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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MANUEL MORALES,)	No. ED CV 07-01549-VBK
)	
Plaintiff,)	MEMORANDUM OPINION
)	AND ORDER
v.)	
)	(Social Security Case)
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

This Memorandum Opinion will constitute the Court's findings of fact and conclusions of law.

1 Plaintiff raises the following issues:

- 2 1. Whether Plaintiff's non-exertional impairments rendered use
3 of the "Grids" inappropriate and instead required testimony
4 from a vocational expert ("VE");
- 5 2. Whether the Administrative Law Judge ("ALJ") failed to
6 properly analyze Plaintiff's diabetes as a non-Listing level
7 impairment;
- 8 3. Whether the ALJ failed to develop the record;
- 9 4. Whether the ALJ improperly rejected the opinion of
10 Plaintiff's treating physician; and
- 11 5. Whether the ALJ properly discredited Plaintiff's
12 credibility.

13 After reviewing the matter, the Court concludes that the decision
14 of the Commissioner must be reversed, and the matter remanded for a
15 new hearing.

16
17 I

18 **THE ALJ DID NOT ERR IN UTILIZING THE GRIDS**

19 **AS A FRAMEWORK FOR DECISION-MAKING**

20 After finding that Plaintiff could not return to his past
21 relevant work as a machine shop laborer, at Step Four of the
22 sequential evaluation analysis (see AR at 24), the ALJ proceeded to
23 the Step Five analysis; that is, determining whether work existed in
24 the national economy that Plaintiff could perform. In making this
25 determination, the ALJ referenced the Medical-Vocational Guidelines,
26 found at 20 C.F.R. part 404, subpart P, appendix 2 (the "Grids"). (AR
27 at 25.) The finding of the ALJ with regard to use of the Grids which
28 Plaintiff contests in the first issue is contained in the following

1 portion of the Decision:

2 "If the claimant can perform all or substantially all
3 of the exertional demands at a given level of exertion, the
4 medical-vocational rules direct a conclusion of either
5 'disabled' or 'not disabled' depending upon the claimant's
6 specific vocational profile (SSR 83-11). When the claimant
7 cannot perform substantially all of the exertional demands
8 of work at a given level of exertion and/or has
9 nonexertional limitations, the medical-vocational rules are
10 used as a framework for decision making unless there is a
11 rule that directs a conclusion of 'disabled' without
12 considering the additional exertional and/or nonexertional
13 limitations (SSRs 83-12 and 83-14). If the claimant has
14 solely nonexertional limitations, section 204.00 in the
15 Medical-Vocational Guidelines provides a framework for
16 decision making (SSR 85-15).

17 If the claimant had the residual functional capacity to
18 perform the full range of medium work, considering the
19 claimant's age, education, and work experience, a finding of
20 'not disabled' would be directed by Medical-Vocational Rule
21 203.25 or 26. However, the additional limitations have
22 little or no effect on the occupational base of unskilled
23 medium work. A finding of 'not disabled' is therefore
24 appropriate under the framework of this rule. I see no
25 reason why the claimant cannot perform a medium exertional
26 level of work including the job of machine shop assembler
27 cited by the State Agency vocational consultants at 2E-2.
28 The non-exertional limitations assessed would not

1 significantly narrow the range of medium work available."

2 (AR 25.)

3
4 Plaintiff's argument, in its essential form, is that he has
5 significant non-exertional limitations which require the use of a VE,
6 and thus rendered the ALJ's reliance on the Grids inappropriate.

7
8 **A. Applicable Law.**

9 Once Plaintiff has established that he is unable to return to his
10 past relevant work (or that he has no past relevant work), the burden
11 shifts to the Commissioner to establish the existence of other jobs
12 which exist in significant numbers which Plaintiff can perform
13 considering his age, education, residual functional capacity, and
14 vocational profile. The Commissioner can meet this burden either by
15 utilizing the Medical Vocational guidelines ("Grids") in Appendix 2,
16 Subpart P, 20 C.F.R. Part 404 or by calling upon the services of a
17 vocational expert. Tackett v. Apfel, 180 F.3d 1094, 1101 (9th Cir.
18 1999).

19 Identical principles regarding application of the Grids were
20 articulated by the Ninth Circuit in its decision in Polny v. Bowen,
21 where the following discussion ensued:

22 "The major issue on appeal is whether the
23 administrative law judge erred in applying the grids in this
24 case where the applicant's impairment was not exertional.
25 The Secretary argues that Polny had no 'significant
26 nonexertional restriction' and so the application of the
27 grids was appropriate. In Razey v. Heckler, 785 F.2d 1426
28 (9th Cir.), modified 794 F.2d 1348 (1986), we held that where

1 an applicant had both exertional and nonexertional
2 limitations the use of the grids was permissible. That
3 decision, in accord with other authority - e.g., Lebron v.
4 Secretary of Health and Human Services, 747 F.2d 818 (1st
5 Cir. 1984) - recognizes the force of the Secretary's own
6 regulations which state that the grids apply where an
7 individual has a 'combination of impairments resulting in
8 both strength limitations and nonexertional limitations.'
9 20 C.F.R. Pt. 404, Subpt. P, App. 2, §200.00(e)(2)."

10 (864 F.2d at 663.)

11
12 In Desrosiers v. Secretary of Health and Human Services, 846 F.2d
13 573, 576-577 (9th Cir. 1988), the Court also held that Social Security
14 law does not preclude application of the Grids in cases which present
15 non-exertional limitations: "The ALJ should first determine if a
16 claimant's non-exertional limitations significantly limit the range of
17 work permitted by her exertional limitations." (Id. at 577.)

18 The Commissioner's own regulations and rulings are also
19 consistent in defining the scope and limits of the applicability of
20 the Grids. Thus, in Social Security Ruling ("SSR") 83-14, the
21 following illustrative discussion is found:

22 "Section 200.00(e)(2) of Appendix 2 provides that,
23 'where an individual has an impairment or combination of
24 impairments resulting in both strength limitations and
25 nonexertional limitations, the rules in this subpart are
26 considered in determining first whether a finding of
27 disabled may be possible based on the strength limitations
28 alone and, if not, the rule(s) reflecting the individual's

1 maximum residual strength capabilities, age, education, and
2 work experience provide a framework for consideration of how
3 much the individual's work capability is further diminished
4 in terms of any types of jobs that would be contraindicated
5 by the nonexertional limitations. Also, in these
6 combinations of nonexertional and exertional limitations
7 which cannot be wholly determined under the rules in this
8 Appendix 2, full consideration must be given to all of the
9 relevant facts in the case in accordance with the
10 definitions and discussions of each factor in the
11 appropriate sections of the regulations, which will provide
12 insight into the adjudicative weight to be accorded each
13 factor.'"

14 (SSR 83-14.)

15
16 SSR 83-14 also notes that:

17 "A particular additional exertional or nonexertional
18 limitation may have very little effect on the range of work
19 remaining that an individual can perform. The person,
20 therefore, comes very close to meeting a table rule which
21 directs a conclusion of 'Not disabled.' On the other hand,
22 an additional exertional or nonexertional limitation may
23 substantially reduce a range of work to the extent that an
24 individual is very close to meeting a table rule which
25 directs a conclusion of 'Disabled.'"

26 (SSR 83-14.)

27
28 Numerous examples are provided in the regulations. In SSR 83-14,

1 for example, it is noted that in jobs at the medium level of exertion,
2 there would be more of a likelihood of a requirement to ascend or
3 descend ladders and scaffolding, to kneel, and crawl, but "limitations
4 of these activities would not significantly affect the occupational
5 base." SSR 83-14 notes that where it is clear that additional non-
6 exertional limitations or restrictions have very little effect on the
7 exertional occupational base, the conclusions directed by the Grids
8 would not be affected. In cases where such limitations have
9 significantly eroded the exertional job base, it is directed that the
10 remaining portion of the job base will guide the decision. It is only
11 "where the adjudicator does not have a clear understanding of the
12 effects of additional limitations on the job base, [that] the services
13 of a VS [vocational expert] will be necessary." (SSR 83-14.)

14
15 **B. Analysis.**

16 In Plaintiff's case, the ALJ determined that the non-exertional
17 limitations which he assessed would not significantly narrow the range
18 of available medium work. The question, then, is whether substantial
19 evidence supports that finding. The non-exertional limitations which
20 were determined by the ALJ as part of Plaintiff's residual functional
21 capacity ("RFC") included an ability to frequently stoop, kneel,
22 crouch and crawl; to occasionally climb and balance; to avoid
23 concentrated exposure to extreme cold and heat; and to avoid working
24 at heights or around hazardous or unprotected machinery. (AR at 22.)
25 Plaintiff seemingly argues that the mere existence of these non-
26 exertional limitations renders application of the Grids improper. (See
27 JS at 11.) But, this is not the conclusion which must be drawn from
28 the applicable cases or regulations. The ALJ reviewed the medical

1 evidence in the file in determining Plaintiff's RFC. He severely
2 depreciated the credibility of the findings of Dr. Grogan. The
3 consultative examination ("CE") performed by Dr. Rocely Ella-Tomayo at
4 the request of the Department of Social Services (AR 131-135)
5 concludes that Plaintiff has no postural restrictions whatsoever,
6 including kneeling and squatting. (See AR at 135.) As noted by the
7 ALJ, also, Dr. Grogan himself performed a physical examination which
8 essentially found normal orthopedic results, such as range of motion
9 of the extremities, motor strength, sensation, reflexes, and grip
10 strength. (See AR at 129.)

11 There is some evidence of bilateral peripheral neuropathy
12 resulting from Plaintiff's severe impairment of diabetes mellitus,
13 which was noted by Dr. Grogan (see AR at 129), and some symptoms of
14 which were testified to by Plaintiff during the hearing. (See AR at
15 226.) It is fair to say that a liberal reading of these findings, and
16 of Plaintiff's testimony, could result in an assessment of the mild
17 non-exertional limitations found by the ALJ. For example, Dr. Grogan
18 found decreased sensation to light touch below the level of the knees
19 bilaterally. (AR 129.) Allocating at least some level of credibility
20 to Dr. Grogan's findings would substantiate some of the non-exertional
21 limitations found by the ALJ.

22 Plaintiff also cites what he asserts are "additional and
23 significant non-exertional impairments that were not included in the
24 ALJ's RFC finding..." (JS at 12.) These include diabetic retinopathy;
25 continuing problems with diabetic ulcers on his lower extremities;
26 kidney issues in the form of priteinuria, and some dizziness and
27 drowsiness from side effects of medications. Further, Plaintiff cites
28 his lack of literacy in English. (JS at 12-13.)

1 With regard to Plaintiff's lack of literacy in English, in
2 Plaintiff's type of work, which is generally unskilled work, the Grids
3 provide that illiteracy or an inability to communicate in English do
4 not significantly erode the job base. (See 20 C.F.R. Part 404, Subpart
5 P, Appendix 2, §200.00(g)(2007).)

6 Concerning the other asserted non-exertional impairments,
7 Plaintiff has not cited any evidence to indicate that any such
8 impairments have a significant impact on the disability analysis, in
9 terms of his ability to work. Simply put, as often stated, it is not
10 the existence of a diagnosis which has ultimate impact on the
11 disability analysis; rather, it is a demonstration that a diagnosis of
12 a particular condition includes relevant functional limitations. The
13 latter simply have not been demonstrated.

14 For the foregoing reasons, the Court finds that Plaintiff's first
15 issue has no merit.¹

16
17 **II**

18 **THE ALJ FAILED TO UNDERTAKE OR ARTICULATE**
19 **IN HIS DECISION THE APPROPRIATE ANALYSIS AT STEP THREE**
20 **OF THE SEQUENTIAL EVALUATION PROCESS**

21 In a "Pre-Hearing Memorandum" filed by his representative (AR 95-

22
23 ¹ Plaintiff notes that his lack of English language skills
24 would render him unqualified to perform the one occupation identified:
25 machine shop assembler. As Plaintiff notes, the DOT requirements for
26 this position require a Language Development level of 2, which would
27 appear to be beyond Plaintiff's capacities. Assuming that Plaintiff's
28 argument is correct with regard to this identified occupation, the
Court deems any error to be harmless. Plaintiff was determined to be
not disabled by utilization of the Grids as a framework. As such, it
was not the obligation of the ALJ to identify any particular
occupations at Step Five of the sequential evaluation. Doing so was
superfluous.

1 105), it was asserted that Plaintiff "is suffering from a combination
2 of medically severe impairments that [sic] equivalent to... [Listing]
3 9.08 diabetes mellitus." (AR 98; see also AR 208, Plaintiff's Appeal
4 to the Appeals Council: "The ALJ committed reversible error in failing
5 to find or to clarify [sic] why is it that Mr. Morales' diabetes
6 mellitus condition does not meet or equivalent [sic] 9.08 diabetes
7 mellitus..." (AR 208).)

8 The ALJ's decision simply concludes that,

9 "The claimant does not have an impairment or
10 combination of impairments that meets or medically equals
11 one of the listed impairments in 20 CFR Part 404, Subpart P,
12 Appendix 1 (20 CFR 404.1520(d), 404.1525 and 404.1526)."

13 (AR 22.)

14
15 **A. Applicable Law.**

16 The Commissioner is required to consider Plaintiff's impairments
17 in light of the Listing of Impairments ("Listings"). 20 C.F.R. Part
18 404, Subpart 404 P, Appendix 1. The Listings set forth certain
19 impairments which are presumed to be of sufficient severity to prevent
20 the performance of work. 20 C.F.R. §416.925(a)(2000).

21 Plaintiff's impairments need not precisely meet the criteria of
22 a Listing in order to obtain benefits. If Plaintiff's impairment or
23 combination of impairments is medically equivalent to one in the
24 Listings, disability is presumed and benefits are awarded. 20 C.F.R.
25 §416.920(d)(2000); Barker v. Secretary of Health and Human Servs., 882
26 F.2d 1474, 1477 (9th Cir. 1989); Bowen v. Yuckert, 482 U.S. 137, 141-
27 42 (1987). To determine medical equivalence, the Commissioner
28 compares the symptoms, signs, and laboratory findings concerning the

1 alleged impairment with the medical criteria of the listed impairment.
2 20 C.F.R. §416.926(a)(2000). The decision is based solely on the
3 medical evidence, which must be supported by medically acceptable
4 clinical and laboratory diagnostic techniques. 20 C.F.R. §416.926(b)
5 (2000).

6 The mere diagnosis of an impairment listed in Appendix 1 is not
7 sufficient to sustain a finding of disability. It must be shown that
8 the findings for that impairment are found in the record. Key v.
9 Heckler, 754 F.2d 1545, 1549-50 (9th Cir. 1985). Further, Plaintiff
10 must establish that he satisfies all of the criteria of the applicable
11 Listing. (See Sullivan v. Zebley, 493 U.S. 521, 530, 110 S.Ct. 885
12 (1990).

13 The Ninth Circuit has held in Lewis v. Apfel 236 F.3d 505 (9th
14 Cir. 2001), that,

15 "An ALJ must evaluate the relevant evidence before
16 concluding that a claimant's impairments do not meet or
17 equal a listed impairment. A boilerplate finding is
18 insufficient to support a conclusion that a claimant's
19 impairment does not do so. See Marcia v. Sullivan, 900 F.2d
20 172, 176 (9th Cir. 1990)(holding that ALJ erred by failing
21 to consider evidence of equivalence)."

22 (236 F.3d at 512.)

23
24 In Lewis, the Circuit upheld the ALJ's conclusion that Plaintiff
25 did not meet a Listing because the ALJ's analysis and discussion of
26 the evidence in the body of his decision noted that the Plaintiff did
27 not comply with his prescribed treatment. The particular Listing at
28 issue in that case required the presence of certain symptoms "in spite

1 of at least 3 months of prescribed treatment." (See Id., at 513, fn
2 10.)

3 Plaintiff correctly notes that there is significant medical
4 evidence in the record which could demonstrate that he meets or equals
5 the Listing for diabetes mellitus (Listing 9.08). Certainly, there is
6 significant evidence of neuropathy, as documented by a number of
7 sources: Dr. Grogan; the CE report of Dr. Ella-Tomayo, and records of
8 Plaintiff's treating physicians, at the Molina Medical Center. (See,
9 e.g., AR 158.) Other than depreciating the findings of Dr. Grogan,
10 the ALJ completely failed to discuss the records of Plaintiff's
11 treating physician, or even the conclusions of the CE, in which it was
12 noted, under "Diagnostic Impression," that Plaintiff suffered from
13 "diabetes mellitus with peripheral neuropathy of the lower
14 extremities." (AR 135.) Moreover, there would appear to be laboratory
15 records in the file which require evaluation under subsection "B" of
16 Listing 9.08.

17 While the Commissioner correctly notes that it is Plaintiff's
18 burden to show that he meets or equals a Listing (see JS at 23-26),
19 citation to this principle does not save the ALJ's decision.
20 Plaintiff did present evidence relevant to the symptoms described
21 under the Listing. There was simply no discussion of this evidence in
22 the decision. That, in itself, distinguishes Plaintiff's case, and
23 the decision being reviewed, from those cases, such as Lewis v. Apfel,
24 where the ALJ's discussion and evaluation of the medical evidence
25 provided a sufficient basis for review of the determination that the
26 claimant did not meet or equal a Listing. Here, there is no such
27 discussion. Moreover, in determining Plaintiff's RFC, the ALJ
28 articulated his reliance on the conclusions of the State Agency

1 Physicians (see AR at 139-148), who, of course, never examined
2 Plaintiff. Moreover, there is nothing in the report of these State
3 Agency Physicians regarding Listing 9.08 other than it was
4 "considered." (See AR at 139.) Again, this provides nothing in the
5 way of substance which would permit adequate review.

6 The Court's determination to reverse and remand for further
7 hearing on this issue incorporates Plaintiff's argument in his third
8 issue, where he asserts that the ALJ failed to fully and properly
9 develop the record. Plaintiff asserts that the ALJ should have
10 ordered an orthopedic CE to determine if he suffered from degenerative
11 disc disease in his cervical and lumbar spine. The ALJ, as noted,
12 severely depreciated Dr. Grogan's findings, finding them to be
13 "grossly exaggerated and accommodative." (AR 24.) Nevertheless, the
14 Court is concerned that there should be adequate medical evidence in
15 the record from which to determine if Plaintiff meets or equals
16 Listing 9.08. Dr. Ella-Tomayo noted the presence of peripheral
17 neuropathy, but it may be the case that a medical expert ("ME") must
18 be utilized, or, that Plaintiff should receive additional and specific
19 examination with regard to the effects of his diabetes mellitus, with
20 particular regard to the Listing requirements.

21
22 **III**

23 **THE ALJ DID NOT ERR IN HIS EVALUATION OF**

24 **DR. GROGAN AS A NON-TREATING PHYSICIAN**

25 As noted, the ALJ depreciated the conclusions of Dr. Grogan
26 regarding Plaintiff's condition. (See AR at 24.) Plaintiff first
27 asserts that Dr. Grogan was his treating physician.

28 Dr. Grogan saw Plaintiff for the first time on September 30, 2004

1 (AR 119-130); then, over two years later on November 28, 2006 (AR 201-
2 205); and finally, on January 29, 2007 (AR 196-200, 219). Thus, in
3 the space of over two years, Dr. Grogan saw Plaintiff three times.
4 Further, the records of Dr. Grogan's examinations indicate no
5 administration of medication; no treatment regimen; or anything else
6 that one normally associates with care provided by a treating
7 physician. Plaintiff's citation of case law regarding a numerical
8 calculation of whether a doctor is a treating source is misplaced.
9 The definition of treating source is discussed, in part, in 20 C.F.R.
10 §404.1502 and, consistent with this Court's above discussion, consists
11 of a physician or other acceptable medical source who "has provided
12 you... with medical treatment or evaluation and who has, or has had,
13 an ongoing treatment relationship with you." While the number of
14 visits is not determinative, it is relevant to the medical need for
15 treatment and evaluation, based on a person's specific condition.
16 Here, Plaintiff primarily suffers from diabetes mellitus, and sees his
17 actual treating source, Molina Medical Center, approximately every
18 three months. Plaintiff himself identified Molina as his treating
19 source. (See AR at 228-229.) Moreover, Dr. Grogan indicated he was
20 not Plaintiff's treating source. (AR 203.)

21 On remand, the medical evidence in the record will be
22 reconsidered, in addition to new evidence. For this reason, the Court
23 will not further address the ALJ's evaluation of Dr. Grogan's opinion
24 at this time.

25 //
26 //
27 //

1 **THE ALJ IMPROPERLY DISCREDITED PLAINTIFF'S CREDIBILITY**

2 Plaintiff asserts that the ALJ improperly discredited his
3 credibility. He is correct. In the decision, the ALJ based his
4 credibility finding on the following factors, inter alia:

- 5 1. Plaintiff was fired from his last job and drew the full
6 round of unemployment insurance which required repeated
7 certification of being ready and willing to work. Plaintiff
8 has not looked for work after unemployment insurance ran
9 out;
- 10 2. The ALJ disbelieved that Plaintiff could not speak English,
11 despite being in the United States for at least 25 years
12 because "I seriously doubt that after 25 years residence in
13 this country he is unable to express himself in English."
- 14 3. Plaintiff said his hands and feet are numb. He just started
15 taking insulin two weeks ago and takes medications for blood
16 pressure;
- 17 4. Plaintiff sees his treating physician at Molina Medical
18 Clinic at irregular intervals;
- 19 5. Plaintiff said he has not driven in nine years, and lives in
20 a house with his employed wife and children;
- 21 6. Plaintiff would not detail his activities of daily living
22 ("ADL") despite repeated questions;
- 23 7. Plaintiff's self-assessment of his ability to stand, walk,
24 lift and sit is unsupported by any clinical or diagnostic
25 findings.

26 (AR 23-24.)

27
28 The law concerning the requirements for credibility assessment

1 are contained in the Commissioner's own regulations, at 20 C.F.R.
2 §404.1529(c), and have often been stated in Ninth Circuit Opinions.
3 (See Thomas v. Barnhart, 278 F.3d 947, 959-960 (9th Cir. 2002.)

4 Because this case will be remanded, it is necessary for the Court
5 to address the factors relied upon by the ALJ, so that the same
6 mistakes are not made again.

7 Discrediting Plaintiff because he does not speak English despite
8 having lived in the United States for 25 years, without any evidence
9 in the record indicating that he does speak more English than he
10 admits, is a speculative conclusion not worthy of a judicial opinion.

11 Plaintiff's statement that his hands and feet are numb is
12 certainly supported, as to his feet, by substantial medical evidence
13 that he has peripheral neuropathy. The ALJ's assertion that Plaintiff
14 just began taking insulin two weeks ago is a misstatement of the
15 record. The evidence indicates that Plaintiff had been taking insulin
16 by injection for two weeks, and had to change from taking his
17 medication in tablet form due to side effects the medication had on
18 his kidneys. (See AR at 230-231.) Plaintiff has taken medication for
19 his diabetes for many years. (AR 81, 86, 132, 160.)

20 Any failure to obtain information regarding the extent of
21 Plaintiff's ability to do ADLs lies with the ALJ, who asked only a few
22 questions during the hearing, all of which Plaintiff answered. (See AR
23 at 229-230.)

24 Plaintiff does not see his treating source at Molina Clinic at
25 irregular intervals. He goes approximately every three months. There
26 is nothing in the record to indicate that this is less frequent than
27 required by his medical condition.

28 The fact that Plaintiff has not driven a car in nine years,

1 combined with the fact that he lives in a house with his employed wife
2 and children, constitute a series of non sequiturs with regard to the
3 credibility analysis.

4 The ALJ's statement, as part of the credibility analysis, that,
5 "I find no reason in this record why the diabetes mellitus could not
6 be controlled with an appropriate ADA diets and properly titrated
7 dosages on insulin" (AR 24) constitutes an improper medical opinion by
8 the ALJ which is, moreover, unsupported by anything this Court has
9 found in the record.

10 Finally, reliance on Plaintiff's receipt of six months of
11 unemployment insurance "which required repeated certification of being
12 ready and willing to work" (see AR at 23-24) is unfounded. The record
13 contains no forms or documents indicating that Plaintiff ever
14 certified his ability to work full time while he received benefits,
15 nor did Plaintiff so testify at his hearing, at which he merely
16 acknowledged receipt of such benefits for approximately six months.
17 (See AR at 224.) The ALJ's legal or factual conclusions as to the
18 "requirements" of the forms are not supported by the record.

19 All in all, the credibility assessment in this case is completely
20 unsupported by any legitimate facts. On remand, a proper credibility
21 assessment will be undertaken.

22 For the foregoing reasons, this matter will be remanded for
23 further hearing.

24 **IT IS SO ORDERED.**

25
26 DATED: September 8, 2008

_____/s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE