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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MATTHEW O'HARA,
Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,
Defendant.

Case No. CV 07-3184-JTL

MEMORANDUM OPINION AND ORDER

PROCEEDINGS

On May 18, 2007, Matthew O'Hara ("plaintiff") filed a Complaint seeking review of the Social Security Administration's denial of his application for Supplemental Security Income benefits and Disability Insurance Benefits. On June 4, 2007, both plaintiff and Michael J. Astrue, Commissioner of Social Security ("defendant") filed a Consent to Proceed Before United States Magistrate Judge Jennifer T. Lum. Thereafter, on October 30, 2007, defendant filed an Answer to the Complaint. On January 10, 2008, the parties filed their Joint Stipulation.

The matter is now ready for decision.

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1 **BACKGROUND**

2 On March 29, 2004, plaintiff filed applications for Supplemental Security Income and
3 Disability Insurance Benefits. (Administrative Record ["AR"] at 68-70). The Commissioner
4 denied plaintiff's application for benefits both initially and upon reconsideration and, thereafter,
5 plaintiff requested a hearing before an Administrative Law Judge ("ALJ"). (AR at 36).

6 On June 5, 2006, the ALJ conducted a hearing in Los Angeles, California. (See AR at
7 438-64). Plaintiff appeared at the hearing with counsel and testified. (See AR at 442-54, 459-
8 60, 463-64). Rheta B. King, a vocational expert; Thomas Maxwell, M.D., a medical expert; and
9 Glenn Griffin, Ph.D., a medical expert, also appeared and testified at the hearing. (See 459-63;
10 454-57; 457-58).

11 On September 21, 2006, the ALJ issued his decision denying benefits to plaintiff. (AR
12 at 13-26). The ALJ found that plaintiff had the following severe impairments: hypertension,
13 seizure disorder, chronic headaches, hepatitis B and C infections, anemia, osteoarthritis and
14 degenerative disc disease of the cervical and lumbosacral spine, and a history of drug abuse
15 (in reported remission). (AR at 15). The ALJ held that plaintiff's severe impairments did not
16 meet or equal the Listings. (AR at 25). The ALJ concluded that plaintiff retained the residual
17 functional capacity to perform his past relevant work as a collector, paralegal and data entry
18 clerk, and was, therefore, not disabled. (Id.). The Appeals Council denied plaintiff's timely
19 request for review of the ALJ's decision. (AR at 5-7).

20 Thereafter, plaintiff appealed to the United States District Court.
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22 **PLAINTIFF'S CONTENTIONS**

23 Plaintiff makes the following claims:

- 24 1. The ALJ failed to properly consider the medical record as a whole; specifically,
25 he failed to develop the record, properly reject the opinion of the medical expert, and properly
26 discredit plaintiff's subjective complaints.
- 27 2. The ALJ failed to make factual findings sufficient to support the conclusion that
28 plaintiff retained the ability to perform his past relevant work.

1 **STANDARD OF REVIEW**

2 Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether
3 the ALJ's findings are supported by substantial evidence and whether the proper legal
4 standards were applied. DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial
5 evidence means “more than a mere scintilla” but less than a preponderance. Richardson v.
6 Perales, 402 U.S. 389, 401 (1971); Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996).

7 Substantial evidence is “such relevant evidence as a reasonable mind might accept as
8 adequate to support a conclusion.” Richardson, 402 U.S. at 401. This Court must review the
9 record as a whole and consider adverse as well as supporting evidence. Morgan v. Comm’r,
10 169 F.3d 595, 599 (9th Cir. 1999). Where evidence is susceptible to more than one rational
11 interpretation, the ALJ's decision must be upheld. Robbins v. Soc. Sec. Admin., 466 F.3d 880,
12 882 (9th Cir. 2006).

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14 **DISCUSSION**

15 **A. The Sequential Evaluation**

16 A claimant is disabled under Title II of the Social Security Act if he or she is unable "to
17 engage in any substantial gainful activity by reason of any medically determinable physical or
18 mental impairment which can be expected to result in death or . . . can be expected to last for
19 a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). The Commissioner
20 has established a five-step sequential process to determine whether a claimant is disabled. 20
21 C.F.R. §§ 404.1520, 416.920.

22 The first step is to determine whether the claimant is presently engaging in substantially
23 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging
24 in substantially gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S.
25 137, 141 (1987). Second, the ALJ must determine whether the claimant has a severe
26 impairment. Parra, 481 F.3d at 746. Third, the ALJ must determine whether the impairment
27 is listed, or equivalent to an impairment listed, in Appendix I of the regulations. Parra, 481 F.3d
28 at 746. If the impediment meets or equals one of the listed impairments, the claimant is

1 presumptively disabled. Bowen, 482 U.S. at 141. Fourth, the ALJ must determine whether the
2 impairment prevents the claimant from doing past relevant work. Parra, 481 F.3d at 746. If the
3 claimant cannot perform his or her past relevant work, the ALJ proceeds to the fifth step and
4 must determine whether the impairment prevents the claimant from performing any other
5 substantially gainful activity. Id.

6 The claimant bears the burden of proving steps one through four, consistent with the
7 general rule that at all times, the burden is on the claimant to establish his or her entitlement
8 to disability insurance benefits. Id. Once this prima facie case is established by the claimant,
9 the burden shifts to the Commissioner to show that the claimant may perform other gainful
10 activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006).

11 **B. Plaintiff's Past Relevant Work**

12 Plaintiff claims that the ALJ made insufficient findings regarding the requirements of
13 plaintiff's past relevant work. Specifically, plaintiff argues that the ALJ failed to adequately
14 discuss the specific physical and mental demands of plaintiff's past relevant work and assess
15 plaintiff's ability to perform them. (Joint Stipulation at 20-21). Defendant argues that the ALJ
16 properly relied on the vocational expert's testimony to conclude that plaintiff could perform his
17 past relevant work as a collector, paralegal and data entry clerk. (Joint Stipulation at 22-23).

18 In order to determine whether a claimant has the residual functional capacity to perform
19 his or her past relevant work, the ALJ must evaluate the work demands of the past relevant
20 work and compare them to the claimant's present capacity. Villa v. Heckler, 797 F.2d 794, 797-
21 98 (9th Cir. 1986). The claimant has the burden of showing that he or she can no longer
22 perform his or her past relevant work. 20 C.F.R. §§ 404.1520(e), 416.920(e); Clem v. Sullivan,
23 894 F.2d 328, 331-32 (9th Cir. 1990). Although the burden of proof lies with the claimant, the
24 ALJ still has a duty to make the requisite factual findings to support his conclusion. Pinto v.
25 Massanari, 249 F.3d 840, 844-45 (9th Cir. 2001).

26 Social Security Ruling ("SSR") 82-62 was promulgated to "explain the procedures for
27 determining a disability claimant's capacity to do past relevant work," and "to clarify the
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1 provisions so that they will be consistently applied." SSR 82-62.¹ SSR 82-62 states that any
2 determination regarding the claimant's ability to perform past work "must be developed and
3 explained fully in the disability decision" and that "every effort must be made to secure evidence
4 that resolves the issue as clearly and explicitly as circumstances permit." This determination
5 requires "a careful appraisal" of the claimant's statements, the medical evidence, and, in some
6 cases, corroborative information such as the Dictionary of Occupational Titles. SSR 82-62
7 further states that adequate documentation must be obtained to support the decision, including
8 "factual information about those work demands which have a bearing on the medically
9 established limitations." SSR 82-62. Thus, "[d]etailed information about . . . mental demands
10 and other job requirements must be obtained as appropriate." SSR 82-62. Specifically, a
11 conclusion that a claimant can return to his or her past relevant work requires the ALJ to make
12 explicit findings of fact as to the following issues: (1) the physical and mental demands of the
13 past occupation; (2) the claimant's residual functional capacity; and (3) whether claimant's
14 residual functional capacity permits him or her to return to her past occupation. See SSR
15 82-62; see also Lewis v. Barnhart, 281 F.3d 1081, 1084 (9th Cir. 2002).

16 Here, the ALJ erred by failing to make specific findings of fact regarding the physical and
17 mental demands of plaintiff's past work and whether plaintiff's residual functional capacity
18 permits him to return to his past occupation. At the hearing, the vocational expert questioned
19 plaintiff about his past relevant work. (AR at 459-60). Plaintiff testified that as a paralegal he
20 "did data entry work into the computer, took records to the courthouse, back and forth . . .
21 research from law books . . . [and] document preparation."² (AR at 460).

23 ¹ Social Security Rulings are issued by the Commissioner to clarify the Commissioner's
24 regulations and policies. Bunnell v. Sullivan, 947 F.2d 341, 346 n.3 (9th Cir. 1991). Although they
25 do not have the force of law, they are nevertheless given deference "unless they are plainly
26 erroneous or inconsistent with the Act or regulations." Han v. Bowen, 882 F.2d 1453, 1457 (9th Cir.
27 1989).

28 ² Plaintiff's Work History Report provides further description of his past relevant work. (See
AR at 100-107). Plaintiff stated that as a paralegal he "[c]arried boxes of [files] to the courts, for
delivery. Carried boxes to storage office, downstairs." (AR at 103). Plaintiff indicated that the
heaviest weight he lifted was 50 pounds and that he frequently lifted 10 pounds. (Id.). As a data

1 The vocational expert testified that the Dictionary of Occupational Titles (“DOT”)
2 classified plaintiff's past relevant work as a collector, DOT number 241.367-010, as light, semi-
3 skilled work; his work as a paralegal, DOT number 119.267-026, as light, skilled work; and as
4 a data entry clerk, DOT number 203.582-054, as sedentary, semi-skilled work.³ (AR at 460-61).
5 The ALJ then asked the vocational expert if a hypothetical person with plaintiff’s limitations
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9 entry clerk, plaintiff “[c]arried boxes of medical records reports to office downstairs in same building.”
10 (AR at 104). Plaintiff indicated that the heaviest weight he lifted as a data entry clerk was 50 pounds
11 and that he frequently lifted 10 pounds. (Id.).

12 ³ The DOT describes the duties and requirements of the numerous occupations that it
13 chronicles. The DOT assigns each job a strength rating that represents the overall strength
14 requirements which are considered to be important for average, successful work performance.

15 Sedentary work is defined by the DOT as:

16 Exerting up to 10 pounds of force occasionally (Occasionally: activity
17 or condition exists up to 1/3 of the time) and/or a negligible amount
18 of force frequently (Frequently: activity or condition exists from 1/3
19 to 2/3 of the time) to lift, carry, push, pull, or otherwise move objects,
20 including the human body. Sedentary work involves sitting most of
21 the time, but may involve walking or standing for brief periods of
22 time. Jobs are sedentary if walking and standing are required only
23 occasionally and all other sedentary criteria are met.

24 Light work is defined by the DOT as:

25 Exerting up to 20 pounds of force occasionally, and/or up to 10
26 pounds of force frequently, and/or a negligible amount of force
27 constantly (Constantly: activity or condition exists 2/3 or more of the
28 time) to move objects. Physical demand requirements are in excess
of those for Sedentary Work. Even though the weight lifted may be
only a negligible amount, a job should be rated Light Work: (1) when
it requires walking or standing to a significant degree; or (2) when it
requires sitting most of the time but entails pushing and/or pulling of
arm or leg controls; and/or (3) when the job requires working at a
production rate pace entailing the constant pushing and/or pulling of
materials even though the weight of those materials is negligible.
NOTE: The constant stress and strain of maintaining a production
rate pace, especially in an industrial setting, can be and is physically
demanding of a worker even though the amount of force exerted is
negligible.

1 could perform plaintiff's past relevant work.⁴ (AR at 461-62). The vocational expert replied that
2 the hypothetical individual "could perform all three of [plaintiff's] past occupation as described
3 by the Dictionary of Occupational Titles, but would, however, be unable to perform the
4 occupations of data entry clerk and of paralegal as [plaintiff] has described having performed
5 them, and this on the basis of lifting." (AR at 462).

6 In his decision, the ALJ discussed the vocational expert's testimony and stated that the
7 vocational expert testified that plaintiff performed the occupations of paralegal and data entry
8 clerk at the medium exertional level.⁵ (AR at 25). The ALJ went on to conclude that while
9 plaintiff had a residual functional capacity to perform light work, plaintiff was able to perform his
10 past relevant work and was, therefore, not disabled. (AR at 25). Such a conclusory finding fails
11 to satisfy the demands of SSR 82-62. See Pinto, 249 F.3d at 845-47.

12 Although the Social Security Rulings provide that an ALJ is permitted to refer to the DOT
13 job descriptions in order to define the job as it usually is performed in the national economy,
14 there may be cases involving significant variations between a claimant's description and the
15 description shown in the DOT. The variation may result from an incomplete or inaccurate
16 description of past work. Employer contact or further contact with the claimant may be

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18 ⁴ The ALJ posed the following hypothetical:

19 [L]et's assume a hypothetical individual of the same age, education,
20 and work experience as [plaintiff], namely a younger individual, 42
21 years of age, a high school graduate, English speaking, who has
22 performed the work that you have just told us about. Let us assume
23 that our hypothetical individual is limited by certain medical
24 restrictions . . . namely, the ability to perform light work with only
occasional posturing, the avoidance of ladders, ropes, and scaffolds,
unprotected heights, dangerous moving machinery, and similar fall
hazards. In addition, as a prophylactic measure, the [individual]
must have a cane available for him (sic) ambulating.

25 (AR at 461-62).

26 ⁵ The DOT defines medium work as:

27 Exerting 20 to 50 pounds of force occasionally, and/or 10 to 25
28 pounds of force frequently, and/or greater than negligible up to 10
pounds of force constantly to move objects. Physical Demand
requirements are in excess of those for Light Work.

1 necessary to resolve such a conflict. SSR 82-61; see also Nimick v. Sec’y, 887 F.2d 864, 867
2 n.4. (8th Cir. 1989).

3 The ALJ's findings regarding plaintiff's residual functional capacity - that he is capable
4 of light work - conflict with plaintiff's descriptions of the physical requirements of his duties as
5 a paralegal and data entry clerk which the ALJ characterized as medium work. Thus, plaintiff's
6 descriptions of his past relevant work conflicted with the ALJ's findings regarding plaintiff's
7 residual functional capacity. Yet the ALJ's determination that plaintiff could perform his past
8 relevant work as a paralegal and data entry clerk did not involve a discussion of the demands
9 of plaintiff's past relevant work. He did not make the required findings of fact as to whether
10 plaintiff's residual functional capacity, which the ALJ determined was a light exertional level,
11 permitted him to return to his past occupations, including paralegal and data entry clerk, which
12 the ALJ stated had a medium exertional level as performed by plaintiff. The ALJ apparently
13 presumed that plaintiff's residual functional capacity permitted him to perform the physical and
14 mental demands of his past relevant work. While the ALJ may have found as much, there is
15 a "gap in [the ALJ's] reasoning that must be filled on remand." Villa, 797 F.2d at 799 (internal
16 quotes omitted); see also Pinto, 249 F.3d at 847. As such, the ALJ erred in failing to make
17 specific findings with respect to the physical and mental demands of plaintiff's past relevant
18 work in accordance with SSR 82-62.

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1 **C. Remand is Required to Remedy Defects in the ALJ's Decision**

2 The choice of whether to reverse and remand for further administrative proceedings, or
3 to reverse and simply award benefits, is within the discretion of the Court. McAlister v. Sullivan,
4 888 F.2d 599, 603 (9th Cir. 1989). Remand is appropriate where additional proceedings would
5 remedy defects in the ALJ's decision, and where the record should be developed more fully.
6 Marcia v. Sullivan, 900 F.2d 172, 176 (9th Cir. 1990).

7 Here, the Court finds remand appropriate. The ALJ failed to make specific findings with
8 respect to the physical and mental demands of plaintiff's past relevant work. On remand, the
9 ALJ must reexamine the physical and mental demands of plaintiff's past relevant work when
10 making conclusions with respect to his residual functional capacity to perform the work.⁶

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12 **ORDER**

13 The Court, therefore, VACATES the decision of the Commissioner of Social Security
14 Administration and REMANDS this action for further administrative proceedings consistent with
15 this Memorandum Opinion and Order.

16 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

17 DATED: February 1, 2008

18 _____ /s/
19 JENNIFER T. LUM
20 UNITED STATES MAGISTRATE JUDGE

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25 ⁶ In the Joint Stipulation, plaintiff also contends that the ALJ erred in failing to properly
26 consider the medical record as a whole, specifically, that he failed to develop the record, properly
27 reject the opinion of the medical expert, and properly discredit plaintiff's subjective complaints. As
28 explained above, however, the ALJ's error in failing to make specific findings with regard to plaintiff's
past relevant work constitutes sufficient reason to remand this case. Moreover, depending on the
outcome of the proceedings on remand, the ALJ will have an opportunity to address plaintiff's other
arguments again. In any event, the ALJ should consider all the issues raised by plaintiff in the Joint
Stipulation when determining the merits of plaintiff's case on remand.