

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JIMMY CARROLL,
Plaintiff,
v.

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

Case No. EDCV 10-1369 JC

MEMORANDUM OPINION AND
ORDER OF REMAND

I. SUMMARY

On September 17, 2010, plaintiff Jimmy Carroll (“plaintiff”) filed a Complaint seeking review of the Commissioner of Social Security’s denial of plaintiff’s application for benefits. The parties have consented to proceed before a United States Magistrate Judge.

This matter is before the Court on the parties’ cross motions for summary judgment, respectively (“Plaintiff’s Motion”) and (“Defendant’s Motion”). The Court has taken both motions under submission without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; September 20, 2010, Case Management Order, ¶ 5.

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1 Based on the record as a whole and the applicable law, the decision of the
2 Commissioner is REVERSED AND REMANDED for further proceedings
3 consistent with this Memorandum Opinion and Order of Remand because the
4 Administrative Law Judge (“ALJ”) failed properly to evaluate the medical opinion
5 evidence.

6 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE** 7 **DECISION**

8 On January 3, 2008 and January 29, 2008, plaintiff filed, respectively,
9 applications for Supplemental Security Income benefits and Disability Insurance
10 Benefits. (Administrative Record (“AR”) 8). Plaintiff asserted that he became
11 disabled on June 21, 2007, due to knee and lower back injuries, a bone spur in his
12 neck, and chronic arthritis. (AR 8, 143). The ALJ examined the medical record
13 and heard testimony from plaintiff (who was represented by counsel), a medical
14 expert and a vocational expert on March 30, 2010. (AR 23).

15 On May 14, 2010, the ALJ determined that plaintiff was not disabled
16 through the date of the decision. (AR 8, 18). Specifically, the ALJ found:
17 (1) plaintiff suffered from the following severe impairments: degenerative disk
18 disease and degenerative arthritis of the neck and low back, mild osteoarthritis of
19 the left knee, and obesity (AR 10); (2) plaintiff’s impairments, considered singly
20 or in combination, did not meet or medically equal one of the listed impairments
21 (AR 10-11); (3) plaintiff retained the residual functional capacity to perform light
22 work (20 C.F.R. §§ 404.1567(b); 416.967(b)) with additional exertional and
23 nonexertional limitations (AR 11);¹ (4) plaintiff could not perform his past
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25 ¹The ALJ determined that plaintiff (i) could lift and carry 20 pounds occasionally and 10
26 pounds frequently; (ii) could stand and walk for 2 hours out of an 8-hour work day; (iii) should
27 avoid uneven surfaces; (iv) could sit for 8 hours out of an 8-hour work day with normal breaks
28 (*i.e.*, every 2 hours); (v) could occasionally stoop and bend; (vi) could climb stairs, but could not
climb ladders, work at heights or balance; (vii) could do occasional neck motion, but should
avoid extremes of motion; (viii) should be permitted to hold his head in a comfortable position
(continued...)

1 relevant work (AR 16); (5) there are jobs that exist in significant numbers in the
2 national economy that plaintiff could perform (AR 17); and (6) plaintiff's
3 allegations regarding his limitations were not credible to the extent they were
4 inconsistent with the ALJ's residual functional capacity assessment (AR 12).

5 The Appeals Council denied plaintiff's application for review. (AR 1).

6 **III. APPLICABLE LEGAL STANDARDS**

7 **A. Sequential Evaluation Process**

8 To qualify for disability benefits, a claimant must show that he is unable to
9 engage in any substantial gainful activity by reason of a medically determinable
10 physical or mental impairment which can be expected to result in death or which
11 has lasted or can be expected to last for a continuous period of at least twelve
12 months. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citing 42 U.S.C.
13 § 423(d)(1)(A)). The impairment must render the claimant incapable of
14 performing the work he previously performed and incapable of performing any
15 other substantial gainful employment that exists in the national economy. Tackett
16 v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

17 In assessing whether a claimant is disabled, an ALJ is to follow a five-step
18 sequential evaluation process:

- 19 (1) Is the claimant presently engaged in substantial gainful activity? If
20 so, the claimant is not disabled. If not, proceed to step two.
- 21 (2) Is the claimant's alleged impairment sufficiently severe to limit
22 his ability to work? If not, the claimant is not disabled. If so,
23 proceed to step three.
- 24 (3) Does the claimant's impairment, or combination of
25 impairments, meet or equal an impairment listed in 20 C.F.R.

27 ¹(...continued)

28 most of the time; and (ix) could occasionally maintain a fixed head position for 15-30 minutes at a time. (AR 11).

Part 404, Subpart P, Appendix 1? If so, the claimant is disabled. If not, proceed to step four.

(4) Does the claimant possess the residual functional capacity to perform his past relevant work? If so, the claimant is not disabled. If not, proceed to step five.

(5) Does the claimant's residual functional capacity, when considered with the claimant's age, education, and work experience, allow him to adjust to other work that exists in significant numbers in the national economy? If so, the claimant is not disabled. If not, the claimant is disabled.

Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th Cir. 2006) (citing 20 C.F.R. §§ 404.1520, 416.920).

The ALJ has an affirmative duty to assist the claimant in developing the record at every step of the inquiry. Bustamante v. Massanari, 262 F.3d 949, 954 (9th Cir. 2001); see also Webb v. Barnhart, 433 F.3d 683, 687 (9th Cir. 2005) (ALJ has special duty to fully and fairly develop record and to assure that claimant's interests are considered). The claimant has the burden of proof at steps one through four, and the Commissioner has the burden of proof at step five. Bustamante, 262 F.3d at 953-54 (citing Tackett); see also Burch, 400 F.3d at 679 (claimant carries initial burden of proving disability).

B. Standard of Review

Pursuant to 42 U.S.C. section 405(g), a court may set aside a denial of benefits only if it is not supported by substantial evidence or if it is based on legal error. Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir. 2006) (citing Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457 (9th Cir. 1995)). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (citations and quotations omitted). It is more than a

1 mere scintilla but less than a preponderance. Robbins, 466 F.3d at 882 (citing
2 Young v. Sullivan, 911 F.2d 180, 183 (9th Cir. 1990)).

3 To determine whether substantial evidence supports a finding, a court must
4 “consider the record as a whole, weighing both evidence that supports and
5 evidence that detracts from the [Commissioner’s] conclusion.” Aukland v.
6 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (quoting Penny v. Sullivan, 2 F.3d
7 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming
8 or reversing the ALJ’s conclusion, a court may not substitute its judgment for that
9 of the ALJ. Robbins, 466 F.3d at 882 (citing Flaten, 44 F.3d at 1457).

10 **IV. DISCUSSION**

11 Plaintiff contends that the ALJ materially erred in failing to mention a
12 physical residual functional capacity form (“RFC form”) that was made part of the
13 administrative record after the hearing. (Plaintiff’s Motion at 2) (citing AR 484-
14 86). The Court agrees. As the Court cannot find that the ALJ’s error was
15 harmless, a remand is warranted.

16 The RFC form does not identify the physician who completed it because the
17 doctor’s signature is illegible and, since the first page of the form is missing, the
18 form also does not identify the patient to whom it applies. (AR 485-86). The RFC
19 form reflects that the unidentified patient has the following limitations: (i) must
20 walk around every 20 minutes for five minutes at a time; (ii) could never twist,
21 crouch or climb ladders, and occasionally stoop/bend and climb stairs; (iii) is
22 limited in the ability to reach, handle, and push/pull; (iv) must avoid all exposure
23 to extreme cold, wetness and hazards (*e.g.*, machinery, heights), and must avoid
24 even moderate exposure to extreme heat, humidity, and fumes, odors, dusts gasses
25 and poor ventilation; and (v) would be absent from work more than three times a
26 month. (AR 485-86).

27 It is puzzling that neither plaintiff nor his attorney is able to identify the
28 physician who authored the RFC form – particularly since plaintiff suggests that

1 the author was a treating physician, and plaintiff's counsel was the person who
2 originally faxed the form to the ALJ for inclusion in the administrative record.
3 (Plaintiff's Motion at 2; AR 485). Nonetheless, since the ALJ accepted the RFC
4 form as part of plaintiff's medical record and the Court cannot conclude on this
5 record that it was not prepared by a treating physician (or other medical source
6 whose opinion the ALJ was required to consider and expressly address), the ALJ's
7 complete failure to address the medical opinions expressed in the RFC form was
8 legal error. See Lingenfelter v. Astrue, 504 F.3d 1028, (9th Cir. 2007) ("[W]hen
9 the ALJ completely ignores or neglects to mention a treating physician's medical
10 opinion that is relevant to the medical evidence being discussed . . . [the case]
11 should be remanded to the agency for proper consideration of the evidence.")
12 (citation omitted).

13 The Court cannot find the error harmless. Assuming the RFC form applies
14 to plaintiff, it assesses functional limitations that are significantly more restrictive
15 than the ALJ's residual functional capacity assessment and, if true, suggest a
16 finding of "disabled" in plaintiff's case.

17 Although, as defendant argues, the ALJ may properly have rejected the
18 opinions expressed in the RFC form for clear and convincing reasons based on
19 substantial other conflicting evidence, such an argument is unavailing. This Court
20 is constrained to review the reasons cited by the ALJ. Connett v. Barnhart, 340
21 F.3d 871, 874 (9th Cir. 2003).

22 Accordingly, this case must be remanded to permit the ALJ properly to
23 consider the medical opinion evidence.

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1 **V. CONCLUSION**

2 For the foregoing reasons, the decision of the Commissioner of Social
3 Security is reversed in part, and this matter is remanded for further administrative
4 action consistent with this Opinion.²

5 LET JUDGMENT BE ENTERED ACCORDINGLY.

6 DATED: May 24, 2011

7 /s/

8 Honorable Jacqueline Chooljian
9 UNITED STATES MAGISTRATE JUDGE
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25 ²When a court reverses an administrative determination, “the proper course, except in rare
26 circumstances, is to remand to the agency for additional investigation or explanation.”
27 Immigration & Naturalization Service v. Ventura, 537 U.S. 12, 16 (2002) (citations and
28 quotations omitted). Remand is proper where, as here, additional administrative proceedings
could remedy the defects in the decision. McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir.
1989).