

OCT 23 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DEBORAH J. CANTRELL,

Plaintiff - Appellant,

v.

COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,

Defendant - Appellee.

No. 12-35374

D.C. No. 3:10-cv-03050-AC

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
John V. Acosta, Magistrate Judge, Presiding

Argued and Submitted October 8, 2013
Portland, Oregon

Before: SILVERMAN, W. FLETCHER, and CALLAHAN, Circuit Judges.

Plaintiff-Appellant Deborah Cantrell appeals the district court's decision granting summary judgment to Defendant-Appellee the Commissioner of Social

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Security on her claims for benefits. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we vacate and remand.¹

Among other things, the administrative law judge (“ALJ”) found that Cantrell did not establish degenerative disc disease as a severe impairment because of a lack of supporting objective medical evidence, and also discounted Cantrell’s self-reporting and her treating medical providers’ assessments for the same reason. The Appeals Council denied Cantrell’s request for review, but incorporated a 2008 x-ray into the record that had not been presented to the ALJ. That x-ray showed “marked multilevel degenerative changes” of the cervical spine.

Under *Brewes v. Commissioner of Social Security Admin.*, 682 F.3d 1157, 1163 (9th Cir. 2012), such “evidence becomes part of the administrative record, which [we] must consider when reviewing the Commissioner’s final decision for substantial evidence.” Because the 2008 x-ray may have implications for the agency’s reasons for denying benefits, we vacate the district court’s judgment and remand to the district court with instructions to remand to the agency to reconsider its decision in light of the 2008 x-ray and any other additional evidence that may exist. *See id.* at 1164 (indicating that we have discretion to remand “for additional evidence and findings”).

¹ As the parties are familiar with the facts of the case, we repeat only those facts necessary to explain our decision.

VACATED and REMANDED.