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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JOE BELGARA,)	Case No. CV 12-2622-MLG
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of the)	
Social Security)	
Administration,)	
)	
Defendant.)	
_____)	

Plaintiff Joe Belgara seeks judicial review of the Commissioner's final decision denying his application for Supplemental Security Income ("SSI") benefits. For the reasons set forth below, the decision of the Commissioner is reversed, and the matter is remanded for further proceedings consistent with this opinion.

I. Background

Plaintiff filed his SSI application on April 6, 2009, alleging disability beginning March 2, 2009, due to schizophrenia, depressive disorder, epilepsy and residual complications from gunshot wounds. (AR at 17, 70.) Plaintiff was born on September 30, 1974 and was 35 years old at the time he filed his application. (Administrative Record ("AR"))

1 at 120, 162.) He completed the eleventh grade and has no relevant work
2 experience. (AR at 141, 145.)

3 Plaintiff's application was denied initially on June 23, 2009, and
4 upon reconsideration on January 14, 2010. (AR at 71-75, 79-83.) An
5 administrative hearing was held on October 15, 2010, before
6 Administrative Law Judge ("ALJ") Sally C. Reason. Plaintiff, who was
7 represented by counsel, testified as did a Medical Expert and a
8 Vocational Expert ("VE"). (AR at 47-65.)

9 On June 2, 2011, the ALJ issued an unfavorable decision. (AR at 17-
10 29.) The ALJ found that pursuant to 20 C.F.R. 416.920(c), the medical
11 evidence established that Plaintiff suffered from the following severe
12 impairments: depressive disorder, schizoaffective disorder, seizure
13 disorder, left hip osteoarthritis and history of left leg surgery with
14 residual antalgic gait. (Id.) However, the ALJ further found that
15 Plaintiff's impairments did not meet, or were not medically equal to,
16 one of the listed impairments in 20 C.F.R., Part 404, Subpart P,
17 Appendix 1. (AR at 22.) The ALJ determined that Plaintiff had the
18 residual functional capacity ("RFC") to:

19 perform light work as defined in 20 C.F.R. 416.967(b) not
20 involving standing and/or walking in excess of 2-4 hours total
21 per 8-hour workday, performance of more than occasional
22 kneeling, performance of any activities involving squatting or
23 climbing of ladders, performance of any tasks involving
24 working around machinery or hazardous conditions, or
25 performance of tasks involving more than limited social
26 contact with others.

27 (AR at 23.)

28 //

1 The ALJ then found, based upon the testimony of the VE, that there
2 were a significant number of jobs in the national economy that Plaintiff
3 could perform, such as small products assembler and production
4 assembler. (AR at 28.) She concluded that Plaintiff was not disabled
5 within the meaning of the Social Security Act. See 20 C.F.R. §
6 416.920(f). (Id.)

7 On February 11, 2012, the Appeals Council denied review. (AR at 1-
8 3.) Plaintiff then timely commenced this action for judicial review. On
9 September 4, 2012, the parties filed a Joint Stipulation ("Joint Stip.")
10 of disputed facts and issues. Plaintiff contends that the ALJ's
11 determination that Plaintiff could perform the jobs of small products
12 assembler and production assembler was inconsistent with the
13 requirements of the jobs as determined by the Dictionary of Occupational
14 Titles ("DOT"). (Joint Stip. at 3.) Plaintiff seeks reversal of the
15 Commissioner's denial of his application and payment of benefits or, in
16 the alternative, remand for a new administrative hearing. (Joint Stip.
17 at 11.) The Commissioner requests that the ALJ's decision be affirmed.
18 (Joint Stip. at 11-12.)

19
20 **II. Standard of Review**

21 Under 42 U.S.C. § 405(g), a district court may review the
22 Commissioner's decision to deny benefits. The Commissioner's or ALJ's
23 decision must be upheld unless "the ALJ's findings are based on legal
24 error or are not supported by substantial evidence in the record as a
25 whole." *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1990); *Parra*
26 *v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007); *Batson v. Comm'r of Soc.*
27 *Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). Substantial evidence
28 means such evidence as a reasonable person might accept as adequate to

1 support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971);
2 *Widmark v. Barnhart*, 454 F.3d 1063, 1066 (9th Cir. 2006). It is more
3 than a scintilla, but less than a preponderance. *Robbins v. Soc. Sec.*
4 *Admin.*, 466 F.3d 880, 882 (9th Cir. 2006). To determine whether
5 substantial evidence supports a finding, the reviewing court "must
6 review the administrative record as a whole, weighing both the evidence
7 that supports and the evidence that detracts from the Commissioner's
8 conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996). "If
9 the evidence can support either affirming or reversing the ALJ's
10 conclusion," the reviewing court "may not substitute its judgment for
11 that of the ALJ." *Robbins*, 466 F.3d at 882.

12 13 **III. Discussion**

14 The ALJ determined that Plaintiff's RFC limited him to performing
15 a range of light work "not involving ... performance of any tasks
16 involving working around machinery" (AR at 23.) At the
17 administrative hearing, the ALJ posed the following hypothetical
18 question to the VE:

19 So if we have a hypothetical individual of this man's age,
20 education, and lack of any work history, and let's say he is
21 able to do light work but he is limited in standing and
22 walking only two to four hours in an eight hour day, and he
23 can only kneel occasionally. No squatting or ladders. He also
24 needs to avoid hazards due to the seizure activity, and needs
25 to work in an environment with limited public contact, or
26 interaction with others. Would there be jobs for such an
27 individual?

28 (AR at 63.)

1 In response, the VE testified that Plaintiff could perform the jobs
2 of Assembler, Small Products I (DOT 706.684-022) and Assembler,
3 Production (DOT 706.687-010). (AR at 63-64.) The ALJ relied on the VE's
4 testimony to find that Plaintiff was able to perform those two types of
5 jobs which exist in significant numbers in the economy (step 5). (AR at
6 27-28).

7 Plaintiff asserts that the ALJ's determination is not supported by
8 substantial evidence because both jobs identified by the VE require
9 Plaintiff to work around machinery, which is incompatible with the ALJ's
10 RFC determination that Plaintiff can perform light work "not involving
11 ... performance of any tasks involving working around machinery"
12 (Joint Stip. at 3, citing AR at 23.)

13 As Plaintiff points out, both the jobs of small products assembler
14 and production assembler require working around machinery. For example,
15 a production assembler (DOT 706.687-010) "bolts, clips, screws, cements
16 or otherwise fastens parts together by hand, or using handtools or
17 portable power tools." In addition, a production assembler "may tend
18 machines, such as arbor presses or riveting machine, to perform force
19 fitting or fastening operations on [an] assembly line." Similarly, a
20 small products assembler "bolts, clips, screws, cements or otherwise
21 fastens parts together by hand, or using handtools or portable power
22 tools." A small products assembler (DOT 706.684-022) also "loads and
23 unloads previously setup machines, such as arbor presses, drill presses,
24 taps, spot-welding machines, riveting machines, milling machines, or
25 broaches, to perform fastening, force fitting, or light metal-cutting
26 operation on [an] assembly line." Given these descriptions, it is
27 entirely unclear how a person who is precluded from "performance of any
28 tasks involving working around machinery" could actually perform either

1 job.

2 When an ALJ determines that a job may be performed in a manner
3 "that contradicts the [DOT], the record must contain 'persuasive
4 evidence to support the deviation.'" *Pinto v. Massanari*, 249 F.3d 840,
5 845-46 (9th Cir. 2001) (quoting *Johnson v. Shalala*, 60 F.3d 1428, 1435
6 (9th Cir. 1995)); *Tommasetti v. Astrue*, 533 F.3d 1035, 1042 (9th Cir.
7 2008) ("The DOT creates a rebuttable presumption as to the job
8 classification"). Here, in finding Plaintiff able to perform other work
9 at step five, the ALJ relied on the VE's testimony, but never asked the
10 VE to explain the discrepancy between Plaintiff's preclusion from
11 working around machinery¹ and the DOT's description of the production
12 assembler and small products assembler jobs. The ALJ also failed to cite
13 any evidence in the decision to support a deviation from the DOT. Under
14 these circumstances, the ALJ's determination that Plaintiff can perform
15 the jobs of production assembler and small products assembler is not
16 supported by substantial evidence. *See Pinto*, 249 F.3d at 845-47.

17 18 **IV. Conclusion**

19 The decision whether to remand for further proceedings is within
20 this Court's discretion. *Harman v. Apfel*, 211 F.3d 1172, 1175-78 (9th
21 Cir. 2000). Where no useful purpose would be served by further
22 administrative proceedings, or where the record has been fully
23 developed, it is appropriate to exercise this discretion to direct an

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25 ¹ Although the ALJ included in the hypothetical question to the VE
26 that the Plaintiff "need[ed] to avoid hazards," she did not include in
27 the hypothetical the preclusion from any work around machinery. (AR at
28 63.) As noted by Defendant, neither job requires working in certain
hazardous conditions or around moving mechanical parts. (Joint Stip. at
10.) However, both jobs do require working around machinery, a
requirement incompatible with the ALJ's RFC determination.

1 immediate award of benefits. *Id.* at 1179 ("the decision of whether to
2 remand for further proceedings turns upon the likely utility of such
3 proceedings"); *Benecke v. Barnhart*, 379 F.3d 587, 593 (9th Cir. 2004).
4 However, where there are outstanding issues that must be resolved before
5 a determination of disability can be made, and it is not clear from the
6 record that the ALJ would be required to find the claimant disabled if
7 all the evidence were properly evaluated, remand is appropriate.
8 *Bunnell v. Barnhart*, 336 F.3d 1112, 1115-16 (9th Cir. 2003); see also
9 *Connett v. Barnhart*, 340 F.3d 871, 876 (9th Cir. 2003)(remanding case
10 for reconsideration of credibility determination).

11 Here, although Plaintiff's RFC as determined by the ALJ precludes
12 Plaintiff from performing the jobs identified by the VE, there may be
13 other jobs within the national economy which Plaintiff could perform.
14 However, that is not a determination that this Court can make.
15 Accordingly, the case is remanded for further evaluation in accordance
16 with the five-step sequential process.

17
18 DATED: September 7, 2012



Marc L. Goldman
United States Magistrate Judge