evidence as would allow a reasonable mind to accept the conclusions reached by the ALJ.’” Dkt.  
9 15, at 7. (*citing Gallant v. Heckler*, 753 F.2d 1450, 1453 (9th Cir. 1984)). The Commissioner  
10 argues that there is no showing that failing to find that these impairments were severe resulted in  
11 harm to Plaintiff. *Id.*

12           **Discussion.** The Report and Recommendation should be adopted and the case remanded  
13 for further proceedings. The objections do not provide a basis to reject the Report and  
14 Recommendation.

15           As stated in the Report and Recommendation, the ALJ found that Plaintiff’s lupus was a  
16 “suspicion” and did not reference Plaintiff’s chronic pain. Dkt. 14, at 6 (*citing AR 35*). The ALJ  
17 did not find these impairments severe. *Id.* The Report and Recommendation notes that not only  
18 did Plaintiff’s treating doctor diagnose her with markedly severe lupus and chronic pain based on  
19 objective medical findings (including a positive antinuclear antibodies screening test), her doctor  
20 noted the impairments caused Plaintiff symptoms including “body pain, fatigue, dizziness,  
21 shortness of breath and swollen joints.” *Id.* Accordingly, “a reasonable mind” could not accept  
22 the conclusions reached by the ALJ regarding whether these impairments were severe.

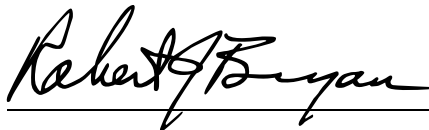
1 Further, the Report and Recommendation noted Plaintiff's treating doctor found that  
2 these severe impairments resulted in marked limitations which were omitted from the RFC. Dkt.  
3 14, at 8. Her treating doctor opined as a result of all her impairments that Plaintiff would be  
4 limited to lifting less than ten pounds, standing 30 minutes, and sitting 15 minutes. *Id.*, at 9  
5 (*citing* AR 707). As stated in the Report and Recommendation, "by omitting lupus and chronic  
6 pain from Plaintiff's list of severe impairments, the ALJ failed to consider all of Plaintiff's  
7 limitations and arrived at an incomplete RFC." *Id.* The undersigned concurs and holds that the  
8 case should be remanded.

9 **ORDER**

- 10 • The Report and Recommendation (Dkt. 14) **IS ADOPTED**; and  
11 • This case is **REMANDED** for further proceedings.

12 The Clerk is directed to send uncertified copies of this Order to all counsel of record,  
13 Judge Creatura, and to any party appearing *pro se* at said party's last known address.

14 Dated this 12<sup>th</sup> day of January, 2016.

15 

16 ROBERT J. BRYAN  
17 United States District Judge  
18  
19  
20  
21  
22  
23  
24