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

CARL E. GAMACHE,
Plaintiff,

v.

CAROLYN W. COLVIN, ACTING
COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,
Defendant.

) Case No. CV 13-9202 JCG

) **MEMORANDUM OPINION AND
ORDER**

Carl E. Gamache (“Plaintiff”) challenges the Social Security Commissioner’s decision denying his application for disability benefits. Plaintiff contends that the Administrative Law Judge (“ALJ”) erred in determining his residual functional capacity (“RFC”). (*See* Joint Stip. at 5-12, 14-15.) Specifically, the ALJ failed to translate language used in Plaintiff’s workers’ compensation disability reports into comparable Social Security terminology. (*Id.*) The Court agrees with Plaintiff for the reasons discussed below.

A. The ALJ Erred in Determining Plaintiff’s RFC

Plaintiff contends that his RFC was under-inclusive because the ALJ failed to translate the opinion of Dr. Vincent L. Gumbs, the qualified medical examiner in

1 Plaintiff's workers' compensation case, into Social Security parlance. (*Id.*)

2 A claimant's RFC is the most he can still do despite his limitations. *Smolen v.*
3 *Chater*, 80 F.3d 1273, 1291 (9th Cir. 1996) (citing 20 C.F.R. § 404.1545(a)). In
4 determining a claimant's RFC, the ALJ must consider all relevant evidence of
5 record, including medical opinions. *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883
6 (9th Cir. 2006); *see* 20 C.F.R. § 404.1527(b). Significantly, unless an ALJ expressly
7 rejects a particular medical opinion, he must consider its findings when crafting the
8 claimant's RFC. *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995) (When "the
9 Commissioner fails to provide adequate reasons for rejecting the opinion of a . . .
10 physician, we credit that opinion as a matter of law.") (citation and internal quotation
11 marks omitted).

12 To that end, when evaluating a medical opinion using state workers'
13 compensation terminology, an ALJ must translate it into the corresponding Social
14 Security parlance. *Desrosiers v. Sec'y of Health & Human Servs.*, 846 F.2d 573,
15 576 (9th Cir. 1988) (finding error where ALJ failed to distinguish between Social
16 Security disability scheme and California workers' compensation scheme); *Booth v.*
17 *Barnhart*, 181 F. Supp. 2d 1099, 1106 (C.D. Cal. Jan. 22, 2002) (The ALJ's
18 decisions should "indicate that the ALJ recognized the differences between the . . .
19 [two schemes,] and took those differences into account in evaluating the medical
20 evidence."); *see Macri v. Chater*, 93 F.3d 540, 543-44 (9th Cir. 1996). If an ALJ
21 *fails* to translate workers' compensation terminology, he will be unable to properly
22 assess the opinion, or incorporate its findings into Plaintiff's RFC. *See id.*

23 Here, Dr. Gumbs provided an opinion couched in workers' compensation
24 terminology. (*See* Administrative Record ("AR") at 720.) In particular, he found
25 that Plaintiff was precluded from "repetitive and prolonged gripping and grasping,"
26 among other things. (*Id.*) For workers' compensation purposes, a preclusion from
27 "repetitive" behavior contemplates a one-half reduction in pre-injury capacity.
28 *Brooks v. Astrue*, 2012 WL 2373628, at *5 (C.D. Cal. June 22, 2012); *see* Schedule

1 for Rating Permanent Disabilities (Labor Code of California 1997),
2 www.dir.ca.gov/dwc/PDR1997.pdf (last visited Oct. 27, 2014). Thus, assuming that
3 Plaintiff was operating at full capacity prior to his injury, Dr. Gumbs suggests that
4 Plaintiff can now grip or grasp only *half* of the workday. (See AR at 719-20.)

5 Nevertheless, the ALJ made no detectable effort to translate Dr. Gumbs’
6 opinion into Social Security terms, or include any correlative restrictions into
7 Plaintiff’s RFC. (See *id.* at 18.) To the contrary, the positions identified by the ALJ
8 as within Plaintiff’s RFC, including cashier, (Dictionary of Occupational Titles
9 (“DOT”) No. 211.462-010), storage facility clerk, (Dot No. 295.367-026), and
10 counter attendant, (Dot. No. 311.677-010), all require “*frequent* handling.” (AR at
11 24) (emphasis added); see Social Security Ruling (“SSR”) 85-15, 1985 WL 56857,
12 at *2 (1985) (defining handling as “seizing, holding, grasping, turning or otherwise
13 working primarily with the whole hand or hands”). For Social Security purposes,
14 “frequent” means “occurring from one-third to *two-thirds* of the time.” SSR 83-10,
15 1983 WL 31251, at *6 (1983). Thus, by requiring Plaintiff to grip or grasp more
16 than one-half of the time, the ALJ implicitly rejected Dr. Gumbs’ opinion. See
17 *Baltazar v. Astrue*, 2012 WL 2319263, at *5 (C.D. Cal. June 19, 2012).

18 The rejection is proper only if the ALJ provided specific and legitimate
19 reasons to support it. See *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155,
20 1164 (9th Cir. 2008) (An ALJ may reject the opinion of an examining physician
21 only for “specific and legitimate reasons that are supported by substantial
22 evidence.”) (citation omitted); *Lester*, 81 F.3d 821 at 834. In this case, the ALJ gave
23 *no* rationale for rejecting Dr. Gumbs’ opinion. (See *generally* AR at 22-23.) To the
24 contrary, the ALJ stated that he gave Dr. Gumbs’ opinion “moderate weight.” (*Id.* at
25 23.) Thus, because the ALJ never properly rejected Dr. Gumbs’ opinion, he erred by
26 omitting its findings from Plaintiff’s RFC. See *Baltazar*, 2012 WL 2319263, at *5
27 (finding error in RFC where physician precluded claimant from “repetitive” gripping
28 and grasping, ALJ did not properly translate or reject the opinion, and RFC allowed

1 for “frequent” gripping and grasping); *Brooks*, 2012 WL 2373628, at *5 (holding
2 similarly).

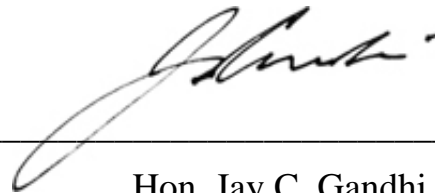
3 B. Remand is Warranted

4 With error established, this Court has discretion to remand or reverse and
5 award benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). Where no
6 useful purpose would be served by further proceedings, or where the record has been
7 fully developed, it is appropriate to exercise this discretion to direct an immediate
8 award of benefits. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004).
9 But where there are outstanding issues that must be resolved before a determination
10 can be made, or it is not clear from the record that the ALJ would be required to find
11 plaintiff disabled if all the evidence were properly evaluated, remand is appropriate.
12 *See id.* at 594.

13 Here, in light of the ALJ’s error, Plaintiff’s RFC was not properly assessed.
14 Therefore, on remand, the ALJ shall translate Dr. Gumbs’ opinion into Social
15 Security terms, and either include its findings in Plaintiff’s RFC, or provide valid
16 reasons for any portion that is rejected.

17 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered
18 **REVERSING** the decision of the Commissioner denying benefits and
19 **REMANDING** the matter for further administrative action consistent with this
20 decision.^{1/}

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22 Dated: October 31, 2014



Hon. Jay C. Gandhi
United States Magistrate Judge

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28 ^{1/} In light of the Court’s remand instructions, it is unnecessary to address Plaintiff’s
remaining contention. (*See Joint Stip.* at 16-18, 20-21.)