

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LAFONCE EUGENE WALKER,

Plaintiff,

v.

CAROLYN W. COLVIN, ACTING
COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,^{1/}

Defendant.

Case No. ED CV 12-0727 JCG

**MEMORANDUM OPINION AND
ORDER**

LaFonce Eugene Walker (“Plaintiff”) challenges the Social Security Commissioner’s decision denying his application for disability benefits. Specifically, Plaintiff contends that the Administrative Law Judge (“ALJ”) improperly rejected the opinion of Dr. Roger Tilton, the consultative examiner. (Joint Stip. at 5-10.) The Court agrees with Plaintiff for the reasons stated below.

A. The ALJ Failed to Provide Specific and Legitimate Reasons for Rejecting Dr. Tilton’s Examining Opinion

An ALJ may reject the controverted opinion of an examining physician only

^{1/} Carolyn W. Colvin is substituted as the proper defendant herein. See Fed. R. Civ. P. 25(d).

1 for “specific and legitimate reasons that are supported by substantial evidence.”
2 *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008)
3 (quoting *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995)).

4 Here, although the ALJ cited Dr. Tilton’s opinion as “consistent” with his
5 Residual Functional Capacity (“RFC”) determination, the two differ in significant
6 respects. (AR at 474.) For instance, Dr. Tilton, as part of his functional assessment,
7 found that Plaintiff was “moderately limited” in both his abilities to “maintain
8 regular attendance in the work place,” and to “perform work activities without
9 special or additional supervision.” (AR at 526.) Neither of these restrictions,
10 however, were incorporated into Plaintiff’s RFC. (*See* AR at 464-65.)

11 And therein lies the error. By not adopting Dr. Tilton’s recommended
12 limitations, the ALJ implicitly rejected them. *Contildes v. Chater*, 225 F.3d 661 (9th
13 Cir. 2000). To justify this, the ALJ needed to provide specific and legitimate
14 reasons, and yet no discussion even touched upon these aspects of Dr. Tilton’s
15 opinion. (*See* AR at 460-79); *see also Carmickle*, 533 F.3d at 1164. Without
16 anything more, the ALJ’s decision does not pass muster.

17 Accordingly, for the reasons stated above, the Court determines that the ALJ
18 improperly discredited Dr. Tilton’s examining opinion.^{2/} The Court thus concludes
19 that the ALJ’s decision is not supported by substantial evidence. *Mayer v.*
20 *Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001).

21 B. Remand is Warranted

22 With error established, this Court has discretion to remand or reverse and
23 award benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). Where no
24

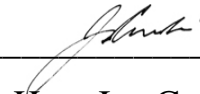
25 ^{2/} Plaintiff also argues that the ALJ erred by limiting him to “simple tasks,”
26 when Dr. Tilton actually found him restricted to “simpl[e] one or two [step] job
27 instructions.” (Joint Stip. at 6.) This very argument, however, has been plainly
28 addressed – and rejected – by the Ninth Circuit. *See Stubbs-Danielson v. Astrue*,
539 F.3d 1169, 1174 (9th Cir. 2008).

1 useful purpose would be served by further proceedings, or where the record has been
2 fully developed, it is appropriate to exercise this discretion to direct an immediate
3 award of benefits. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004).
4 But where there are outstanding issues that must be resolved before a determination
5 can be made, or it is not clear from the record that the ALJ would be required to find
6 plaintiff disabled if all the evidence were properly evaluated, remand is appropriate.
7 *See id.* at 594.

8 Here, in light of the ALJ's error, the credibility of Dr. Tilton must be properly
9 assessed. Therefore, on remand, the ALJ shall reevaluate his opinions and either
10 credit them as true, or provide valid reasons for any portion that is rejected.

11 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered
12 **REVERSING** the decision of the Commissioner denying benefits and
13 **REMANDING** the matter for further administrative action consistent with this
14 decision.

15
16 Dated: July 24, 2013



18 Hon. Jay C. Gandhi

19 United States Magistrate Judge

20
21
22
23
24
25
26
27
28