

O

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

GRANT BROWN,)	Case No. CV 07-06139-MLG
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of the)	
Social Security)	
Administration,)	
)	
Defendant.)	
)	

Plaintiff Grant Brown ("Plaintiff") seeks review of the Commissioner's final decision denying his applications for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI"). For the reasons discussed below, the Commissioner's decision is reversed and remanded for further proceedings.

I. Factual and Procedural Background

On July 29, 2002, Plaintiff filed claims for DIB and SSI benefits. (Administrative Record ("AR") at 70-76). The Commissioner denied the applications initially and upon reconsideration. (AR at 48-51, 58-62).

1 On February 11, 2004, an administrative hearing was held before
2 Administrative Law Judge Edward C. Graham ("ALJ Graham"). (AR at 189-
3 204). On March 19, 2004, ALJ Graham issued a decision ("Decision #1")
4 concluding that Plaintiff was not disabled. (AR at 22-30). On May 12,
5 2004, Plaintiff requested review before the Appeals Council. (AR at 16-
6 21). The request was denied. (AR at 6-9). Plaintiff then sought review
7 in this Court. On April 24, 2006, this Court remanded the matter to the
8 Commissioner for further proceedings. (AR at 237). The Court found that
9 ALJ Graham failed to properly consider the medical evidence, specifically
10 a state agency psychiatric consultation report prepared by Dr. Brian S.
11 Taylor, M.D. The Court also found that ALJ Graham failed to propound a
12 complete hypothetical to the Vocational Expert ("VE") because the
13 hypothetical did not take into account the great difficulty Plaintiff's
14 stuttering would cause in a work environment in general, not just in
15 interacting with the public. *Grant v. Barnhart*, Case No. CV 04-9734-MLG
16 (AR at 239-244).

17 On April 4, 2007, a second administrative hearing was held, this
18 time before ALJ Mary L. Everstine ("ALJ Everstine"). (AR at 294). On
19 April 18, 2007, ALJ Everstine issued a decision finding that Plaintiff
20 was not disabled ("Decision #2"). (AR at 219-225). Specifically, ALJ
21 Everstine found that Plaintiff suffered from the severe impairments of
22 lumbar sprain and speech dysfluency, but that Plaintiff's impairments did
23 not meet or medically equal one of the listed impairments in 20 C.F.R.,
24 Part 404, Subpart P, Appendix 1. (AR at 222). The ALJ determined that
25 Plaintiff retained the residual functional capacity ("RFC") to perform
26 a limited range of light work with the following limitations: "unable to
27 perform work requiring any verbal interaction with the general public;
28 and unable to perform activities solely dependent upon verbal responses,

1 but able to communicate and/or acknowledge communication nonverbally with
2 hand gestures and/or nodding." (AR at 222). Based on this RFC and the
3 described limitations, the ALJ concluded that Plaintiff would not be
4 capable of performing his past relevant work, but that Plaintiff would
5 be able to perform other work activity, specifically that of a toy
6 assembler (AR at 224-225). The ALJ therefore found that Plaintiff was
7 not disabled under the Social Security Act. (AR at 225). The Appeals
8 Council denied review and Decision #2 became the final decision of the
9 Commissioner. (AR at 205-208).

10 Plaintiff then filed this action for judicial review. Plaintiff
11 raises the following arguments by way of a Joint Stipulation of disputed
12 issues:

- 13 1. ALJ Everstine erred by disregarding the medical
14 evidence. (Joint Stipulation ("Joint Stip.") at 5-
15 11).
- 16 2. ALJ Everstine erred in her assessment of Plaintiff's
17 credibility. (Joint Stip. at 14-17).
- 18 3. ALJ Everstine erred in determining that Plaintiff
19 could perform the identified alternative work based
20 on the RFC as assessed by the ALJ. (Joint Stip. at
21 21-24).

22 Plaintiff seeks a remand for payment of benefits, or alternatively a
23 remand for further proceedings (Joint Stip. at 27). The Commissioner
24 requests that Decision #2 be affirmed. (AR at 27-28). The Joint
25 Stipulation has been taken under submission without oral argument.

26 //

27 //

28 //

1 **II. Standard of Review**

2 The Court must uphold the Social Security Administrations's
3 disability determination unless it is not supported by substantial
4 evidence or is based on legal error. *Ryan v. Comm'r of Soc. Sec.*, 528
5 F.3d 1194, 1198 (9th Cir. 2008)(citing *Stout v. Comm'r of Soc. Sec.*
6 *Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006)). Substantial evidence means
7 more than a scintilla, but less than a preponderance; it is evidence that
8 a reasonable person might accept as adequate to support a conclusion.
9 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007)(citing
10 *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). To
11 determine whether substantial evidence supports a finding, the reviewing
12 court "must review the administrative record as a whole, weighing both
13 the evidence that supports and the evidence that detracts from the
14 Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th
15 Cir. 1996). "If the evidence can support either affirming or reversing
16 the ALJ's conclusion," the reviewing court "may not substitute [its]
17 judgment for that of the ALJ." *Robbins*, 466 F.3d at 882.

18
19 **III. Discussion**

20 After reviewing the parties' respective contentions and the record
21 as a whole, the Court finds that ALJ Everstine disregarded this Court's
22 order in *Grant v. Barnhart* (Case No. CV 04-9734-MLG), which required the
23 ALJ to properly consider the medical evidence and to propound a complete
24 hypothetical to the VE. Therefore, the Court remands this matter for
25 further proceedings consistent with this opinion and this Court's earlier
26
27
28

1 opinion in *Grant v. Barnhart* (Case No. CV 04-9734-MLG).¹ First, the ALJ
2 did not, despite this Court's order, address Dr. Taylor's finding of "a
3 marked limitation in [Plaintiff's] ability to maintain social
4 functioning" based upon an organic mental disorder, nor did the ALJ
5 provide any reasons why such a limitation should not be credited and
6 included in the vocational limitations presented in the hypothetical to
7 the VE. (AR at 242). Second, from an examination of the transcript of
8 the hearing held on April 4, 2007, it does not appear that the ALJ
9 constructed a complete hypothetical which adequately reflected
10 Plaintiff's substantial verbal limitations. The reason for this may be
11 the increasingly marked combativeness between ALJ Everstine and
12 Plaintiff's counsel during the course of the hearing. In fact, it is the
13 opinion of this Court that ALJ Everstine's conduct at the hearing was so
14 intemperate as to give rise to an appearance of partiality.²
15 Accordingly, the Court orders that the case be assigned to a different

17 ¹ As noted above, Plaintiff raises three alleged errors committed
18 by the ALJ in Decision #2: (1) the ALJ disregarded the medical evidence;
19 (2) the ALJ did not properly credit Plaintiff's testimony; and (3) the
20 ALJ incorrectly determined that Plaintiff could perform the identified
21 alternative work based on the RFC. Because the ALJ erred by disregarding
this Court's earlier order in Decision #1, the Court does not reach
these three issues and will not decide whether these issues would
independently warrant relief.

22 ² For example, the following exchange took place between ALJ
23 Everstine and Plaintiff's counsel, after which the hearing abruptly
ended:

24 Atty: Well, she's not answering the question. She never will.
25 ALJ: Well, then, you know what, Mr. Rosales? Just appeal it. You
got it? Because this is over. You've just - what you're doing is
26 berating her. You're -
Atty: My God, Your Honor.
27 ALJ: My God nothing, Steven. Get out.
Atty: She asked -
28 ALJ: We're done. We're done. Get out.
(AR at 327).

1 ALJ on remand.³

2

3 **IV. Conclusion**

4 Accordingly, pursuant to sentence four of 42 U.S.C. § 405(g), **IT IS**
5 **HEREBY ORDERED** that Judgment be entered reversing the decision of the
6 Commissioner of Social Security, and remanding this matter for further
7 proceedings consistent with this decision and the decision in *Grant v.*
8 *Barnhart*, Case No. CV 04-9734-MLG.

9

10 Dated: October 31, 2008

11

12



Marc L. Goldman
United States Magistrate Judge

13

14

15

16

17

18

19

20

21

22

23

24

25

26 ³ In doing so, the Court does not find that the ALJ's behavior was
27 so extreme as to display a clear inability to render a fair judgment,
28 which in itself would warrant a remand or award of benefits. *See Bayliss*
v. Barnhart, 427 F.3d 1211, 1214-15 (9th Cir. 2005), *Rollins v.*
Massanari, 261 F.3d 853, 858 (9th Cir. 2001).