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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

EDWARD FLORES,	)	NO. CV 12-01927-MAN
	)	
Plaintiff,	)	MEMORANDUM OPINION
	)	
v.	)	AND ORDER
	)	
CAROLYN W. COLVIN, <sup>1</sup>	)	
Acting Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff filed a Complaint on March 14, 2012, seeking review of the denial of plaintiff's application for a period of disability, disability insurance benefits ("DIB"), and supplemental security income ("SSI"). On April 24, 2012, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. The parties filed a Joint Stipulation on January 2, 2013, in which: plaintiff seeks an order reversing the Commissioner's

<sup>1</sup> Carolyn W. Colvin became the Acting Commissioner of the Social Security Administration on February 14, 2013, and is substituted in place of former Commissioner Michael J. Astrue as the defendant in this action. (See Fed. R. Civ. P. 25(d).)

1 decision and remanding this case for the payment of benefits or,  
2 alternatively, for further administrative proceedings; and the  
3 Commissioner requests that his decision be affirmed or, alternatively,  
4 remanded for further administrative proceedings.

5  
6 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**  
7

8 Plaintiff filed an application for SSI on March 10, 2009, and an  
9 application for a period of disability and DIB on March 23, 2009.  
10 (Administrative Record ("A.R.") 15.) Plaintiff, who was born on April  
11 22, 1956,<sup>2</sup> claims to have been disabled since May 5, 2007 (A.R. 17), due  
12 to depression, high blood pressure, diabetes, and back and neck problems  
13 (A.R. 53). Plaintiff has past relevant work experience as a trailer  
14 truck driver and forklift operator. (A.R. 22.)  
15

16 After the Commissioner denied plaintiff's claims initially (A.R.  
17 53-57), plaintiff requested a hearing (A.R. 59-60). On August 23, 2010,  
18 plaintiff, who was represented by counsel, appeared and testified at a  
19 hearing before Administrative Law Judge John C. Tobin (the  
20 "ALJ"). (A.R. 28-48.) Vocational expert E. Kurata also testified.  
21 (*Id.*) On September 2, 2010, the ALJ denied plaintiff's claim (A.R. 15-  
22 24), and the Appeals Council subsequently denied plaintiff's request for  
23 review of the ALJ's decision (A.R. 1-4). That decision is now at issue  
24 in this action.  
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27 <sup>2</sup> On the alleged onset date, plaintiff was 51 years old, which  
28 is defined as an individual closely approaching advanced age. (A.R. 22;  
citing 20 C.F.R. §§ 404.1563, 416.963.)



1 the side effects from the treatment of pain. As such,  
2 [plaintiff] is able to perform simple, repetitive tasks and  
3 work with occasional public contact and solitary, not teamwork  
4 type environments.

5  
6 (A.R. 19.)  
7

8 The ALJ found that plaintiff is unable to perform any past relevant  
9 work. (A.R. 22.) However, based upon his RFC assessment for plaintiff  
10 and after having considered plaintiff's age, education,<sup>4</sup> work experience,  
11 and the testimony of the vocational expert, the ALJ found "there are  
12 jobs that exist in significant numbers in the national economy that  
13 [plaintiff] can perform," including that of "inspector/hand packager,"  
14 "shoe packer," and "assembler." (A.R. 23.) Accordingly, the ALJ  
15 concluded that plaintiff has not been under a disability, as defined in  
16 the Social Security Act, from May 5, 2007, through the date of the ALJ's  
17 decision. (*Id.*)  
18

#### 19 STANDARD OF REVIEW

20

21 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's  
22 decision to determine whether it is free from legal error and supported  
23 by substantial evidence in the record as a whole. Orn v. Astrue, 495  
24 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is "'such relevant  
25 evidence as a reasonable mind might accept as adequate to support a  
26 conclusion.'" *Id.* (citation omitted). The "evidence must be more than  
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28 <sup>4</sup> The ALJ found that plaintiff has limited education and is able  
to communicate in English. (A.R. 22.)

1 a mere scintilla but not necessarily a preponderance." Connett v.  
2 Barnhart, 340 F.3d 871, 873 (9th Cir. 2003). "While inferences from the  
3 record can constitute substantial evidence, only those 'reasonably drawn  
4 from the record' will suffice." Widmark v. Barnhart, 454 F.3d 1063,  
5 1066 (9th Cir. 2006)(citation omitted).

6  
7 Although this Court cannot substitute its discretion for that of  
8 the Commissioner, the Court nonetheless must review the record as a  
9 whole, "weighing both the evidence that supports and the evidence that  
10 detracts from the [Commissioner's] conclusion." Desrosiers v. Sec'y of  
11 Health and Hum. Servs., 846 F.2d 573, 576 (9th Cir. 1988); *see also*  
12 Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). "The ALJ is  
13 responsible for determining credibility, resolving conflicts in medical  
14 testimony, and for resolving ambiguities." Andrews v. Shalala, 53 F.3d  
15 1035, 1039 (9th Cir. 1995).

16  
17 The Court will uphold the Commissioner's decision when the evidence  
18 is susceptible to more than one rational interpretation. Burch v.  
19 Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). However, the Court may  
20 review only the reasons stated by the ALJ in his decision "and may not  
21 affirm the ALJ on a ground upon which he did not rely." Orn, 495 F.3d  
22 at 630; *see also* Connett, 340 F.3d at 874. The Court will not reverse  
23 the Commissioner's decision if it is based on harmless error, which  
24 exists only when it is "clear from the record that an ALJ's error was  
25 'inconsequential to the ultimate nondisability determination.'" Robbins  
26 v. Soc. Sec. Admin., 466 F.3d 880, 885 (9th Cir. 2006)(quoting Stout v.  
27 Comm'r, 454 F.3d 1050, 1055 (9th Cir. 2006)); *see also* Burch, 400 F.3d  
28 at 679.

1 DISCUSSION

2  
3 Plaintiff claims the ALJ erred by not considering  
4 properly: (1) the opinion of plaintiff's treating physician; and (2)  
5 plaintiff's subjective symptom testimony. (Joint Stipulation ("Joint  
6 Stip.") at 3-6, 9-17, 19-21.)

7  
8 I. The ALJ Failed To Set Forth Appropriate Reasons For  
9 Rejecting The Opinion Of Plaintiff's Treating Physician  
10 And Needs To Reassess Plaintiff's RFC On Remand.  
11

12 It is the responsibility of the ALJ to analyze evidence and resolve  
13 conflicts in medical testimony. Magallanes v. Bowen, 881 F.2d 747, 750  
14 (9th Cir. 1989). In the hierarchy of physician opinions considered in  
15 assessing a social security claim, "[g]enerally, a treating physician's  
16 opinion carries more weight than an examining physician's, and an  
17 examining physician's opinion carries more weight than a reviewing  
18 physician's." Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir.  
19 2001); 20 C.F.R. §§ 404.1527(d), 416.927(d).

20  
21 The opinions of treating physicians are entitled to the greatest  
22 weight, because the treating physician is hired to cure and has a better  
23 opportunity to observe the claimant. Magallanes, 881 F.2d at 751. When  
24 a treating physician's opinion is not contradicted by another physician,  
25 it may be rejected only for "clear and convincing" reasons. Lester v.  
26 Chater, 81 F.3d 821, 830 (9th Cir. 1995). When contradicted by another  
27 doctor, a treating physician's opinion may only be rejected if the ALJ  
28 provides "specific and legitimate" reasons supported by substantial

1 evidence in the record. *Id.*

2  
3 In a June 25, 2008 Permanent and Stationary Report, plaintiff's  
4 treating physician, Khalid B. Ahmed, M.D., an orthopedic surgeon,  
5 diagnosed plaintiff with: (1) chronic pain syndrome secondary to  
6 cervical spine sprain/strain and disk lesion with  
7 radiculitis/radiculopathy; (2) thoracic spine sprain/strain and disk  
8 lesion with radiculopathy; (3) lumbar spine sprain/strain and disk  
9 lesion with radiculopathy; (4) anxiety and depressive illness related to  
10 chronic pain and trauma; (5) intermittent insomnia related to depressive  
11 illness and pain; and (6) diabetes type 2, which is under  
12 control. (A.R. 299-300.) Dr. Ahmed found that plaintiff's cervical  
13 spine discomfort is "best described as constant, slight, intermittent,  
14 moderate-to-severe, reaching moderate-to-severe level with repetitive  
15 use of the neck for 15 minutes to 20 minutes." (A.R. 300.) With  
16 respect to plaintiff's thoracic spine pain, Dr. Ahmed described it as  
17 "constant, slight to moderate, intermittent, moderate-to-severe,  
18 reaching moderate-to-severe level with any attempts in bending,  
19 stooping, or lifting." (*Id.*) Plaintiff's lumbar spine discomfort was  
20 described as "constant, slight-to moderate, intermittent, moderate-to-  
21 severe, reaching moderate-to-severe level with 30 minutes to 35 minutes  
22 of standing, 30 minutes to 35 minutes of walking, 30 minutes to 35  
23 minutes of sitting and any attempts in bending, stooping, or lifting."  
24 (A.R. 301.) Lastly, Dr. Ahmed noted that plaintiff's status was  
25 permanent and stationary "with . . . permanent partial disability from  
26 this point onwards." (A.R. 300.)

27  
28 In his decision, the ALJ gives "little weight" to the opinions of

1 the consultative examiner and the medical consultant, who opined that  
2 plaintiff could perform "medium work," because, according to the ALJ,  
3 "there is evidence which supports more limitations than offered by the  
4 [consultative examiner (and medical consultant)]." (A.R. 21.) In so  
5 finding, the ALJ cites, *inter alia*, the June 25, 2008 Report by Dr.  
6 Ahmed and notes that Dr. Ahmed found that plaintiff "can use his neck  
7 repetitively for 15 to 20 minutes and has constant, slight to moderate,  
8 intermittent, moderate to severe, reaching moderate to severe level of  
9 discomfort with any attempts in bending, stooping, or lifting" and "is  
10 able to stand, walk, and sit for 30 to 35 minutes." (A.R. 22; citations  
11 omitted.) While the ALJ notes that he was not bound by Dr. Ahmed's  
12 finding(s) of temporary total disability, the ALJ states that he gave  
13 "some weight to [Dr. Ahmed's] standing, walking, sitting, and postural  
14 limitations." (*Id.*)

15  
16 As plaintiff notes, however, while the ALJ's RFC assessment for  
17 plaintiff is consistent with Dr. Ahmed's sitting, standing, and walking  
18 limitations and "may be consistent" with Dr. Ahmed's neck use  
19 limitation, the ALJ's RFC assessment does not appear to be consistent  
20 with Dr. Ahmed's opinion that plaintiff would experience moderate-to-  
21 severe discomfort with any bending, stooping, or lifting. In other  
22 words, because the ALJ found that plaintiff could perform light work,  
23 which contemplates lifting up to 20 pounds at a time "with frequent  
24 lifting or carrying of objects weighing up to 10 pounds," 20 C.F.R. §§  
25 404.1567(b) and 416.9679(b)(emphasis added), and the ALJ found that  
26 plaintiff could occasionally stoop (A.R. 19), the ALJ's RFC assessment  
27 appears to be at odds with Dr. Ahmed's opinion. While the ALJ need not  
28 accept the full extent of Dr. Ahmed's opinion, the ALJ may not reject



1 it, or significant parts of it, without giving specific and legitimate  
2 reasons for so doing. The ALJ's failure to proffer any reason,<sup>5</sup> let  
3 alone an appropriate reason, for rejecting Dr. Ahmed's opinion  
4 constitutes reversible error.<sup>6</sup>

5  
6 **II. The ALJ Gave Clear And Convincing Reasons For Finding**  
7 **Plaintiff's Subjective Symptom Testimony To Be Not**  
8 **Credible.**  
9

10 Once a disability claimant produces objective medical evidence of  
11 an underlying impairment that is reasonably likely to be the source of  
12 claimant's subjective symptom(s), all subjective testimony as to the  
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14 <sup>5</sup> Although not entirely clear, to the extent the ALJ rejects Dr.  
15 Ahmed's opinion because he also rendered an opinion on the matter of  
16 ultimate disability, the ALJ's reasoning is misguided. While it is true  
17 that a treating physician's opinion on the matter of ultimate disability  
18 is not determinative or entitled to special weight, "a treating  
19 physician's *medical* opinions are generally [entitled to] more weight."  
20 Boardman v. Astrue, 286 Fed. Appx. 397, 399 (9th Cir. 2008)(citing 20  
21 C.F.R. § 404.1527(d)(2)). A medical opinion "'reflect[s] judgments  
22 about the nature and severity of [a claimant's] impairment(s), including  
23 [a claimant's] symptoms, diagnosis and prognosis, what [a claimant] can  
24 still do despite impairment(s), and [a claimant's] physical or mental  
25 restrictions.'" *Id.* (citing 20 C.F.R. § 404.1527(a)(2)). Here, beyond  
26 finding that plaintiff was temporarily disabled and/or unable to work,  
27 Dr. Ahmed diagnosed plaintiff with various impairments and found that  
28 plaintiff had resulting limitations and restrictions, as noted in detail  
*supra*. Thus, the ALJ's apparent rejection of Dr. Ahmed's opinion on the  
ground that it also contained an opinion regarding the ultimate issue of  
disability is not legitimate. See Boardman, 286 Fed. Appx. at 399  
(finding that "while [the fact that the treating physician expressed an  
opinion regarding Boardman's ultimate disability and residual  
functional] may be a specific reason to reject a treating physician's  
medical opinion, it is not a legitimate one").

<sup>6</sup> Although the Commissioner now offers other reasons to explain  
the ALJ's rejection of the opinion of Dr. Ahmed, the Court cannot  
entertain these post hoc rationalizations. See, e.g., Orn, 495 F.3d at  
630 ("We review only the reasons provided by the ALJ in the disability  
determination and may not affirm on a ground upon which he did not  
rely").

1 severity of the symptoms must be considered. Moisa v. Barnhart, 367  
2 F.3d 882, 885 (9th Cir. 2004); Bunnell v. Sullivan, 947 F.2d 341, 346  
3 (9th Cir. 1991); see also 20 C.F.R. §§ 404.1529(a), 416.929(a)  
4 (explaining how pain and other symptoms are evaluated). “[U]nless an  
5 ALJ makes a finding of malingering based on affirmative evidence  
6 thereof, he or she may only find an applicant not credible by making  
7 specific findings as to credibility and stating clear and convincing  
8 reasons for each.” Robbins, 466 F.3d at 883. The factors to be  
9 considered in weighing a claimant’s credibility include: (1) the  
10 claimant’s reputation for truthfulness; (2) inconsistencies either in  
11 the claimant’s testimony or between the claimant’s testimony and her  
12 conduct; (3) the claimant’s daily activities; (4) the claimant’s work  
13 record; and (5) testimony from physicians and third parties concerning  
14 the nature, severity, and effect of the symptoms of which the claimant  
15 complains. See Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir.  
16 2002); see also 20 C.F.R. §§ 404.1529(c), 416.929(c).

17  
18 An ALJ may rely on a claimant’s daily activities to support an  
19 adverse credibility determination when those activities: (1) “contradict  
20 [claimant’s] other testimony”; or (2) “meet the threshold for  
21 transferable work skills.” Orn, 495 F.3d at 639. Thus, plaintiff’s  
22 credibility may be discounted if he or she “is able to spend a  
23 substantial part of his or her day performing household chores or other  
24 activities that are transferable to a work setting.” Smolen v. Chater,  
25 80 F.3d 1273, 1284 n.7 (9th Cir. 1996). A claimant, however, need not  
26 be “utterly incapacitated to be eligible for benefits . . . and many  
27 home activities are not easily transferable to what may be the more  
28 grueling environment of the workplace, where it might be impossible to

1 periodically rest or take medication." Fair v. Bowen, 885 F.2d 597, 603  
2 (9th Cir. 1989)(internal citations omitted).

3  
4 In a functional report dated April 6, 2009, plaintiff reported that  
5 he: walks for 15-20 minutes a day; drives to the store to shop for  
6 groceries; makes dinner; cleans up after himself; "sometimes" picks up  
7 his children and grandson from school and watches them; and performs  
8 light household chores, including washing the dishes, doing the laundry,  
9 ironing, and sweeping the kitchen. (A.R. 155, 157.) Plaintiff also  
10 stated that he watches televisions, reads, naps, and goes for walks  
11 after dinner. (A.R. 155.) Plaintiff reported that he goes outside  
12 three to four times a day and travels either by foot or car. (A.R.  
13 158.) He also reported that when he goes to the stores for groceries,  
14 it takes him five minutes to half an hour to shop. (*Id.*) Additionally,  
15 plaintiff reported that he can pay bills, handle a savings account,  
16 count change, and use a checkbook/money orders. (*Id.*) Plaintiff  
17 indicated that his illness, injuries, or conditions affect his ability  
18 to: lift, walk, climb stairs, squat, bend, stand, sit, kneel,  
19 concentrate, remember, and get along with others. (A.R.  
20 160.) Plaintiff also reported that he can only pay attention for five  
21 to ten minutes. (*Id.*)

22  
23 At the August 23, 2010 hearing, plaintiff testified that he: can  
24 sit for 10-15 minutes at a time; stand for 20 minutes at a time; and  
25 drives once or twice a month. (A.R. 38.) Plaintiff also testified that  
26 he is able to perform household chores, including light sweeping and  
27 taking out the trash. (A.R. 39.)

1 As noted *supra*, the ALJ found that plaintiff has the severe  
2 impairments of "neck and back disorder[s], diabetes, and high blood  
3 pressure." (A.R. 17.) The ALJ also found that "[plaintiff]'s medically  
4 determinable impairments could reasonably be expected to cause the  
5 alleged symptoms." (A.R. 20.) Further, the ALJ cited no evidence of  
6 malingering by plaintiff. Accordingly, the ALJ's reason for  
7 discrediting plaintiff's subjective complaints must be clear and  
8 convincing.

9  
10 The ALJ found that "[plaintiff]'s statements concerning the  
11 intensity, persistence and limiting effects of [his] symptoms are not  
12 credible to the extent they are inconsistent with [the ALJ's RFC]  
13 assessment." (A.R. 20.) Specifically, the ALJ found plaintiff to be  
14 not credible, because: (1) "[plaintiff] reported that he was in a lot  
15 of pain during the hearing, . . . [but plaintiff] admitted that he did  
16 not take his medication that morning"; (2) plaintiff's described daily  
17 activities "are not limited to the extent one would expect, given  
18 [plaintiff]'s complaints of disabling symptoms and limitations"; and (3)  
19 "[plaintiff]'s subjective complaints and alleged limitations are out of  
20 proportion to the objective clinical findings and observed functional  
21 restrictions." (*Id.*)

22  
23 The ALJ's first reason for finding plaintiff to be not credible is  
24 unavailing. As the ALJ properly notes, plaintiff testified that,  
25 notwithstanding his pain, he did not take his medications the morning of  
26 the administrative hearing. (A.R. 35.) Before plaintiff could explain  
27 why he did not take his medications, however, it appears that he was cut  
28 off and/or interrupted by the ALJ. (*Id.*) Shortly thereafter, plaintiff

1 explained that his medications cause him to have memory problems and  
2 feel drowsy and nauseous. (*Id.*) Upon hearing plaintiff's side effects,  
3 the ALJ appeared to acknowledge the fact that plaintiff's drowsiness  
4 could interfere with the hearing. (A.R. 36, noting that "so if there's  
5 drowsiness it would interrupt, interfere with the hearing.") While an  
6 ALJ may consider an "unexplained or inadequately explained failure to  
7 seek treatment or to follow a prescribed course of treatment" in  
8 assessing a claimant's credibility, *Tommasetti v. Astrue*, 533 F.3d 1035,  
9 1039 (9th Cir. 2008), in this case, plaintiff provided a legitimate  
10 reason for choosing not to take his medication -- *to wit*, that it would  
11 cause him to feel drowsy during the hearing. Accordingly, the ALJ's  
12 reasoning cannot constitute a clear and convincing reason for finding  
13 plaintiff to be not credible.

14  
15 The ALJ's second reason for discrediting plaintiff -- *to wit*, that  
16 plaintiff's described daily activities "are not limited to the extent  
17 one would expect, given [plaintiff]'s complaints of disabling symptoms  
18 and limitations" -- is, however, a clear and convincing reason for  
19 finding plaintiff to be not credible. As the ALJ notes in his decision,  
20 plaintiff reported that he "does light sweeping," "takes out the kitchen  
21 trash," "drive[s]," "picks up his children from school," "takes care of  
22 his children," "clean[s] up after himself," "prepares his own meals on  
23 a daily basis, performs household chores such as laundry, light  
24 cleaning, ironing, and sweeping the kitchen, and shops in stores for  
25 food and household items." (A.R. 20; internal citations omitted.) In  
26 addition, the ALJ noted that plaintiff is able to: "pay bills, count  
27 change, handle a savings account, and use a checkbook/money order"; and  
28 "watch[] television with no indication that he has difficulty following

1 a television program." (*Id.*) Plaintiff's daily activities go beyond  
2 what would be expected of an individual who, like plaintiff, claims to  
3 be in so much pain as to be unable, for example, to concentrate for more  
4 than five minutes. See *Light v. SSA*, 119 F.3d 789, 793 (9th Cir.  
5 1997)(stating that an ALJ may disbelieve a claimant if there are  
6 inconsistencies between the claimant's testimony about his daily  
7 activities and his testimony about the nature, effect, or severity of  
8 his symptoms); *Fair*, 885 F.2d at 603 (noting that "if, despite his  
9 claims of pain, a claimant is able to perform household chores and other  
10 activities that involve many of the same physical tasks as a particular  
11 type of job, it would not be farfetched for an ALJ to conclude that the  
12 claimant's pain does not prevent the claimant from working"). As such,  
13 the ALJ properly considered plaintiff's daily activities as a factor in  
14 assessing plaintiff's credibility.

15  
16 Lastly, the ALJ properly considered the lack of objective evidence  
17 and objective functional restrictions as a factor in assessing  
18 plaintiff's credibility. For example, citing the consultative  
19 examiner's May 30, 2009 report, the ALJ noted that, although plaintiff  
20 had some tenderness in his lower lumbar region, his physical examination  
21 was generally normal. (A.R. 21.) The consultative examiner found that  
22 plaintiff had a negative straight leg raise test at 90 degrees, 5/5  
23 strength in all extremities, and that plaintiff's "sensory was grossly  
24 intact and symmetrical to light touch." (*Id.*; citations omitted.) In  
25 addition, the ALJ noted that "[t]here [wa]s no evidence of severe disuse  
26 muscle atrophy that would be compatible with [plaintiff]'s alleged  
27 inactivity and inability to function." (A.R. 20.) Further, no  
28 physician found plaintiff to be as functionally limited as he claimed.

1 While the failure of the medical record to corroborate a claimant's  
2 subjective symptom testimony fully is not, by itself, a legally  
3 sufficient basis for rejecting such testimony, it is a factor that the  
4 ALJ may take into account when making a credibility determination. See  
5 Burch, 400 F.3d at 691; Rollins v. Massanari, 261 F.3d 853, 856 (9th  
6 Cir. 2001). Thus, the ALJ properly considered the lack of evidence  
7 supporting plaintiff's subjective complaints and alleged limitations as  
8 a factor in assessing his credibility.

9  
10 Accordingly, because the ALJ provided clear and convincing reasons  
11 for finding plaintiff's testimony to be not credible, no reversible  
12 error was committed.

### 13 14 **III. Remand Is Required.**

15  
16 The decision whether to remand for further proceedings or order an  
17 immediate award of benefits is within the district court's discretion.  
18 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no  
19 useful purpose would be served by further administrative proceedings, or  
20 where the record has been fully developed, it is appropriate to exercise  
21 this discretion to direct an immediate award of benefits. *Id.* at 1179  
22 ("[T]he decision of whether to remand for further proceedings turns upon  
23 the likely utility of such proceedings."). However, where there are  
24 outstanding issues that must be resolved before a determination of  
25 disability can be made, and it is not clear from the record that the ALJ  
26 would be required to find the claimant disabled if all the evidence were  
27 properly evaluated, remand is appropriate. *Id.* at 1179-81.

1 Remand is the appropriate remedy to allow the ALJ the opportunity  
2 to remedy the above-mentioned deficiency and error.<sup>7</sup> On remand, the ALJ  
3 must credit Dr. Ahmed's opinion or provide appropriate reasons supported  
4 by substantial evidence for rejecting it. After doing so, the ALJ may  
5 need to reassess plaintiff's RFC, in which case additional testimony  
6 from a vocational expert likely will be needed to determine what work,  
7 if any, plaintiff can perform.

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20 <sup>7</sup> Plaintiff has requested that this Court award benefits under  
21 Smolen, supra, because: "(1) the ALJ . . . failed to provide legally  
22 sufficient reasons for rejecting the [opinion of Dr. Ahmed]; (2) there  
23 are no outstanding issues that must be resolved before a determination  
24 of disability can be made; and (3) it is clear from the record that the  
25 ALJ would be required to find the claimant disabled were such evidence  
26 credited." (Joint Stip. at 5.) It is well established that the court  
27 "may direct an award of benefits where the record has been fully  
28 developed and where further proceedings would serve no useful purpose."  
Smolen, 80 F.3d at 1292. In this case, however, it is not apparent to  
the Court whether Dr. Ahmed's opinion, particularly his opinion  
regarding plaintiff's bending, stooping, and lifting limitations, would  
require a finding of disability. As plaintiff properly notes, light  
work -- the type of work the ALJ found plaintiff capable of performing  
-- typically involves occasional bending and stooping. (Joint Stip. at  
5.) However, it is unclear to the Court whether all light work involves  
such limitations. Accordingly, because further proceedings would serve  
a useful purpose, the Court declines to award benefits at this time.



1 **CONCLUSION**

2

3 Accordingly, for the reasons stated above, IT IS ORDERED that the  
4 decision of the Commissioner is AFFIRMED, in part, and REVERSED, in  
5 part, and this case is REMANDED for further proceedings consistent with  
6 this Memorandum Opinion and Order.

7

8 IT IS FURTHER ORDERED that the Clerk of the Court shall serve  
9 copies of this Memorandum Opinion and Order and the Judgment on counsel  
10 for plaintiff and for defendant.

11

12 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

13

14 DATED: May 3, 2013

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16 \_\_\_\_\_  
17 MARGARET A. NAGLE  
18 UNITED STATES MAGISTRATE JUDGE