

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Luz Maria Orozco v. Commissioner of Social Security

Case No. 1:22-cv-01478-CDB (SS) (E.D. Cal. Dec. 29, 2025) · No. 1:22-cv-01478-CDB (SS) · Decided
December 29, 2025

SUMMARY

The United States District Court for the Eastern District of California denied Luz Maria Orozco’s motion for summary judgment and affirmed the Commissioner of Social Security’s denial of disability benefits. The court held that the Administrative Law Judge properly evaluated Plaintiff’s education and English-language proficiency under the applicable regulations and adequately considered the medical opinion of Dr. Fabella.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Christopher D. Baker
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 29, 2025
DOCKET	1:22-cv-01478-CDB (SS)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff sought judicial review under 42 U.S.C. § 405(g) of the Commissioner's final decision denying disability benefits. The parties filed cross-motions for summary judgment, and the matter was submitted without oral argument.
STANDARD OF REVIEW	The court reviewed the Commissioner's decision under 42 U.S.C. § 405(g), asking whether it was supported by substantial evidence and free of legal error. The court considered the record as a whole, did not substitute its judgment for the Commissioner's, and treated an error as harmless when inconsequential to the ultimate nondisability determination.
PRECEDENTIAL VALUE	unpublished district-court order; nonprecedential
PARTIES	Luz Maria Orozco v. Commissioner of Social Security

TOPICS

judicial review of agency action

administrative law

agency adjudication

PRACTICE AREAS

Social Security disability

administrative law

judicial review of agency action

civil procedure

QUESTIONS PRESENTED

1. Whether the ALJ erred by failing to reconcile the vocational expert's testimony with the Dictionary of Occupational Titles and Orozco's alleged inability to communicate effectively in English.
2. Whether the ALJ improperly evaluated Dr. Fabella's medical opinion and erred by failing to include hourly sitting breaks in the residual functional capacity assessment.

HOLDINGS

1. Under the Social Security regulations and guidance applicable after April 27, 2020, English-language proficiency is no longer a factor used to determine a claimant's education category, and the ALJ did not err by declining to address Orozco's alleged lack of English proficiency at step five.
2. The ALJ properly evaluated Dr. Fabella's opinion by addressing its supportability and consistency and reasonably found it partially persuasive.
3. The ALJ did not commit reversible error by omitting hourly sitting breaks because Dr. Fabella's statement that Orozco would likely benefit from such breaks was a recommendation, not an affirmative functional limitation or imperative.

KEY QUOTATIONS

“The scope of review under § 405(g) is limited; the Commissioner’s decision will be disturbed “only if it is not supported by substantial evidence or is based on legal error.”” (Section II)

“Because Plaintiff has not cited any authority requiring an ALJ to address English language proficiency limitations in an RFC assessment or a vocational expert hypothetical under the current regulatory scheme, and because SSA guidance indicates such consideration is inappropriate, the Court finds the ALJ did err in declining to discuss Plaintiff’s lack of English language proficiency at Step Five” (Section III.A)

“Dr. Fabella’s remark here is short of an opined limitation of Plaintiff’s functional capacity, and instead, merely a recommendation that would benefit her issue with cervicgia.” (Section III.B)

FACTUAL BACKGROUND

Orozco alleged disability based principally on a left shoulder labral tear and impingement syndrome after arthroscopic repair, degenerative disc disease of the cervical and thoracic spine, and mental impairments. The ALJ found that she could perform light work with specified postural, reaching, environmental, and climbing restrictions, but could not perform her past relevant work. Relying on vocational-expert testimony, the ALJ found that she could perform work as a school bus monitor, conveyor line bakery worker, or counter clerk. A consulting physician, Dr. Fabella, assessed light-work limitations and stated that Orozco would likely benefit from sitting breaks approximately every hour because of cervicgia.

PROCEDURAL HISTORY

Orozco applied for disability insurance benefits, alleging disability beginning February 2, 2018. The claim was denied initially and on reconsideration; following a March 11, 2021 telephone hearing, the ALJ issued an unfavorable decision on April 26, 2021. The Appeals Council denied review on April 22, 2022, making the ALJ's decision final. The district court denied Orozco's motion for summary judgment, affirmed the Commissioner's decision, entered judgment for the Commissioner, and closed the case.

DISPOSITION

affirmed

CASES CITED

- Hill v. Astrue, 698 F.3d 1153, 1158-59 (9th Cir. 2012)
- Sandgate v. Chater, 108 F.3d 978, 980 (9th Cir. 1997)
- Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008)
- Shinseki v. Sanders, 556 U.S. 396, 409-10 (2009)
- Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999)
- Beltran v. Astrue, 700 F.3d 386, 389 (9th Cir. 2012)
- Valdizon v. Kijakazi, No. 1:20-cv-01271-SKO, 2022 WL 378656, at *4 n.5 (E.D. Cal. Feb. 8, 2022)
- Vang v. Commissioner of Social Security, No. 1:21-cv-00488-SAB, 2022 WL 17812859, at *6 (E.D. Cal. Dec. 19, 2022)
- Arias v. Commissioner of Social Security, No. CV-22-08123-PCT-DMF, 2023 WL 2909220, at *3-4 (D. Ariz. Apr. 12, 2023)
- Juan R. v. Kijakazi, No. 2:20-cv-11257-GJS, 2022 WL 3018056, at *4 (C.D. Cal. July 29, 2022)
- Salimeh N. v. Commissioner of Social Security, No. C21-1523-SKV, 2022 WL 1963719, at *4-5 (W.D. Wash. June 6, 2022)
- Rubio v. O'Malley, No. 3:23-cv-00399-CSD, 2024 WL 2518810, at *7 (D. Nev. May 23, 2024)
- Trevizo v. Berryhill, 871 F.3d 664, 675 (9th Cir. 2017)
- Woods v. Kijakazi, 32 F.4th 785, 791-93 (9th Cir. 2022)
- Jones v. Saul, No. 2:19-CV-01273 AC, 2021 WL 620475, at *8 (E.D. Cal. Feb. 17, 2021)
- Rounds v. Commissioner of Social Security Administration, 807 F.3d 996, 1006 (9th Cir. 2015)
- Carmickle v. Commissioner, Social Security Administration, 533 F.3d 1155, 1165 (9th Cir. 2008)
- Valentine v. Commissioner of Social Security Administration, 574 F.3d 685, 691-92 (9th Cir. 2009)
- Scott v. Colvin, No. 3:14-cv-01693-KI, 2015 WL 7432356, at *8 (D. Or. Nov. 23, 2015)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 LUZ MARIA OROZCO, Case No. 1:22-cv-01478-CDB (SS) 12 Plaintiff,
ORDER DENYING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT 13 v. AND

AFFIRMING DECISION OF COMMISSIONER OF SOCIAL SECURITY 14 COMMISSIONER OF SOCIAL SECURITY, (Docs. 18, 21) 15 Defendant. 16 17 Plaintiff Luz Maria Orozco (“Plaintiff”) seeks judicial review of a final decision of the 18 Commissioner of Social Security (“Commissioner” or “Defendant”) denying her application for 19 disability benefits under the Social Security Act (“SSA” or “Act”).

(Doc. 1). The matter is before 20 the Court on the Administrative Record (Doc. 13, hereinafter “AR”) and the parties’ briefs (Docs. 21 18, 21), which were submitted without oral argument. Upon review of the record, the Court finds 22 and rules as follows.¹ 23 I. BACKGROUND 24 A. Administrative Proceedings and ALJ’s Decision 25 On May 10, 2019, Plaintiff filed an application for a period of disability and disability 26 insurance benefits with an alleged onset date of February 2, 2018.

(AR 32, 509, 513). Plaintiff’s 27 1 On December 22, 2022, after the parties consented to the jurisdiction of a U.S. Magistrate Judge for all further proceedings pursuant to 28 U.S.C. § 636(c) (1), this action was reassigned to a 1 claim was initially denied on November 14, 2019, and again upon reconsideration on April 9, 2020. 2 (AR 32, 384, 390). Plaintiff requested a hearing before an Administrative Law Judge on April 24, 3 2020.

(AR 32, 397). Vicky Ruth, the Administrative Law Judge (“ALJ”), held a telephone hearing 4 on March 11, 2021, during which Plaintiff, represented by counsel Rosalina Nunez, and impartial 5 vocational expert Larry Underwood (“VE”) testified. (AR 32).

The ALJ issued an unfavorable 6 decision on April 26, 2021, finding Plaintiff was not disabled. (AR 26-50). The Appeals Council 7 denied Plaintiff’s request for review on April 22, 2022, rendering the ALJ’s decision as the final 8 decision of the Commissioner. (AR 11). Plaintiff subsequently filed this action seeking judicial 9 review of the ALJ’s decision.

(Docs. 1, 4). 10 In the decision, the ALJ considered Plaintiff’s claims using the five-step sequential 11 evaluation required by 20 C.F.R. § 404.1520(a). (AR 34-46). The ALJ found that Plaintiff meets 12 the insured status requirements of the Social Security Act (“Act”) through December 31, 2023. 13 (AR 34). At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity 14 since February 2, 2018, the alleged onset date.

Id. 15 At step two, the ALJ found that Plaintiff had the following severe medically determinable 16 impairments (“MDIs”) through the date last insured which significantly limit the ability to perform 17 basic work activities as required by Social Security Ruling (“SSR”) 85-28: left shoulder labral tear 18 and impingement syndrome status post arthroscopic repair; and degenerative disc disease (“DDD”) 19 of the cervical and thoracic spine.

Id. The ALJ considered the severity of Plaintiff’s mental 20 impairments, considering whether the four broad functional areas of mental functioning listed in 21 the “paragraph B” criteria are

satisfied.² Because Plaintiff's mental impairments did not cause at least two "marked" limitations or one "extreme" limitation, and do not cause more than minimal ^{23 24 2} The "paragraph B" criteria evaluate mental impairments in the context of four broad areas of functioning: (1) understanding, remembering, or applying information; (2) interacting with others; (3) concentrating, persisting, or maintaining pace; and (4) adapting or managing oneself.

20 C.F.R. § Pt. 404, Subpt. P, App. 1. The severity of the limitation a claimant has in each of the four areas of functioning is identified as either "no limitation," "mild," "moderate," "marked," or "extreme." Id. To satisfy the paragraph B criteria, a claimant must have an "extreme" limitation ²⁷ in at least one of the areas of mental functioning, or a "marked" limitation in at least two of the areas of mental functioning.

Id. ¹ limitation in Plaintiff's ability to perform basic mental work activities, the ALJ found the paragraph 2 B criteria were not satisfied and that the mental impairments are non-severe. (AR 35-37). The ALJ ³ also found that the evidence in this case fails to establish the presence of "paragraph C" criteria.^{3 4} At step three, the ALJ found that Plaintiff did not have an impairment, or any combination ⁵ of impairments, that met or medically equaled the severity of one of the listed impairments in ^{20 6} C.F.R. Part 404, Subpart P, Appendix 1 (20 C.F.R. §§ 404.1520(d), 404.1525, and 404.1526).

(AR 7 38). ⁸ Prior to step four, the ALJ found that Plaintiff has the RFC to perform light work as defined ⁹ in 20 C.F.R. 404.1567(b) except for the following non-exertional limitations: ¹⁰ [Plaintiff] can never climb ladders, ropes, or scaffolds; can no more than occasionally climb ramps or stairs; can no more than frequently balance, stoop, or ¹¹ crouch; can no more than occasionally kneel or crawl; can no more than frequently ¹² reach; can no more than occasionally reach overhead; must not work at unprotected heights; and must have no more than occasional exposure to excessive vibration.

^{13 14} (AR 39). In considering Plaintiff's symptoms and the extent to which these symptoms can ¹⁵ reasonably be accepted as consistent with objective medical evidence and other evidence, the ALJ ¹⁶ noted he followed the two-step process as set forth in 20 C.F.R. § 404.1529 and SSR 16-3p, and ^{20 17} C.F.R. § 404.1520c. Id. The ALJ found "after careful consideration of the evidence" that Plaintiff's ¹⁸ MDIs could reasonably be expected to cause the alleged symptoms but that her statements ¹⁹ concerning the intensity, persistence, and limiting effects of symptoms are not entirely consistent ²⁰ with the medical evidence and other record evidence.

(AR 42). The ALJ, citing to Plaintiff's ²¹ hearing testimony, medical evidence, treatment notes, and prior administrative medical findings, ²² determined that the evidence of record did not provide support for the existence of greater ²³ limitations above those assessed in the RFC regarding Plaintiff's impairments. (AR 44). ²⁴ At step four, the ALJ determined that Plaintiff is unable to perform any past relevant work ²⁵ under 20 C.F.R. 404.1565.

(AR 44). The ALJ found that Plaintiff is a younger individual on the 26 3 “Paragraph C,” subsection (1) requires a “highly structured setting that is ongoing that diminishes the signs and symptoms of [Plaintiff’s] mental disorder.” 20 C.F.R. Pt. 404, Subpt. P, 27 App. 1 § 12.04(C)(1). “Paragraph C,” subsection (2) requires that Plaintiff “have minimal capacity to adapt to changes in [Plaintiff’s] environment or to demands that are not already part of 1 alleged disability onset date that is closely approaching advanced age pursuant to 20 C.F.R. § 2 404.1563 and has a marginal education.

Id. The ALJ found that transferability of job skills is not 3 an issue here because Plaintiff’s past relevant work is unskilled pursuant to 20 C.F.R. 404.1568. 4 Id. 5 At step f*i* ve, the ALJ found that there are jobs that exist in significant numbers in the 6 national economy that Plaintiff could perform. (AR 44-45).

The ALJ cited to school bus monitor, 7 conveyor line bakery worker, and counter clerk based on the testimony of the vocational expert. 8 (AR 45). The ALJ therefore concluded a finding of “not disabled” was appropriate under sections 9 216(i) and 223(d) of the Act from February 2, 2018, through the date of the decision. (AR 45-46). 10 B. Medical Record and Hearing Testimony 11 The relevant hearing testimony and medical record were reviewed by the Court and will be 12 referenced below as necessary to this Court’s decision.

13 II. LEGAL STANDARD 14 A district court’s review of a final decision of the Commissioner of Social Security is 15 governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the 16 Commissioner’s decision will be disturbed “only if it is not supported by substantial evidence or is 17 based on legal error.” *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir.

2012). “Substantial evidence” 18 means “relevant evidence that a reasonable mind might accept as adequate to support a 19 conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence 20 equates to “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and citation 21 omitted). “[I]t is such relevant evidence as a reasonable mind might accept as adequate to support 22 a conclusion.” *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir.

1997) (quotation and citation 23 omitted). In determining whether the standard has been satisfied, a reviewing court must consider 24 the entire record as a whole rather than searching for supporting evidence in isolation. *Id.* 25 The court will review only the reasons provided by the ALJ in the disability determination 26 and may not affirm the ALJ on a ground upon which she did not rely.

Social Security Act § 205, 27 42 U.S.C. § 405(g). In reviewing a denial of benefits, a district court may not substitute its 1 evidence is susceptible to more than one rational interpretation.” *Tommasetti v. Astrue*, 533 F.3d 2 1035, 1038 (9th Cir. 2008). Further, a district court will not

reverse an ALJ's decision on account 3 of an error that is harmless. *Id.* An error is harmless where it is "inconsequential to the [ALJ's] 4 ultimate nondisability determination." *Id.* (quotation and citation omitted).

The party appealing 5 the ALJ's decision generally bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009). 7 A claimant must satisfy two conditions to be considered "disabled" and eligible for benefits 8 within the meaning of the Social Security Act.

First, the claimant must be "unable to engage in any 9 substantial gainful activity by reason of any medically determinable physical or mental impairment 10 which can be expected to result in death or which has lasted or can be expected to last for a 11 continuous period of not less than twelve months." 42 U.S.C. § 1382c(a)(3)(A).

Second, the 12 claimant's impairment must be "of such severity that he is not only unable to do his previous 13 work[,] but cannot, considering his age, education, and work experience, engage in any other kind 14 of substantial gainful work which exists in the national economy." 42 U.S.C. § 15 1382c(a)(3)(B). 16 The Commissioner has established a five-step sequential analysis to determine whether a 17 claimant satisfies the above criteria.

See 20 C.F.R. § 416.920(a)(4)(i)-(v). At step one, the 18 Commissioner considers the claimant's work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant 19 is engaged in "substantial gainful activity," the Commissioner must find that the claimant is not 20 disabled. 20 C.F.R. § 416.920(b). 21 If the claimant is not engaged in substantial gainful activity, the analysis proceeds to step 22 two.

At this step, the Commissioner considers the severity of the claimant's impairment. 20 C.F.R. 23 § 416.920(a)(4)(ii). If the claimant suffers from "any impairment or combination of impairments 24 which significantly limits [his or her] physical or mental ability to do basic work activities," the 25 analysis proceeds to step three. 20 C.F.R. § 416.920(c). If the claimant's impairment does not 26 satisfy this severity threshold, however, the Commissioner must find that the claimant is not 27 disabled.

Id. 1 recognized by the Commissioner to be so severe as to preclude a person from engaging in 2 substantial gainful activity. 20 C.F.R. § 416.920(a)(4)(iii). If the impairment is as severe or more 3 severe than one of the enumerated impairments, the Commissioner must find the claimant disabled 4 and award benefits. 20 C.F.R. § 416.920(d). 5 If the severity of the claimant's impairment does not meet or exceed the severity of the 6 enumerated impairments, the Commissioner must pause to assess the claimant's "residual 7 functional capacity," defined generally as the claimant's ability to perform physical and mental 8 work activities on a sustained basis despite his or her limitations (20 C.F.R. § 416.945(a)(1)).

9 At step four, the Commissioner considers whether, in view of the claimant's RFC, the 10 claimant is capable of performing work that he or she has performed in the past (past relevant 11 work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, 12 the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(f).

If the 13 claimant is incapable of performing such work, the analysis proceeds to step five. 14 At step five, the Commissioner considers whether, in view of the claimant's RFC, the 15 claimant is capable of performing other work in the national economy. 20 C.F.R. § 416.920(a)(4)(v).

In making this determination, the Commissioner must also consider vocational 17 factors such as the claimant's age, education, and past work experience. *Id.* If the claimant is 18 capable of adjusting to other work, the Commissioner must find that the claimant is not disabled. 20 19 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the analysis 20 concludes with a finding that the claimant is disabled and is therefore entitled to benefits.

Id. 21 The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*, 22 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the 23 Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such 24 work "exists in significant numbers in the national economy." 20 C.F.R. § 416.960(c)(2); *Beltran* 25 *v. Astrue*, 700 F.3d 386, 389 (9th Cir.

2012). 26 III. ISSUES AND ANALYSIS 27 Plaintiff seeks judicial review of the Commissioner's final decision denying her application 1 1. Whether the ALJ erred in failing to reconcile conflicts between the VE's testimony, the 2 Dictionary of Occupational Titles ("DOT"), and Plaintiff's inability to effectively 3 communicate in English, resulting in an insignificant number of jobs; and 4 2.

Whether the ALJ improperly rejected the opinion of Dr. Fabella and failed to include 5 restrictions in the RFC consistent with the report. 6 (Doc. 18 at 3). 7 A. Whether the ALJ Failed to Consider Plaintiff's Inability to Speak English and 8 to Reconcile the Conflict Between the VE and the DOT 9 1. Parties' Contentions 10 Plaintiff asserts that the ALJ failed to consider her inability to communicate effectively in 11 English and the ALJ failed to reconcile this conflict between the VE's testimony and the DOT.

12 (Doc. 18 at 15-17). Plaintiff argues that the ALJ failed her affirmative duty to inquire about any 13 possible conflicts between the VE's testimony and the information provided in the DOT given the 14 ALJ was "obviously aware of [Plaintiff's] language deficits" and that, here, an "obvious and 15 apparent conflict exists between the language-level requirements of the School Bus Monitor and 16 Counter Clerk positions and the undisputed language deficits[.]" *Id.* at 17.

Plaintiff contends that 17 the last position the VE cited, conveyer line bakery worker, does not exist in substantial numbers 18 to satisfy the Agency's burden at Step Five, which she contends

must be “at least 25,000 jobs” that 19 exist in the national economy to satisfy that burden, and “there are only 5,000 jobs available under 20 the supported RFC[.]” Id. at 19.

21 Defendant contends that substantial evidence supports the ALJ’s finding at Step Five, which 22 did not conflict with Plaintiff’s English abilities as Plaintiff told the ALJ that she could speak and 23 understand some degree of English and shows that Plaintiff’s marginal education and English 24 proficiency was consistent with her ability to perform unskilled work.

(Doc. 21 at 1, 4-5). 25 Defendant asserts that during the hearing, the VE affirmed that for a person with Plaintiff’s RFC 26 and marginal education, such a person could perform unskilled occupations including the ones 27 listed in the ALJ’s opinion—that of a school bus monitor, conveyer line bakery worker, and counter 1 sufficient to find that Plaintiff was not disabled.

Id. at 5. Defendant argues that by the time of the 2 ALJ’s decision in April 2021, the ALJ was not required to consider Plaintiff’s English language 3 proficiency under governing regulations and authority. Id. at 1, 6. Defendant asserts that Plaintiff 4 has not shown that she is incapable of speaking English or that the ALJ needed to consider her 5 English proficien`cy, and because there is no language conflict at Step Five, the Court should affirm.

6 Id. at 7. 7 2. Governing Authority 8 Prior to April 27, 2020, the SSA considered a plaintiff’s inability to communicate in English 9 in assessing a plaintiff’s education level as part of the five-step sequential evaluation. See 85 Fed. 10 Reg. 37, 10586-10587 (Feb. 25, 2020) (revising 20 C.F.R. § 416.964). Effective April 27, 2020, 11 the SSA amended the regulations such that a plaintiff’s lack of English language proficiency is no 12 longer a factor an ALJ considers when determining a plaintiff’s disability eligibility.

See id.; 13 *Valdizon v. Kijakazi*, No. 1:20-cv-01271-SKO, 2022 WL 378656, *4 n. 5 (E.D. Cal. Feb. 8, 2022) 14 (“There is no longer an ‘inability to communicate in English’ category, and accordingly, this 15 category is no longer in the Medical-Vocational Guidelines.”). 16 3. Analysis 17 The parties acknowledge that the regulation concerning education was amended effective 18 as of April 27, 2020, to eliminate any reference to the ability to speak, read, and comprehend 19 English.

See (Doc. 18 at 15-16); (Doc. 21 at 5-6). The SSA found that English language 20 proficiency “is no longer a useful indicator of an individual’s educational attainment or of the 21 vocational impact of an individual’s education because of changes in the national workforce since 22 [the SSA] adopted the current rule more than 40 years ago.” 85 Fed. Reg. 10586, 10601 (Feb.

25, 23 2020). The SSA determined that the amendment would apply “to claims that are pending on or 24 after the effective date [of April 27, 2020].” See 85 Fed. Reg. 13692-02, No. SSA-2017-0046, 2020 25 WL 1083309 (Mar. 9, 2020) (Social Security Ruling, SSR 20-01p: How We Determine an 26 Individual’s Education Category). 27 Because the ALJ’s decision here was

rendered on April 26, 2021 (AR 26-50), which is after 1 English language proficiency in determining Plaintiff's education and in consideration of the 2 vocational expert's testimony and the DOT.

See, e.g., *Vang v. Comm'r of Soc. Sec.*, No. 1:21-cv- 3 00488-SAB, 2022 WL 17812859, at *6 (E.D. Cal. Dec. 19, 2022) ("Plaintiff has cited no authority 4 requiring an ALJ to address English proficiency limitations in an RFC assessment or a VE 5 hypothetical under the current regulatory scheme. Indeed, recent agency guidance suggests that 6 such a consideration would be inappropriate."); accord *Arias v. Comm'r of Soc.*

Sec., No. CV-22- 7 08123-PCT-DMF, 2023 WL 2909220, at *3-4 (D. Az. April 12, 2023); *Juan R. v. Kijakazi*, No. 8 2:20-cv-11257-GJS, 2022 WL 3018056, at *4 (C.D. Cal. July 29, 2022); *Salimeh N. v. Comm'r of 9 Soc. Sec.*, No. C21-1523-SKV, 2022 WL 1963719, at *4-5 (W.D. Wash. June 6, 2022). Cf. *Rubio 10 v. O'Malley*, No. 3:23-cv-00399-CSD, 2024 WL 2518810, at *7 (D.

Nev. May 23, 2024) (agreeing 11 that while an ALJ is no longer required to address English proficiency limitations with the VE at 12 step five, a conflict could arise where an ALJ does ask the VE to consider whether a plaintiff who 13 only speaks Spanish could perform the identified jobs, and the VE indicated that she could not). 14 Furthermore, the record reflects that Plaintiff has a marginal education based on her 15 attainment of a sixth-grade education.

See (AR 44, 335, 337); SSR 20-01p, 2020 WL 1083309 16 (Mar. 9, 2020); 20 C.F.R. § 404.1564 (April 27, 2020) ("Marginal education means ability in 17 reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. 18 We generally consider that formal schooling at a 6th grade level or less is a marginal education."). 19 Under the operative regulations and guidance, Plaintiff's inability to communicate effectively in 20 English was irrelevant to the disability determination.

See SSR 20-01p ("Neither the country in 21 which an individual was educated nor the language an individual speaks informs us about whether 22 the individual's reasoning, arithmetic, and language abilities are commensurate with his or her 23 formal education level."). An individual is considered illiterate "only if the evidence supports a 24 finding that the individual is unable to read or write a simple message in any language." *Id.* Here, 25 there is no evidence that Plaintiff cannot read and write in her native Spanish language.

Nor is 26 there evidence that Plaintiff cannot read or write a simple message in English given Plaintiff's 27 statements at the hearing that she has some understanding of English in testifying that she "[m]ore 1 concluding Plaintiff has a marginal education and finding there was no apparent conflict between 2 the jobs relied on at Step Five and Plaintiff's marginal education level.

3 Because Plaintiff has not cited any authority requiring an ALJ to address English language 4 proficiency limitations in an RFC assessment or a vocational expert hypothetical under the current 5 regulatory scheme, and because SSA guidance indicates such consideration is inappropriate, the 6 Court finds the ALJ did err in declining to discuss Plaintiff's lack of English language proficiency 7 at Step Five, and the ALJ properly found there are jobs that exist in significant numbers in the 8 national economy that Plaintiff can perform in relying on the VE's testimony regarding 9 representative occupations.

10 B. Whether the ALJ Improperly Rejected the Opinion of Dr. Fabella and Failed 11 to Include Restrictions in the RFC Consistent with the Report 12 1. Parties' Contentions 13 Plaintiff contends the ALJ rejected the opinions of Dr. Fabella favorable to Plaintiff's claim 14 without proper consideration and support with substantial evidence. (Doc. 18 at 20). Plaintiff 15 argues the ALJ failed to explain which portions of Dr. Fabella's opinion he found were 16 unpersuasive and why, and the ALJ's rationale is otherwise unclear.

Id. Plaintiff asserts that the 17 ALJ failed to include in the RFC Dr. Fabella's opined limitation that Plaintiff would require hourly 18 breaks due to neck pain and failed to provide a reason for not including the same. Id. at 21. 19 Defendant contends the ALJ reasonably evaluated Dr. Fabella's opinion, whose imperatives 20 on Plaintiff's limitations did not conflict with the RFC.

(Doc. 21 at 7). Defendant argues that Dr. 21 Fabella's equivocal recommendation that Plaintiff would "likely benefit from breaks from sitting 22 every one hour or so" did not qualify as a medical opinion about what a claimant can or cannot do 23 in a work setting under the applicable regulations because Dr. Fabella did not opine that Plaintiff 24 required any limitations with sitting.

Id. Defendant asserts that because the RFC does not 25 materially differ from the restrictions assessed by Dr. Fabella, noting that Dr. Fabella found 26 Plaintiff "would be limited to a light range of work" and the RFC established that Plaintiff was 27 limited to light work with some postural limitations, the ALJ did not err. Id. at 8. Defendant argues 1 Dr. Fabella's limitations to light exertional work partially persuasive because of Dr. Fabella's 2 supporting examination findings and explanations and "the opinion's consistency with Plaintiff's 3 conservative pattern of treatment, mostly unremarkable longitudinal examination findings, and the 4 diagnostic imaging." Id. at 8-9.

5 2'. Governing Authority 6 Because Plaintiff applied for benefits after March 27, 2017, her claim is governed by the 7 agency's newest regulations applicable to an ALJ's evaluation of medical opinions. 20 C.F.R. § 8 416.920c.

Under these regulations, the Commissioner does "not defer or give any specific 9 evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative 10 medical

findings(s), including those from [a plaintiff's] medical sources.” 20 C.F.R. §§ 11 404.1520c(a), 416.920c(a).

Thus, the regulations require an ALJ to apply the same factors to all 12 medical sources when considering medical opinions and no longer mandate particularized 13 procedures that the ALJ must follow in considering opinions from treating sources. See 20 C.F.R. 14 § 404.1520c(b) (the ALJ “is not required to articulate how [he] considered each medical opinion or 15 prior administrative medical finding from one medical source individually.”); *Trevizo v. Berryhill*, 16 871 F.3d 664, 675 (9th Cir.

2017). 17 Instead, “[w]hen a medical source provides one or more medical opinions or prior 18 administrative medical findings, [the ALJ] will consider those medical opinions or prior 19 administrative medical findings from that medical source together using” the following factors: (1) 20 supportability; (2) consistency; (3) relationship with the claimant; (4) specialization; (5) other 21 factors that “tend to support or contradict a medical opinion or prior administrative medical 22 finding.” 20 C.F.R. §§ 404.1520c(a), (c)(1)-(5).

The most important factors to be applied in 23 evaluating the persuasiveness of medical opinions and prior administrative medical findings are 24 supportability and consistency. 20 C.F.R. §§ 404.1520c(a), (b)(2). Regarding the supportability 25 factor, the regulation provides that the “more relevant the objective medical evidence and 26 supporting explanations presented by a medical source are to support his or her medical opinion(s), 27 the more persuasive the medical opinions... will be.” 20 C.F.R. § 404.1520c(c)(1).

In other words, 1 explaining the ‘relevant... objective medical evidence.’” *Woods v. Kijakazi*, 32 F.4th 785, 791-92 2 (9th Cir. 2022) (quoting 20 C.F.R. § 404.1520c(c)(1)). Regarding the consistency factor, the “more 3 consistent a medical opinion(s) is with the evidence from other medical sources and nonmedical 4 sources in the claim, the more persuasive the medical opinion(s)... will be.” 20 C.F.R. § 5 404.1520c(c)(2).` 6 The ALJ must explain in his decision how persuasive he finds a medical opinion and/or a 7 prior administrative medical finding based on these two factors.

20 C.F.R. § 404.1520c(b)(2). The 8 ALJ “may, but [is] not required to, explain how [he] considered the [other remaining factors],” 9 except when deciding among differing yet equally persuasive opinions or findings on the same 10 issue. 20 C.F.R. § 404.1520c(b)(2)-(3). Further, the ALJ is “not required to articulate how [he] 11 considered evidence from nonmedical sources.” 20 C.F.R. § 404.1520c(d).

Nonetheless, the Court 12 must determine whether the ALJ adequately explained “how [he] considered the supportability and 13 consistency factors” relative to medical opinions and whether the reasons were free from legal error 14 and supported by substantial evidence. *Woods*, 32 F.4th

at 792-93. 15 3. Dr. Fabella's Opinion 16 Dr. Emmanuel Fabella, a board-certified internal medicine consultant, authored a summary 17 report of an internal medicine consultation of Plaintiff conducted on October 1, 2019.

(AR 991- 18 97) ("Ex. 9F"). Dr. Fabella notes that the medical records available for his review include a June 19 22, 2019, clinic note which documented Plaintiff's prediabetes, mixed hyperlipidemia, Bell's palsy, 20 urinary tract infection, and Lyme disease, and an MRI of Plaintiff's brain dated April 4, 2017, 21 which was normal. (AR 991). Dr. Fabella noted largely normal physical and neurological 22 examination findings.

(AR 993-95). He noted the impression that Plaintiff is a 51-year-old female 23 with "[c]ervicalgia with decreased range of motion, likely secondary to degenerative disc disease 24 but [he] do[es] not have the imaging report" and "[n]o MRI of the cervical spine has yet been done." 25 (AR 995). He noted a residual limitation of Plaintiff's left shoulder range of motion, "status post 26 arthroscopic surgery." Id. As to physical limitations, Dr. Fabella opined that: Plaintiff is able to lift 27 and carry 20 pounds occasionally and lift 10 pounds frequently, limited due to left shoulder injury; 1 and stand for four to six hours out of an eight-hour day secondary to cervicalgia; no assistive device 2 is needed; she is able to climb, balance, kneel, or crawl only occasionally secondary to cervicalgia 3 and left shoulder decreased range of motion; she is able to walk on uneven terrain occasionally, but 4 climbing ladders and working at heights is best avoided due to left shoulder injury and cervicalgia; 5 she has no seeing and hearing limitations; she has no hand use impairment nor any fine fingering 6 manipulation impairment; and there are no environmental restrictions.

Id. As to sitting limitations, 7 Dr. Fabella opined that Plaintiff "would likely benefit from breaks sitting every one hour or so 8 secondary to cervicalgia." Id. Dr. Fabella noted that his "conclusions relate to an internal medicine 9 assessment of alleged disability, and should not be misconstrued as a complete physical 10 examination for general medical purposes." (AR 996).

He provided that "[t]he findings on physical 11 examination are based both on formal testing, as well as by [his] direct observation of [Plaintiff.]" 12 Id. 13 4. Analysis 14 The ALJ found the opinions of Dr. Fabella partially persuasive, noting that Dr. Fabella 15 found Plaintiff "would be limited to a range of light exertional work" and that the opinions "are 16 based upon an only one-time but thorough examination" of Plaintiff.

(AR 43) (citing Ex. 9F). The 17 ALJ acknowledged that Dr. Fabella "provided a detailed explanation of his examination and 18 reasons supporting his opinions, which typically would increase the supportability and 19 persuasiveness of [the] opinions." Id. The ALJ concluded that Dr. Fabella's opinions "are 20 generally consistent with the record as a whole, particularly [Plaintiff's] conservative pattern of 21 treatment, minimally supportive physical examinations, and partially supportive diagnostic 22 imaging, which supports the consistency of Dr. Fabella's

opinions and renders them more 23 persuasive.” Id. 24 Here, the ALJ addressed how she considered the supportability and consistency of Dr. 25 Fabella’s opinions in finding the opinion partially persuasive.

As Defendant correctly notes, 26 Plaintiff does not dispute that Dr. Fabella’s findings showed mostly unremarkable examination 27 findings nor the ALJ’s conclusion that the opinion was “generally consistent with the record as a 1 supportability and persuasiveness of [the] opinions.” See Woods, 32 F. 4th at 791-92; Jones v. Saul, 2 No. 2:19-CV-01273 AC, 2021 WL 620475, at *8 (E.D.

Cal. Feb. 17, 2021) (“the ALJ must explain 3 how the agency considered the supportability and consistency of a medical opinion.... [T]he ALJ 4 [is not allowed] to forego articulation of their ‘reason or reasons’ altogether; rather, [the new 5 regulations] prov` ide specific articulation requirements.”). 6 Instead, Plaintiff asserts that the ALJ erred “because it is unclear ... what parts of Dr. 7 Fabella’s opinion persuaded the ALJ and what parts did not.” Plaintiff specifically challenges that 8 the ALJ failed to incorporate Dr. Fabella’s opinion that Plaintiff would require hourly breaks due 9 to neck pain in the RFC.

However, as the record shows, Dr. Fabella opined that, as to Plaintiff’s 10 sitting limitations, she “would likely benefit from breaks sitting every one hour or so secondary to 11 cervicalgia.” (AR 995) (emphasis added). Dr. Fabella’s remark here is short of an opined limitation 12 of Plaintiff’s functional capacity, and instead, merely a recommendation that would benefit her 13 issue with cervicalgia.

See Rounds v. Comm’r of Soc. Sec. Admin., 807 F.3d 996, 1006 (9th Cir. 14 2015) (“An ALJ may rationally rely on specific imperatives regarding a [plaintiff’s] limitations, 15 rather than recommendations.”) (citing Carmickle v. Comm’r, Soc. Sec. Admin., 533 F.3d 1155, 16 1165 (9th Cir. 2008)); e.g., Carmickle, 533 F.3d at 1165 (“Dr. Horowitz’s proposal [that rotation 17 between sitting, standing, and walking works best] was offered as a recommendation, not an 18 imperative.”); Valentine v. Comm’r of Soc.

Sec. Admin., 574 F.3d 685, 691 (9th Cir. 2009) (holding 19 that ALJ may disregard a medical source’s recommendations, as compared to a diagnosis or 20 affirmative statement of required limitation, in formulating RFC); accord Scott v. Colvin, No. 3:14– 21 cv–01693–KI, 2015 WL 7432356, at *8 (D. Or. Nov. 23, 2015) (“[M]any of the accommodations 22 are phrased as ‘could benefit’ and ‘may need.’ ... An ALJ does not err by excluding 23 recommendations from the RFC.”) (citing Valentine, 574 F.3d at 691-92).

Indeed, the ALJ assessed 24 the RFC to limit Plaintiff to light work with certain physical limitations that appear consistent with 25 Dr. Fabella’s assessed limitations, including to avoid climbing ladders and to “no more than 26 occasionally kneel or crawl[.]” (AR 39). That the ALJ

failed to explain why Dr. Fabella's 27 recommendation for hourly breaks was not included in the RFC does not amount to reversible error 1 | partially persuasive and properly incorporating these considerations in the RFC.

Because Plaintiff 2 | does not demonstrate that the ALJ failed to properly consider the supportability and consistency of 3 | Dr. Fabella's opinion in finding the opinion partially persuasive, and because the ALJ's treatment 4 | of Dr. Fabella's opinions and assessment of the RFC is supported by substantial evidence, the ALJ 5 | did not err in failing to incorporate the recommendation that Plaintiff would benefit from hourly 6 | breaks into the RFC.

Woods, 32 F.4th at 792-93; Valentine, 574 F.3d at 691. 71 IV. CONCLUSION AND ORDER 8 For the reasons stated above, IT IS HEREBY ORDERED that: 9 1. Plaintiff's motion for summary judgment (Doc. 18) is DENIED. 10 2. The ALJ's decision (Doc. 13) is AFFIRMED; and 11 3.

The Clerk of the Court shall enter judgment in favor of Defendant, terminate any 12 deadlines, and close this case. 13 | IT IS SO ORDERED. 14 Dated: _ December 29, 2025 | ww RR 15 UNITED STATES MAGISTRATE JUDGE 16 17 18 19 20 21 22 23 24 25 26 27 28 15