

Exhibit A

**SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS**

TRANSCRIPT

In the case of:

Marcelino Gomez

Claimant

Claim for:

Period of Disability and
Disability Insurance Benefits, and
Supplemental Security Income Benefits

618-09-7740

Wage Earner
(Leave blank in SSI Claims, or if the name
is the same as above.)

Social Security Number

Hearing Held at:

San Bernardino, California

(City, State)

December 11, 2003

(Month, Day, Year)

by:

John Belcher

(Administrative Law Judge)

APPEARANCES:

Marcelino Gomez, Claimant
Mr. Keenan, Attorney for Claimant
Sandra Miranda, Interpreter
Dr. Lowell Sparks, Jr., Medical Expert
Corinne Porter, Vocational Expert

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Marcelino Gomez

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(The following is a transcript of the hearing held before John Belcher, Administrative Law Judge, Office of Hearings and Appeals, Social Security Administration, on December 11, 2003, in the case of Marcelino Gomes, Social Security number 618-09-7740. The Claimant, Marcelino Gomez, appeared in person and was represented by his attorney, Mr. Keenan. Also present were Sandra Miranda, Interpreter, Dr. Lowell Sparks, Jr., Medical Expert, and Corinne Porter, Vocational Expert.)

(The hearing commenced at 4:00 p.m., on December 11, 2003.)

OPENING STATEMENT BY ADMINISTRATIVE LAW JUDGE:

ALJ: This hearing is now open. It's 4:00 in the case of Marcelino Gomez, Social Security number 618-09-7740. Ms. Interpreter, could you please state your full name for the record?

INT: Sandra, last name is Miranda.

ALJ: And could you please tell me your address and telephone number?

INT: My address is 23396 Via Montego, V-i-a M-o-n-t-e-g-o, Marino Valley, California, 92557. Telephone number is 909-990-0075.

ALJ: And are you in any way related to Mr. Gomez?

INT: No.

ALJ: Okay. Mr. Gomez, you filed an application for disability insurance benefits and supplement security income benefits on December 20 of 2001 indicating you became unable to perform substantial work on March 5 of 2000. Your claim was denied by Social Security both initially and after a request for reconsideration, after which on November 12 of 2002 you requested a hearing. The general issues in this case are whether a period of disability may be established under the Social Security Act and

whether you are entitled to any disability insurance benefits or supplemental security income as a disabled individual under the Act. Mr. Keenan, I have exhibits marked 1A through 10F, is that right? Yeah, 10F in the file. We have already added Exhibit 11E at the last hearing, which was postponed in order for Mr. Gomez to have an opportunity to find an attorney. It's now in the file. Do you have any objections to any of the exhibits?

ATTY: None.

ALJ: Okay. Then I'm going to admit all the exhibits from 1A through 10F into the record or evidence into the record of evidence -- into evidence.

(Exhibits 1A through 10F, previously identified, were received into evidence and made a part of the record thereof.)

ALJ: Mr. Gomez, could you please state your full name for the record?

CLMT: Marcelino Gomez.

ALJ: Okay. No middle name?

CLMT: Pesh.

ALJ: How do you spell that?

CLMT: P-e-s-h.

ALJ: Have you ever been known by any other names?

CLMT: No.

ALJ: No nicknames?

CLMT: No.

ALJ: And I have your birth date as April 26 of 1958, is that correct?

CLMT: Yes.

ALJ: Are you are presently 45 years old then?

CLMT: Yes.

ALJ: And in what country were you born in?

CLMT: Yucatan, Mexico.

ALJ: Okay. When did you come to the United States?

CLMT: Maybe -- I was 17, maybe 1973.

ALJ: That would be about 15 years old. Did you come here when you were 19?

CLMT: I was 17 when I came into the country.

ALJ: And are you a resident, alien, or a citizen?

CLMT: Resident, permanent resident.

ALJ: And are you left or right-handed?

CLMT: Right-handed.

ALJ: And do you know how tall you are?

CLMT: I believe it's 5'1".

ALJ: And do you know what your weight is?

CLMT: 180.

ALJ: Dr. Sparks, could you please state your full name for the record?

ME: Lowell Sparks.

ALJ: And does the curriculum vitae in the file accurately reflect your qualifications?

ME: Yes.

ALJ: Are there any objections to the doctor's qualifications?

ATTY: None.

ALJ: Doctor, have you ever personally examined the Claimant?

ME: No.

ALJ: Have you had an opportunity to review the evidence including the medical records in this matter?

ME: Yes.

ALJ: And do you have any questions that you would like to ask the Claimant?

ME: Yes.

ATTY: Do we need him to be sworn in first?

ALJ: Yeah. We probably should. There seems to be a problem today. Mr. Gomez, I've asked you a number of questions. Did you answer all of those questions honestly?

CLMT: Yes.

ALJ: Thank you. Dr. Sparks, I've asked you some questions did you answer all of those honestly?

ME: Yes.

ALJ: Okay. Go ahead and ask your questions.

(SANDRA MIRANDA was duly sworn to act as an interpreter.)

(The Claimant, MARCELINO GOMEZ, having been first duly sworn, testified as follows:)

EXAMINATION OF CLAIMANT BY ATTORNEY:

Q Mr. Gomez, you had the sleep apnea test last June.

A Yes.

Q Have long have you had trouble sleeping?

A Two years.

Q Two years. Two years before this summer?

A Two years prior to the examination.

ATTY: Okay. So, Your Honor, what period are we considering here?

ALJ: From March 5, 2000.

ATTY: 3/2000, okay.

BY ATTORNEY:

Q And they gave you an attachment for your nose and some oxygen.

A Yes.

Q And do you still use that at night?

A Yes, I'm still using that.

Q Does that help you?

A Very little.

Q Okay. Now, how many hours do you sleep at night?

A There's nights that I sleep three hours.

Q I see.

A Prior to that I would sleep maybe two hours.

Q And are you sleeping during the day?

A No, I don't sleep. I have trouble sleeping at night, and I can't sleep during the day. I get sleepy sleeping, but I don't sleep.

Q So, he's sleepy during the day. Does he have trouble concentrating during the day?

A What I'm constantly thinking about is the pain that's within my back.

Q Okay. Now, what time do you go to bed normally?

A 9:00.

Q And what time do you get up in the morning?

A I usually wake up at 10:00, because I'm very tired. I wake up very early, and I walk throughout the house.

Q Okay. So, he only sleeps two or three hours. Is he in bed all the time?

A Yes. I go buy something to eat. I get up. I take a shower.

Q Okay. Now, does he sleep in the bed or does he have to sit up in a chair?

A Well, right now he sleeps in the bed but prior to that I would sleep sitting up.

Q And does he have to prop himself up with several pillows?

A Before.

Q Yes. Now, his back has been a problem for how long?

A Its been, I believe, four years.

Q And did he have an injury or an accident?

A I got hurt in a work accident.

Q And when was that?

A That's what I don't remember at this time. I can't remember.

Q But it was about four years ago?

A Yes, more or less.

Q And what was he doing when he got injured?

A I was throwing away trash.

Q I see. Okay. And what does he do for his back pain now?

A The doctor recommended that I do some exercises. He sent me to therapy but the pain did not go away with the therapies.

Q And does he take any pain medicine or Motrin medicine?

A Yes. First I was given Motrin, now I'm drinking Tylenol. I'm sorry. Now I'm taking Tylenol.

Q Anything else?

A I'm also taking Celexa. I think it's for the pressure.

Q Depression.

A Depression, yes.

Q Is he still taking the Celexa?

A Yes.

Q Does that help?

A More or less, yes, it's helping.

Q And what is he depressed about?

A I think it's due to the pain that I'm feeling. I don't go out. Sometimes I just go out to buy and then I come back.

Q How far can he walk now?

A Well, the store that's by my home is probably three corners long.

ATTY: Is that three blocks?

INT: He said corners though.

CLMT: Blocks.

INT: He says corners.

ALJ: He walks three blocks?

INT: Right. Three blocks.

CLMT: But I think I probably can walk probably a mile, but I'll tell you my knee and my back starts hurting me.

ATTY: Okay. And can he drive a car?

CLMT: At this time, I'm not presently driving, because of the problems due that hardly I don't sleep, and I'm very nervous.

BY ADMINISTRATIVE LAW JUDGE:

Q Do you have a driver's license?

A Yes, I do.

Q And when was the last time you did drive?

A It's probably been three years I think.

Q And what exactly about the driving is he worried about?

A When I drive, well, before I wasn't as worried. The way I am now, because of the pain, I'm scared to crash. It's the nerves and back. And hardly, due to lack of sleep, I tend to get more nervous.

Q So, basically he's worried?

A I'm worried due to the pain that does not go away.

Q And worried about his ability to drive?

A Yes, yes.

Q Yes, okay.

A I get very nervous.

Q And can he sit for very long?

A I would think that I could sit probably for one hour and then it begins right here. This lower part seems to start hurting and that's why I get up and walk.

Q He gets up and walks around and then --

A Yes.

Q -- and then can he sit down again?

A Yes. I'll sit down or I'll lay down.

Q And how many hours a day does he watch television?

A Probably two hours but then I get sleepy.

Q Does he ever fall asleep in the chair?

A No. I go to my bed. I'm not used to sleeping when I watch TV. I go to my bed.

Q So, watching TV makes him sleepy and then he goes to bed?

A Yes. And also when I'm reading I get sleepy.

Q Okay. What's the most he's ever weighed?

A My body? Maybe 190.

Q 190, yeah. We have a weight of 182.

A When I started working for the manufacturing company I lost a lot of weight and now I gained the weight back.

Q And has he tried to go on any diets? Tried to lose weight?

A Just this week the doctor told me I should eat a lot of fruits, but I don't have any money. I don't have any money to buy fruits. I eat whatever my parents buy me.

Q In 1991, he broke his elbow.

A Yes.

Q And does that bother him now?

A Yes, it does.

Q How?

A It hurts all up within this area and this region here.

ALJ: Let the record reflect that the Claimant is showing his entire lower including over the hand and under the hand, over the whole hand apparently.

ATTY: That's all, Your Honor.

ALJ: Counsel, do you have any questions for your client?

ATTY: Yes.

BY ATTORNEY:

Q The last time you worked that you were working emptying trash, cleaning things.

A Yes.

Q And how did that work come to an end?

A How did it finish? They fired me.

Q What was the reason?

A I think it was maybe due to the fact that I told them that I was ill. They didn't believe me. They said that my work wasn't producing like before. And I would tell them my back's hurting, my hands are hurting me, and they said it was just excuses I was using. They never believed me, and they fired me.

Q Did you ever try to get work after that?

A No, because I started feeling the pains, and I preferred -- what I did is I found a doctor on my own. When I went to the

doctor, my own account, when I'm fine I will pay them, and I will start working again.

Q At that time that you stopped working was it primarily the low back that was hurting you?

A Yes. Yes, it was the lower back. I don't understand why it hurts all the way up here.

Q Okay. You're indicating your neck.

A I don't know why it's hurting. What got injured was my lower back and the pain that I feel is again in the back of my neck.

Q Okay. So, you feel pain in your low back, and it goes up to your neck.

A Yes, on top. All this along here, all this.

Q All the way up?

A To the top.

Q Has that gotten better, worse, or has it stayed the same since March of 2000?

A Well, like I said, right now I can move my hands, but they become numb.

Q I'm referring onto his back pain.

A It's always hurting a lot.

Q So, its been pretty stable for the last few years?

A Yes, always. It's always constantly -- there's times I don't even know what to do. They told me to bathe with warm or hot water. I tried doing that and no, it doesn't come out well.

Q Other than the pain in your back and also in your right elbow, do you have pain anywhere else?

A Yes, in the hips.

Q In your hips.

A Then again I didn't have that before. And now I have this.

Q When did that start?

A This pain in the pain, it's probably been six months. Six months ago.

Q Was that --

A And the pain in the legs has also been awhile too. It becomes numb.

INT: And he's referring to the right leg right now.

ATTY: Okay. How long have you had pain in your right leg?

CLMT: Almost the same as the back. I think when I injured my back, which was a year, year and a half ago, is when the pain in the leg started. I feel itching. The way it is right now it's numb. I feel like pinching it.

ATTY: Do you have numbness in your left side?

CLMT: Yes, at times. This just recently I felt this.

ALJ: What? Just -- what just recently?

CLMT: My knee on this side.

ALJ: The left knee?

CLMT: Yes. I just realized it when they started sending me to physical therapy. The doctors found this out. I didn't even know.

BY ATTORNEY:

Q How long have you been in physical therapy?

A I think maybe two months or maybe a month and a half.
Something like that.

Q Has it worked for you?

A No, it does not. I told them that it wasn't helping. And they told me they would send me to the chiropractor, but they haven't sent me and that's when they sent to the Sweet Clinic.

Q When you're at home do you do anything for yourself to ease the pain?

A Yes. What I do is a little bit of exercises. I do the exercises that the doctor says so I can recover. But it's very little I do.

Q So, you exercise?

A Movements more.

Q Stretching?

A Stretching, little by little. That's what I do.

Q Do you use heat?

A No. I used it on my back before but not anymore. Not anymore. Nothing helps anymore.

Q Okay. Where do you live right now?

A The same address. I forget the name. 7434 --

Q What city?

A In San Bernardino, apartment number nine.

Q Who do you live there with?

A With my parents, my mother and father.

Q So, the three of you live there?

A Yeah, three.

Q Do you have any work around the house that you do?

A No. If I had work I would I would do -- I would buy all the things that the doctors have ask me to get. I don't have any work, because of my hands, my fingers.

Q Do you have pain in your hands and fingers too?

A Yes. When I grab constantly they hurt.

Q Are you right-handed or left-handed?

A This one here. I'm saying the right hand.

Q You said that you could sit for one hour.

A Yes.

Q How long can you stand?

A No, I haven't become aware of that. Sometimes when I'm standing I feel like I'm going to fall over, but I don't know the duration.

Q Is it easier to sit or stand?

A I'd say sit and lay down and walk. When I stand for periods of time I'm scared to fall down.

Q Do you think you'd be able to stand for an hour?

A I'd say so, yes, I think. But I do feel like I like see some friends, I'll stand up to converse with them and that's when I've noticed, and I want to double over. That's what I'm saying I don't know why. The doctor should tell me why this happens. Until now, he hasn't told me a thing.

Q Within a typical eight-hour period how much time do you lay down?

A In one day?

Q Eight-hour period.

A I haven't become aware. I don't know. I lay down. I stand up. I walk. I haven't become aware.

Q Do you think you'd be able to work full-time at any job?

A I'd say no, because when I'm at home there's two little rooms. I have a very small vacuum. I clean it and my back starts to hurt. And it's a small home.

ATTY: That's all I have, Your Honor.

ALJ: Okay. Thank you. Doctor, anything you might wish to ask?

ME: Yes. Do you have any difficulty remembering?

CLMT: Yes.

ME: You had some difficulty remembering your city, your town

CLMT: Yes.

ME: What else do you have trouble remembering?

CLMT: One time I went into the store I was going to buy some things, and I got lost. I couldn't find the exit.

ME: I see. And do you lose things easily like your keys or --

CLMT: No, I don't lose my keys, because I hang them right here on my pants where they don't get lost or else they would get lost.

ME: How about, like, his wallet or -- that's all, Your Honor.

(The medical expert, Dr. LOWELL SPARKS, JR., having been duly sworn, testified as follows:)

EXAMINATION OF MEDICAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q Okay. Doctor, what impairment or impairments does the Claimant have and what is the basis for your opinion?

A Yes. He has obstructive sleep apnea, and he's being treated with nocturnal C-PAP. During his sleep apnea study, he had a period of 3 1/2 minutes with an oxygen saturation less than 85 percent. So, it's significant. He also is obese. His BMI is 33.5 and his neck size was measured at 18 1/2 inches or 47 centimeters. Number three, he has mechanical back pain associated with degenerative changes in L4 and 5 and disk disease of the L4, 5 disk.

Q What was the first part of that?

A Mechanical back pain.

Q Mechanical back and then you said something else.

A Yeah. He's got degenerative changes in the vertebrae L4 and L5 and in addition he has a degenerative disk between L4 and 5.

Q So, he has osteo-arthritis in the --

A Yes.

Q -- joint there?

A Yes.

Q Okay.

A He's status post continuity fracture of the right radial head in '91 with persistent elbow pain, and he has reactive depression. He's being treated with anti-depressants, Celexa. In addition, I think he has some cognitive difficulty, but it's hard for me to evaluate. He's a pretty stoic individual, I think. But I think the listing for sleep apnea really hangs on the degree of cognitive dysfunction an individual has.

Q Okay. Tell me what -- if you have it there before you, what the actual requirements are of the listing as per sleep apnea for one thing. And --

A Yeah. 3.10.

ALJ: Is it 3.10?

ATTY: It references 12.02 and 3.09.

BY ADMINISTRATIVE LAW JUDGE:

Q I think the cognitive difficulty would be 12.02. 3.09 is heart dysfunction as I recall.

A Yeah, on page 53 of my book, although many individuals with one of these will respond to prescribed treatment and some the disturbed sleep pattern and associated chronic nocturnal hypoxemia [phonetic] causes daytime sleepiness with chronic pulmonary hypertension and/or disturbances in cognitive function. Because this can affect memory or annotation of personality a longitudinal treatment record maybe needed to evaluate mental function.

Q Um-hum.

A Not all individuals with sleep apnea develop a functional impairment that affects work ability. When any gainful work is

precluded the physiological base maybe a chronic core point malady. Daytime somnolence [phonetic] maybe associated with disturbances in cognitive vigilance. Impairment of cognitive function maybe evaluated under organic mental disorders, 12.02.

Q That's only 112 of my book --

A I don't feel competent to do that.

Q -- and I've got those in front of me, and I've been reading them.

A Yeah.

Q One of the things we don't have, I think, is a documented persistence of at least one of the following, because that's what is required medically documented persistence of disorientation to time or place --

A Yeah, that's right. Exactly.

Q -- or memory impairment or perceptual or thinking disturbances or change in personality or disturbance in mood. We do have some documentation of depression.

A Yes.

Q Emotional inability.

A He described the incident with his daughter where he got lost, didn't know where he was.

Q Right. You were lost. Measured intellectual ability, and we have to then meet the criteria being which are marked resulting in at least two of the following marked restrictions, daily activities of activities of daily living, marked difficulties in maintaining social functioning's, marked difficulties in

maintaining concentration, persistence or pace or repeated episodes of decompensation of each of extended duration or we have to do a number C, which is also three different requirements. And those really require a psychological eval. Now, Mr. Keenan, do you want me to send your client out for a psychological evaluation to see if he might meet the requirements of 3.10 under the requirements of 12.02?

ATTY: Yes, Your Honor.

ALJ: Okay. I'm going to go ahead and finish up with the doctor's testimony at this time and in the absence of meeting a or equaling a listing. Doctor, based upon your knowledge, education -- well, first of all before I get into that I'm assuming based upon what I've heard about the sleep apnea is severe. What about the obesity?

ME: Yes.

BY ADMINISTRATIVE LAW JUDGE:

Q The degenerative disk disease and the arthritis in the back?

A Yes.

Q And the fractured elbow with residual pain?

A Yes.

Q And I'm going to hold off on characterizing the reactive depression until such time as I can --

A Okay, sure.

Q -- get a medical expert to testify on that -- or a psychological expert. Based upon your education, knowledge, and

experience in review of the record, were these impairments in existence as March 5 of 2000?

A Yes.

Q Do they continue to exist to the present time?

A Yes.

Q And depending upon the psychological eval you think he might meet 3.10?

A Yes.

ALJ: Sleep apnea. Do we have the sleep apnea results in the -- we do.

ATTY: Yeah.

ALJ: Yeah, I remember. Okay. I reviewed them. I should know that. Wasn't there an indication in those records though that his daytime sleepiness was considered mild? I thought I remembered that. Where was the study? Do you have --

ATTY: 8F1, I think.

ALJ: And, you know, I easily get these cases turned around sometimes.

ATTY: Yeah, I know.

ALJ: But --

ME: Well, he described his sleep apnea as severe.

ALJ: Um-hum.

ME: And they say he has very poor sleep efficiency.

ALJ: Yeah.

ME: Mr. Gomez's comprehensive sleep disorder questionnaire shows complaints of frequent snoring, excessive daytime sleepiness,

and difficulty getting to and staying asleep. The F4 sleepiness scale he scored 9 out of 24, which is in the range of mild daytime sleepiness --

ALJ: Yeah, that's what I'm remembering.

ME: Yeah, that's what you were talking about. I really don't have any experience with that test so I can't really comment. This was done seven months ago.

BY ADMINISTRATIVE LAW JUDGE:

Q Right. I thought I remembered that on the test. Okay. Would the Claimant's medical impairments be expected to result in any limitation or visibility of the function in the work setting?

A Yes.

Q What would those function limitations be?

A Mr. Gomez can lift 20 pounds frequently, ten pounds occasionally. He can stand or walk two hours out of an eight-hour day with an ability to change position. He can sit --

Q How often?

A Hourly. He can sit six hours out of an eight-hour day with hourly position change. Postural abilities he should only occasionally be required to climb stairs. He should not be using ladders, scaffolding, ropes. The rest of the postural are all occasional. Environmental he should not be exposed to dangerous, fast moving machinery. Should not be exposed to extreme cold temperature nor use vibrating tools, which vibrate his back.

Q That was no extreme cold?

A Yes.

Q Did the functional limitations exist as of March 5 of 2000?

A Yes.

ALJ: Okay, counsel, do you have any questions for the doctor.

ATTY: Just a couple.

EXAMINATION OF MEDICAL EXPERT BY ATTORNEY:

Q Doctor, the Claimant has complained today of pain in his right knee and there were some references to it in the file. Any diagnosis there?

A Not that I'm aware of. I don't know that he's had any x-rays. Can you verify where it was mentioned?

Q No. In addition to his testimony it was mentioned in 10F11 --

A Okay.

Q -- and I'm wondering if it maybe a mild arthritic-type condition with his knee.

A With his work history and changes in his back I wouldn't be surprised if he had some mild arthritic changes. He -- but we don't have any objective findings.

ALJ: 10F11 I'm looking at like the second line --

ATTY: Yeah.

ALJ: -- and it says right knee pain is resolved.

ATTY: Right. Apparently on this visit it's resolved.

ALJ: Oh, okay.

ATTY: But apparently it's a complaint he has occasionally.

ME: At this point, without any x-rays or any kind of -- we're just speculating.

ATTY: Would he have any limitation in terms of surfaces he could walk on?

ME: Well, I think short distances would be all right. I don't he'd have to -- you know, he's limited to two hours of walking a day, but I would say he would be limited to a block or less irregular surface.

ALJ: Pardon me. What was that?

ME: I don't --

ALJ: You faded off there at the end. I didn't --

ME: Oh. A block -- he should be only doing a block or less of having to walk on uneven --

ALJ: Oh, okay.

ME: Yeah.

ATTY: So, one block or less on uneven surfaces?

ME: Right.

ATTY: That's all I have, Your Honor.

ALJ: In what kind of a period? I mean, are we just talking about at a time and if you walked --

ME: Yeah.

ALJ: -- on a level surface he could walk another --

ME: Yes.

ALJ: -- block.

ME: Yes.

ALJ: Okay. All right, counsel, anything else you want to offer to me at this time before I adjourn and have some additional development?

ATTY: No.

ALJ: Okay. Then I will be setting the psychological eval for cognitive testing primarily and then we'll reconvene, and I may very well a ME at that time too.

ATTY: Okay.

ALJ: To help me out with the MS, MMS -- Medical Source Statement, MSS. There we go. Thank you very much. Hearing is adjourned.

(The hearing closed at 3:35 p.m. on December 11, 2003.)

C E R T I F I C A T I O N

I have read the foregoing and hereby certify that it is a true and complete transcription of the testimony recorded at the hearing in the above case, before Administrative Law Judge John Belcher.

Vicki L. Bailey

Vicki L. Bailey, Transcriber
York Stenographic Services, Inc.

Bob O'Boyle

Bob O'Boyle, Proofreader
York Stenographic Services, Inc.