

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

David M. v. Frank Bisignano, Commissioner of Social Security

David M. · No. 2:25-cv-159-EFS · Decided December 17, 2025

OPINION

1 FILED IN THE U.S. DISTRICT COURT EASTERN DISTRICT OF WASHINGTON 2 Dec 17,
2025 SEAN F. MCAVOY, CLERK 3 UNITED STATES DISTRICT COURT 4 EASTERN
DISTRICT OF WASHINGTON 5 DAVID M.,1 No. 2:25-cv-159-EFS 6 Plaintiff, 7 ORDER
REVERSING THE v. ALJ'S DENIAL OF BENEFITS, 8 AND REMANDING FOR FRANK
BISIGNANO, MORE PROCEEDINGS 9 Commissioner of Social Security, 10 Defendant.

11 Plaintiff David M. asks the Court to reverse the Administrative 12 Law Judge's (ALJ) denial of
Title 2 benefits. Plaintiff claims he is 13 unable to work due to both physical and mental
conditions. Because the 14 ALJ consequentially erred when considering the medical record and 15
16 17 18 1 For privacy reasons, Plaintiff is referred to by first name and last 19 initial or as
"Plaintiff." See LCivR 5.2(c).

20 1 evaluating Plaintiff's reported symptoms and the medical opinions, this 2 matter is remanded
for further proceedings. 3 I. Background 4 After serving in the military and attempting work,
Plaintiff 5 applied for benefits under Title 2 in June 2021, at the age of 36, 6 claiming disability
beginning April 1, 2020.2 The agency denied 7 benefits, and Plaintiff requested an administrative
hearing.3 8 ALJ Allen Erickson held a telephonic hearing in February 2023, at 9 which Plaintiff
and a vocational expert testified.4 After the hearing, the 10 ALJ issued a decision denying
benefits.5 The ALJ found Plaintiff's 11 alleged symptoms were "not entirely consistent with the
medical 12 13 14 15 2 AR 219–20.

16 3 AR 119–30 17 4 AR 39–82. 18 5 AR 19–38. Per 20 C.F.R. § 404.1520(a)–(g), a five-step
evaluation 19 determines whether a claimant is disabled. 20 1 evidence and other evidence."6 As
to the medical opinions, the ALJ 2 found: 3 • The examining physical-health opinion of Shirley
Deem, MD; 4 the examining mental-health opinion of Ngozi Chime, ARNP; 5 the reviewing
administrative physical-health findings by Paula 6 Lantsberger, MD; and the reviewing
administrative mental- 7 health findings by Lisa Hacker, MD MPH, not persuasive.

8 • The reviewing physical-health administrative findings by 9 Dennis Koukol, MD; and the
reviewing mental-health 10 administrative findings by Steven Haney, MD, generally 11
persuasive.7 12 As to the sequential disability analysis, the ALJ found: 13 • Plaintiff met the
insured status requirements through March 14 31, 2023. 15 16 6 AR 29.

As recommended by the Ninth Circuit in *Smartt v. Kijakazi*, 17 the ALJ should consider replacing the phrase “not entirely consistent” 18 with “inconsistent.” 53 F.4th 489, 499, n.2 (9th Cir. 2022). 19 7 AR 30–32. 20 1 • Step one: Plaintiff had not engaged in substantial gainful 2 employment during the relevant period, which began on the 3 alleged onset date of April 1, 2020.

4 • Step two: Plaintiff had the following medically determinable 5 severe impairments: lumbar spine conditions, obesity, asthma, 6 irritable bowel syndrome (IBS), major depressive disorder, 7 anxiety disorder, and attention deficit hyperactivity disorder 8 (ADHD). 9 • Step three: Plaintiff did not have an impairment or 10 combination of impairments that met or medically equaled the 11 severity of one of the listed impairments.

12 • RFC: Plaintiff had the RFC to perform light work with the 13 following restrictions: 14 He can lift and/or carry twenty pounds occasionally and ten pounds frequently; he can stand and/or walk 15 four hours out of an eight-hour workday; he can sit six hours out of an eight-hour workday. He can 16 occasionally climb ladders, ropes, scaffolds, stairs, and ramps; he can occasionally crawl and balance; he can 17 have occasional exposure to vibration, temperature and humidity extremes, and concentrated levels of dust, 18 fumes, gases, and poor ventilation, etc.; he needs ready access to bathroom facilities meaning no more than 100 19 feet away; he will need occasional use of a cane to ambulate; he can understand, remember, and apply 20 1 detailed but not complex instructions while performing predictable tasks not in a fast-paced production type 2 environment; and he can have exposure to only occasional workplace changes and can have only 3 occasional interaction with the general public.

4 • Step four: Plaintiff has no past relevant work. 5 • Step five: considering Plaintiff’s RFC, age, education, and work 6 history, Plaintiff could perform work that existed in significant 7 numbers in the national economy, such as garment sorter, 8 bench assembler, and office helper.8 9 Plaintiff timely requested review of the ALJ’s decision by the 10 Appeals Council and now this Court.9 11 II.

Standard of Review 12 The ALJ’s decision is reversed “only if it is not supported by 13 substantial evidence or is based on legal error” and such error impacted 14 the nondisability determination.10 Substantial evidence is “more than a 15 16 8 AR 22–34. 17 9 AR 6–11. ECF No. 1. 18 10 *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). See 42 U.S.C. § 19 405(g); *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir.

2012), 20 1 mere scintilla but less than a preponderance; it is such relevant 2 evidence as a reasonable mind might accept as adequate to support a 3 conclusion.”11 The court looks to the entire record to determine if 4 substantial evidence supports the ALJ’s findings.12 5 III. Analysis 6 Plaintiff argues the ALJ erred when evaluating Plaintiff’s 7 symptom reports and Dr. Deem’s medical opinion.

In response, the 8 Commissioner argues the ALJ's decision is supported by substantial 9 evidence and that the ALJ did not commit any harmful legal error. As is 10 11 superseded on other grounds by 20 C.F.R. § 416.920(a) (recognizing that 12 the court may not reverse an ALJ decision due to a harmless error—one 13 that “is inconsequential to the ultimate nondisability determination”).

14 11 Hill, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 15 980 (9th Cir. 1997)). 16 12 Kaufmann v. Kijakazi, 32 F.4th 843, 851 (9th Cir. 2022). See also 17 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (requiring 18 the court to consider the entire record, not simply the evidence cited by 19 the ALJ or the parties). 20 1 explained below, the ALJ's nondisability finding was impacted by 2 consequential error.

3 A. Symptom Reports: Plaintiff establishes consequential 4 error. 5 Plaintiff argues the ALJ erred by rejecting Plaintiff's statements 6 about his symptoms and limitations without articulating specific, clear, 7 and convincing reasons supported by substantial evidence, highlighting 8 that the ALJ misinterpreted the medical records.

The Court agrees the 9 ALJ erred. 10 1. Plaintiff's testimony about his symptom reports 11 At the hearing, Plaintiff testified about his prior work and 12 military experience, from which he was medically discharged due to 13 exacerbated breathing difficulties.13 Plaintiff shared that due to his 14 lung issues and his obesity he is often rendered short of breath.14 15 Plaintiff also testified that he suffers back pain due to his degenerative 16 17 18 13 AR 50–57.

19 14 AR 58. 20 1 disc disease and obesity.15 He had a spinal cord stimulator (SCS) 2 implanted in his back in September 2022 to help with the pain.16 The 3 implant is operated by a battery, and if the battery is not charged, it 4 does not manage his pain and he must sit down.17 Plaintiff stated that 5 the implant initially relieved his back pain, but his back pain and 6 numbness in his legs returned.18 The implant allowed Plaintiff to stop 7 taking the previously prescribed methocarbamol, which is a muscle 8 relaxer, but the implant has not allowed him to increase the amount of 9 activity he can engage in.19 10 Plaintiff testified that he cannot stand while cooking or load the 11 washer, dryer, or dishwasher.20 He said he can clean the floor and 12 counter surfaces, but he must take breaks, with the longest that he can 13 14 15 AR 59.

15 16 Id. 16 17 AR 60. 17 18 Id. 18 19 AR 61. 19 20 AR 67. 20 1 stand being an hour.21 He uses a grabbing tool to pick up items from the 2 floor.22 He also shared that he can trim hedges and bushes, but he is not 3 able to do the other landscaping work that requires bending or picking 4 things up.23 He testified that can walk on a treadmill for 10 minutes 5 and walk up a hill about 100 feet to visit his mom while using a cane for 6 stability; when he arrives, he is short of breath.24 In addition, he said 7 that after a flight of stairs he is winded, he needs to slow down when 8 walking, and if he is very tired when walking he must sit down.25 9 Plaintiff stated that he uses a cane every day to prevent falling both 10 while walking and standing, because his legs give

out or he loses his 11 equilibrium.²⁶ Plaintiff testified that driving a vehicle is a challenge 12 because his medication makes him drowsy, and so he limits his driving 13 14 21 AR 67.

15 22 Id. 16 23 AR 68. 17 24 AR 69. 18 25 AR 58. 19 26 AR 69–70. 20 1 to 45 minutes.²⁷ Plaintiff also testified that he has a hard time 2 concentrating due to his pain and anxiety medications.²⁸ Plaintiff stated 3 he also takes an anti-diarrhea medication for his IBS, which his 4 psychiatrist believes is induced by his anxiety.²⁹ Plaintiff stated he uses 5 the bathroom about 3–5 times a day and that if he leaves the house 6 there are times that he must use the bathroom frequently to address his 7 anal leakage.³⁰ Plaintiff shared that his PTSD is associated with his 8 military service in Korea.³¹ He has received multiple rounds of 9 transcranial magnetic stimulation to assist with his PTSD.³² Plaintiff 10 testified that his PTSD causes daily difficulties with focus, anxiety, 11 and/or anger.³³ 12 13 27 AR 68.

14 28 AR 70. 15 29 AR 57, 61–63. 16 30 AR 61–63. 17 31 AR 64. 18 32 AR 65. 19 33 AR 62–65. 20 1 2. Standard 2 After finding a medically determinable impairment, the ALJ must 3 assess the intensity and persistence of the alleged symptoms to 4 determine how they affect the claimant’s ability to work.³⁴ Factors the 5 ALJ may consider when evaluating the intensity, persistence, and 6 limiting effects of a claimant’s symptoms include: 1) objective medical 7 evidence, 2) daily activities; 3) the location, duration, frequency, and 8 intensity of pain or other symptoms; 4) factors that precipitate and 9 aggravate the symptoms; 5) the type, dosage, effectiveness, and side 10 effects of any medication the claimant takes or has taken to alleviate 11 pain or other symptoms; 6) treatment, other than medication, the 12 claimant receives or has received for relief of pain or other symptoms; 13 and 7) any non-treatment measures the claimant uses or has used to 14 relieve pain or other symptoms.³⁵ 15 16 17 34 20 C.F.R. § 404.1529(c).

18 35 Id. § 404.1529(c). See also 3 Soc. Sec. Law & Prac. § 36:25, 19 Consideration of objective medical evidence (2025). 20 1 If the ALJ finds inconsistency between the claimant’s reported 2 symptoms and the evidence, the ALJ must identify what symptom 3 claims are being discounted and clearly and convincingly explain the 4 rationale for discounting the symptoms with supporting citation to 5 evidence.³⁶ This requires the ALJ to “show his work” and provide a 6 “rationale... clear enough that it has the power to convince” the 7 reviewing court.³⁷ 8 3.

The ALJ’s findings 9 The ALJ found Plaintiff’s “statements concerning the intensity, 10 persistence, and limiting effects of [his] symptoms are not entirely 11 consistent with the medical evidence and other evidence in the record.. 12.”³⁸ The ALJ summarized some of the medical records pertaining to 13 Plaintiff’s lumbar spine conditions and his treatment for such, including 14 15 36 *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir.

2022); 20 C.F.R. § 16 404.1529(c); *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014); Soc. 17 Sec. Rlg. 16-3p, 2016 WL 1119029, at *7. 18 37 *Smartt*, 53 F.4th at 499 (alteration added). 19 38 AR 29. 20 1 that he had a spinal cord simulator (SCS) implanted in the fall of 2 November 18,

2022, stating: 3 [Plaintiff] stated that he was getting great relief from the device but started experiencing excruciating pain that 4 started a few days prior.

He expressed concern that the device unplugged or something shifted. However, an 5 examination showed the implant device was in place. The assessment noted that the claimant had axial and discogenic 6 pain that should improve with reprogramming.³⁹ 7 The ALJ then stated that “December 5, 2022 Department of Veterans 8 Affairs medical records note that the claimant reported he had been 9 doing well since his back surgery.”⁴⁰ 10 The ALJ also discounted Plaintiff’s reported shortness of breath 11 because “[p]ulmonary function testing has showed a nonspecific mild 12 restrictive pattern with normal diffusing capacity.”⁴¹ The ALJ 13 discounted Plaintiff’s IBS symptoms because Plaintiff “noted his 14 symptoms are off and on and not as bad as they had been” given that 15 16 17 39 AR 29.

18 40 AR 30. 19 41 Id. 20 1 medication improved his symptoms.⁴² The ALJ also discounted 2 Plaintiff’s reported anxiety, depression, and ADHD symptoms because 3 medical records showed improvement with medication and 4 “[t]hroughout the mental health treatment records, the claimant’s 5 anxiety and depression are consistently noted to be doing better.”⁴³ 6 4. Analysis 7 Plaintiff establishes consequential error.

The ALJ misreading of 8 some of the medical records led to several consequential errors. 9 First, as to the SCS device, the ALJ failed to appreciate that the 10 leads attached to the stimulator pack shifted after the operation and 11 that Plaintiff did not enjoy sustained pain improvement.⁴⁴ The 12 November 18, 2022 follow-up note states, “Patient has one lead that 13 may have migrated by two contacts.

Checking on flouro we see that 14 both leads have descended; the upper lead crosses the T9 VB through 15 16 17 42 AR 30. 18 43 Id. 19 44 AR 770. 20 1 the T9-10 disc; the top of the inferior is now mid-T10.”⁴⁵ The physician 2 hoped that Plaintiff’s pain would improve with reprogramming of the 3 implant.⁴⁶ There are no subsequent medical records discussing 4 Plaintiff’s back condition, as the only other subsequent treatment 5 record is from Plaintiff’s medication-management provider Dr. David 6 Penner on December 14, 2022.⁴⁷ Yet, the ALJ stated, “December 5, 2022 7 Department of Veterans Affairs medical records note that the claimant 8 reported he had been doing well since his back surgery.”⁴⁸ This record, 9 however, is not dated December 5 but instead November 15, 2022, three 10 days before the appointment that Plaintiff reported “paralytic pain” and 11 the imaging revealed that the leads connected to the stimulator pack 12 had descended.⁴⁹ The ALJ failed to appreciate that the SCS leads were 13 no longer in the correct location and that the medical record in which 14 15 45 AR 770; see also AR 806.

16 46 AR 773. 17 47 AR 913–20. 18 48 AR 30. 19 49 AR 770, 806–10. 20 1 Plaintiff reported pain relief afforded by the device occurred before the 2 leads descended. These misunderstandings by the ALJ impacted the 3 ALJ’s evaluation of Plaintiff’s reported back pain and resulting 4

limitations. 5 In addition, even if the SCS device did provide sustained pain 6 improvement, the ALJ failed to consider Plaintiff's pain and resulting 7 limitations before the implant.⁵⁰ For instance, before the permanent 8 SCS device was installed, Plaintiff's treatment for his back pain 9 included injections, physical therapy, chiropractic care, a bilateral 10 radiofrequency ablation, and a temporary stimulator in November 11 2021.⁵¹ These procedures did not offer complete, sustained pain relief.

12 In addition, the ALJ did not address Plaintiff's reports that he falls if he 13 is not using his cane. Like his testimony on this point, Plaintiff told his 14 15 ⁵⁰ See *Smith v. Kijakazi*, 14 F.4th 1108, 1113 (9th Cir. 2021) (holding 16 that the claimant's testimony "could not be discredited as a whole 17 because of changes over time or inconsistencies relevant only to portions 18 of testimony describing a certain period").

19 ⁵¹ AR 422, 431, 450–82, 752–67. 20 1 treating provider in March and May 2022 that he had fallen due to 2 seizing pains in his lower back and hips, causing his legs to give out.⁵² 3 Therefore, substantial evidence does not support the ALJ's finding 4 that Plaintiff's testimony about his standing and walking limitations is 5 not entirely consistent with the record.

This error consequentially 6 impacted the RFC, which requires Plaintiff to be able to stand and/or 7 walk for four hours each workday, along with occasionally lifting or 8 carrying 20 pounds and frequently lifting 10 pounds, while only using 9 the cane occasionally.⁵³ In comparison, the vocational expert testified 10 that Plaintiff is unable to perform light duty jobs if he must use a cane 11 frequently.⁵⁴ On remand, the ALJ is to develop the record by obtaining 12 medical records since November 2022 and by ordering a consultative 13 physical examination to reassess Plaintiff's exertional abilities.

14 Second, substantial evidence does not support the ALJ's decision 15 to discount Plaintiff's reported shortness of breath simply on the 16 17 ⁵² AR 821, 781. 18 ⁵³ AR 28. 19 ⁵⁴ AR 76–77. 20 1 grounds that it is disproportionate to his FEV1 (forced expiratory 2 volume in 1 second) and FVC (forced vital capacity) readings which 3 were above 70%.

Although Plaintiff's pulmonary function testing 4 readings were above 70%, the pulmonologist stated, "I suspect his 5 obesity and likely deconditioning are contributing to his symptoms as 6 well."⁵⁵ The pulmonologist did not disbelieve Plaintiff's reported 7 shortness of breath but instead found that several symptoms 8 contributed to his shortness of breath and even requested records from 9 a methacholine challenge test done in 2012.⁵⁶ After reviewing the 2012 10 records, the physician determined that the 2012 test was consistent 11 with asthma.⁵⁷ Plaintiff was prescribed inhalers, and he told his 12 pulmonary treatment provider in 2022 that he was using his inhaler a 13 few times a week and that if he paced himself he could continue with an 14 activity even though he would have shortness of breath.⁵⁸ Thus, on this 15 16 ⁵⁵ AR 689.

17 56 AR 689–90, 739–40. 18 57 AR 739–40. 19 58 AR 807–08. 20 1 record, substantial evidence does not support the ALJ’s finding that 2 Plaintiff’s reported shortness of breath was disproportionate to his 3 pulmonary test results. This error was harmful because the RFC 4 allowed Plaintiff to have occasional exposure to concentrated levels of 5 dust, fumes, gases, and poor ventilation; whereas Dr. Koukol 6 recommended that Plaintiff avoid concentrated exposure to fumes, 7 odors, dusts, gases, and poor ventilation.⁵⁹ 8 Third, the ALJ’s finding that Plaintiff’s depression, anxiety, and 9 ADHD symptoms were “consistently noted to be doing better” because of 10 medication is not supported by substantial evidence.⁶⁰ Instead of 11 sustained mental-health improvement, treatment records reveal waxing 12 and waning mental-health symptoms—and continued medication 13 adjustments to try and stabilize symptoms.⁶¹ Treatment notes authored 14 15 59 AR 28, 100.

16 60 AR 30. 17 61 See *Garrison v. Colvin*, 759 F.3d 995, 1017 (9th Cir. 2014) (“Cycles of 18 improvement and debilitating symptoms are a common occurrence... 19.”). 20 1 by Dr. Penner, who was Plaintiff’s mental-health medication- 2 management provider, reflect: 3 • January 2022: reporting that he had been confused about his 4 medications, his self-worth is down, and his anxiety is bad; 5 observed with slow psychomotor activity and quiet, slowed 6 speech with dysthymic affect and otherwise normal mental 7 status.⁶² 8 • April 2022: reporting that his anxiety is noticeable when he 9 does not take medications and has difficulties with short-term 10 memory loss; observed with slowing psychomotor activity and 11 slightly slowed and quiet speech, with sad dysthymic affect and 12 otherwise normal mental status.⁶³ 13 • May 2022: reporting depression is getting better and that while 14 anger management had been getting better he had an anger 15 outburst over the weekend; observed with slowed psychomotor 16 17 18 62 AR 504–06.

19 63 AR 876–77. 20 1 activity and slightly slowed and quiet speech with a dysthymic 2 affect and otherwise normal mental status.⁶⁴ 3 • August 2022: reporting much anxiety and depression; observed 4 with restless psychomotor activity and worried/anxious affect 5 with otherwise normal mental status.⁶⁵ 6 • November 2022: reporting concern that medication is making 7 him hallucinate although he feels calmer; observed with 8 somewhat slow psychomotor activity and slightly slowed and 9 quiet speech with dysthymic/depressed affect and otherwise 10 normal mental status.⁶⁶ 11 • December 2022: reporting that although his anxiety has been 12 lowering he is still having agitation issues with the worse being 13 mid-day; observed with slow psychomotor activity and slightly 14 15 16 17 64 AR 881–82.

18 65 AR 892–93. 19 66 AR 908–09. 20 1 slowed and quiet speech, decreased affect, and otherwise 2 normal mental status.⁶⁷ 3 In addition, throughout the relevant period, Plaintiff’s PHQ-9 scores 4 continued to fluctuate between “severe” and “moderately severe.”⁶⁸ 5 Overall, contrary to the ALJ’s general finding that Plaintiff’s “anxiety 6 and depression [and ADHD] have

been noted to be improved with 7 treatment,”⁶⁹ the longitudinal treatment record reflects that, even with 8 consistent medication management, Plaintiff struggled with fluctuating 9 anxiety, depression, and anger-management symptoms.

10 Finally, as Plaintiff highlights, the ALJ did not discuss whether 11 Plaintiff’s reported daytime drowsiness resulting from his medication is 12 consistent with the record.⁷⁰ On remand, the ALJ must do so. 13 14 15 67 AR 913–16. 16 68 AR 909. 17 69 AR 30. 18 70 See Soc. Sec. Rlg. 16-3p (requiring the ALJ to consider medication 19 side-effects when assessing the claimant’s symptom reports).

20 1 5. Conclusion 2 The ALJ did not provide a clear rationale that convinced the Court 3 that Plaintiff’s reported symptoms are not entirely consistent with the 4 record. The ALJ’s finding in this regard is not supported by substantial 5 evidence. 6 B. Medical Opinions: Plaintiff establishes consequential error. 7 Plaintiff argues the ALJ failed to properly evaluate the opinion of 8 Shirley Deem, MD.⁷¹ In response, the Commissioner argues the ALJ 9 reasonably found Dr. Deem’s opinion not persuasive.

As is explained 10 below, the ALJ’s evaluation of Dr. Deem’s opinion was consequentially 11 impacted by the ALJ’s erroneous reading of the treatment records. 12 1. Standard 13 The ALJ must consider and articulate how persuasive he found 14 each medical opinion and prior administrative medical finding, 15 16 71 Plaintiff’s motion focused solely on the ALJ’s evaluation of Dr. Deem’s 17 physical-health opinion and not the mental-health opinions.

Therefore, 18 the Court only discusses Dr. Deem’s opinion and the administrative 19 findings related to Plaintiff’s physical health. 20 1 including whether the medical opinion or finding was consistent with 2 and supported by the record.⁷² The factors for evaluating the 3 persuasiveness of medical opinions include, but are not limited to, 4 supportability, consistency, relationship with the claimant, and 5 specialization.⁷³ Supportability and consistency are the most important 6 factors.⁷⁴ The regulations define these two required factors as follows: 7 (1) Supportability.

The more relevant the objective medical evidence and supporting explanations presented by a 8 medical source are to support his or her medical opinion(s) or prior administrative medical finding(s), the more persuasive 9 the medical opinions or prior administrative medical finding(s) will be. 10 (2) Consistency.

The more consistent a medical opinion(s) or 11 prior administrative medical finding(s) is with the evidence from other medical sources and nonmedical sources in the 12 claim, the more persuasive the medical opinion(s) or prior administrative medical finding(s) will be.⁷⁵ 13 14 15 72 20 C.F.R. § 404.1520c(a)–(c); *Woods v. Kijakazi*, 32 F.4th 785, 792 16 (9th Cir.

2022). 17 73 20 C.F.R. § 404.1520c(c)(1)–(5). 18 74 *Id.* § 404.1520c(b)(2). 19 75 *Id.* § 404.1520c(c)(1)–(2). 20 1 When considering the ALJ’s findings, the Court is constrained to the 2

reasons and supporting explanation offered by the ALJ.⁷⁶ 3 2. Dr. Deems' opinion and the administrative medical findings 4 In October 2021, Dr. Deems conducted a consultative examination 5 and reviewed a CT report showing mild lumbar degenerative changes 6 and a chest x-ray with normal results.⁷⁷ Plaintiff told Dr. Deems that he 7 was living with his wife and three children, could not perform 8 housework that required bending or lifting due to his low back pain that 9 radiates to his hips, and that he uses a cane for stability.⁷⁸ Plaintiff's 10 chest and lungs were clear to auscultation, he had no edema, and he 11 was obese at 330 pounds.

Dr. Deems observed that he used a cane as an 12 assistive device: "[h]e uses a cane for stabilization. He stands up rather 13 quickly from a seated position and just moves ahead using his cane. No 14 particular hesitancy."⁷⁹ His range of motion was normal for all tested 15 16 ⁷⁶ See *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014). 17 ⁷⁷ AR 625–29. 18 ⁷⁸ AR 625.

19 ⁷⁹ AR 627. 20 1 body parts. He had a positive straight leg raise in the seated and supine 2 positions on both the left and the right, and he had 5/5 upper and lower 3 extremity strength and tone. 4 Dr. Deems diagnosed Plaintiff with degenerative disk disease of 5 the lumbar spine with lumbar strain, overweightness, ADHD (by 6 history), depression (by history), and PTSD (by history).

Dr. Deems 7 opined that Plaintiff could stand or walk about 6 hours using his cane 8 for stability, that he needed to periodically alternate between sitting 9 and standing, that he could lift 10 pounds occasionally and frequently, 10 and that he could occasionally and slowly climb stairs and ladders, 11 balance, stoop, crouch, kneel, and crawl.⁸⁰ 12 The same month as Dr. Deem's examination, Paula Lantsberger, 13 MD, who specializes in occupational medicine, reviewed the record and 14 issued initial-level administrative medical findings.⁸¹ She found that 15 Plaintiff could sit about 6 hours and stand and/or walk for 4 hours, a 16 medically required hand-held assistive device was necessary for 17 18 ⁸⁰ AR 628–29.

19 ⁸¹ AR 84–93. 20 1 ambulation and stabilization, he was limited to occasional postural 2 movements, and he should avoid heights due to the need to use a cane. 3 Four months later, in March 2022, Dennis Koukol, MD, whose 4 specialty is cardiology, issued reconsideration-level administrative 5 medical findings.⁸² He found that Plaintiff could occasionally lift 20 6 pounds, frequently lift 10 pounds, stand and/or walk for 4 hours, sit for 7 6 hours, frequently crawl, and occasionally stoop and climb ladders and 8 ropes, and should avoid concentrated exposure to vibration and fumes 9 and other environmental odors.

Dr. Koukol wrote, 10 Regarding condition of DDD [(degenerative disc disease)] of lumbar spine, he does have chronic low back pain he believes 11 to be from military work entering in and out of tanks since 2011 with having only pain with [range of motion] to low 12 back and pain with prolonged walking, standing or excessive lifting of heavy items. Despite chronic pain medication

13 management, objectively imaging is just mild DDD L5-S1 with no nerve root impairment despite self-reported 14 sensation changes into legs which is not objectively found ever.

This condition he also contributes to his [right] hip and 15 [right] knee pain, which is not found to actually limit his functioning beyond his subjective reports. He is able to do 16 pool exercises, walk 50 feet, ascend a flight of stairs, manage 17 18 19 82 AR 95–101. 20 1 his self care, uses no assistive devices, and so RFC considers some restrictions to lumbar primarily due to pain.⁸³ 2 There is no explanation by Dr. Koukol as to why he found that Plaintiff 3 does not use a cane—an assistive device—even though there are 4 references to Plaintiff’s use of a cane in medical records.

5 3. The ALJ’s findings 6 The ALJ found Dr. Deem’s opinion not persuasive. As to the 7 supportability factor, the ALJ found the opinion: 8... is not supported by the physical examination results at 9 the evaluation. It was noted that although the claimant used a cane, he moved ahead of it. He had normal range of motion 10 of his back, neck, hip, upper extremities, and lower extremities.

Although the claimant displayed positive 11 straight leg raising, he had 5/5 muscle strength in the lower extremities. 12 As to the consistency factor, the ALJ found: 13 Additionally, the overall records is more consistent with the 14 specific limitation contained in this decision’s residual functional capacity. December 5, 2022 Department of 15 Veterans Affairs medical records note that the claimant reported he had been doing well since his back surgery.

It 16 was noted that he was walking a little more and was the primary caretaker for his mother. He stated that he walked 17 about 100 feet with elevation to get to his mother’s house every day. (Exhibit 12F, pg. 11). Medical records note that 18 19 83 AR 101 (emphasis added). 20 1 the claimant’s reported shortness of breath seems disproportionate to his pulmonary disease in that his FVC 2 and FEV1 are above 70%.

Pulmonary function testing has showed a nonspecific mild restrictive pattern with normal 3 diffusing capacity. (Exhibit 9F, pg. 42). As for his irritable bowel syndrome impairment, the claimant has noted his 4 symptoms are off and on and not as bad as they had been. He has taken Loperamide, which has improved his 5 symptoms. (Exhibit 12F, pg. 16).⁸⁴ 6 The ALJ found Dr. Lantsberger’s administrative findings 7 unpersuasive and found Dr. Koukol’s administrative findings generally 8 persuasive.⁸⁵ For the consistency analysis, the ALJ used the exact 9 language he used when analyzing Dr. Deem’s opinion, as quoted above, 10 as he did when analyzing the consistency of Dr. Lantsberger’s and 11 Dr. Koukol’s administrative findings with the record, including citing 12 the incorrect date for the cited Veterans Affairs medical record, relying 13 on the pulmonary function testing, and the improvement with 14 medication for IBS.⁸⁶ For the supportability factor, the ALJ simply 15 acknowledged that both Dr. Lantsberger and Dr. Koukol were 16 17 84 AR 30–31.

18 85 AR 31. 19 86 Id. 20 1 knowledgeable in the Social Security Administration disability 2 program.⁸⁷ 3 4. Analysis 4 As to Dr. Deem's opinion, the ALJ's findings as to the 5 supportability and the consistency factors are not supported by 6 substantial evidence.

The ALJ's supportability analysis was 7 consequentially impacted by the ALJ's misreading of Dr. Deem's 8 observation about Plaintiff's use of his cane. The ALJ found Dr. Deem's 9 opinion not supported because "[i]t was noted that although the 10 claimant used a cane, he moved ahead of it."⁸⁸ This is an incorrect 11 interpretation of Dr. Deem's observation, which was that Plaintiff "uses 12 a cane for stabilization.

He stands up rather quickly from a seated 13 position and just moves ahead using his cane."⁸⁹ Consistent with this 14 observation, Dr. Deem opined that Plaintiff needed to use a cane as an 15 16 17 87 AR 31. 18 88 AR 30. 19 89 AR 627 (emphasis added). 20 1 assistive device.⁹⁰ The ALJ also found Dr. Deem's opinion not supported 2 because he had 5/5 muscle strength in the lower extremities; however, 3 the ALJ fails to convincingly explain why Plaintiff's full muscle 4 strength in his lower extremities diminishes his need to use the cane for 5 stabilization, as Dr. Deem—and Dr. Lantsberger—found.⁹¹ Moreover, 6 the ALJ failed to explain why Plaintiff's full lower extremity strength 7 was more relevant evidence to the supportability analysis rather than 8 Plaintiff's lumbar imaging, obesity, and positive straight leg raise in 9 both positions.

The imaging reviewed by the ALJ showed at L5-S1 10 intervertebral disc height loss, vacuum disc phenomenon, mild endplate 11 sclerosis, and mild symmetric disc bulge seen; similarly, imaging a 12 month prior revealed mild degenerative changes at L5-S1 with facet 13 arthropathy and intervertebral disc height loss.⁹² 14 15 16 90 AR 627. 17 91 AR 89 ("A medically required hand-held assistive device is necessary 18 for ambulation").

19 92 AR 322, 376–77. 20 1 As to the consistency factor, the ALJ's analysis was 2 consequentially impacted by the ALJ's misunderstanding as to the date 3 of the cited "December 5, 2022 Department of Veterans Affairs medical 4 records note that the claimant reported he had been doing well since his 5 back surgery."⁹³ Again, this medical record was from November 14, 6 2022, three days before the appointment he reported excruciating back 7 pain starting a few days prior.⁹⁴ Upon testing, it was discovered that 8 both leads from the spinal code stimulator implant had moved.⁹⁵ The 9 provider hoped that reprogramming the implant would provide pain 10 relief; however, this was the last medical record related to Plaintiff's 11 back pain or the implant in the file and thus it is unknown where 12 Plaintiff reported and/or was observed with increased or decreased back 13 pain or limitations.

14 Moreover, the ALJ fails to explain why any relief afforded by the 15 permanent implant is a basis to find Dr. Deem's opinion, which was 16 17 93 AR 30. 18 94 AR 770–73, 806–10; see also AR 806, 848. 19 95 AR 770, 806, 846. 20 1 issued before the implant was installed, as unsupported. Like Dr. Deem 2 and others observed, Plaintiff used a cane to help with balance and

3 ambulation.⁹⁶ Similarly, Dr. Lantsberger found that Plaintiff needed to 4 use a cane for ambulation.⁹⁷ 5 By finding Dr. Deem's opinion unpersuasive, the ALJ did not 6 include in the RFC Dr. Deem's opinions that Plaintiff was limited to 7 lifting 10 pounds occasionally, must alternate between sitting and 8 standing, would perform occasional postural activities very slowly, and 9 could only occasionally crouch, stoop, or kneel.⁹⁸ The RFC also only 10 states that Plaintiff needs occasional use of a cane.

Including each of 11 Dr. Deem's limitations would further reduce the available jobs. 12 13 14 96 AR 640 (Nov. 20, 2011: psychiatric disability evaluation); AR 820 15 (March 7, 2022: follow-up visit); AR 781 (May 31, 2022 appointment). 16 97 AR 89. 17 98 Compare AR 28 with AR 88–90. See *Rounds v. Comm'r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015) (requiring the ALJ to 19 translate and incorporate clinical findings into the succinct RFC).

20 1 5. Conclusion 2 The ALJ's finding that Dr. Deem's opinion is unpersuasive is not 3 supported by substantial evidence. Both the ALJ's supportability and 4 consistency evaluations are based on a flawed reading of the medical 5 records. Likewise, the ALJ's consistency analysis relating to the 6 administrative findings by Dr. Lantsberger and Dr. Koukol are flawed 7 for the same reasons.

On remand, the ALJ is to reevaluate all the 8 medical opinions and administrative findings. 9 IV. Conclusion 10 Plaintiff establishes the ALJ erred. Remand is necessary to allow 11 the ALJ is to develop the record, including ordering a consultative 12 physical examination,⁹⁹ and reevaluate—with meaningful articulation 13 and evidentiary support—the sequential process.

When conducting this 14 evaluation, the ALJ is to consider whether Plaintiff has experienced 15 sustained improvement in back pain and other symptoms because of 16 17 99 The Social Security Administration is to provide “the examiner [with] 18 any necessary background information about your condition.” See 20 19 C.F.R. § 404.1517. 20 1 ||treatment, and if so consider Plaintiff's RFC for that period of sustained 2 ||amprovement apart from his prior RFC.¹⁰⁰ 3 Accordingly, IT IS HEREBY ORDERED: 4 1.

The ALJ's nondisability decision is REVERSED, and this 5 matter is REMANDED to the Commissioner of Social 6 Security for further proceedings pursuant to sentence 7 four of 42 U.S.C. § 405(g). g 2. The Clerk's Office shall TERM the parties' briefs, ECF Nos. 9 9 and 13, enter JUDGMENT in favor of Plaintiff, and 10 CLOSE the case. 11 IT IS SO ORDERED.

The Clerk's Office is directed to file this 12 ||order and provide copies to all counsel. 13 DATED this 17* day of December 2025. 14 Chuwd, Thea 15 EDWARD F.SHEA Senior United States District Judge 16 17 18 19 100 See *Smith v. Kiyakazi*, 14 F.4th 1108, 1113-16 (9th Cir. 2021). DISPOSITIVE ORDER - 3

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