

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

David A. M. v. Acting Commissioner of Social Security

David A. M. · No. 2:24-cv-01814-TLF · Decided December 29, 2025

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON 5 AT
TACOMA/ SEATTLE 6 DAVID A. M., Case No. 2:24-cv-01814-TLF 7 Plaintiff, v. ORDER
REVERSING AND 8 REMANDING DEFENDANT’S ACTING COMMISSIONER OF
SOCIAL DECISION TO DENY BENEFITS 9 SECURITY, 10 Defendant. 11 12 Plaintiff seeks
review of the denial of his application for Disability Insurance 13 Benefits.

Having considered the Administrative Law Judge (ALJ)’s decision, the 14 administrative record
(AR), and all memoranda of record, the Court REVERSES and 15 REMANDS the ALJ’s decision
to deny benefits. 16 BACKGROUND 17 On February 8, 2022, plaintiff filed a Title II application
for a period of disability 18 and disability insurance benefits, alleging disability beginning July 9,
2020 and the date 19 last insured will be December 31, 2027.

AR 17, 20. The claim was denied initially on 20 October 4, 2022, and upon reconsideration on
May 1, 2023. Id. Plaintiff has a high 21 school education and past relevant work as a maintenance
worker II and inventory 22 clerk. AR 93 (education); AR 36 (past work). ALJ Deborah Giesen
conducted a hearing 23 24 1 on January 5, 2024. Dkt. 16, AR 1662-1703.1 The ALJ denied
plaintiff’s claims on 2 February 23, 2024.

AR 17-37. 3 Plaintiff engaged in substantial gainful activity between February and September 4
2021. AR 17, 20, 264, 293, 298. 520. The ALJ found that plaintiff has “severe 5 impairments” of
sequela of traumatic compartment syndrome of the right leg status post 6 surgeries as well as
posterior tibial tendonitis. AR 20.

The ALJ formulated the RFC, 7 finding plaintiff can perform light work, but with additional
limitations: never climb 8 ladders, ropes, or scaffolds; never work around unprotected heights or
unprotected 9 dangerous moving machinery; occasionally climb ramps/stairs, balance, and stoop;
10 never kneel, crouch, or crawl; and never operate foot controls with the right foot.

AR 26. 11 The ALJ found The ALJ, thus, found that plaintiff was not disabled. AR 36-37. 12
Based on the vocational expert’s opinion, at step four, that plaintiff was capable 13 of performing
his past relevant work as an inventory clerk as actually performed. 14 LEGAL STANDARDS 15
Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of 16 Social

Security disability benefits if the plaintiff shows the ALJ's decision was based on 17 harmful legal error or the decision is not supported by substantial evidence in the record 18 as a whole.

Bayliss v. Barnhart, 427 F.3d 1211, 1214 (9th Cir. 2005). Substantial 19 evidence is "more than a mere scintilla; it means - and means only - such relevant 20 evidence as a reasonable mind might accept as adequate to support a conclusion." 21 22 23 1 The hearing transcript (Dkt. 16) will be referred to by docket number, along with the AR page number.

The other administrative records (Dkt. 9) will be referred to only by the AR page numbers without also referring to the 24 CM/ECF docket number. 1 Biestek v. Berryhill, 139 S. Ct. 1148, 1154 (2019) (cleaned up); Magallanes v. Bowen, 2 881 F.2d 747, 750 (9th Cir. 1989). 3 The ALJ is responsible for evaluating symptom testimony, resolving conflicts in 4 medical testimony, and resolving any other ambiguities that might exist.

Andrews v. 5 Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the 6 record as a whole, it may neither reweigh the evidence nor substitute its judgment for 7 that of the Commissioner. Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002). When 8 the evidence is susceptible to more than one rational interpretation, it is the 9 Commissioner's conclusion that must be upheld.

Id 10 DISCUSSION 11 Plaintiff argues the ALJ erred in finding that he could perform his past work as an 12 inventory clerk as actually performed. The Commissioner argues that ALJ's decision is 13 free of harmful legal error, supported by substantial evidence, and should be affirmed. 14 At step four, the claimant bears the burden of proving that she can no longer 15 perform her past relevant work.

20 C.F.R. §§ 404.1512(a), 404.1520(f); Barnhart v. 16 Thomas, 540 U.S. 20, 25 (2003). Although the burden of proof lies with the claimant, the 17 ALJ retains a duty to make factual findings to support his conclusion, including a 18 determination of whether the claimant can perform the actual functional demands and 19 job duties of his past relevant work or the functional demands and job duties of the 20 occupation as generally performed in the national economy.

Pinto v. Massanari, 249 21 F.3d 840, 844–45 (9th Cir.2001) (citing Social Security Ruling ("SSR") 82–61). "This 22 requires specific findings as to the claimant's residual functional capacity, the physical 23 24 1 and mental demands of the past relevant work, and the relation of the residual 2 functional capacity to the past work." Id. at 845 (citing SSR 82–62).

3 RFC is the most a claimant can do considering his limitations or restrictions. SSR 4 96–8p. The ALJ must consider the limiting effects of all of plaintiff's impairments, 5 including those that are not severe, in determining RFC. 20 C.F.R. §§ 404.1545(e), 6 416.945(e); SSR 96–8p. "[T]wo sources of information... may be used to define a 7 claimant's past relevant work as actually

performed: a properly completed vocational 8 report, SSR 82–61, and the claimant's own testimony, SSR 82–41.” Pinto, 249 F.3d at 9 845.

A claimant may be found not disabled at step four based on a determination that 10 she can perform past relevant work as it was actually performed or as it is generally 11 performed in the national economy. SSR 82–61; SSR 96–8p. 12 Under the “actually performed” test, the ALJ evaluates a claimant’s past relevant 13 work by consulting a “properly completed vocational report” and “the claimant’s own 14 testimony” and assessing whether the claimant can perform his past job duties as he 15 actually performed them.

See Pinto v. Massanari, 249 F.3d 840, 845 (9th Cir. 2001). 16 In this case, plaintiff does not challenge the ALJ’s RFC assessment, which 17 limited plaintiff to light work and completely prohibited kneeling, crouching, or crawling. 18 The ALJ found at step four that plaintiff could perform his past work as an inventory as 19 actually performed, not as generally performed.

20 “The decision as to whether the [plaintiff] retains the functional capacity to 21 perform past work... has far-reaching implication and must be developed and explained 22 fully in the disability decision.” SSR 82–62.

The regulations require the ALJ to obtain 23 adequate documentation of past work to support the decision as to the plaintiff's ability 24 1 to return to past work. Id. “Adequate documentation of past work includes factual 2 information about those work demands which have a bearing on the medical 3 established limitations. Detailed information about strength, endurance, manipulative 4 ability, mental demands and other job requirements must be obtained as appropriate.” 5 Id. 6 According to plaintiff’s work history (AR 300), he describes his job with the City of 7 Lynnwood as a maintenance worker, prior to his injury on July 9, 2020 (AR 497) as 8 follows: “I maintain the city parks systems- my job varies by day based on the task at 9 hand for that particular day- this job requires the license to drive commercial vehicle- 10 tasks include, seed, mow, fertilize, water and weed lawns- inspect and repair equipment 11 such as playgrounds, picnic tables, park benches, and other amenities- keep any trails 12 and pathways clear of debris- pick up litter and remove bagged trash- may require 13 plowing and shoveling snow.” AR 300.

He states he kneels for 30 minutes each day, 14 crouches for 30 minutes each day, and crawls for an hour and a half every day. 15 Plaintiff was not asked whether he had to kneel, crouch or crawl while he 16 performed “light duty” work. AR 69-70.

The Vocational Expert described plaintiff’s “light 17 work” as a “made up job” that was created to “figure out something to keep him busy.” 18 AR 86. 19 Although the claimant bears the burden of proof at step four, the ALJ has a duty 20 to make the requisite findings of fact to support the step-four finding. Pinto, 249 F.3d at 21 844. Where the ALJ’s findings do not ensure the claimant can

perform his past relevant 22 work, either as actually performed or as generally performed, the reviewing court cannot 23 determine whether the finding is supported by substantial evidence.

Id. 24 1 The findings are insufficient to support a finding that plaintiff can perform his 2 inventory clerk past work as actually performed. While the ALJ did ask the Vocational 3 Expert whether plaintiff could perform his past job as actually performed with the 4 plaintiff's RFC (AR 1697), the ALJ did not make findings that plaintiff did not kneel, crawl 5 or crouch while performing his "light duty" job.

Because plaintiff has identified a 6 discrepancy between his description of his past work and the ALJ's RFC assessment, 7 the Court agrees with plaintiff that ALJ erred in finding that he could perform the job as 8 actually performed. 9 CONCLUSION 10 The ALJ failed to sufficiently develop the facts as to whether plaintiff could 11 continue to take inventory and perform his "light duty" job as inventory clerk – i.e., 12 whether that job as actually performed would include any kneeling, crawling, or 13 crouching.

The RFC shows plaintiff has complete restrictions as to kneeling, crawling, 14 and crouching,. As a result, the ALJ's finding that plaintiff could perform his past 15 relevant work as actually performed is not supported by substantial evidence. 16 // 17 // 18 // 19 // 20 // 21 // 22 // 23 24 1 On remand, the ALJ is directed to hold another hearing, and solicit additional 2 testimony from plaintiff at step four regarding whether kneeling, crawling, or crouching 3 were part of the physical job requirements for his past relevant work, as actually 4 performed, before making a determination of whether plaintiff is able to perform the 5 inventory clerk past work as actually performed.

The ALJ may also take additional 6 evidence concerning step five: whether plaintiff is able to perform other jobs existing in 7 significant numbers in the national economy. 8 9 Dated this 29th day of December, 2025. 10 A 11 Theresa L. Fricke United States Magistrate Judge 12 13 14 15 16 17 18 19 20 21 22 23 24