

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Kanha Phounsavath v. Commissioner of Social Security

Phounsavath v. Commissioner of Social Security, No. 1:23-cv-01436-HBK (E.D. Cal. Mar. 5, 2025) · No. 1:23-cv-01436-HBK · Decided March 6, 2025

SUMMARY

The United States District Court for the Eastern District of California remands Kanha Phounsavath’s Social Security disability benefits case to the Commissioner for further administrative proceedings. The court concludes that the Appeals Council inadequately evaluated examining psychologist Pauline Bonilla’s opinion under the applicable medical-opinion regulations and failed to account for assessed limitations concerning completion of a normal workday or workweek and dealing with workplace stress and changes. The court also finds that the error was not harmless because the vocational expert’s testimony indicated that such limitations could affect employability.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Helena M. Barch-Kuchta
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 6, 2025
DOCKET	1:23-cv-01436-HBK
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff sought judicial review under 42 U.S.C. § 405(g) of the Commissioner’s final decision denying her application for disability insurance benefits. The parties filed cross-motions for summary judgment without oral argument.
STANDARD OF REVIEW	Under 42 U.S.C. § 405(g), the court reviews the Commissioner’s decision for substantial evidence and legal error, considers the administrative record as a whole, and does not substitute its judgment for the Commissioner’s. An error is harmless if inconsequential to the ultimate nondisability determination; the party challenging the decision generally bears the burden of showing harm.
PRECEDENTIAL VALUE	unpublished district court order; precedential status unknown

TOPICS

judicial review of agency action

administrative law

disability definition

administrative procedure act

PRACTICE AREAS

Social Security disability

administrative law

judicial review of agency action

medical-opinion evidence

vocational evidence

QUESTIONS PRESENTED

1. Whether the Appeals Council properly evaluated the medical opinion of Pauline Bonilla, Psy.D., under the post-2017 Social Security regulations.
2. Whether the Appeals Council's residual functional capacity assessment adequately accounted for Dr. Bonilla's moderate limitations in completing a normal workday or workweek and dealing with workplace stress and changes.
3. Whether the Appeals Council's error in evaluating Dr. Bonilla's opinion was harmless.
4. What remedy was appropriate after finding harmful error in the evaluation of the medical opinion evidence.

HOLDINGS

1. The Appeals Council erred by finding Dr. Bonilla's opinion only somewhat persuasive without explaining how it considered the opinion's supportability and consistency or identifying substantial evidence supporting its conclusion.
2. The RFC limitation to simple, routine tasks, limited public contact, occasional teamwork, no quota-driven work, and working mainly with objects rather than people did not account for Dr. Bonilla's moderate limitations in completing a normal workday or workweek and dealing with workplace stress and changes.
3. The error was not harmless because the vocational expert testified that missing more than two days of work per month or being productive only four to six hours per day would not be tolerated in competitive employment, and the record did not establish that no reasonable ALJ could reach a different disability determination after properly evaluating the evidence.
4. Remand for further administrative proceedings, rather than an immediate award of benefits, was appropriate.

KEY QUOTATIONS

"Here, the Appeals Council fails to identify or explain how the specific limitations assessed by Dr. Bonilla were "somewhat persuasive" pursuant to the revised regulations; thus, the Appeal Council's finding was not supported by substantial evidence." (at 6)

“Based on the foregoing, the Court finds the RFC limiting Plaintiff to simple, routine tasks with only occasional public contact, occasional tasks that require teamwork, no quota-driven work, and working “mainly with objects and not people” (AR 7), does not account for Dr. Bonilla’s findings of moderate limitations in Plaintiff’s ability to complete a normal workday/work week and deal with stress and changes encountered in the workplace.” (at 10-11)

“Where,” as here, “there is conflicting evidence, and not all essential factual issues have been resolved, a remand for an award of benefits is inappropriate.” (at 13-14)

FACTUAL BACKGROUND

Plaintiff was 57 years old at the time of the administrative hearing, had completed eleventh grade in Laos, and could not read or write English. She had worked as a farm laborer and bench worker and alleged disability based on mental-health symptoms, a reported heart condition, hypertension, and leg pain. She testified to poor concentration, difficulty getting along with others, panic attacks, depression, fatigue, limited outings, and use of a prescribed walker. The Appeals Council found severe impairments including essential hypertension, obesity, osteoarthritis, and depressive bipolar disorder, but concluded that Plaintiff could perform a reduced range of medium work and other jobs existing in significant numbers.

PROCEDURAL HISTORY

Plaintiff applied for disability insurance benefits, alleging disability beginning January 28, 2020. The application was denied initially and on reconsideration. After a July 12, 2022 telephonic hearing, the ALJ issued an unfavorable decision. The Appeals Council later corrected Plaintiff’s date last insured from June 30, 2020, to September 30, 2020, adopted the ALJ’s disability findings, and denied benefits. The district court granted Plaintiff’s motion for summary judgment, denied the Commissioner’s cross-motion, reversed the Commissioner’s decision, and remanded for further administrative proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reconsider Dr. Bonilla’s opinion and the relevant medical evidence; reevaluate Plaintiff’s symptom claims; conduct a new sequential analysis; reassess the RFC and step-five finding; obtain additional consultative examinations or medical-expert testimony if appropriate; and, if necessary, obtain additional vocational-expert testimony based on all limitations credited by the ALJ.

CASES CITED

- *Sousa v. Callahan*, 143 F.3d 1240, 1242 n.3 (9th Cir. 1998)
- *Hill v. Astrue*, 698 F.3d 1153, 1158-59 (9th Cir. 2012)
- *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008)
- *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009)

- Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999)
- Beltran v. Astrue, 700 F.3d 386, 389 (9th Cir. 2012)
- Jeffrey C. v. Kijakazi, 2023 WL 4760603, at *3 (D. Or. July 26, 2023)
- Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998)
- Brown-Hunter v. Colvin, 806 F.3d 487, 494-95 (9th Cir. 2015)
- Woods v. Kijakazi, 32 F.4th 785, 787, 792 (9th Cir. 2022)
- Smith v. Bowen, 849 F.2d 1222, 1225 (9th Cir. 1988)
- Boucher v. Colvin, 2013 WL 3778891, at *2-3 (W.D. Wash. July 18, 2013)
- Voelker v. Kijakazi, 2023 WL 3062111, at *7 (E.D. Cal. Apr. 24, 2023)
- Svaldi v. Berryhill, 720 F. App'x 342, 343-44 (9th Cir. 2017)
- Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1174 (9th Cir. 2008)
- Bayliss v. Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005)
- Panziera v. Berryhill, 2018 WL 278623, at *20 (N.D. Cal. Jan. 3, 2018)
- Harrell v. Kijakazi, 2021 WL 4429416, at *6 (E.D. Cal. Sept. 27, 2021)
- Macias v. Saul, 2021 WL 856423, at *6 (E.D. Cal. Mar. 8, 2021)
- Gowan v. Commissioner of Social Security, 2024 WL 3372470, at *3 (E.D. Cal. July 11, 2024)
- de los Santos v. Kijakazi, 2022 WL 1541464, at *6 (E.D. Cal. May 16, 2022)
- Berenisia Madrigal v. Saul, 2020 WL 58289, at *5-6 (E.D. Cal. Jan. 6, 2020)
- Millsap v. Kijakazi, 2023 WL 4534341, at *5-6 (E.D. Cal. July 13, 2023)
- Sahyoun v. Saul, 2020 WL 1492661, at *4 (E.D. Cal. Mar. 27, 2020)
- Messerli v. Berryhill, 2017 WL 3782986, at *11 (E.D. Cal. Aug. 31, 2017)
- Schmidt v. Colvin, 2013 WL 5372845, at *17 (E.D. Cal. Sept. 25, 2013)
- Stout v. Commissioner of Social Security Administration, 454 F.3d 1050, 1056 (9th Cir. 2006)
- Byrd v. Colvin, 2017 WL 980559, at *8 (D. Or. Mar. 14, 2017)
- Treichler v. Commissioner of Social Security Administration, 775 F.3d 1090, 1101, 1103-04 (9th Cir. 2014)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
 CALIFORNIA 10 11 KANHA PHOUNSAVATH, Case No. 1:23-cv-01436-HBK 12 Plaintiff,
 ORDER REMANDING CASE TO COMMISSIONER OF SOCIAL SECURITY 1 13 v. (Doc.
 Nos. 8, 12) 14 COMMISSIONER OF SOCIAL SECURITY, 15 Defendant. 16 17 18 19 Kanha
 Phounsavath (“Plaintiff”) seeks judicial review of a final decision of the 20 Commissioner of
 Social Security (“Commissioner” or “Defendant”) denying her application for 21 disability
 insurance benefits under the Social Security Act.

(Doc. No. 1). The matter is currently 22 before the Court on the parties’ briefs, which were
 submitted without oral argument. (Doc. Nos. 23 8, 12-13). For the reasons set forth more fully
 below, the Court remands the matter to the 24 Commissioner of Social Security for further

administrative proceedings. 25 I. JURISDICTION 26 Plaintiff protectively filed for disability insurance benefits on January 28, 2020, alleging 27 1 Both parties have consented to the jurisdiction of a magistrate judge in accordance with 28 U.S.C. §636(c)(1).

(Doc. No. 16). 28 1 an onset date of January 28, 2020. (AR 306-09). Benefits were denied initially (AR 102-23, 171- 2 75), and upon reconsideration (AR 124-40, 182-87). Plaintiff appeared at a telephonic hearing 3 before an Administrative Law Judge (“ALJ”) on July 12, 2022. (AR 18-44). Plaintiff was 4 represented by counsel and testified at the hearing with an interpreter.

(Id.). The ALJ issued an 5 unfavorable decision on September 27, 2022. (AR 141-66). On June 27, 2023, the Appeals 6 Council notified Plaintiff that they granted her request for review of the ALJ’s decision, and 7 indicated they were taking action because the ALJ incorrectly calculated the date last insured as 8 June 30, 2020. (AR 286-90).

On August 25, 2023, the Appeals Council corrected the date last 9 insured to September 30, 2020, adopted the ALJ’s findings and conclusions regarding whether 10 Plaintiff is disabled, agreed with the ALJ’s findings under all steps of the sequential analysis, and 11 issued an unfavorable decision denying Plaintiff disability insurance benefits. (AR 1-10).

The 12 Appeals Council decision is the Commissioner’s final decision for the purposes of judicial 13 review. See 42 U.S.C. § 1383(c)(3); *Sousa v. Callahan*, 143 F.3d 1240, 1242 n.3 (9th Cir. 1998). 14 II. BACKGROUND 15 The facts of the case are set forth in the administrative hearing and transcripts, the 16 Appeals Council and ALJ decisions, and the briefs of Plaintiff and Commissioner.

Only the most 17 pertinent facts are summarized here. 18 Plaintiff was 57 years old at the time of the hearing. (See AR 340). She completed 19 eleventh grade in Laos and cannot read or write in English. (AR 22-23). Plaintiff has work 20 history as a farm laborer and a bench worker. (AR 37). She is claiming disability based on 21 symptoms from mental health issues, a reported heart condition, and high blood pressure.

(AR 22 23). Plaintiff testified that she is unable to work because of poor concentration, problems getting 23 along with people, and high blood pressure. (AR 32). She reported she does not go out much, 24 needs a family member to go with her to the grocery store, has panic attacks once or twice a 25 week, is depressed, has fatigue, and has “far sight problems.” (AR 33-34).

Plaintiff testified that 26 she has been using a prescribed walker for two years because of leg pain. (AR 34). 27 III. STANDARD OF REVIEW 28 A district court’s review of a final decision of the Commissioner of Social Security is 1 governed by 42 U.S.C. § 405(g).

The scope of review under § 405(g) is limited; the 2 Commissioner’s decision will be disturbed “only if it is not supported by substantial evidence or 3 is based on legal error.” *Hill v. Astrue*, 698

F.3d 1153, 1158 (9th Cir. 2012). “Substantial 4 evidence” means “relevant evidence that a reasonable mind might accept as adequate to support a 5 conclusion.” Id. at 1159 (quotation and citation omitted).

Stated differently, substantial evidence 6 equates to “more than a mere scintilla[,] but less than a preponderance.” Id. (quotation and 7 citation omitted). In determining whether the standard has been satisfied, a reviewing court must 8 consider the entire record as a whole rather than searching for supporting evidence in isolation. 9 Id. 10 In reviewing a denial of benefits, a district court may not substitute its judgment for that of 11 the Commissioner. “The court will uphold the ALJ’s conclusion when the evidence is susceptible 12 to more than one rational interpretation.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir.

13 2008). Further, a district court will not reverse an ALJ’s decision on account of an error that is 14 harmless. Id. An error is harmless where it is “inconsequential to the [ALJ’s] ultimate 15 nondisability determination.” Id. (quotation and citation omitted).

The party appealing the ALJ’s 16 decision generally bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 17 U.S. 396, 409-10 (2009). 18 IV. FIVE-STEP SEQUENTIAL EVALUATION PROCESS 19 A claimant must satisfy two conditions to be considered “disabled” within the meaning of 20 the Social Security Act.

First, the claimant must be “unable to engage in any substantial gainful 21 activity by reason of any medically determinable physical or mental impairment which can be 22 expected to result in death or which has lasted or can be expected to last for a continuous period 23 of not less than twelve months.” 42 U.S.C. § 423(d)(1)(A).

Second, the claimant’s impairment 24 must be “of such severity that he is not only unable to do his previous work[,] but cannot, 25 considering his age, education, and work experience, engage in any other kind of substantial 26 gainful work which exists in the national economy.” 42 U.S.C. § 423(d)(2)(A). 27 The Commissioner has established a five-step sequential analysis to determine whether a 28 claimant satisfies the above criteria.

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

At this step, the Commissioner considers the severity of the claimant’s impairment. 20 6 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers from “any impairment or combination of 7 impairments which significantly limits [his or her] physical or mental ability to do basic work 8 activities,” the analysis proceeds to step three. 20 C.F.R. § 404.1520(c). If the claimant’s 9 impairment does not

satisfy this severity threshold, however, the Commissioner must find that the claimant is not disabled.

20 C.F.R. § 404.1520(c). 11 At step three, the Commissioner compares the claimant's impairment to severe 12 impairments recognized by the Commissioner to be so severe as to preclude a person from 13 engaging in substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(iii). If the impairment is as 14 severe or more severe than one of the enumerated impairments, the Commissioner must find the 15 claimant disabled and award benefits.

20 C.F.R. § 404.1520(d). 16 If the severity of the claimant's impairment does not meet or exceed the severity of the 17 enumerated impairments, the Commissioner must pause to assess the claimant's "residual 18 functional capacity." Residual functional capacity (RFC), defined generally as the claimant's 19 ability to perform physical and mental work activities on a sustained basis despite his or her 20 limitations, 20 C.F.R. § 404.1545(a)(1), is relevant to both the fourth and fifth steps of the 21 analysis.

22 At step four, the Commissioner considers whether, in view of the claimant's RFC, the 23 claimant is capable of performing work that he or she has performed in the past (past relevant 24 work). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is capable of performing past relevant 25 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 404.1520(f).

If 26 the claimant is incapable of performing such work, the analysis proceeds to step five. 27 At step five, the Commissioner considers whether, in view of the claimant's RFC, the 28 claimant is capable of performing other work in the national economy. 20 C.F.R. § 404.1520(a)(4)(v).

In making this determination, the Commissioner must also consider 2 vocational factors such as the claimant's age, education, and past work experience. 20 C.F.R. § 404.1520(a)(4)(v). If the claimant is capable of adjusting to other work, the Commissioner must 4 find that the claimant is not disabled. 20 C.F.R. § 404.1520(g)(1). If the claimant is not capable 5 of adjusting to other work, analysis concludes with a finding that the claimant is disabled and is 6 therefore entitled to benefits.

20 C.F.R. § 404.1520(g)(1). 7 The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*, 8 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the 9 Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such 10 work "exists in significant numbers in the national economy." 20 C.F.R. § 404.1560(c)(2); 11 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir.

2012). 12 V. APPEAL COUNCIL'S FINDINGS 13 At step one, the Appeals Council found that Plaintiff has engaged in substantial gainful 14 activity (SGA) since January 28, 2020, the alleged onset date. (AR 7). At step two, the Appeals 15 Council found that Plaintiff has the following

severe impairments: essential hypertension, obesity, 16 osteoarthritis, and depressive bipolar disorder.

(AR 7). At step three, the Appeals Council found 17 that Plaintiff does not have an impairment or combination of impairments that meets or medically 18 equals the severity of a listed impairment. (AR 7). The Appeals Council then found that Plaintiff 19 has the RFC to perform a reduced range of the medium exertional level 20 except occasionally climb ramps or stairs, stoop, kneel and crawl.

She could not climb ladders, ropes or scaffolds. She must avoid 21 hazardous work environments such as working at unprotected heights, operating fast or dangerous machinery, or driving 22 commercial vehicles. She must avoid walking on slippery or uneven terrain. She is limited to simple, routine tasks with only occasional 23 public contact, but should not do jobs that require the public to complete the tasks.

She could occasionally perform tasks that require 24 teamwork. She cannot perform jobs that require the ability to read or write in English, but she should be able to perform unskilled tasks 25 that can be learned by demonstration within a 30-to-90-day period. She cannot perform quota-driven work. She should work mainly 26 with objects and not people. 27 (AR 7).

At step four, the Appeals Council found that Plaintiff is unable to perform her past 28 relevant work. (AR 7). At step five, the Appeals Council found there are a significant number of 1 jobs in the national economy that Plaintiff can perform, including hand packager, hardware 2 assembler, polisher buffer, industrial cleaner, and machine packager. (AR 8).

On that basis, the 3 Appeals Council concluded that Plaintiff is not disabled, as defined in the Social Security Act, at 4 any time from January 28, 2020, the alleged onset date, through September 30, 2020, the date last 5 insured. (AR 8). 6 VI. ISSUES 7 Plaintiff seeks judicial review of the Commissioner's final decision denying her disability 8 insurance benefits under Title II of the Social Security Act.

(Doc. No. 1). Plaintiff raises the 9 following issues for this Court's review: 10 1. Whether the Appeals Council properly considered the medical opinions of Pauline 11 Bonilla, Psy.D. and Lance Zimmerman, Ph.D.; 12 2. Whether the Appeals Council properly considered Plaintiff's mental health symptom 13 claims; and 14 3. Whether the Appeals Council properly resolved an apparent inconsistency between the 15 vocational expert testimony and the Dictionary of Occupational Titles.

16 (Doc. No. 8 at 9-23). 17 VII. DISCUSSION 18 A. Medical Opinions 19 For claims filed on or after March 27, 2017, new regulations apply that change the 20 framework for how an ALJ must evaluate medical opinion evidence. Revisions to Rules 21 Regarding the Evaluation of Medical

Evidence, 2017 WL 168819, 82 Fed. Reg. 5844-01 (Jan. 18, 22 2017); 20 C.F.R. §§ 404.1520c, 416.920c.

The new regulations provide that the ALJ will no longer “give any specific evidentiary weight...to any medical opinion(s).” Revisions to Rules, 24 2017 WL 168819, 82 Fed. Reg. 5844, at 5867-68; see 20 C.F.R. §§ 404.1520c(a), 416.920c(a). 25 Instead, an ALJ must consider and evaluate the persuasiveness of all medical opinions or prior 26 administrative medical findings from medical sources.

20 C.F.R. §§ 404.1520c(a) and (b), 27 416.920c(a) and (b). The factors for evaluating the persuasiveness of medical opinions and prior 28 administrative medical findings include supportability, consistency, relationship with the claimant 1 (including length of the treatment, frequency of examinations, purpose of the treatment, extent of 2 the treatment, and the existence of an examination), specialization, and “other factors that tend to 3 support or contradict a medical opinion or prior administrative medical finding” (including, but 4 not limited to, “evidence showing a medical source has familiarity with the other evidence in the 5 claim or an understanding of our disability program’s policies and evidentiary requirements”).

20 6 C.F.R. §§ 404.1520c(c)(1)-(5), 416.920c(c)(1)-(5). 7 Supportability and consistency are the most important factors, and therefore the ALJ is 8 required to explain how both factors were considered. 20 C.F.R. §§ 404.1520c(b)(2), 9 416.920c(b)(2). Supportability and consistency are explained in the regulations: 10 (1) Supportability.

The more relevant the objective medical evidence and supporting explanations presented by a medical source are to 11 support his or her medical opinion(s) or prior administrative medical finding(s), the more persuasive the medical opinions or prior 12 administrative medical finding(s) will be. 13 (2) Consistency.

The more consistent a medical opinion(s) or prior administrative medical finding(s) is with the evidence from other 14 medical sources and nonmedical sources in the claim, the more persuasive the medical opinion(s) or prior administrative medical 15 finding(s) will be. 16 20 C.F.R. §§ 404.1520c(c)(1)-(2), 416.920c(c)(1)-(2).

The ALJ may, but is not required to, 17 explain how the other factors were considered. 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2). 18 However, when two or more medical opinions or prior administrative findings “about the same 19 issue are both equally well-supported... and consistent with the record... but are not exactly the 20 same,” the ALJ is required to explain how “the other most persuasive factors in paragraphs (c)(3) 21 through (c)(5)” were considered.

20 C.F.R. §§ 404.1520c(b)(3), 416.920c(b)(3). 22 The Ninth Circuit has additionally held that the new regulatory framework displaces the 23 longstanding case law requiring an ALJ to provide

“specific and legitimate” or “clear and 24 convincing” reasons for rejecting a treating or examining doctor’s opinion. *Woods v. Kijakazi*, 32 25 F.4th 785, 787 (9th Cir. 2022).

Nonetheless, in rejecting an examining or treating doctor’s 26 opinion as unsupported or inconsistent, an ALJ must still provide an explanation supported by 27 substantial evidence. *Id.* at 792. This means that the ALJ “must ‘articulate... how persuasive’ 28 [he or she] finds ‘all of the medical opinions’ from each doctor or other source... and ‘explain 1 how [he or she] considered the supportability and consistency factors’ in reaching these findings.” 2 *Id.* (citing 20 C.F.R. §§ 404.1520c(b), 404.1520(b)(2)).

3 Plaintiff argues the Appeals Council improperly considered the medical opinions of 4 Pauline Bonilla, Psy.D. and Lance Zimmerman, Ph.D. (Doc. No. 8 at 14-20). In January 2021, 5 Dr. Pauline Bonilla examined Plaintiff and opined that she had moderate limitations in her ability 6 to complete a normal workday/workweek without interruptions from a psychiatric condition and 7 deal with stress and changes encountered in the workplace; and the likelihood of Plaintiff 8 emotionally deteriorating in a work environment is minimal to moderate.

(AR 458). The ALJ 9 found Dr. Bonilla’s opinion was “generally persuasive” as it was based on personal examination 10 and reflects the improvement Plaintiff achieved with medications. (AR 157 (also finding the state 11 agency consultant opinion at the initial level of review “reflects a broader period during which the 12 claimant remained more symptomatic until appropriate treatment provided improvement to her 13 symptoms.”)).

The Appeals Council “agreed” with the ALJ’s findings at all steps of the 14 sequential evaluation; however, the Appeals Council specifically found Dr. Bonilla’s opinion was 15 only “somewhat persuasive” solely because the evaluation occurred in January 2021, after 16 Plaintiff’s date last insured of September 30, 2020. (AR 6). 17 Plaintiff argues the Appeals Council failed to properly evaluate Dr. Bonilla’s opinion 18 because “the AC failed to explain its consideration of the supportability and consistency factors” 19 and erred by disregarding her opinion “merely because the evaluation and opinion were issued a 20 few months after the expiration of Plaintiff’s insured status, particularly when there was no 21 significant change in Plaintiff’s mental condition in the short intervening time period.” (Doc.

No. 22 8 at 19). As an initial matter, Defendant has waived any argument that this reason was legally 23 sufficient by failing to respond to Plaintiff’s argument. See, e.g., *Jeffrey C. v. Kijakazi*, 2023 WL 24 4760603, at *3 (D. Or. July 26, 2023) (collecting cases) (“The Government’s failure to defend 25 Plaintiff’s allegations of error,... is a concession of those alleged errors.”).

26 Regardless, to the extent the Appeals Council rejected any portion of Dr. Bonilla’s 27 opinion as only “somewhat persuasive,” they must do more than state a conclusion; rather, the 28 Appeals Council must “set forth [their] own interpretations and explain why they, rather than the 1

doctors', are correct." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998); *Brown-Hunter*, 806 2 F.3d at 495 (a court "cannot substitute [the court's] conclusions for the ALJ's, or speculate as to 3 the grounds for the ALJ's conclusions.

Although the ALJ's analysis need not be extensive, the 4 ALJ must provide some reasoning in order for [the court] to meaningfully determine whether the 5 ALJ's conclusions were supported by substantial evidence."). "This can be done by setting out a 6 detailed and thorough summary of the facts and conflicting clinical evidence, stating his 7 interpretation thereof, and making findings." *Reddick*, 157 F.3d at 725.

In addition, as noted 8 above, the Ninth Circuit recently clarified that under the new regulations for considering medical 9 evidence, "an ALJ cannot reject an examining or treating doctor's opinion as unsupported or 10 inconsistent without providing an explanation supported by substantial evidence.

The agency 11 must 'articulate ... how persuasive' it finds 'all of the medical opinions' from each doctor or 12 other source, 20 C.F.R. § 404.1520c(b), and "explain how [it] considered the supportability and 13 consistency factors" in reaching these findings, *id.* § 404.1520c(b)(2)." *Woods*, 32 F.4th at 792. 14 Here, the Appeals Council fails to identify or explain how the specific limitations assessed by Dr. 15 Bonilla were "somewhat persuasive" pursuant to the revised regulations; thus, the Appeal 16 Council's finding was not supported by substantial evidence.

17 Moreover, it is well-settled in the Ninth Circuit that "medical evaluations made after the 18 expiration of a claimant's insured status are relevant to an evaluation of the pre-expiration 19 condition." *Smith v. Bowen*, 849 F.2d 1222, 1225 (9th Cir. 1988) ("It is obvious that medical 20 reports are inevitably rendered retrospectively and should not be disregarded solely on that 21 basis.").

However, "while post-[date last insured] evidence cannot be rejected solely as remote in 22 time, it can be rejected on the grounds that the evidence itself is not retrospective." *Boucher v. 23 Colvin*, 2013 WL 3778891, at *2-3 (W.D. Wash. July 18, 2013); *Voelker v. Kijakazi*, 2023 WL 24 3062111, at *7 (E.D. Cal. Apr. 24, 2023) (finding plaintiff did not establish opinion post-dating 25 date last insured was offered retrospective to a time prior to plaintiff's date last insured); but see 26 *Svaldi v. Berryhill*, 720 F. App'x 342, 343-44 (9th Cir.

2017) (noting medical opinion issued after 27 date last insured should be considered because it referred to chronic condition and symptoms 28 during the relevant period). Here, to the extent it was offered as a reason to discount Dr. 1 Bonilla's opinion, the Appeals Council's finding that the "evaluation occurred in January 2021, 2 after the claimant's date last insured of September 30, 2020," without consideration of whether 3 the evidence was retrospective, does not rise to the level of substantial evidence to find Dr. 4 Bonilla's opinion only somewhat persuasive.

5 Defendant's sole argument is that "there is no conflict for the Court to resolve" because 6 the RFC assessed by the Appeals Council properly accounted for the moderate limitations 7 assessed by Dr. Bonilla. (Doc. No. 12 at 10-12). Specifically, Defendant argues any error in 8 considering the Dr. Bonilla's opinion was harmless because the assessed RFC limiting Plaintiff to 9 simple and routine tasks, limited social interaction, and no quota-drive work properly 10 incorporated the moderate limitations assessed by Dr. Bonilla in Plaintiff's ability to complete a 11 normal workday/workweek and deal with stress and changes in the workplace.² (Id. at 11-12 12 (collecting cases finding RFC limitation to simple tasks accommodated opinion assessing 13 moderate limitations in plaintiff's ability to respond to work pressure, maintain regular 14 attendance, and complete a normal workday/workweek); *Stubbs-Danielson v. Astrue*, 539 F.3d 15 1169, 1174 (9th Cir.

2008) (an ALJ's assessment of a claimant adequately captures restrictions 16 related to concentration, persistence, or pace where the assessment is consistent with restrictions 17 identified in medical testimony)). Plaintiff responds that any error in considering Dr. Bonilla's 18 opinion would not be harmless because the RFC did not account for Plaintiff's moderate 19 limitations in dealing with stress or workplace changes.

(Doc. No. 8 at 20). The Court agrees. 20 A claimant's RFC is "the most [the claimant] can still do despite [his or her] limitations." 21 20 C.F.R. § 404.1545(a); 20 C.F.R. § 416.945(a). The RFC assessment is an administrative 22 finding based on all relevant evidence in the record, not just medical evidence. *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir.

2005). In determining the RFC, the Appeals Council 24 must consider all limitations, severe and non-severe, that are credible and supported by 25 26 2 As to Dr. Bonilla's functional assessment that the likelihood of Plaintiff emotionally deteriorating in a work environment is minimal to moderate, Defendant argues Plaintiff provides "no cogent reasons or 27 relevant legal authorities why this 'minimal to moderate' limitation equates to 'work absences or the need for additional work breaks.'" (Doc.

No. 12 at 12). In light of the need to reconsider Dr. Bonilla's opinion 28 on remand for the reasons discussed supra, it is unnecessary for the Court to consider this argument. 1 substantial evidence in the record. (Id.) (RFC determination will be affirmed if supported by 2 substantial evidence).

However, the RFC findings need only be consistent with relevant assessed 3 limitations and not identical to them. *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1222-23 (9th 4 Cir. 2010). 5 Defendant generally cites the finding in *Stubbs-Danielson* that a limitation to simple, 6 routine, repetitive work properly accounted for moderate limitations in concentration, persistence, 7 and pace; and relies on additional case law concluding that a claimant's low tolerance for stress or 8 moderate limitations dealing with changes are accounted for in an RFC limiting claimant to 9 simple, repetitive tasks.

(Doc. No. 12 at 11 (citing *Stubbs-Danielson*, 539 F.3d at 1174; *Garza v. 10 Comm’r of Soc. Sec.*, 2022 WL 2974691, at *11 (E.D. Cal. July 27, 2022) (collecting cases)). 11 However, “the Ninth Circuit and district courts in the Ninth Circuit have held that *Stubbs- 12 Danielson* does not control in cases where the limitations relate to functional areas other than 13 concentration, persistence, and pace, such as social functioning and attendance.” *Panziera v. 14 Berryhill*, 2018 WL 278623, at *20 (N.D.

Cal. Jan. 3, 2018). After review of the most recent case 15 law, the Court agrees. 16 [U]npublished district court case law (which is not controlling, but is more factually on point) is split but tends to favor the view that a 17 restriction to simple/routine tasks with limited public contact does not account for the moderate limitations [the doctor] identified in 18 interacting with supervisors and peers, handling work related stressors, maintaining regular attendance, and completing a normal 19 workweek without interruption.

The district court case law in support of Defendant’s position is sparser and more outdated. The 20 weight of the more recent case law tends to refute the notion that a limitation to simple/routine tasks with limited public contact 21 adequately accounts for other limitations in social interaction, maintaining attendance, completing a normal workday without 22 interruptions from a psychiatric condition, and handling work related stressors.

23 24 *Harrell*, 2021 WL 4429416 at *6 (internal citations omitted); see also *Macias v. Saul*, 2021 WL 25 856423, at *6 (E.D. Cal. Mar. 8, 2021) (collecting cases and holding that a limitation to simple 26 one- or two- step tasks does not account for attendance limitations); *Gowan v. Comm’r of Soc. 27 Sec.*, 2024 WL 3372470, at *3 (E.D. Cal. July 11, 2024) (citing *de los Santos v. Kijakazi*, 2022 28 WL 1541464, at *6 (E.D.

Cal. May 16, 2022) (“The case law in this circuit is split but tends to 1 favor the view that a restriction to simple/routine tasks is not a catchall and does not account for 2 limitations such as maintaining attendance”); *Berenisia Madrigal v. Saul*, 2020 WL 58289, at *5- 3 6 (E.D. Cal. Jan. 6, 2020) (restriction to simple, routine tasks dos not account for assessed 4 limitations in ability to complete a normal workday or workweek without interruptions from 5 psychiatric condition and the ability to deal with stress or changes encountered in the workplace); 6 *Millsap v. Kijakazi*, 2023 WL 4534341, at *5-6 (E.D.

Cal. July 13, 2023) (rejecting argument that 7 limitation to simple, routine tasks in the RFC accounted for moderate mental limitations in 8 opinion the ALJ found persuasive, including ability to complete a normal workday or workweek); 9 *Sahyoun v. Saul*, 2020 WL 1492661, at *4 (E.D. Cal. Mar. 27, 2020) (rejecting argument that 10 limitation to work involving simple and repetitive tasks adequately captured moderate limitations 11 in maintaining regular attendance, completing a normal workday or work week without 12 interruption from psychiatric condition, and handling work-related stress); but see *Messerli v. 13 Berryhill*, 2017 WL 3782986, at *11 (E.D.

Cal. Aug. 31, 2017) (finding limitation to simple 14 routine tasks adequately accounted for moderate limitations in ability to accept instructions, 15 interact with coworkers and the public, maintain attendance, and complete a normal 16 workday/workweek without interruptions); Schmidt v. Colvin, 2013 WL 5372845, at *17 (E.D. 17 Cal. Sept. 25, 2013) (finding RFC limitation to simple unskilled work adequately captured opined 18 moderate limitations in completing a normal workday and work week).

19 Based on the foregoing, the Court finds the RFC limiting Plaintiff to simple, routine tasks 20 with only occasional public contact, occasional tasks that require teamwork, no quota-driven 21 work, and working “mainly with objects and not people” (AR 7), does not account for Dr. 22 Bonilla’s findings of moderate limitations in Plaintiff’s ability to complete a normal 23 workday/work week and deal with stress and changes encountered in the workplace.

The 24 Appeals Council’s failure to provide reasons, supported by substantial evidence, to reject those 25 limitations, particularly as to her ability to complete a workday/work week and deal with stress 26 and changes, or to properly incorporate those limitations into the assessed RFC, constitutes error. 27 See Robbins v. Soc. Sec. Admin., 466 F.3d 880, 886 (9th Cir.

2006) (“an ALJ is not free to 28 disregard properly supported limitations”); Byrd v. Colvin, 2017 WL 980559, at *8 (D. Or. Mar. 14, 2017) (“Here, the ALJ gave great weight to [the] opinion, but the RFC failed to take into 2 account all of the limitations identified by [the doctor], and the ALJ failed to explain why she did 3 not include the limitations in the RFC.

As a result, the ALJ erred in formulating the RFC.”). 4 Further, on the record before the Court it cannot conclude that the error was harmless, as the VE 5 testified that missing more than two days of work per month or being productive only four to six 6 hours a day would not be allowed in competitive employment. (AR 40); see Stout v. Comm’r of 7 Soc. Sec. Admin., 454 F.3d 1050, 1056 (9th Cir.

2006) (the reviewing court cannot consider an 8 error harmless unless it “can confidently conclude that no reasonable ALJ, when fully crediting 9 the [evidence], could have reached a different disability determination”). 10 On remand, the ALJ must reconsider Dr. Bonilla’s opinion along with the relevant 11 medical evidence, and, if necessary, reassess the RFC.

12 B. Additional Assignments of Error 13 Plaintiff also argues the Appeals Council failed to properly evaluate the medical opinion 14 of Lance Zimmerman, Ph.D.; the Appeals Council failed to present the requisite reasons for 15 discounting Plaintiff’s mental health symptom claims; and the Appeals Council failed to resolve 16 an apparent inconsistency between the vocational expert’s testimony and the Dictionary of 17 Occupational Titles.

(Doc. No. 8 at 9-17, 21-23). As to Dr. Zimmerman’s opinion, the Court 18 particularly notes that the Appeals Council relied on inconsistencies between Dr. Bonilla and Dr. 19 Zimmerman’s

opinion as a reason to find Dr. Zimmerman's opinion not persuasive. (AR 6). 20 In light of the need to reconsider Dr. Bonilla's medical opinion, and the relevant medical 21 evidence, the Court declines to consider these challenges in detail here.

On remand, the ALJ is 22 instructed to reconsider the relevant medical opinion evidence and conduct a new sequential 23 analysis, including a reevaluation of Plaintiff's symptom claims, and a reassessment of the RFC 24 and step five finding if necessary. 25 C. Remedy 26 Plaintiff requests that the case be remanded for further administrative proceedings and a 27 new decision.

(Doc. No. 8 at 23). The Court finds that further administrative proceedings are 28 appropriate. See *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103-04 (9th Cir. 1 | 2014) (remand for benefits is not appropriate when further administrative proceedings would 2 | serve a useful purpose).

Here, the Appeals Council improperly considered the medical opinion 3 | evidence, which calls into question whether the assessed RFC, and resulting hypothetical 4 | propounded to the vocational expert, are supported by substantial evidence. "Where," as here, 5 | "there is conflicting evidence, and not all essential factual issues have been resolved, a remand for 6 | an award of benefits is inappropriate." *Treichler*, 775 F.3d at 1101.

On remand, the ALJ should 7 | reevaluate the medical opinion evidence, as well as Plaintiff's symptom claims. If necessary, the 8 | ALJ should order additional consultative examinations and, if appropriate, take additional 9 | testimony from medical experts.

The ALJ should conduct a new sequential analysis, reassess 10 | Plaintiff's RFC and, if necessary, take additional testimony from a vocational expert which 11 | includes all of the limitations credited by the ALJ. 12 Accordingly, it is ORDERED: 13 1. Plaintiff's Motion for Summary Judgment (Doc. No. 8) is GRANTED. 14 2. Defendant's Cross Motion for Summary Judgment (Doc.

No. 12) is DENIED. 15 3. Pursuant to sentence four of 42 U.S.C. § 405(g), the Court REVERSES the 16 Commissioner's decision and REMANDS this case back to the Commissioner of 17 Social Security for further proceedings consistent with this Order. 18 4. An application for attorney fees may be filed by separate motion within thirty (30) 19 days. 20 5.

The Clerk shall enter judgment in favor of Plaintiff, terminate any motions and 21 deadlines, and close this case. 22 | Dated: _ March 5, 2025 Mihaw. Wh. foareh fackte 24 HELENA M. BARCH-KUCHTA 35 UNITED STATES MAGISTRATE JUDGE 26 27 28 14