

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 3 2023

FOR THE NINTH CIRCUIT

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

TERESA HARVEY,

Plaintiff-Appellant,

v.

KILOLO KIJAKAZI, Acting Commissioner  
of Social Security,

Defendant-Appellee.

No. 22-15116

D.C. No. 2:20-cv-01495-DWL

MEMORANDUM\*

On Appeal from the United States District Court  
for the District of Arizona  
The Hon. Dominic W. Lanza, District Judge, Presiding

Submitted December 6, 2022\*\*  
Phoenix, Arizona

Before: WARDLAW and BUMATAY, Circuit Judges, and SCHREIER,\*\*\* District  
Judge.

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision  
without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Karen E. Schreier, United States District Judge for the  
District of South Dakota, sitting by designation.

Teresa Harvey appeals from the district court's order reversing in part the administrative law judge's (ALJ) denial of her application for benefits and remanding for further proceedings to consider improperly overlooked medical opinion evidence. Harvey contends that the district court should have instead remanded for payment of benefits. We have jurisdiction under 28 U.S.C. § 1291. Reviewing for an abuse of discretion, *see Treichler v. Commissioner of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014), we affirm.

1. The district court did not abuse its discretion by remanding to the ALJ for further proceedings rather than for payment of benefits. “When the ALJ denies benefits and the court finds error, the court ordinarily must remand to the agency for further proceedings before directing an award of benefits.” *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017). Harvey maintains that her case falls within the ambit of the “credit-as-true” rule, under which “the reviewing court may grant a direct award of benefits when certain conditions are met.” *Id.* The “credit-as-true” rule applies when (1) the ALJ “failed to provide legally sufficient reasons for rejecting evidence”; (2) the record is fully developed, such that the court determines that further administrative proceedings would not be useful; and (3) the Court determines that “the record, taken as a whole, leaves not the slightest uncertainty as to the outcome of the proceeding.” *Treichler*, 775 F.3d at 1100–01 (simplified).

The district court found the “credit-as-true” rule inapplicable because “further proceedings would be useful” and there remained “at least some uncertainty as to the outcome” on remand. Harvey argues that further proceedings will be “fruitless,” because the improperly disregarded medical opinion evidence, once accounted for, “would establish that [she] is disabled.” But because the ALJ overlooked the medical opinion at issue in the initial proceeding, remanding for further proceedings is appropriate to allow the ALJ to properly consider the evidence in the first instance.

Reversal of a district court’s decision to remand for further proceedings rather than for payment of benefits is appropriate “only when the appellate court is convinced firmly that the reviewed decision lies beyond the pale of reasonable justification under the circumstances.” *Harman v. Apfel*, 211 F.3d 1172, 1175 (9th Cir. 2000). Because we conclude that the district court’s decision to remand was not “beyond the pale” here, we affirm.

2. Substantial evidence supports the ALJ’s findings that Harvey did not have a severe mental impairment and that her testimony conflicted with evidence in the record. The ALJ found that Harvey suffered “no more than mild limitations” mentally. One of the medical opinions in the record recounted Harvey’s history of depression and noted her difficulty getting along with coworkers and the public and responding appropriately to criticism. But the ALJ discounted this opinion because other record evidence conveyed that Harvey worked as a part-time volunteer

basketball coach and had completed an adoption process, undermining the medical opinion's conclusions about Harvey's social limitations.

The ALJ also found that Harvey's testimony about the severity of her symptoms conflicted with other evidence in the record. Harvey claimed that she cannot sit or stand for periods of time and reported that her medications make her tired. But the ALJ relied on Harvey's statement that she "engage[d] in a somewhat normal level of daily activity and interaction," including shopping, attending church, working out, and caring for nine children.

We review these findings under the "highly deferential" substantial evidence standard. *Valentine v. Comm'r. of Soc. Sec.*, 574 F.3d 685, 690 (9th Cir. 2009). Even if the ALJ's conclusion is subject to reasonable disagreement, "[w]here evidence is susceptible to more than one rational interpretation, it is the ALJ's conclusion that must be upheld." *Shaibi v. Berryhill*, 883 F.3d 1102, 1108 (9th Cir. 2018) (simplified). Because the ALJ's findings are supported by "such relevant evidence as a reasonable mind might accept as adequate," we affirm. *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019).

**AFFIRMED.**