

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Jennifer M. Ellsworth v. Commissioner of Social Security
Administration

Ellsworth · No. CV-25-00114-TUC-RM · Decided March 18, 2026

SUMMARY

The United States District Court for the District of Arizona reviews objections to a magistrate judge’s Report and Recommendation in a Social Security disability benefits case. The court adopts the recommendation in substantial part, reverses the Commissioner’s decision because the ALJ failed to provide clear and convincing reasons for discounting testimony about migraines, and remands for a new hearing and decision. The court also directs further evaluation of the claimant’s foot impairment and residual functional capacity.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	Rosemary Márquez
JURISDICTION	United States District Court for the District of Arizona
DECIDED	March 18, 2026
DOCKET	CV-25-00114-TUC-RM
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff sought judicial review of the Commissioner's denial of disability insurance benefits and objected to a magistrate judge's Report and Recommendation recommending reversal and remand for further administrative proceedings.
STANDARD OF REVIEW	The district court reviews objected-to portions of a magistrate judge's report and recommendation de novo under 28 U.S.C. § 636(b)(1). The Commissioner's decision must be affirmed if supported by substantial evidence and based on correct legal standards. The court reviews the record as a whole, considers evidence supporting and detracting from the ALJ's conclusions, and may not affirm on grounds not relied upon by the ALJ. An ALJ rejecting symptom testimony after the claimant establishes a medically determinable impairment capable of producing the symptoms, absent malingering, must provide specific, clear, and convincing reasons.

PRECEDENTIAL VALUE	Unpublished district court order; precedential status unknown.
PARTIES	Jennifer M. Ellsworth v. Commissioner of Social Security Administration

TOPICS

judicial review of agency action administrative law remedies civil procedure

PRACTICE AREAS

Social Security disability administrative law federal civil procedure

QUESTIONS PRESENTED

1. Whether the ALJ provided legally sufficient, clear, and convincing reasons for discounting Plaintiff's symptom testimony concerning her migraines.
2. Whether the ALJ was required to consider Plaintiff's non-severe foot impairment when formulating the residual functional capacity.
3. Whether the record warranted remand for an immediate award of benefits under the credit-as-true rule or remand for further administrative proceedings.
4. Whether the ALJ's evaluations of Plaintiff's hand, neck, back, and other impairment-related testimony were supported by substantial evidence.

HOLDINGS

1. The ALJ failed to provide specific, clear, and convincing reasons for discounting Plaintiff's testimony concerning the severity of her migraines.
2. Even though Plaintiff's foot impairments were found non-severe at Step Two, the ALJ was required to consider them when formulating the residual functional capacity and specifically evaluate the related symptom testimony.
3. Because the ALJ found the foot impairments non-severe at Step Two, and Plaintiff forfeited a challenge to that finding, the ALJ was not required to evaluate the foot impairments under Listing 1.18 at Step Three.
4. Remand for further administrative proceedings, rather than an immediate award of benefits, was appropriate.

KEY QUOTATIONS

“If an ALJ finds that a “claimant has presented objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged,” and “there is no evidence of malingering, the ALJ can reject the claimant’s testimony about the severity of symptoms only by offering specific, clear and convincing reasons for doing so.”” (Order at 7)

“Even though a non-severe impairment standing alone may not significantly limit an individual's ability to do basic work activities, it may—when considered with limitations or restrictions due to other impairments—be critical to the outcome of a claim.” (Order at 11)

FACTUAL BACKGROUND

Plaintiff applied for disability insurance benefits alleging disability beginning August 13, 2019. The ALJ found severe impairments including rheumatoid arthritis, fibromyalgia, bilateral thumb osteoarthritis, degenerative disc disease, and headaches, but found Plaintiff capable of sedentary work with limitations and able to perform other jobs existing in significant numbers in the national economy. Plaintiff testified that migraines could incapacitate her for an entire day, that her hands were almost nonfunctional, that neck and back pain required her to recline for four to five hours daily, and that foot pain limited walking. The district court concluded that the ALJ inadequately explained the rejection of the migraine testimony and did not adequately address the foot impairment in the residual-functional-capacity analysis.

PROCEDURAL HISTORY

The Social Security Administration denied Plaintiff's application initially and on reconsideration. After an administrative hearing, the ALJ found Plaintiff not disabled, and the Appeals Council denied review. Magistrate Judge Maria S. Aguilera recommended reversing and remanding for a new hearing and decision. The district court reviewed the objected-to portions de novo, adopted the R&R with a modification concerning the foot impairment, reversed the Commissioner's final decision, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter is remanded to the Commissioner for a new hearing and decision. The agency must further develop the record concerning Plaintiff's headache disorder, reevaluate the headache disorder under SSR 19-4p, reassess the residual functional capacity, consider limitations imposed by the headache disorder and all severe and non-severe impairments, and specifically evaluate the credibility of Plaintiff's symptom testimony concerning her foot impairments and whether those impairments affect the residual functional capacity.

CASES CITED

- Johnson v. Zema Systems Corp., 170 F.3d 734, 739 (7th Cir. 1999)
- Prior v. Ryan, CV 10-225-TUC-RCC, 2012 WL 1344286, at *1 (D. Ariz. Apr. 18, 2012)
- Carmickle v. Commissioner of Social Security Administration, 533 F.3d 1155, 1159 (9th Cir. 2008)
- Thomas v. Barnhart, 278 F.3d 948, 954 (9th Cir. 2002)
- Gutierrez v. Commissioner of Social Security, 740 F.3d 519, 523 (9th Cir. 2014)
- Hill v. Astrue, 698 F.3d 1153, 1159 (9th Cir. 2012)
- Revels v. Berryhill, 874 F.3d 648, 654 (9th Cir. 2017)

- *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)
- *Stout v. Commissioner, Social Security Administration*, 454 F.3d 1050, 1054-56 (9th Cir. 2006)
- *Smartt v. Kijakazi*, 53 F.4th 489, 498 n.1 (9th Cir. 2022)
- *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991)
- *Batson v. Commissioner of Social Security Administration*, 359 F.3d 1190, 1194 (9th Cir. 2004)
- *Garrison v. Colvin*, 759 F.3d 995, 1019-21 (9th Cir. 2014)
- *Treichler v. Commissioner of Social Security*, 775 F.3d 1090, 1101 (9th Cir. 2014)

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF ARIZONA 8 9 Jennifer M Ellsworth, No. CV-25-00114-TUC-RM 10 Plaintiff, ORDER 11 v. 12 Commissioner of Social Security Administration, 13 Defendant. 14 15 Plaintiff Jennifer Ellsworth challenges the Commissioner of Social Security's denial 16 of her application for disability insurance benefits.

On December 8, 2025, Magistrate 17 Judge Maria S. Aguilera issued a Report and Recommendation ("R&R"), recommending 18 that the Commissioner's decision be reversed and the matter remanded for a new hearing 19 and decision. (Doc. 22.) Plaintiff filed an Objection (Doc. 23), to which the Commissioner 20 did not respond. 21 I. Background 22 Plaintiff's application for disability insurance benefits was denied at the initial level 23 and on reconsideration.

(AR 201-225.) Administrative Law Judge ("ALJ") Charles Davis 24 held a hearing and thereafter issued a decision finding Plaintiff not disabled. (AR 38-53, 25 177-200.) The Appeals Council denied review, rendering the ALJ's decision the final 26 decision of the Commissioner. (AR 1.) 27 The ALJ followed the five-step sequential evaluation process set forth in the Social 28 1 Security regulations.

See 20 C.F.R. § 416.920(a)(4).1 At Step One, the ALJ found that 2 Plaintiff has not engaged in substantial gainful activity since her alleged disability onset 3 date of August 13, 2019. (AR 41.) At Step Two, the ALJ found that Plaintiff has the 4 following severe impairments: rheumatoid arthritis, fibromyalgia, osteoarthritis of the 5 thumbs, degenerative disc disease, and headaches.

(Id.) The ALJ found that Plaintiff's 6 foot conditions, her carpal tunnel syndrome, her stroke history, her obesity, and her 7 depression were non-severe impairments. (AR 41-44.) At Step Three, the ALJ found that 8 Plaintiff does not have an impairment or combination of impairments that meets or 9 medically equals the severity of a listed impairment. (AR 44-45.)

10 At Step Four, the ALJ found that Plaintiff has the residual functional capacity to 11 perform sedentary work with the following limitations: Plaintiff can lift and carry up to ten 12 pounds occasionally and less than ten pounds frequently; she can do unlimited standing 13 and walking;

she can sit approximately six hours in an eight-hour day; she can frequently 14 climb ramps and stairs, and occasionally climb ladders, ropes, and scaffolds; she can 15 frequently balance, stoop, and crouch, and occasionally kneel and crawl; she can frequently 16 overhead reach, bilaterally; she can frequently handle and finger, with braces as needed; 17 and she can have occasionally exposure to cold, wetness, vibration, and workplace hazards.

18 (AR 45-46.) In so finding, the ALJ determined that Plaintiff's "medically determinable 19 impairments could reasonably be expected to cause her alleged symptoms" but that her 20 "statements concerning the intensity, persistence and limiting effects" of her alleged 21 symptoms were "not entirely consistent with the medical evidence and other evidence in 22 the record." (AR 47.)

The ALJ found that Plaintiff is unable to perform any past relevant 23 1 At Step One of this process, an ALJ must determine whether a claimant is doing substantial gainful activity; if so, the claimant will be found not disabled. 20 C.F.R. § 24 416.920(a)(4)(i). At Step Two, the ALJ determines whether the claimant has a severe medically determinable impairment that meets the duration requirement; if not, the 25 claimant will be found not disabled.

Id. § 416.920(a)(4)(ii). At Step Three, the ALJ determines whether the claimant has an impairment that meets or equals the severity of a 26 listed impairment; if so, the claimant will be found disabled. Id. § 416.920(a)(4)(iii). At Step Four, the ALJ determines whether the claimant can perform past relevant work given 27 his or her residual functional capacity; if so, the claimant will be found not disabled.

Id. § 416.920(a)(4)(iv). Finally, at Step Five, the ALJ determines whether the claimant can 28 adjust to other work given his or her residual functional capacity, age, education, and work experience; if so, the claimant will be found not disabled. Id. § 416.920(a)(4)(v). 1 work given her residual functional capacity, but at Step Five, the ALJ found that Plaintiff 2 is not disabled because she is capable of performing other jobs that exist in significant 3 numbers in the national economy.

(AR 50-52.) 4 In her Opening Brief, Plaintiff challenges the ALJ's rejection of her symptom 5 testimony and the ALJ's residual functional capacity analysis. (Doc. 18.) The R&R agrees 6 with Plaintiff that the ALJ failed to provide clear and convincing reasons for rejecting 7 Plaintiff's symptom testimony concerning her migraines, but the R&R finds that Plaintiff's 8 other challenges to the ALJ's decision fail.

(Doc. 22.) The R&R recommends rejecting 9 Plaintiff's request to remand for an immediate award of benefits, finding instead that 10 remand for a new hearing and decision is the appropriate remedy. (Id. at 15-16.) 11 II. Standard of Review 12 A district judge must "make a de novo determination of those portions" of a 13 magistrate judge's "report or specified proposed findings or recommendations to which 14 objection is made." 28 U.S.C. § 636(b)(1).

The district judge “may accept, reject, or 15 modify, in whole or in part, the findings or recommendations made by the magistrate 16 judge.” *Id.* The advisory committee’s notes to Rule 72(b) of the Federal Rules of Civil 17 Procedure state that, “[w]hen no timely objection is filed, the court need only satisfy itself 18 that there is no clear error on the face of the record in order to accept the recommendation” 19 of a magistrate judge.

Fed. R. Civ. P. 72(b) advisory committee’s note to 1983 addition. 20 See also *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999) (“If no objection 21 or only partial objection is made, the district court judge reviews those unobjected portions 22 for clear error.”); *Prior v. Ryan*, CV 10-225-TUC-RCC, 2012 WL 1344286, at *1 (D. Ariz. 23 Apr. 18, 2012) (reviewing for clear error unobjected-to portions of Report and 24 Recommendation).

25 The Court must affirm the Commissioner’s decision “if it is supported by substantial 26 evidence and based on the application of correct legal standards.” *Carmickle v. Comm’r*, 27 Soc. Sec. Admin., 533 F.3d 1155, 1159 (9th Cir. 2008). “Substantial evidence is relevant 28 evidence which, considering the record as a whole, a reasonable person might accept as 1 adequate to support a conclusion.” *Thomas v. Barnhart*, 278 F.3d 948, 954 (9th Cir.

2002). 2 It is “more than a scintilla, but less than a preponderance.” *Id.* In determining whether the 3 Commissioner’s decision is supported by substantial evidence, the Court must “weigh both 4 the evidence that supports and the evidence that detracts from the ALJ’s factual 5 conclusions.” *Gutierrez v. Comm’r of Soc. Sec.*, 740 F.3d 519, 523 (9th Cir. 2014) (internal 6 quotation marks omitted).

The Court “must consider the entire record as a whole and may 7 not affirm simply by isolating a specific quantum of supporting evidence.” *Hill v. Astrue*, 8 698 F.3d 1153, 1159 (9th Cir. 2012) (internal quotation marks omitted). When evidence 9 “is susceptible to more than one rational interpretation, one of which supports the ALJ’s 10 decision,” this Court must uphold the ALJ’s conclusion.

Thomas, 278 F.3d at 954. The 11 Court may may consider “only the reasons provided by the ALJ in the disability 12 determination and may not affirm the ALJ on a ground upon which he did not rely.” *Revels 13 v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017). 14 If an ALJ finds that a “claimant has presented objective medical evidence of an 15 underlying impairment which could reasonably be expected to produce the pain or other 16 symptoms alleged,” and “there is no evidence of malingering, the ALJ can reject the 17 claimant’s testimony about the severity of symptoms only by offering specific, clear and 18 convincing reasons for doing so.” *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir.

19 2007) (internal quotation marks omitted). 20 Error in a social security determination is subject to harmless-error analysis. *Stout 21 v. Comm’r*, Soc. Sec. Admin., 454 F.3d 1050, 1054-56 (9th

Cir. 2006). An error is harmless 22 if it “was inconsequential to the ultimate nondisability determination.” Id. at 1055. 23 III. Discussion 24 Plaintiff objects to the R&R’s evaluation of her headache disorder; her rheumatoid 25 arthritis, bilateral thumb osteoarthritis, and fibromyalgia conditions; her neck and back 26 pain; and her foot impairment.

(Doc. 23.) She also argues that the R&R incorrectly framed 27 her argument regarding the narrative function-by-function requirement of SSR 96-8p. (Id. 28 1 at 13.)2 2 A. Migraine and Headache Testimony 3 Plaintiff testified before the ALJ that she gets headaches that vary in duration and 4 migraines that “take [her] down for an entire day.” (AR 192.)

As discussed above, the 5 R&R finds that the ALJ failed to provide clear and convincing reasons for discounting 6 Plaintiff’s symptom testimony concerning the severity of her migraines, and that as a result, 7 the Commissioner’s decision should be reversed and this matter remanded for a new 8 hearing and decision. (Doc. 22 at 8-10, 15-16.)

The R&R notes that the record is unclear 9 regarding the nature and frequency of Plaintiff’s migraines and whether migraine-related 10 limitations would preclude employment. (Id. at 10, 16.) 11 Notwithstanding that the R&R finds in her favor on this issue, Plaintiff objects, 12 arguing that the R&R erroneously characterizes the ALJ’s “errors as factual deficiencies 13 rather than legal errors requiring reversal.” (Doc.

23 at 2.) Plaintiff argues that the “ALJ’s 14 migraine analysis was not merely incomplete—it was medically inaccurate, inconsistent 15 with SSR 19-4p, and grounded in mischaracterizations of the record.” (Id.) Plaintiff asks 16 the Court to remand with instructions to “(1) reevaluate Plaintiff’s headache disorder under 17 SSR 19-4p; (2) consider the neurological impact of her strokes; (3) assess the interactions 18 between migraines and her other impairments; and (4) incorporate migraine-related 19 functional limitations into” Plaintiff’s residual functional capacity.

(Id. at 3-4.) 20 The Court will adopt the R&R’s recommendation to reverse the Commissioner’s 21 final decision and remand for a new hearing and decision due to the Commissioner’s failure 22 to provide clear and convincing reasons for discounting Plaintiff’s symptom testimony 23 concerning her migraines. Encompassed within this recommended remand is further 24 development of the record concerning Plaintiff’s headache disorder, reevaluation of 25 Plaintiff’s headache disorder under SSR 19-4p, and reassessment of Plaintiff’s residual 26 functional capacity.

In reassessing Plaintiff’s residual functional capacity, the ALJ must 27 consider the limitations imposed by Plaintiff’s headache disorder and her other severe and 28 2 The Court finds that the unobjected-to portions of the R&R are not erroneous, and the Court will accept and adopt those portions. 1 non-severe impairments. See Carmickle, 533 F.3d at 1164. 2 The Court will deny as moot Plaintiff’s Objection to the R&R’s analysis of her 3 headache disorder, as the relief Plaintiff requests is already encompassed by the relief 4 recommended in the R&R.

5 B. Rheumatoid Arthritis, Bilateral Thumb Osteoarthritis, Fibromyalgia 6 Plaintiff testified before the ALJ that her “hands are almost non-functioning” and 7 “don’t operate.” (AR 185-186.) She further testified that she wears hand braces all the 8 time to stabilize her thumb and wrist; that she cannot open jars; that she cannot tie, button, 9 or buckle items; that she drops items; and that she cannot lift a gallon of milk.

(AR 186- 10 188, 192-193.) 11 The ALJ discounted Plaintiff’s symptom testimony as inconsistent with the medical 12 evidence. (AR 47-48.) The ALJ discussed Plaintiff’s testimony that she has weakness in 13 her hands “and is unable to grasp, tie, or hold objects,” and contrasted that testimony to 14 medical evidence reflecting routine treatment of Plaintiff’s rheumatoid arthritis and 15 osteoarthritis—including examinations showing normal range of motion and indications 16 that symptoms were overall well-controlled with medication—as well as a lack of “medical 17 documentation of persistent debilitating fibromyalgia flare ups.” (Id.)

18 The R&R finds that the ALJ properly discounted Plaintiff’s testimony concerning 19 the severity of her hand limitations based on inconsistencies between that testimony and 20 the objective medical evidence. (Doc. 22 at 3-5.)

The R&R further finds that, even if the 21 ALJ erred in discounting Plaintiff’s symptom testimony, the error was harmless, because 22 a vocational expert testified at Plaintiff’s hearing that Plaintiff could perform the job of 23 surveillance system monitor, which does not require any reaching, handling, fingering, or 24 feeling. (Id. at 5-6.) 25 In her objection, Plaintiff argues that the “R&R fundamentally mischaracterized 26 [her] argument by reducing it to a narrow dispute about ‘manipulative limitations,’ rather 27 than addressing... the ALJ’s failure to evaluate three distinct severe impairments— 28 rheumatoid arthritis, bilateral thumb osteoarthritis, and fibromyalgia—each of which 1 required separate analysis[.]” (Doc.

23 at 4.) Plaintiff further argues that the R&R 2 improperly “treats the ALJ’s” residual functional capacity finding “as proof that Plaintiff’s 3 symptoms were ‘not as severe as alleged’”; that the R&R failed to “meaningfully review 4 the evidence” in finding that “little to no evidence” supports Plaintiff’s testimony that her 5 hands are “almost non-functioning”; that the ALJ failed to link specific testimony to 6 specific contradictory evidence in rejecting Plaintiff’s testimony concerning the severity of 7 her hand limitations; and that the ALJ failed to analyze Plaintiff’s thumb osteoarthritis 8 under Listing 1.18.

(Id. at 4-5.) Plaintiff contends that the Court should remand for an 9 immediate award of benefits. (Id. at 7.) 10 The Court disagrees. The ALJ specifically analyzed Listing 1.18, finding that 11 Plaintiff’s impairment does not meet or medically equal the criteria of that listing, and the 12 ALJ separately evaluated Plaintiff’s inflammatory arthritis under Listing 14.09.

(AR 45.)³ ¹³ In evaluating Plaintiff's symptom testimony and formulating her residual functional ¹⁴ capacity, the ALJ discussed specific testimony and specific contradictory medical ¹⁵ evidence. (AR 46-48.) The R&R does not treat the ALJ's residual functional capacity ¹⁶ finding as proof that Plaintiff's symptoms were not as severe as alleged; instead, the R&R ¹⁷ discusses inconsistencies between Plaintiff's testimony that her hands are "almost non- ¹⁸ functioning" and medical records indicating that Plaintiff's arthritis is well-controlled with ¹⁹ medication.

(Doc. 22 at 3-4.) Furthermore, Plaintiff does not address in her Objection the ²⁰ R&R's alternative finding that, even if the ALJ erred in rejecting Plaintiff's symptom ²¹ testimony regarding her hand limitations, the error was harmless because there are a ²² significant number of surveillance system monitor jobs nationwide, and that job does not ²³ require any reaching, handling, fingering or feeling.

(Id. at 5-6; see also AR 200.) ²⁴ The Court will overrule Plaintiff's objection to the R&R's analysis of her hand ²⁵ limitations arising from rheumatoid arthritis, bilateral thumb osteoarthritis, and ²⁶ fibromyalgia. ²⁷.... ²⁸ ³ Furthermore, Plaintiff failed to raise in her Opening Brief any challenge to the ALJ's application of or failure to apply Listing 1.18 with respect to her thumb osteoarthritis.

¹ C. Neck and Back Pain ² Plaintiff testified before the ALJ that her "cervical spine" and "neck" are "in pain ³ all the time," and that she cannot sit or stand for long periods of time. (AR 186.) She ⁴ testified that she lies down for 4-5 hours per day. (AR 192.)

The ALJ recognized ⁵ Plaintiff's testimony that she reclines 4-5 hours per day due to neck pain but discounted ⁶ the testimony as inconsistent with the medical evidence and other evidence in the record. ⁷ (AR 46-48.)

In so doing, the ALJ discussed medical evidence indicating that Plaintiff has ⁸ "received routine treatment and pain management for neck/back pain secondary to ⁹ degenerative disc disease," that she has "had no complications secondary to treatment," ¹⁰ and that "her physical examinations were mainly within normal limits." (AR 48.)

The ¹¹ R&R finds that substantial evidence supports the ALJ's conclusion that Plaintiff's ¹² testimony concerning the severity of her neck and back pain is inconsistent with the ¹³ objective medical evidence. (Doc. 22 at 6-8.) ¹⁴ In her Objection, Plaintiff argues that the "R&R's analysis rests on ¹⁵ mischaracterization of Plaintiff's testimony, reliance on non-exams and template language, ¹⁶ a legally impermissible use of 'normal' findings to reject pain testimony, and an improper ¹⁷ post hoc rationale that the ALJ never articulated." (Doc.

²³ at 7.) Plaintiff argues that the ¹⁸ ALJ failed to evaluate her specific spinal impairments when analyzing her degenerative ¹⁹ disc disease. (Id. at 9.) She further argues that the R&R and the ALJ cherry-picked medical ²⁰ evidence and improperly relied on non-exams and boilerplate language

in the medical 21 records. (Id. at 8-11.) Plaintiff asserts that “objective evidence alone can never constitute 22 a clear and convincing reason to reject symptom testimony.” (Id. at 9.)

She also argues 23 that the “ALJ never found that objective evidence contradicted Plaintiff’s specific 24 limitations,” and that the R&R’s finding that the objective medical evidence contradicted 25 Plaintiff’s symptom testimony is therefore an improper “post hoc rationale that the ALJ 26 never gave.” (Id. at 10.) 27 Once a claimant has shown that she has a medically determinable impairment or 28 impairments that could reasonably be expected to produce her pain or other symptoms, her 1 statements about the intensity, persistence, and effect of her pain or other symptoms cannot 2 be rejected “solely because the available objective medical evidence does not substantiate” 3 them.

20 C.F.R. §§ 404.1529(c)(2); see also *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 4 (9th Cir. 1991) (an ALJ “may not discredit a claimant’s testimony of pain and deny 5 disability benefits solely because the degree of pain alleged by the claimant is not supported 6 by objective medical evidence”).

However, an ALJ can rely on “contradictions between a 7 claimant’s subjective symptom testimony and the objective medical evidence in the record 8 to discount the symptom testimony.” *Smartt v. Kijakazi*, 53 F.4th 489, 498 n.1 (9th Cir. 9 2022). That is what the ALJ did here. 10 The Court agrees with the R&R that the ALJ offered specific examples of objective 11 medical evidence inconsistent with Plaintiff’s alleged symptom severity, and that the 12 examples cited by the ALJ are not cherry picked but, rather, representative of mainly 13 normal physical examinations.

(Doc. 22 at 6-8.) The record does not support Plaintiff’s 14 argument that the R&R relied on a post hoc rationale that the ALJ never gave; both the 15 ALJ’s decision and the R&R discuss contradictions between Plaintiff’s symptom testimony 16 and her medical records. (Id.; AR 46, 48.)

The Court will overrule Plaintiff’s Objection 17 to the R&R’s analysis of her neck and back pain. 18 D. Foot Impairment 19 Plaintiff testified before the ALJ that she cannot be on her feet long because “it hurts 20 to walk,” and her “foot will start swelling up” after about ten minutes of walking. (AR 21 187.) She testified that her foot surgeries did not “take,” and one foot is “totally deformed.” 22 (Id.)

23 The ALJ found at Step Two, with respect to Plaintiff’s “history of bunionectomy, 24 status post resection of middle phalanx and second right toe, and hammer toe deformities,” 25 that the foot impairment is non-severe because “the medical evidence indicates no post- 26 surgery complications and no issues with the claimant’s gait.” (AR 41.)

The ALJ 27 discussed specific medical records indicating independent ambulation and normal gait. 28 (AR 41-42.) The R&R finds that Plaintiff forfeited any challenge to the ALJ's Step Two 1 analysis by failing to address it in her briefing. (Doc. 22 at 10.)

The R&R further finds 2 that substantial evidence supports the ALJ's conclusion that Plaintiff's foot impairment is 3 non-severe and does not limit Plaintiff from standing and walking. (Id. at 10, 12.) The 4 R&R concludes that the "ALJ did not err in rejecting testimony about extreme limitations 5 arising from a nonsevere impairment." (Id. at 10.) 6 Plaintiff argues in her Objection that the ALJ failed to evaluate her actual orthopedic 7 impairment, and that the R&R improperly treats template notations in non-pertinent 8 cardiology and neurology visit summaries as sufficient to uphold the ALJ's residual 9 functional capacity finding of unlimited standing and walking.

(Doc. 23 at 11.) Plaintiff 10 further argues that the R&R erroneously "suggest[s] that the ALJ was not required to 11 consider Plaintiff's foot limitations in the [residual functional capacity finding] because the 12 impairment was found non-severe." (Id. at 12.) Plaintiff contends that the ALJ failed to 13 address Listing 1.18 in connection with Plaintiff's documented foot impairment, despite 14 evidence of post-reconstructive deformity and pain with ambulation.

(Id. at 12.) Plaintiff 15 asks the Court to "remand with instructions requiring proper identification and evaluation 16 of Plaintiff's foot impairment under Listing 1.18, consideration of all resulting functional 17 limitations" in Plaintiff's residual functional capacity, "and a legally adequate 18 reassessment of [Plaintiff's] symptom testimony." (Id. at 12.)

19 An ALJ is required to compare a claimant's impairment to the listed impairments 20 only if the ALJ determines that the impairment is severe. *Batson v. Comm'r of Soc. Sec.* 21 Admin., 359 F.3d 1190, 1194 (9th Cir. 2004).

Here, the ALJ found at Step Two that 22 Plaintiff's foot impairments are non-severe, and Plaintiff did not object to the R&R's 23 conclusion that she forfeited any challenge to the ALJ's Step Two finding. Because the 24 ALJ found Plaintiff's foot impairments non-severe at Step Two, the ALJ was not required 25 to evaluate her foot impairments under Listing 1.18 at Step Three.

Furthermore, Plaintiff 26 failed to raise in her Opening Brief any challenge to the ALJ's application of or failure to 27 apply Listing 1.18 with respect to her foot impairments. 28 As discussed above, an ALJ must consider all medical impairments, including non- 1 severe impairments, in formulating a claimant's residual functional capacity. See 20 C.F.R. 2 § 404.1545(a)(2); *Carmickle*, 533 F.3d at 1164. "Even though a non-severe impairment 3 standing alone may not significantly limit an individual's ability to do basic work activities, 4 it may—when considered with limitations or restrictions due to other impairments—be 5 critical to the outcome of a claim." *Carmickle*, 533 F.3d at 1164 (internal quotation and 6 alteration marks omitted).

Here, the ALJ did not discuss Plaintiff's foot impairment when 7 formulating her residual functional capacity, nor did the ALJ specifically explain why he 8 rejected Plaintiff's testimony that foot pain limits her ability to walk for extended periods. 9 When reassessing Plaintiff's residual functional capacity on remand, the ALJ should 10 specifically evaluate the credibility of Plaintiff's symptom testimony concerning her foot 11 impairments and evaluate whether the foot impairments, even though found non-severe at 12 Step Two, affect Plaintiff's residual functional capacity.

13 E. SSR 96-8p Function-by-Function Assessment 14 The R&R concludes that the ALJ complied with SSR 96-8p's narrative requirement 15 by providing a function-by-function assessment and supporting the findings with an 16 analysis of the objective medical evidence. (Doc. 22 at 11-12.)

The R&R further finds 17 that the ALJ did not err in grouping "impairments that could cause related functional 18 limitations." (Id. at 12.) 19 Plaintiff argues in her Objection that the R&R mischaracterizes her argument 20 regarding SSR 96-8p as asserting that the ALJ failed to provide a function-by-function 21 assessment, when Plaintiff's argument is actually that the ALJ failed to provide a narrative 22 function-by-function explanation linking specific medical findings to specific functional 23 limitations.

(Doc. 23 at 13.) However, the R&R finds that the ALJ supported its function- 24 by-function assessment with an analysis of the objective medical evidence of Plaintiff's 25 impairments. Accordingly, the Court will overrule Plaintiff's objection to the R&R's 26 evaluation of her SSR 96-8p argument. 27.... 28.... 1 F. Credit as True 2 Under 42 U.S.C. § 405(g), the court has the power to affirm, modify, or reverse the 3 decision of the Commissioner, "with or without remanding the cause for a rehearing." 4 Accordingly, "in appropriate circumstances courts are free to reverse and remand a 5 determination by the Commissioner with instructions to calculate and award benefits." 6 *Garrison v. Colvin*, 759 F.3d 995, 1019 (9th Cir.

2014). 7 Under the credit-as-true rule, a court may remand for the immediate calculation and 8 award of benefits if: (1) the record has been fully developed and further administrative 9 proceedings would serve no useful purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting evidence, whether claimant testimony 10 or medical opinion; and (3) if the improperly discredited evidence were credited as true, the ALJ would be required to find the claimant disabled on 11 remand.

12 Id. at 1020. Further administrative proceedings generally are useful if "the record has not 13 been fully developed" or "there is a need to resolve conflicts and ambiguities." *Treichler* 14 v. Comm'r of Soc. Sec., 775 F.3d 1090, 1101 (9th Cir. 2014) (internal quotation and 15 alteration marks omitted). Furthermore, even when all the conditions of the credit-as-true 16 rule are satisfied, the court may instead remand for further proceedings if "the record as a 17 whole creates

serious doubt as to whether the claimant is, in fact, disabled within the 18 meaning of the Social Security Act.” Garrison, 759 F.3d at 1021.

19 In her Objection, Plaintiff argues that the Court should remand for an immediate 20 award of benefits due to errors in the ALJ’s analysis of limitations arising from her 21 rheumatoid arthritis, osteoarthritis, and fibromyalgia. (See Doc. 23 at 7.)

However, as 22 explained above, the Court agrees with the R&R’s finding that the ALJ properly discounted 23 Plaintiff’s testimony concerning hand limitations arising from those conditions and that 24 any error was harmless. Plaintiff does not specifically object to the R&R’s conclusion that 25 remand for further proceedings is the appropriate remedy with respect to the ALJ’s failure 26 to provide clear and convincing reasons for discounting Plaintiff’s headache testimony.

27 The Court agrees with the R&R that remand for further proceedings is appropriate given 28 the need to further develop the record concerning Plaintiff’s headache disorder. 1 IT IS ORDERED: 2 1. Plaintiffs Objection (Doc. 23) is partially granted and partially 3 overruled, as set forth above. 4 2.

The Report and Recommendation (Doc. 22) is accepted and adopted, with 5 the modification discussed above with respect to reevaluation of 6 foot impairment. 7 3. The final decision of the Commissioner is reversed, and this matter is 8 remanded to the agency for a new hearing and decision, as set forth above 9 and in the Report and Recommendation (Doc.

22). 10 4. The Clerk of Court is directed to enter a final judgment in favor of Plaintiff 11 and against the Commissioner, and to close this case. 12 Dated this 17th day of March, 2026. 13 14 ff 16 —D J Honorable Rosthiary 17 United States District 18 19 20 21 22 23 24 25 26 27 28 -13-