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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PATRICK REILLY MORENO,	)	Case No. ED CV 12-211-PJW
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM OPINION AND ORDER
	)	
CAROLYN W. COLVIN,	)	
ACTING COMMISSIONER OF THE	)	
SOCIAL SECURITY ADMINISTRATION,	)	
	)	
Defendant.	)	

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I.

INTRODUCTION

Before the Court is an appeal of a decision by Defendant Social Security Administration ("the Agency"), denying Plaintiff's applications for disability insurance benefits ("DIB") and supplemental security income ("SSI"). Plaintiff claims that the Administrative Law Judge ("ALJ") erred when he failed to fully develop the record by obtaining additional medical records. For the reasons set forth below, the Court concludes that the ALJ erred but that the error was harmless. As such, the Agency's decision is affirmed.<sup>1</sup>

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<sup>1</sup> Carolyn W. Colvin is substituted for Michael J. Astrue as Defendant, pursuant to Fed. Rule Civ. Pro. 25(d).

1 II.

2 SUMMARY OF PROCEEDINGS

3 Plaintiff applied for DIB and SSI in September 2006, alleging  
4 that he had been unable to work since September 2003, due to arthritis  
5 in his back, a heart condition, stomach problems, carpal tunnel  
6 syndrome, and depression. (Administrative Record ("AR") 72-76, 79,  
7 138, 169.) The Agency denied his applications initially and on  
8 reconsideration. (AR 62-71, 79-83.) He then requested and was  
9 granted a hearing before an ALJ. (AR 85-87.) Plaintiff appeared with  
10 counsel and testified at the hearing in February 2010. (AR 24-61.)  
11 In April 2010, the ALJ issued a decision denying benefits. (AR 10-  
12 19.) Plaintiff appealed to the Appeals Council, which denied review.  
13 (AR 1-6.) He then commenced this action.

14 III.

15 ANALYSIS

16 A. The ALJ's Development of the Record

17 Plaintiff contends that the ALJ erred by failing to develop the  
18 record by obtaining medical records relating to: (1) carpal tunnel  
19 syndrome; (2) irritable bowel syndrome; (3) and mitral valve surgery.  
20 (Joint Stip. at 4-9.) For the following reasons, the Court finds that  
21 the ALJ erred but that the error was harmless.

22 ALJs have a duty to fully and fairly develop the record, which  
23 duty is triggered by inadequate or ambiguous evidence that impedes an  
24 ALJ's ability to properly evaluate a claim. *Tonapetyan v. Halter*, 242  
25 F.3d 1144, 1150 (9th Cir. 2001); see also 20 C.F.R. §§ 404.1512(e),  
26 416.912(e). The claimant has the burden to prove that he was  
27 prejudiced by the ALJ's failure to develop the record. *McLeod v.*  
28 *Astrue*, 640 F.3d 881, 887 (9th Cir. 2010) ("Where harmfulness of the

1 error is not apparent from the circumstances, the party seeking  
2 reversal must explain how the error caused harm.") (citing *Shinseki v.*  
3 *Sanders*, 556 U.S. 396, 409 (2009)).

4 Plaintiff never alleged in his application that he suffered from  
5 carpal tunnel syndrome or from pain in his hands or wrists. (AR 169,  
6 216-28, 232.) The ALJ, however, noted in his decision that carpal  
7 tunnel syndrome was mentioned in some of the medical records and that  
8 an alleged study had confirmed the presence of carpal tunnel. (AR  
9 13.) The ALJ questioned whether such a study had been conducted and  
10 noted in his decision that, if it had been, it was not contained in  
11 the record. (AR 13.) The ALJ noted that the medical record did not  
12 contain positive signs or clinical tests establishing carpal tunnel  
13 syndrome and that an orthopedic examination was unremarkable. (AR  
14 13.) As a result, he concluded that there was no basis for finding  
15 that Plaintiff suffered from carpal tunnel syndrome. (AR 13.)

16 Plaintiff argued in the Joint Stipulation that the ALJ erred in  
17 not searching for and finding the study and considering it in his  
18 decision. The Court ordered Plaintiff to submit the study so that it  
19 could consider it in evaluating the prejudice to Plaintiff. In  
20 response, Plaintiff informed the Court that there was no such study.  
21 (See January 10, 2013 Reply to Court Order ("Reply") at 2.) Thus, the  
22 Court concludes that the ALJ did not err in failing to obtain it  
23 because the record was not ambiguous or inadequate, *see, e.g., Mayes*  
24 *v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001), and, more  
25 importantly, the study did not exist.

26 Plaintiff raised similar complaints regarding irritable bowel  
27 syndrome records. He now concedes that no such records exist. (Reply  
28 at 2.) As such, the Court reaches the same conclusion: the ALJ did

1 not err in failing to locate additional records because the medical  
2 record was not so ambiguous or inadequate as to trigger the need to  
3 obtain additional records and because additional records did not  
4 exist.<sup>2</sup>

5 As to Plaintiff's mitral valve surgery, the Court finds that the  
6 ALJ's duty to fully and fairly develop the record was triggered when  
7 Plaintiff testified (in February 2010) that he had undergone mitral  
8 valve surgery in December 2008 and that he had gone to the emergency  
9 room twice after the surgery because of chest pain. (AR 42-43.) In  
10 his decision, the ALJ noted that Plaintiff had been scheduled to have  
11 the surgery in November 2008 and that Plaintiff testified he had  
12 undergone the surgery but that there was "no record that the surgery  
13 actually took place and no record of follow-up treatment or care."  
14 (AR 13.) In concluding that Plaintiff's heart condition was not  
15 severe, the ALJ relied, at least in part, on the absence of medical  
16 records about the surgery and Plaintiff's subsequent treatment. (AR  
17 13.)

18 Plaintiff has now produced records, which demonstrate that he did  
19 undergo mitral valve surgery in 2008 and that he went to the emergency  
20 room thereafter complaining of chest pain.<sup>3</sup> The ALJ erred by not

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22 <sup>2</sup> The ALJ rejected Plaintiff's testimony that an X-ray revealed  
23 that his bowels were "twisted" because there was no record that such  
24 an X-ray had been taken. (AR 13, 48.) Plaintiff now concedes that  
25 there was no X-ray. He contends, however, that an emergency room  
26 doctor told him that his intestines were twisted. (Reply at 2.)

27 <sup>3</sup> The Agency suggests that Plaintiff's surgery in December 2008  
28 and subsequent treatment is not relevant to the ALJ's decision because  
it has no bearing on whether Plaintiff was disabled on December 31,  
2008, his date last insured. (Joint Stip. at 9.) The Court  
disagrees. Plaintiff's heart condition clearly existed prior to his  
(continued...)

1 obtaining these records and addressing them before determining that  
2 Plaintiff's heart condition was not a severe impairment.  
3 Nevertheless, the ALJ's failure to develop the record did not  
4 prejudice Plaintiff.<sup>4</sup>

5 Plaintiff contends that the "residual limitations" of his mitral  
6 valve surgery prevents him from performing light work, the type of  
7 work the ALJ concluded he could perform. (Joint Stip. at 4-5, 8.)  
8 However, the additional records that Plaintiff has submitted do not  
9 support his argument.

10 \_\_\_\_\_  
11 <sup>3</sup> (...continued)  
12 December 2008 surgery. (Reply at 15; January 30, 2013 Reply to Court  
13 Order ("Supp. Reply") at 7 (noting Plaintiff had history of heart  
14 murmur "for the past year").) Further, Plaintiff has also applied for  
15 SSI, which is not dependent on insurance.

16 <sup>4</sup> It bears noting that the ALJ and the claimant are both  
17 responsible for ensuring that the record is complete. The Court has  
18 outlined the ALJ's duty above, but the claimant has a corresponding  
19 duty to perfect the record because he bears the burden of proving his  
20 entitlement to benefits, see *Bayliss v. Barnhart*, 427 F.3d 1211, 1217  
21 (9th Cir. 2005), and cannot meet that burden if he does not provide  
22 the medical records that support his claims. Obviously, there is  
23 tension between these two mandates and it is not always clear to the  
24 Court which side should be held responsible when records are not  
25 included. This case highlights the problem with particularity.  
26 Plaintiff argued in the Joint Stipulation that the ALJ erred by  
27 failing to acquire medical records relating to carpal tunnel syndrome  
28 and irritable bowel syndrome that Plaintiff now concedes did not  
exist. The ALJ would have been on an impossible quest had he tried to  
find these records. As this case illustrates, generally speaking, the  
claimant is better situated to know whether any records are missing  
and, if so, where they can be found. Further, it seems to make sense  
that the claimant would be more motivated to find these records  
because the claimant stands to gain from including them in the file.  
However, the Court need not attempt to resolve the issue of the  
conflicting duties in the case at bar because, even assuming that it  
was the ALJ's obligation to find the records in this case, there was  
no prejudice. The Court notes, however, that in a different case the  
issue of who ultimately bears the burden of locating the records may  
have to be addressed.

1 Plaintiff was admitted to the hospital for mitral valve  
2 replacement surgery on December 18, 2008. (Supp. Reply at 7.) He was  
3 discharged on December 26, 2008, with instructions not to lift more  
4 than five pounds or drive for six weeks, i.e., through the beginning  
5 of February 2009. (Supp. Reply at 10.) Clearly, for those six weeks,  
6 Plaintiff could not perform light work. The record establishes,  
7 however, that, by March 2, 2009, Plaintiff was walking every day and  
8 had no new symptoms. (Reply at 55.) His treating physician, Dr. Ravi  
9 Konchigeri, told him on that date that he was restricted to lifting no  
10 more than 25 pounds for the next six months, after which he could  
11 perform physical activity "as tolerated," and did not assess any other  
12 limitations. (Reply at 57.) Thus, by March 2009, Plaintiff could  
13 perform light work. See 20 C.F.R. § 416.967(b) (defining light work  
14 as requiring, among other things, the ability to occasionally lift 20  
15 pounds and frequently lift ten pounds). Although Plaintiff  
16 subsequently complained of chest pains on June 9, 2009, it seems to  
17 have been an isolated incident, and no additional functional  
18 restrictions were imposed. (Reply at 99-101.) None of the other  
19 records submitted by Plaintiff suggest that he was precluded from  
20 performing light work. (AR 18.)

21 Because the additional medical records submitted by Plaintiff do  
22 not undermine the ALJ's decision, Plaintiff has not shown that he was  
23 prejudiced by the ALJ's error in failing to consider them. For that  
24 reason, the ALJ's failure to obtain them was harmless.<sup>5</sup>

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25  
26 <sup>5</sup> To the extent that Plaintiff challenges the ALJ's residual  
27 functional capacity determination with respect to his carpal tunnel  
28 syndrome and irritable bowel syndrome based solely on the original  
record, his claims are rejected. First, Plaintiff has not shown that  
(continued...)

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IV.

CONCLUSION

For these reasons, the Agency's decision denying Plaintiff's applications for benefits is affirmed and the case is dismissed with prejudice.

IT IS SO ORDERED.

DATED: May 23, 2013.



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PATRICK J. WALSH  
UNITED STATES MAGISTRATE JUDGE

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<sup>5</sup> (...continued)

the ALJ's consideration of the medical record was erroneous. Second, Plaintiff's alleged limitations are largely based on his own complaints, which the ALJ found were not credible (AR 6-8), a finding Plaintiff has not challenged here.