

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

Hakop A. v. Leland Dudek, Acting Commissioner of Social Security

Hakop A. · No. 2:24-cv-02950-FLA (BFM) · Decided March 28, 2025

OPINION

Hakop Ashchyan v. Martin OMalley

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 11 HAKOP A., Case No. 2:24-cv-02950-FLA (BFM) 12 Plaintiff,

ORDER ACCEPTING

13 v. MAGISTRATE JUDGE’S REPORT

14 LELAND DUDEK, Acting AND RECOMMENDATION

Commissioner of Social Security,

[DKT. 16]

15 Defendant. 16

17 18 Pursuant to 28 U.S.C. § 636, the court has reviewed the Complaint, the 19 records on file, the Report and Recommendation of the United States Magistrate 20 Judge (“Report”), and Defendant’s objections to the Report. The court has engaged 21 in a de novo review of those portions of the Report to which objections have been 22 made. 23 The Report recommends that the decision of the Administrative Law Judge 24 (“ALJ”) denying Plaintiff’s application for Social Security disability benefits be 25 reversed and this matter be remanded for further administrative proceedings. Dkt. 26 16. The Commissioner’s objections to the Report, Dkt. 18, do not warrant a change 27 to the Report’s findings or recommendations. 28 / / / 1 The Commissioner objects that the Appeals Council’s rejection of new 2 evidence, as part of its denial of review of the ALJ’s decision, was supported by 3 substantial evidence. Dkt. 18 at 3. The court, however, does not review the 4 Appeals Council’s denial of review for substantial evidence. “When the Appeals 5 Council denies a request for review, it is a non-final agency action not subject to 6 judicial review because the ALJ’s decision becomes the final decision of the 7 Commissioner.” Taylor v. Comm’n of Social Sec. Admin., 659 F.3d 1228, 1231 8 (9th Cir. 2011). Nevertheless, federal courts have the authority to review, as the 9 Report did here, whether evidence presented for the first time to the Appeals 10 Council “should have been considered,” as required by the agency’s regulations. 11 Id. at 1232 (citing 20 C.F.R. § 404.970(b)). “Where the Appeals Council was 12 required to consider additional evidence, but failed to do so, remand to the ALJ is 13

appropriate so that the ALJ can reconsider its decision in light of the additional 14 evidence.” Id.
15 As the Report found, the evidence presented to the Appeals Council reflected 16 erosive
changes to multiple joints. Dkt. 16 at 13; Dkt. 9-3 at 21. It is unlikely such 17 changes “happened
overnight.” Dkt. 16 at 13. It, therefore, should not have been 18 rejected by the Appeals Council
as not relating to the period on or before the date of 19 the ALJ’s decision. See Taylor, 659 F.3d at
1233 (“[I]f the Appeals Council 20 rejected [the medical evidence] because it believed it to
concern a [later] time . . . , 21 its rejection was improper.”); see also Nadon v. Saul, 851 F. App’x
24, 27 (9th Cir. 22 2021) (“The Appeals Council erroneously believed that [the medical]
opinion 23 ‘d[id] not relate to the time period at issue’ in [Plaintiff’s] benefits application. 24
Misunderstanding the temporal scope of a medical opinion is error.”); Edgecomb v. 25 Berryhill,
741 F. App’x 390, 393 (9th Cir. 2018) (remanding case to the agency 26 where “the Appeals
Council failed to consider [the medical evidence] on the 27 mistaken belief that it did not relate to
the period before the date of the ALJ’s 28 decision”). Thus, the Report properly recommended
remand to the agency for 1 || consideration of the new evidence. Dkt. 16 at 14. 2 The court accepts
the recommendations of the Magistrate Judge. 3 ACCORDINGLY, IT IS ORDERED: 4 1. The
Report and Recommendation is accepted. 5 2. The decision of the ALJ is reversed and the matter
is remanded for further 6 proceedings consistent with the Report and Recommendation. 7 3.
Judgment shall be entered consistent with this Order. 8 4. The court Clerk shall serve this Order
and the Judgment on all counsel or 9 parties of record. 10 11 || Dated: March 28, 2025

FERNANDO L7AENLLE-ROCHA

14 United States District Judge 15 16 17 18 19 20 21 22 23 24 25 26 27 28