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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DORA GREEN,)	NO. CV 06-3942-E
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION
)	
MICHAEL J. ASTRUE, COMMISSIONER)	AND ORDER OF REMAND
OF SOCIAL SECURITY ADMINISTRATION,)	
)	
Defendant.)	
_____)	

Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS
HEREBY ORDERED that Plaintiff's motion for summary judgment is denied,
Defendant's motion for remand is granted, and this matter is remanded
for further administrative action consistent with this Opinion.

PROCEEDINGS

Plaintiff filed a complaint on June 26, 2006, seeking review of
the Commissioner's denial of benefits. The parties filed a consent to
proceed before Magistrate Judge Johnson on August 7, 2006.

///

1 Plaintiff and Defendant filed the "Parties' Joint Stipulation for
2 Disposition of Claim for Relief from Decision of the Commissioner"
3 ("Joint Stipulation") on May 11, 2007. In the Joint Stipulation, both
4 parties agreed that the present record is insufficient to support the
5 Commissioner's denial of benefits. Plaintiff seeks an order for the
6 immediate payment of benefits, while Defendant seeks a remand for
7 further administrative proceedings.

8
9 On July 23, 2009, this case was transferred from Magistrate Judge
10 Johnson to Magistrate Judge Eick. On August 5, 2009, the parties
11 filed a consent to proceed before Magistrate Judge Eick.

12 13 **BACKGROUND**

14
15 By Judgment and Order entered March 16, 2005, Magistrate Judge
16 Johnson reversed a prior administrative decision in Plaintiff's case,
17 holding that the Administrative Law Judge ("ALJ") had erred in deeming
18 not fully credible Plaintiff's subjective complaints of pain
19 (Administrative Record ("A.R.") 222-35). At that time, Magistrate
20 Judge Johnson remanded the matter for further administrative
21 proceedings, ordering that the Administration credit Plaintiff's
22 subjective complaints of pain as a matter of law. Id.

23
24 On remand, the ALJ failed to credit in the hypothetical
25 questioning of the vocational expert certain of Plaintiff's pain-
26 related subjective complaints. Specifically, the hypothetical
27 questioning failed to credit Plaintiff's complaints that she can only
28 walk half a block, stand for 10 minutes at a time, and sit for

1 20 minutes at a time (A.R. 255-57). In response to the ALJ's
2 deficient hypothetical questioning, the vocational expert identified
3 the light work jobs of office helper, bench packer, and bench
4 inspector as jobs Plaintiff assertedly could perform (A.R. 257-58).
5 Plaintiff's counsel cross-examined the vocational expert, but did not
6 pose a hypothetical question that included the subjective complaints
7 omitted by the ALJ (A.R. 258-60).

8 9 DISCUSSION

10
11 When there exists error in an administrative determination, "the
12 proper course, except in rare circumstances, is to remand to the
13 agency for additional investigation or explanation." INS v. Ventura,
14 537 U.S. 12, 16 (2002) (citations and quotations omitted); compare
15 Benecke v. Barnhart, 379 F.3d 587, 595 (9th Cir. 2004) ("[I]n the
16 unusual case in which it is clear from the record that the claimant is
17 unable to perform gainful employment in the national economy, even
18 though the vocational expert did not address the precise work
19 limitations established by the improperly discredited testimony,
20 remand for an immediate award of benefits is appropriate.");
21 Ghokassian v. Shalala, 41 F.3d 1300, 1304 (9th Cir. 1994)
22 ("[G]enerally, we direct the award of benefits in cases where no
23 useful purpose would be served by further administrative proceedings,
24 or where the record has been thoroughly developed") (citations and
25 quotations omitted).

26
27 In this Court's view, the instant case does not present one of
28 the "rare" or "unusual" circumstances in which an order for the

1 immediate payment of benefits is appropriate. Plaintiff's entitlement
2 to benefits remains unclear, and additional administrative proceedings
3 could remedy the defects in the most recent administrative decision.
4 Specifically, it is not clear from the present record that a person
5 limited to walking for half a block, standing for 10 minutes at a time
6 and sitting for 20 minutes at a time would be incapable of performing
7 the light work jobs identified by the vocational expert. Indeed, the
8 vocational expert volunteered that "these jobs would afford an
9 opportunity to vary sitting, standing and walking throughout a normal
10 work day" (A.R. 257). Under the specific circumstances of this case,
11 therefore, remand is appropriate. Id.; see, e.g., Page v.
12 Commissioner, 304 Fed App'x 520 at *2 (9th Cir. Dec. 17, 2008) (where,
13 after crediting the plaintiff's testimony, the record was unclear
14 whether the plaintiff would be disabled from all employment, remand
15 was appropriate); Alfaro v. Astrue, 2009 WL 425627 at *6 (E.D. Wash.
16 Feb. 13, 2009) ("It is not clear from the record that Plaintiff is
17 disabled; therefore, remand for additional proceedings is required.");
18 compare Moisa v. Barnhart, 367 F.3d 882, 887 (9th Cir. 2004) (remand
19 for award of benefits is appropriate where "it is clear from the
20 record that the ALJ would be required to find [the claimant] disabled
21 if [the claimant's] testimony were credited").

22
23 Plaintiff cites cases from other circuits in arguing that a court
24 should grant benefits where the delay occasioned by repeated remands
25 has become "unconscionable," or where the Administration has displayed
26 "obduracy" in complying with the law of the case (Joint Stipulation at
27 5-6). However, it is uncertain whether courts may grant disability
28 benefits merely because a claimant has been waiting a long time or

1 because the Administration has been obdurate. In a case cited by
2 Plaintiff, the First Circuit declined to decide when delay alone might
3 justify the granting of benefits. Seavey v. Barnhart, 276 F.3d 1, 13
4 (1st Cir. 2001). The Seavey Court observed, however, that "the
5 Supreme Court has noted that Congress was fully aware of the serious
6 delays in resolution of disability claims yet declined to impose
7 deadlines . . ." Id. at 13 n.14 (citing Heckler v. Day, 467 U.S. 104
8 (1984). Although Plaintiff argues that the Seventh Circuit
9 automatically awarded disability benefits based on the
10 Administration's obduracy in Wilder v. Apfel, 153 F.3d 799 (7th Cir.
11 1998) ("Wilder"), the Seventh Circuit itself later rejected such an
12 interpretation of Wilder. "Wilder did not hold, however, that
13 obduracy alone could ever warrant an award of benefits." Briscoe ex
14 rel. Taylor v. Barnhart, 425 F.3d 345, 356 (7th Cir. 2005). According
15 to the Seventh Circuit:

16
17 It remains true that an award of benefits is appropriate
18 only if all factual issues have been resolved and the record
19 supports a finding of disability . . . This is so because a
20 court does not have the authority to award disability
21 benefits on grounds other than those provided under 42
22 U.S.C. § 423. Subsection (a)(1)(E) requires that the
23 claimant must be disabled under the Act in order to qualify
24 for benefits. As the Supreme Court stated in Office of
25 Personnel Management v. Richmond, payment from the U.S.
26 Treasury must be authorized by a statute. 496 U.S. 414,
27 424, 110 S. Ct. 2465, 110 L.Ed. 2d 387 (1990). Obduracy is
28 not a ground on which to award benefits; the evidence

1 properly in the record must demonstrate disability. Id. at
2 356-57 (citations and quotations omitted).

3
4 Although the Ninth Circuit has not spoken directly to these
5 issues, the Circuit has appeared to suggest that delay and obduracy
6 sometimes should factor into the analysis. See, e.g., Benecke v.
7 Barnhart, 379 F.3d 587, 595 (9th Cir. 2004) ("Allowing the
8 Commissioner to decide the issue again would create an unfair 'heads
9 we win; tails, let's play again' system of disability benefits
10 adjudication. . . . Remanding a disability claim for further
11 proceedings can delay much needed income for claimants who are unable
12 to work and are entitled to benefits, often subjecting them to
13 tremendous financial difficulties while awaiting the outcome of their
14 appeals and proceedings on remand") (citations and quotations
15 omitted).

16
17 This Court need not and does not determine whether, in an
18 appropriate case, the law would permit the granting of disability
19 benefits to a likely non-disabled claimant based on the
20 Administration's unconscionable delay or obduracy. In the present
21 case, the Administration acted relatively promptly following
22 Magistrate Judge Johnson's prior remand.¹ For the most part, the
23 Administration did not evidence obduracy in complying with the law of
24 the case. For example, in examining the medical expert, the ALJ
25 stated:

26 ///

27 _____
28 ¹ Regrettably, the Court has been responsible for most of
the post-remand delay the parties have experienced.

1 This matter has been up to the Federal District Court, and
2 at the Federal District Court, there was a discussion about
3 how much weight the Agency should give to the claimant's
4 testimony about her condition. She testified previously
5 that - and this was in the hearing in 2004, that she can
6 walk a half a block, she can stand for 10 minutes at a time,
7 and sit for 20 minutes at a time. And what I want you to
8 know is that I want you to give that full credibility and I
9 want you to give that your full weight of consideration
10 (A.R. 247).

11
12 Similarly, the ALJ acknowledged in the written decision that the
13 "District Court credited [Plaintiff's] pain complaints as a matter of
14 law and remanded the case with instructions to re-assess the
15 claimant's residual functional capacity as it is affected by her
16 subjective complaints of pain and to obtain vocational expert [sic]
17 testimony in analyzing the claimant's employability" (A.R. 172). The
18 ALJ misapplied Magistrate Judge Johnson's remand directive by failing
19 to include certain specific limitations in the hypothetical
20 questioning of the vocational expert, but the ALJ did not wholly
21 ignore or flaunt Magistrate Judge Johnson's directive.² Therefore,
22 even if, in an appropriate case, factors of delay and obduracy
23 properly could tip the balance of the analysis in favor of an
24 immediate award of benefits rather than a remand for further
25 proceedings, consideration of those factors does not tip the balance

26
27 ² Although it was not the burden of Plaintiff's counsel to
28 do so, counsel could have remedied the ALJ's omissions at the time
of the hearing by posing an alternative hypothetical question to
the vocational expert.

1 in the present case.

2
3 **CONCLUSION AND ORDER**
4

5 For all of the foregoing reasons, this matter is remanded for
6 further administrative action consistent with this Opinion.

7 Specifically, the Appeals Council shall direct an ALJ to:
8

9 Give further consideration to Plaintiff's maximum residual
10 functional capacity during the entire period at issue,
11 provide appropriate rationale with specific references to
12 evidence of record in support of assessed limitations, and
13 clearly articulate Plaintiff's maximum residual functional
14 capacity in terms consistent with 20 CFR 416.945.

15 Furthermore, in accordance with the order of remand by the
16 United States District Court for the Central District of
17 California, Western Division, filed March 15, 2005, the
18 Administrative Law Judge shall credit as true and as a
19 matter of law, Plaintiff's subjective complaints that she
20 can walk only half a city block, she can stand for only ten
21 minutes at a time, and she can sit for only twenty minutes
22 at a time. These limitations must be incorporated into the
23 assessment and findings for Plaintiff's residual functional
24 capacity.

25
26 Obtain supplemental evidence from a vocational expert to
27 clarify the effect of the assessed limitations on
28 Plaintiff's occupational base, and as necessary, to

1 determine whether Plaintiff has acquired any skills that are
2 transferable to other occupations under the guidelines in
3 Social Security Ruling 82-41. The hypothetical questions
4 must clearly reflect the specific capacity limitations
5 established by the record as a whole and the limitations
6 incorporated into Plaintiff's residual functional capacity,
7 credited as true and as a matter of law. The Administrative
8 Law Judge shall ask the vocational expert to identify
9 examples of appropriate jobs, if any, and to state the
10 incidence of any such jobs in the national economy.
11 Further, before relying on the vocational expert evidence,
12 the Administrative Law Judge shall identify and resolve any
13 conflicts between the occupational evidence provided by the
14 vocational expert and information in the Dictionary of
15 Occupational Titles and its companion publication, the
16 Selected Characteristics of Occupations (Social Security
17 Ruling 00-4p).³

18
19 LET JUDGMENT BE ENTERED ACCORDINGLY.

20
21 DATED: August 5, 2009.

22
23 _____/S/_____
24 CHARLES F. EICK
25 UNITED STATES MAGISTRATE JUDGE
26

27
28 _____
³ Thus, the Court has adopted the substance (and most of the phrasing) of the remand order proposed in Defendant's portion of the Joint Stipulation.