

1
2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 DONALD L. EDEN,

7 Plaintiff,

8 v.

9 NANCY A. BERRYHILL, Acting
10 Commissioner of Social Security,¹

11 Defendant.

Case No. 3:16-cv-05257-KLS

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

12 Plaintiff has brought this matter for judicial review of defendant's denial of his
13 applications for disability insurance and supplemental security income (SSI) benefits. The parties
14 have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. §
15 636(c), Federal Rule of Civil Procedure 73; Local Rule MJR 13. For the reasons set forth below,
16 the Court finds that defendant's decision to deny benefits should be reversed, and that this matter
17 should be remanded for further administrative proceedings.
18

19 FACTUAL AND PROCEDURAL HISTORY

20 On October 26, 2012, plaintiff filed an application for disability insurance benefits and
21 another one for SSI benefits, alleging in both applications that he became disabled beginning
22 October 1, 2009. Dkt. 9, Administrative Record (AR) 13. That application was denied on initial
23 administrative review and on reconsideration. *Id.* At a hearing held before an Administrative
24

25 _____
26 ¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to Federal Rule of Civil
Procedure 25(d), Nancy A. Berryhill should be substituted for Acting Commissioner Carolyn W. Colvin as the
defendant in this suit. The Clerk is directed to update the docket, and all future filings by the parties should reflect
this change.

1 Law Judge (ALJ), plaintiff appeared and testified, as did a vocational expert. AR 77-109.

2 In a written decision dated December 24, 2014, the ALJ found that plaintiff could
3 perform his past relevant work, and therefore that he was not disabled. AR 13-27. On February 2,
4 2016, the Appeals Council denied plaintiff's request for review of the ALJ's decision, making
5 that decision the Commissioner's final decision, which plaintiff then appealed in a complaint
6 filed with this Court on April 8, 2016. AR 1; Dkt. 1-3; 20 C.F.R. § 404.981, § 416.1481.
7

8 In his opening brief, which he filed on October 20, 2016, plaintiff states he seeks reversal
9 of the ALJ's decision and remand for further administrative proceedings, arguing the ALJ erred:

- 10 (1) in evaluating the medical evidence;
- 11 (2) in discounting plaintiff's credibility;
- 12 (3) in rejecting the lay witness evidence;
- 13 (4) in assessing plaintiff's residual functional capacity; and
- 14 (5) in finding plaintiff could perform his past relevant work.
15

16 Dkt. 13. In her response brief filed on December 8, 2016, Defendant argues the ALJ did not err
17 as alleged and therefore the ALJ's determination of non-disability was proper. Dkt. 14.

18 With his reply brief, which was filed on December 23, 2016, plaintiff informed the Court
19 that he recently was notified of a written determination of disability, dated November 30, 2016,
20 made by the Social Security Administration. Dkt. 15, p. 10; Dkt. 15-1. That determination states:
21

22 You said you have been unable to work since 6/24/08 due to autoimmune
23 conditions, multiple sclerosis, shoulder problems, and depression. The
24 evidence indicates you meet the criteria for disability as of 12/25/14.
25 Therefore, we have allowed your claim as of this date.
26

Dkt. 15-1. That determination also lists a number of medical records that were relied on to decide
25 plaintiff's disability claim. *Id.* For the reasons set forth below, the Court finds remand for further
26 administrative proceedings is warranted in light of this new evidence.

1 DISCUSSION

2 The Commissioner’s determination that a claimant is not disabled must be upheld if the
3 “proper legal standards” have been applied, and the “substantial evidence in the record as a
4 whole supports” that determination. *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986);
5 *see also Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004); *Carr v.*
6 *Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991). “A decision supported by substantial
7 evidence nevertheless will be set aside if the proper legal standards were not applied in weighing
8 the evidence and making the decision.” *Carr*, 772 F.Supp. at 525 (citing *Brawner v. Sec’y of*
9 *Health and Human Sers.*, 839 F.2d 432, 433 (9th Cir. 1987)). Substantial evidence is “such
10 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
11 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation omitted); *see also Batson*, 359 F.3d at
12 1193.
13

14 The Commissioner’s findings will be upheld “if supported by inferences reasonably
15 drawn from the record.” *Batson*, 359 F.3d at 1193. Substantial evidence requires the Court to
16 determine whether the Commissioner’s determination is “supported by more than a scintilla of
17 evidence, although less than a preponderance of the evidence is required.” *Sorenson v.*
18 *Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence admits of more than one
19 rational interpretation,” that decision must be upheld. *Allen v. Heckler*, 749 F.2d 577, 579 (9th
20 Cir. 1984). That is, “[w]here there is conflicting evidence sufficient to support either outcome,”
21 the Court “must affirm the decision actually made.” *Allen*, 749 F.2d at 579 (quoting *Rhinehart v.*
22 *Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).
23

24 In support of his argument that the recent determination of disability provides additional
25 support for reversing the ALJ’s decision and remanding this matter for further administrative
26

1 proceedings, plaintiff points to the Ninth Circuit’s decision in *Luna v. Astrue*, 623 F.2d 1022 (9th
2 Cir. 2010). In that case, the Court of Appeals noted that the district court had remanded the
3 ALJ’s decision under 42 U.S.C. § 405(g), which provides that to justify remand based on newly
4 submitted evidence, the claimant must show that that evidence is both “new” and “material”, and
5 that there is “good cause for having failed to produce that evidence earlier.” *Id.* at 1034; *Mayer v.*
6 *Massanari*, 276 F.3d 453, 462 (9th Cir. 2001). The Ninth Circuit went on to note that “[n]ew
7 evidence is material when it bear[s] directly and substantially on the matter in dispute, and if
8 there is a reasonabl[e] possibility that the new evidence would have changed the outcome of the . . .
9 . . . determination.” *Luna*, 623 F.2d at 1034 (citations and internal quotation marks omitted).

11 In finding that the district court in *Luna* did not err in remanding the matter, the Court of
12 Appeals explained:

13 The district court held that the finding of disability based on Luna’s second
14 benefits application was new and material evidence warranting remand for
15 further factual consideration because it commenced at or near the time Luna
16 was found not disabled based on the first application. The court cited a district
17 court decision holding that an ALJ’s award of benefits less than a week after
18 the ALJ denied a claimant’s first benefits application constituted “new and
19 material evidence.” *See Reichard v. Barnhart*, 285 F.Supp.2d 728, 734
20 (S.D.W.Va.2003). That case stands for the proposition that, “in certain
21 circumstances, an award based on an onset date coming in immediate
22 proximity to an earlier denial of benefits is worthy of further administrative
23 scrutiny to determine whether the favorable event should alter the initial,
24 negative outcome on the claim.” *Bradley v. Barnhart*, 463 F.Supp.2d 577,
25 580–81 (S.D.W.Va.2006) (emphasizing the “tight timeline” from the denial of
26 benefits to the grant of benefits).

27 We agree. The “reasonable possibility” that the subsequent grant of benefits
28 was based on new evidence not considered by the ALJ as part of the first
29 application indicates that further consideration of the factual issues is
30 appropriate to determine whether the outcome of the first application should
31 be different. *See [Booz v. Sec’y of Health & Human Servs., 734 F.2d 1378,*
32 *1380-81 (9th Cir. 1984)].*

33 Although we have previously upheld the denial of a remand for further
34 proceedings in somewhat similar circumstances, it was in a case where an

1 initial denial and subsequent award were easily reconcilable on the record
2 before the court. *See Bruton*, 268 F.3d at 827 (“In this case, Bruton’s second
3 application involved different medical evidence, a different time period, and a
4 different age classification.”). That is not true here. We cannot conclude based
5 on the record before us whether the decisions concerning Luna were
6 reconcilable or inconsistent. There was only one day between the denial of
7 Luna’s first application and the disability onset date specified in the award for
8 her successful second application, but she may have presented different
9 medical evidence to support the two applications, or there might be some
10 other reason to explain the change. Given this uncertainty, remand for further
11 factual proceedings was an appropriate remedy. *See Am. Bird Conservancy v.*
12 *FCC*, 545 F.3d 1190, 1195 n. 3 (9th Cir.2008) (“The proper remedy for an
13 inadequate record ... is to remand to the agency for further factfinding.”).

14 *Id.* at 1034-35.

15 As in *Luna*, in this case the determination of disability found plaintiff met the criteria for
16 disability beginning the day after the ALJ found him to be not disabled. *Id.* at 1033, 1035; AR
17 13-27. It also is not possible to conclude based on the record before the Court whether the ALJ’s
18 decision and the disability determination are reconcilable or inconsistent. Although some of the
19 medical records the Social Security Administration relied on to find plaintiff disabled are from a
20 period of time well after the date of the ALJ’s decision, it is unclear whether those records touch
21 on the period of time the ALJ considered. *See* Dkt. 15-1. Further, the determination of disability
22 specifically states that it also relied on “reports . . . listed in our previous notice.” *Id.* However, it
23 again is unclear which notice this refers to, what “reports” are listed in that notice, or whether the
24 reports are from a period that includes the one the ALJ considered. *Id.*

25 The Court may remand this case “either for additional evidence and findings or to award
26 benefits.” *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Generally, when the Court
reverses an ALJ’s decision, “the proper course, except in rare circumstances, is to remand to the
agency for additional investigation or explanation.” *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th
Cir. 2004) (citations omitted). Thus, it is “the unusual case in which it is clear from the record

1 that the claimant is unable to perform gainful employment in the national economy,” that
2 “remand for an immediate award of benefits is appropriate.” *Id.*

3 Benefits may be awarded where “the record has been fully developed” and “further
4 administrative proceedings would serve no useful purpose.” *Smolen*, 80 F.3d at 1292; *Holohan v.*
5 *Massanari*, 246 F.3d 1195, 1210 (9th Cir. 2001). Specifically, benefits should be awarded where:

6
7 (1) the ALJ has failed to provide legally sufficient reasons for rejecting [the
8 claimant’s] evidence, (2) there are no outstanding issues that must be resolved
9 before a determination of disability can be made, and (3) it is clear from the
record that the ALJ would be required to find the claimant disabled were such
evidence credited.

10 *Smolen*, 80 F.3d 1273 at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir. 2002).
11 Because it is not possible to reconcile the ALJ’s decision on non-disability with the subsequent
12 determination of disability issued by the Social Security Administration, remand for the purpose
13 of reconciling those decisions is proper.

14
15 CONCLUSION

16 Based on the foregoing discussion, the Court finds the ALJ improperly determined
17 plaintiff to be not disabled. Defendant’s decision to deny benefits therefore is REVERSED and
18 this matter is REMANDED for further administrative proceedings.

19 DATED this 16th day of February, 2017.

20
21
22 
23 Karen L. Strombom
24 United States Magistrate Judge
25
26