

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Terrence R. Higbee v. Leland Dudek, Acting Commissioner of Social
Security

Higbee v. Dudek · No. 2:24-cv-00347-SCR · Decided April 4, 2025

SUMMARY

The United States District Court for the Eastern District of California reviewed the denial of Terrence R. Higbee’s application for disability insurance benefits. The court held that the administrative law judge exceeded the scope of a prior remand order, improperly found ulcerative colitis non-severe, and inadequately evaluated Higbee’s subjective symptom testimony. The court granted Higbee’s motion for summary judgment, denied the Commissioner’s cross-motion, and remanded for further proceedings.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sean C. Riordan
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 4, 2025
DOCKET	2:24-cv-00347-SCR
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff sought judicial review of the Commissioner's denial of disability insurance benefits. The parties filed cross-motions for summary judgment based on the administrative record.
STANDARD OF REVIEW	The Commissioner's decision is upheld if supported by substantial evidence and based on the correct legal standards. The Court reviews compliance with a prior remand order de novo and may not affirm the ALJ on a ground not stated by the ALJ. An error is harmless only when it is clear from the record that the error was inconsequential to the ultimate nondisability determination.
PRECEDENTIAL VALUE	unpublished district-court opinion; precedential status unknown
PARTIES	Terrence R. Higbee v. Leland Dudek, Acting Commissioner of Social Security

TOPICS

judicial review of agency action

administrative law

summary judgment

remedies

civil procedure

PRACTICE AREAS

Social Security disability

administrative law

federal civil procedure

QUESTIONS PRESENTED

1. Whether the second ALJ exceeded the scope of the prior remand order by revisiting the severity of Plaintiff's ulcerative colitis rather than evaluating the previously identified issue concerning the number and duration of bathroom breaks.
2. Whether the ALJ erred in finding Plaintiff's ulcerative colitis non-severe at step two of the sequential evaluation.
3. Whether the ALJ provided legally sufficient specific, clear, and convincing reasons for discounting Plaintiff's subjective symptom testimony.
4. Whether Plaintiff was entitled to an immediate award of benefits under the credit-as-true rule or whether remand for further proceedings was appropriate.

HOLDINGS

1. The second ALJ exceeded the scope and spirit of the prior remand order by revisiting step two and finding ulcerative colitis non-severe instead of evaluating Plaintiff's testimony concerning the number and duration of bathroom breaks and providing the required rationale.
2. The ALJ erred in finding Plaintiff's ulcerative colitis non-severe because the record met the de minimis threshold for proceeding beyond step two and did not clearly establish that the impairment imposed only minimal limitations.
3. The ALJ failed to provide legally sufficient specific, clear, and convincing reasons for discounting Plaintiff's subjective symptom testimony concerning ulcerative colitis and the resulting need for bathroom breaks.
4. Remand for an immediate award of benefits was not warranted; remand for further administrative proceedings was appropriate.

KEY QUOTATIONS

"Instead of evaluating Plaintiff's symptom testimony and resolving how many breaks and of what duration Plaintiff needed—or providing clear and convincing reasons for rejecting that testimony—the ALJ determined that ulcerative colitis was not a severe impairment. This was impermissible." (at 7)

"This is sufficient to pass the step two de minimis threshold, and was found to be sufficient by the ALJ at the first administrative hearing in 2018." (at 9)

"The ALJ's decision exceeded the scope of the prior remand order. The ALJ erred at step two in finding that Plaintiff's ulcerative colitis was non-severe." (at 14)

FACTUAL BACKGROUND

Plaintiff alleged disability from ulcerative colitis and back problems, with an amended onset date of January 28, 2016, and a date last insured of March 31, 2021. He testified that ulcerative colitis required multiple bowel movements and bathroom breaks each day, often lasting between 10 and 30 minutes. Medical records documented a history of ulcerative colitis, frequent and sometimes bloody bowel movements, loose stools, and urgent bowel movements. The second ALJ treated ulcerative colitis as non-severe and found Plaintiff capable of medium work and his past work as a janitor.

PROCEDURAL HISTORY

Plaintiff applied for disability insurance benefits in 2016, was denied initially and on reconsideration, and received an unfavorable ALJ decision in 2018. This Court previously remanded for further proceedings because the ALJ had not provided clear and convincing reasons for discounting Plaintiff's subjective symptom testimony. After a second hearing, a different ALJ again found Plaintiff not disabled, including finding that ulcerative colitis was non-severe. Plaintiff filed this action, and the Court granted his motion for summary judgment, denied the Commissioner's cross-motion, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Commissioner must further consider Plaintiff's subjective symptom testimony, particularly the ulcerative-colitis-related number and duration of bathroom breaks. After determining the frequency and duration of the breaks and accounting for them in the residual functional capacity, the ALJ may proceed with the five-step sequential evaluation.

CASES CITED

- Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1011 (9th Cir. 2003)
- Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995)
- Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012)
- Biestek v. Berryhill, 587 U.S. 97, 103 (2019)
- Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006)
- Desrosiers v. Secretary of HHS, 846 F.2d 573, 576 (9th Cir. 1988)
- Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985)
- Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001)
- Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002)
- Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007)
- Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003)
- Robbins v. Social Security Administration, 466 F.3d 880, 885 (9th Cir. 2006)

- Stout v. Commissioner, 454 F.3d 1050, 1055 (9th Cir. 2006)
- Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)
- Bowen v. Yuckert, 482 U.S. 137, 140, 146 n.5 (1987)
- Barnhart v. Thomas, 540 U.S. 20, 24-25 (2003)
- Hill v. Astrue, 698 F.3d 1153, 1161 (9th Cir. 2012)
- Stacy v. Colvin, 825 F.3d 563, 566-68 (9th Cir. 2016)
- Sanchez v. Astrue, 2012 WL 3704756, at *11, *14 (E.D. Cal. Aug. 27, 2012)
- Ramirez v. O'Malley, 2024 WL 4763686, at *1 (9th Cir. 2024)
- D'Ambrosio v. Commissioner of Social Security, 2024 WL 3164535, at *6 (E.D. Cal. June 25, 2024)
- Webb v. Barnhart, 433 F.3d 684, 686-87 (9th Cir. 2005)
- Glanden v. Kijakazi, 86 F.4th 838, 843-45 (9th Cir. 2023)
- Davidson v. Astrue, 2011 WL 4498836, at *3 (D. Or. Sept. 27, 2011)
- Trevizo v. Berryhill, 871 F.3d 664, 679 (9th Cir. 2017)
- Smartt v. Kijakazi, 53 F.4th 489, 499 (9th Cir. 2022)
- Treichler v. Commissioner of Social Security Administration, 775 F.3d 1090, 1099 (9th Cir. 2014)
- Garrison v. Colvin, 759 F.3d 995, 1019-21 (9th Cir. 2014)

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