

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 6 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ZUBIN KHAVARIAN,

Plaintiff-Appellant,

v.

ANDREW SAUL, Commissioner of Social  
Security,

Defendant-Appellee.

No. 17-56351

D.C. No. 3:16-cv-01251-JLS

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Janis L. Sammartino, District Judge, Presiding

Submitted May 4, 2020\*\*

Before: FARRIS, LEAVY, TROTT, Circuit Judges.

Zubin Khavarian appeals the district court's decision remanding his case to the ALJ for further proceedings instead of for an immediate award of benefits, a decision with which the Commissioner does not disagree. Khavarian applied for

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

disability insurance benefits under Title II of the Social Security Act. An administrative law judge (“ALJ”) found that Khavarian was not disabled and could perform a full range of work at all exertional levels with the non-exertional limitation of non-public simple repetitive tasks. The district court did not agree with the ALJ. We review for abuse of discretion the district court’s decision to remand for further proceedings, *Harman v. Apfel*, 211 F.3d 1172, 1173 (9th Cir. 2000), and we affirm.

The district court correctly exercised its discretion when it remanded for further administrative proceedings because outstanding factual issues remain to be resolved regarding (1) the extent of Khavarian’s functional limitations resulting from his PTSD, (2) why his condition has not improved since 2012, and (3) whether he would be able to sustain a forty-hour work week in a less demanding job than his previous work in the Air Force. *See Dominguez v. Colvin*, 808 F.3d 403, 408-10 (9th Cir. 2015) (remanding for further proceedings rather than an immediate award of benefits where outstanding factual issues remain unresolved). The district court correctly considered this ambiguity to be relevant because the record indicated that some state reviewing physicians had suggested that Khavarian may be able to perform “less demanding” work than he did in the past.

**AFFIRMED.**