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8   UNITED STATES DISTRICT COURT

9   CENTRAL DISTRICT OF CALIFORNIA

10   ALBERT KESHISHYAN,   )   Case No. CV 14-2282-PJW
)
11   Plaintiff,   )
)   MEMORANDUM OPINION AND ORDER
12   v.   )
)
13   CAROLYN W. COLVIN,   )
     Acting Commissioner of the   )
14   Social Security Administration,   )
)
15   Defendant.   )
)
16

17   Plaintiff appeals a decision by Defendant Social Security

18   Administration ("the Agency"), denying his application for Disability

19   Insurance Benefits and Supplemental Security Income. He claims that

20   the Administrative Law Judge ("ALJ") erred when he concluded that

21   Plaintiff had the ability to perform jobs requiring Language Level 1

22   because he does not speak English. For the following reasons, the

23   Court concludes that the ALJ erred and remands the case to the Agency

24   for further proceedings.

25   Plaintiff was born in 1950 in Armenia and came to the United

26   States in 1991. (Administrative Record ("AR") 25.) He was educated

27   in Armenia and attended some college there. He claims that he cannot

28   read, write, or speak English. (AR 25, 146.)

1   The ALJ concluded that Plaintiff could not perform any of his

2 past work but could perform three jobs that required Language Level 1.

3 (AR 62-63.) Language Level 1 is defined as the ability to

4 "[r]ecognize [the] meaning of 2,500 (two- or three-syllable) words.

5 Read at rate of 95-120 words per minute. Compare similarities and

6 differences between words and between series of numbers." Dictionary

7 of Occupational Titles No. 920.587-018 (hand packager). The ALJ,

8 however, did not state any basis for finding that Plaintiff had this

9 ability. (AR 63.) This was error and necessitates remand.

10   The Agency disagrees. It points out that Plaintiff has been in

11 the United States since 1991 and admits that he speaks and understands

12 some English. (Joint Stip. at 8.) Though this is true, it is not

13 enough to establish that Plaintiff has a working familiarity with

14 2,500, two- and three-syllable English words, read 95-12- words a

15 minute, or compare the similarities and differences in words. It is

16 possible to live in Los Angeles without speaking English. And, though

17 the record establishes that Plaintiff performed jobs that, according

18 to the DOT, require Language Levels much higher than Level 1, nowhere

19 in the record does it suggest how Plaintiff actually performed those

20 jobs. It is possible that he spoke only Armenian at work.

21   The Agency also notes that the ALJ found that Plaintiff was not

22 credible, a finding Plaintiff does not challenge. It argues that,

23 outside of Plaintiff's testimony, which has been discredited, there is

24 no evidence establishing that Plaintiff cannot speak English.

25   The Ninth Circuit has made clear that it is the Agency's burden

26 at Step Five to establish that a claimant is literate and can perform

27 work in the economy. *See Silveira v. Apfel*, 204 F.3d 1257, 1261 (9th

28 Cir. 2000) ("The Commissioner bears the burden of establishing that

1 [the claimant] is literate.") Thus, the ALJ was not entitled to rely

2 on Plaintiff's failure to prove illiteracy and was required, instead,

3 to point to some evidence in the record that established his ability

4 to speak and read English at Language Level 1.

5 The Agency complains that Plaintiff's counsel never objected to

6 the ALJ's finding that Plaintiff possessed Language Level 1 skills at

7 the administrative hearing. It argues that this issue could have and

8 should have been raised by Plaintiff's counsel at the hearing and that

9 it is too late to raise it now.

10 Though the Court would agree that counsel has a duty to raise

11 issues like the one at bar in the administrative hearing, it notes

12 that Plaintiff has jettisoned his counsel from that hearing and

13 retained new counsel. The Court does not feel that it is appropriate

14 in this case to punish Plaintiff for the errors of his former counsel.

15 For these reasons, the ALJ's decision is reversed and the case is

16 remanded to the Agency for further proceedings consistent with this

17 Memorandum Opinion and Order.

18 IT IS SO ORDERED.

19 DATED: April 29, 2015

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21 PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE

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