

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
WASHINGTON**

Rhoda B. v. Frank Bisignano, Commissioner of Social Security

Rhoda B. v. Bisignano, No. 1:25-CV-03013-JAG (E.D. Wash. Mar. 30, 2026) · No. 1:25-CV-03013-JAG ·

Decided March 30, 2026

OPINION

1 Mar 30, 2026 2 SEAN F. MCAVOY, CLERK UNITED STATES DISTRICT COURT 3
EASTERN DISTRICT OF WASHINGTON 4 5 RHODA B., No. 1:25-CV-03013-JAG 6 Plaintiff,
ORDER REMANDING FOR 7 v. FURTHER PROCEEDINGS 8 FRANK BISIGNANO, 9
Commissioner of Social Security,1 10 Defendant. 11 12 BEFORE THE COURT is Plaintiff's
Opening Brief and the 13 Commissioner's Brief in response, ECF No. 8 and 12, as well as
Plaintiff's Reply 14 Memorandum.

ECF No. 13. Attorney D. James Tree represents Rhoda B. 15 (Plaintiff); Special Assistant United
States Attorney David Burdett represents the 16 17 Commissioner of Social Security (Defendant).
The parties have consented to 18 proceed before the undersigned by operation of Local Magistrate
Judge Rule 19 (LMJR) 2(b)(2), as no party returned a Declination of Consent Form to the Clerk's
20 Office by the established deadline.

ECF No. 3. After reviewing the administrative 21 record and briefing, the Court OVERTURNS
the Administrative Law Judge's 22 (ALJ) decision and REMANDS for further proceedings. 23 I.
JURISDICTION 24 Plaintiff filed applications for Disability Insurance Benefits and 25
Supplemental Security Income on July 21, 2021, alleging disability since May 15, 26 27 1
Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Frank Bisignano 28 is substituted
as the defendant in this suit.

See 42 U.S.C. § 405(g). 2021, due to stroke and heart issues. Tr. 18. Plaintiff's claim was denied
initially 1 2 and on reconsideration, and she requested a hearing before an ALJ. Tr. 188. A 3
hearing was held on September 19, 2023, at which vocational expert Tom Polsin, 4 and Plaintiff,
who was represented by counsel, testified. Tr. 86-119. ALJ 5 Malcolm Ross presided.

Tr. 86. The ALJ denied benefits on February 27, 2024. 6 Tr. 15-33. The Appeals Council denied
review. Tr. 1. The ALJ's decision 7 became the final decision of the Commissioner, which is
appealable to the district 8 court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for
judicial review 9 on January 31, 2025. ECF No. 1. 10 II. STATEMENT OF FACTS 11 The facts
of the case are set forth in detail in the transcript of proceedings 12 and the ALJ's decision and are
only briefly summarized here.

Plaintiff was born in 13 1963 and was 57 years old on the alleged onset date. Tr. 254. Plaintiff's past jobs 14 include civil engineer. Tr. 27. 15 III. STANDARD OF REVIEW 16 The ALJ is responsible for determining credibility, resolving conflicts in 17 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 18 1039 (9th Cir. 1995).

The ALJ's determinations of law are reviewed de novo, with 19 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*, 20 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed 21 only if it is not supported by substantial evidence or if it is based on legal error. 22 23 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.

1999). Substantial evidence is 24 defined as being more than a mere scintilla, but less than a preponderance. *Id.* 25 at 1098. Put another way, substantial evidence is such relevant evidence as a 26 reasonable mind might accept as adequate to support a conclusion. *Richardson v. 27 Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one 28 rational interpretation, the Court may not substitute its judgment for that of the ALJ.

Tackett, 180 F.3d at 1097; *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 1 2 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative 3 findings, or if conflicting evidence supports a finding of either disability or non- 4 disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 5 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision supported by 6 substantial evidence will be set aside if the proper legal standards were not applied 7 in weighing the evidence and making the decision.

Browner v. Secretary of Health 8 and Human Services, 839 F.2d 432, 433 (9th Cir. 1988). 9 IV. SEQUENTIAL EVALUATION PROCESS 10 The Commissioner established a five-step sequential evaluation process for 11 determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); 12 see *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987).

In steps one through four, the 13 burden of proof rests upon the claimant to establish a prima facie case of 14 entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-99. This burden is 15 met once a claimant establishes that a physical or mental impairment prevents him 16 from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4).

17 If a claimant cannot perform past relevant work, the ALJ proceeds to step five, and 18 the burden shifts to the Commissioner to show that (1) the claimant can make an 19 adjustment to other work; and (2) the claimant can perform specific jobs that exist 20 in the national economy. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 21 1193-94 (9th Cir. 2004).

If a claimant cannot make an adjustment to other work in 22 23 the national economy, the claimant will be found disabled. 20 C.F.R. §§ 24 404.1520(a)(4)(v), 416.920(a)(4)(v). 25 V. ADMINISTRATIVE FINDINGS 26 On February 27, 2024, the ALJ issued a decision finding

Plaintiff was not 27 disabled as defined in the Social Security Act. Tr. 15-33. 28 At step one, ALJ Ross found Plaintiff had not engaged in substantial gainful 1 2 activity since May 15, 2021.

Tr. 20. 3 At step two, the ALJ found Plaintiff had the following severe impairments: 4 history of stroke with left hemiplegia; paroxysmal atrial fibrillation; left shoulder 5 abnormality; essential hypertension; seizure disorder; and obesity, status post- 6 bariatric surgery. Tr. 20. 7 At step three, the ALJ determined Plaintiff does not have an impairment or 8 combination of impairments that meets or medically equal one of the listed 9 impairments in 20 C.F.R., Subpart P, Appendix 1 (20 C.F.R. §§ 404.1520(d), 10 404.1525, 404.1526, 416.920(d), 416.925 and 416.926).

Tr. 22. The ALJ also 11 found Plaintiff has the residual functional capacity (RFC) to perform light work, 12 with the following limitations: 13 [F]our hours standing and/or walking in an eight-hour workday; 14 occasional climbing of ramps and stairs; never climbing ladders, ropes or scaffolds; no operation of foot controls with the left lower extremity; 15 occasional overhead reaching with the left upper extremity; occasional 16 balancing, stooping, kneeling, crouching and crawling; occasional 17 exposure to extreme vibrations and hazards such as unprotected heights and dangerous machinery; and using a cane to ambulate.

18 Tr 23. 19 At step four, the ALJ found that Plaintiff could perform past relevant work 20 as a civil engineer and a data examination clerk. Tr. 27. 21 At step five, the ALJ found that, based on the testimony of the vocational 22 expert, and considering Plaintiff's age, education, work experience, and RFC, 23 Plaintiff was capable of performing jobs that existed in significant numbers in the 24 25 national economy, including the jobs of date examination clerk.

Tr. 27 26 The ALJ thus concluded Plaintiff was not under a disability within the 27 meaning of the Social Security Act at any time from the alleged onset date through 28 the date of the decision. Tr. 28. 1 VI. ISSUES 2 The question presented is whether substantial evidence exists to support the 3 ALJ's decision denying benefits and, if so, whether that decision is based on proper 4 legal standards.

Plaintiff contends that the ALJ erred by improperly assessing 5 medically determinable impairments, improperly assessing lay opinions, 6 improperly assessing medical opinions, and improperly assessing Plaintiff's 7 subjective complaints. 8 VII. DISCUSSION 9 A. Step Two. 10 Plaintiff argues that the ALJ erred by omitting neurocognitive defects 11 following the stroke as well as right knee osteoarthritis as severe impairments.

The 12 ALJ addressed both but found neither were "severe" impairments. The ALJ 13 examined cognitive deficits finding that the impairment caused no more than 14 "mild" limitation of any of the functional areas and no evidence suggested more 15 than a minimal limitation to the claimant's ability to do basic work activities. 16 Tr. 21.

As for the right knee osteoarthritis, the ALJ found that the impairment did not cause significant vocation limitations for 12 consecutive months or more. 18 Tr. 21. 19 Defendant argues that omission of conditions at Step Two can never cause 20 prejudicial error regardless of whether some conditions are miscategorized as non- 21 severe. ECF No. 28. Defendant continues that even if the omission could have 22 23 been harmful, discussion of the physical impairments flowing from Plaintiff's 24 stroke also sufficiently addressed neurocognitive deficits.

ECF No. 29. 25 While the Court agrees that so long as the ALJ considers the impact of any 26 and all conditions, even those deemed non-severe at Step Two, the ALJ cannot 27 make a reversible error. However, where, as in this case, the ALJ does not even 28 consider the impacts of conditions deemed non-severe on Plaintiff's ability to work, the ALJ commits reversible error.

The ALJ failed to address Plaintiff's 1 2 neurocognitive deficits on her ability to perform a highly skilled and cognition 3 heavy past work.² With regard to the right knee osteoarthritis, the ALJ provided 4 for some mobility limitations, including use of a cane, but did not specifically 5 address how having difficulty with both legs may significantly impact Plaintiff's 6 ability to perform field work as required for a civil engineer.

7 The Court finds that the ALJ reversibly erred by omitting neurocognitive 8 deficits caused by the stroke and the right knee osteoarthritis at Step Two because 9 the failure to include those impairments as "severe" led to ignoring the effects of 10 those impairments on Plaintiff's ability to work at later steps. 11 B. Lay Opinions. 12 Although the ALJ correctly noted the regulations do not require as thorough 13 of a review of lay opinion as required for medical opinion, in a case such as this, 14 the ALJ should have at least considered the lay opinion and given it similar if not 15 more weight than that of the vocational expert.

Plaintiff's former employer, who 16 has expertise in the job requirements as well as having witnessed firsthand how the 17 stroke impacted Plaintiff's ability to perform her job duties, provided a detailed 18 review and explanation of the changes to Plaintiff's job performance following the 19 stroke.

The ALJ barely addressed this opinion. The ALJ simply noted that he 20 need not evaluate this type of evidence the same way that he is required to 21 evaluated medical opinion, took judicial notice of the lay witness statement, and 22 23 then "considered it in this decision" without making further comment or analysis 24 This omission is problematic in light of the ALJ's failure to address evidence 25 2 26 submitted by Plaintiff's former employer (addressed in more detail later in this 27 order) who noticed a severe drop off in Plaintiff's ability to perform her job 28 following the stroke due to cognitive limitations.

Tr. 393–95. of the statement. Tr. 27. Unlike a situation where the lay witness may have a bias 1 2 or obvious interest in buoying a claimant, this lay witness had no reason to 3 exaggerate or lie on

Plaintiff's behalf.

The lay witness' statement is consistent 4 with the cognitive testing and Plaintiff's complaints of brain fog, provides a 5 practical explanation of how stroke caused cognition deficits affected Plaintiff's 6 job performance, and is not contradicted by any of the other evidence on the 7 record.

The ALJ, however, does not appear to meaningfully consider the opinion, 8 and instead discounted Plaintiff's testimony of brain fog because it did not comport 9 with her having worked for several years following her stroke despite Mr. Revell's 10 clear explanation for this discrepancy. 11 C. Plaintiff's Subjective Statements. 12 Plaintiff contends the ALJ erred by improperly rejecting her subjective 13 complaints.

ECF No. 8. It is the province of the ALJ to make determinations 14 regarding a claimant's subjective statements. *Andrews*, 53 F.3d at 1039. However, 15 the ALJ's findings must be supported by specific, cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the claimant produces 17 medical evidence of an underlying medical impairment, the ALJ may not discredit 18 testimony as to the severity of an impairment merely because it is unsupported by 19 medical evidence.

Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998). Absent 20 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's 21 testimony must be "specific, clear and convincing." *Smolen*, 80 F.3d at 1281; 22 23 *Lester*, 81 F.3d at 834. "General findings are insufficient: rather the ALJ must 24 identify what testimony is not credible and what evidence undermines the 25 claimant's complaints." *Lester* at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th 26 Cir.

1993). 27 The ALJ cited to "inconsistencies "and other facts present in the evidence" 28 that undermined Plaintiff's subjective reports. Tr. 24. As noted above, the ALJ appears to have not fully evaluated lay witness evidence that supported Plaintiff's 1 2 complaint of lasting cognitive issues caused by her stroke and presumed, without 3 evidence, that Plaintiff's cognition remained at the level necessary to perform her 4 job.

The ALJ found Plaintiff's reports of brain fog at odds with her volunteer work 5 which involved her giving people rides 10 hours a week or so. The ability to 6 perform relatively simple volunteer work and attend to self-care such as 7 performing household chores and playing cards at the Senior Center are not clear 8 and convincing reasons to discount Plaintiff's complaints.

9 D. Medical Opinions. 10 No medical opinion in the record finds Plaintiff capable of performing job 11 functions. The ALJ gives only one medical opinion weight, that of Dr. Schultz. 12 Since the Court already has determined that the ALJ committed harmful error the 13 Court will not review each medical opinion, but instead asks the ALJ to reassess all 14 medical opinion, including the testing and follow up testing performed by Dr. Jane 15 Thompson, Ph.D.

The ALJ shall review and assess medical opinions that pertain to cognition as well as physical impairments. The Court notes that the weight of medical evidence strongly swings in favor of a finding of disability, with the ALJ crediting the only outlier, consultative examiner Dr. Schultz, who opined that Plaintiff lacked a DSM diagnosis, but that her “occupational adaptation is hard to assess.” Tr.

561 (emphasis added). This opinion does not appear to bear the weight the ALJ has thrust upon given that the examiner expresses no opinion about whether Plaintiff can perform cognitively at a level necessary to perform work as an engineer. VIII. CONCLUSION Having reviewed the record and the ALJ's findings, the Court concludes the ALJ's decision is not supported by evidence and is based on legal error.

The Court sees no evidence supporting the ALJ's decision regarding the lack of cognitive deficits despite a robust medical record supporting a finding of disability. Upon remand, the ALJ shall address all impairments, take new evidence if offered, offer Plaintiff the opportunity for a hearing, and reassess all medical opinions. 4 Accordingly, IT IS ORDERED: 5 1.

Plaintiff's Motion for Remand, ECF No. 8, is GRANTED. 6 2. Defendant's Motion to Affirm ALJ, ECF No. 12, is DENIED. 7 The District Court Executive is directed to file this Order and provide a copy to counsel. Judgment shall be entered for Plaintiff and the file shall be CLOSED.? DATED March 30, 2026. 12 a ge JAMES A. GOEKE B a” UNITED STATES MAGISTRATE JUDGE 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28