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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-EASTERN DIVISION

LOREN RAY KOONTZ,)	Case No. EDCV 13-01510-AS
)	
Plaintiff,)	MEMORANDUM OPINION AND
)	
v.)	ORDER OF REMAND
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

Pursuant to Sentence 4 of 42 U.S.C. § 405(g), IT IS HEREBY ORDERED that this matter is remanded for further administrative action consistent with this Opinion.

PROCEEDINGS

On August 22, 2013, Plaintiff filed a Complaint seeking review of the Commissioner's denial of Plaintiff's application for Disability Insurance Benefits. (Docket Entry No. 1). On December 24, 2013, Defendant filed an Answer and the Administrative Record ("AR"). (Docket Entry Nos. 11, 12). The parties have consented to proceed before a United States Magistrate Judge. (Docket Entry Nos. 7, 8). On April 1,

1 2014, the parties filed a Joint Stipulation ("Joint Stip.") setting
2 forth their respective positions regarding Plaintiff's claims. (Docket
3 Entry No. 17). On June 1, 2015, Defendant filed an Exhibit to the Joint
4 Position Statement ("Joint Stip. Exhibit"). (Docket Entry No. 21).

5 The Court has taken this matter under submission without oral
6 argument. See C.D. Local R. 7-15; "Order Re: Procedures in Social
7 Security Case," filed October 30, 2013 (Docket Entry No. 5).

8
9 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

10 On August 25, 2010, Plaintiff, a former cabinet installer (see 1 AR
11 178), filed an application for a period of disability or Disability
12 Insurance Benefits, alleging an inability to work since March 22, 2010.
13 (See 1 AR 159-65). On March 12, 2012,¹ the Administrative Law Judge
14 ("ALJ"), Marti Kirby, heard testimony from Plaintiff and vocational
15 expert Corinne Porter. (See 1 AR 44-76). On March 15, 2012, the ALJ
16 issued a decision denying Plaintiff's application. The ALJ determined
17 that Plaintiff had severe impairments -- osteoarthritis of the left
18 knee; degenerative joint disease of the right hip; degenerative disc
19 disease of the cervical spine; degenerative disc disease of the lumbar
20 spine; right radiculopathy; depression; and anxiety. The ALJ determined
21 that Plaintiff had the following residual functional capacity ("RFC")²:
22 the ability to perform light work with certain limitations, including:
23 lifting and/or carrying 20 pounds occasionally and 10 pounds frequently;
24 standing and/or walking for 4 hours out of an 8-hour workday, but no
more than 10 to 15 minutes at a time; a sit/stand option of 1 hour;

25 ¹ The transcript of the hearing incorrectly states the hearing
26 took place on March 12, 2013 (see 1 AR 44, 76). (See 1 AR 21, 151).

27 ² A Residual Functional Capacity ("RFC") is what a claimant can
28 still do despite existing exertional and nonexertional limitations. See
20 C.F.R. § 404.1545(a)(1).

1 pushing and/or pulling unlimited; bending, stooping, balancing and
2 climbing stairs occasionally; never kneeling, squatting or crawling;
3 reaching overhead occasionally; never pushing, pulling or operating foot
4 pedals with the left lower extremity; never walking on uneven terrain,
5 climbing ladders, ropes or scaffolds, working at unprotected heights,
6 around moving machinery or other hazards; no repetitive movement of the
7 head or neck, either side to side or up and down; limited to work not
8 involving high levels of stress; and occasionally will miss one day of
9 work per month due to pain, depression or side effects of medication.
10 Finding that there were jobs that exist in the national economy that
11 Plaintiff could perform, the ALJ found that Plaintiff was not disabled
12 within the meaning of the Social Security Act. (See 1 AR 21-36).

13 Plaintiff requested that the Appeals Council review the ALJ's
14 decision. (See 1 AR 15-17). Plaintiff submitted the following to the
15 Appeals Council: (a) legal arguments (see 1 AR 219-21); (b) medical
16 records, specifically, reports (Orthopedic Disability/Return to Work
17 Assessment Narrative Report; Multiple Impairment Questionnaire) prepared
18 by consultative examiner Chirag N. Amin, M.D. on July 3, 2012 (see 1 AR
19 222-25); and (c) medical records from Kaiser Permanent dated January 20,
20 2012 to April 5, 2012, March 27, 2012 to August 15, 2012, and January
21 31, 2011 to November 14, 2012 (see 2 AR 930-1009).

22 On June 26, 2013, the Appeals Council denied Plaintiff's request
23 for a review of the ALJ's decision (See 1 AR 1-7). In its denial, the
24 Appeals Council specifically declined to consider certain submitted
25 medical records: "We also looked at evidence from Chirag N. Amin, M.D.
26 and Kaiser Permanente, dated June 6, 2012 through April 1, 2013. The
27 Administrative Law Judge decided your case through March 15, 2012. This
28 new information is about a later time. Therefore, it does not affect

1 the decision about whether you were disabled beginning on or before
2 March 15, 2012." (1 AR 2).³

3
4 The ALJ's decision then became the final decision of the
5 Commissioner, allowing this Court to review the decision. See 42 U.S.C.
6 §§ 405(g), 1383(c).

7 **PLAINTIFF'S CONTENTIONS**

8
9 Plaintiff makes three challenges to the ALJ's Decision. In the
10 first claim of error, Plaintiff alleges the ALJ erred in rejecting the
11 opinion of the examining physician and certain portions of the opinion
12 of the treating physician. In the second claim of error, Plaintiff
13 alleges that the ALJ erred in finding Plaintiff's testimony regarding
14 his subjective complaints not credible. In the third claim of error,
15 Plaintiff alleges that the Appeals Council erred in failing to consider
16 and to incorporate into the administrative record the additional
17 evidence presented to the Appeals Council. (See Joint Stip. at 6-13,
18 16-18, 22-24).

19 **DISCUSSION**

20 After consideration of the record as a whole, the Court finds that
21 Plaintiff's third claim of error has merit and warrants a remand for
22 further consideration. Since the Court is remanding the matter based on
23 Plaintiff's third claim of error, the Court will not address Plaintiff's
24 first and second claims of error.

25 ³ Although the Appeals Council did incorporate into the
26 administrative record certain medical records, namely, Representative's
27 Briefs, dated July 27, 2012 and August 15, 2012, Medical Records from
28 Kaiser Permanente dated January 31, 2011, January 20, 2012 to April 5,
2012 and March 27, 2012 to April 26, 2012, and a treatment note from
Ronald Lee Warnell, M.D., dated December 29, 2012 (see 1 AR 5-6) -- the
additional evidence which the Appeals Council expressly declined to
consider was not incorporated into the administrative record.

1 **A. The Appeals Council Failed to Consider the Additional Evidence**
2 **Submitted by Plaintiff.**

3
4 Plaintiff asserts that the Appeals Council failed to consider the
5 additional evidence submitted by Plaintiff and to incorporate a copy of
6 the additional evidence into the administrative record. (See Joint
7 Stip. at 22-24).⁴ Defendant asserts that the Appeals Council properly
8 declined to consider the additional evidence submitted by Plaintiff.
9 (See Joint Stip. at 24-27).

10 As an initial matter, the Court has jurisdiction to address
11 Plaintiff's claim that the Appeals Council failed to consider the
12 additional evidence submitted by Plaintiff. See Harman v. Apfel, 211
13 F.3d 1172, 1180 (9th Cir. 2000) ("[W]e properly may consider the
14 additional materials because the Appeals Council addressed them in the
15 context of denying Appellant's request for Review.").

16 To the extent that Plaintiff is alleging that the Appeals Council
17 rejected the additional evidence and failed to incorporate the
18 additional evidence in violation of various provisions of the Hallex
19 manual (see Joint Stip. at 22-24), Plaintiff is not entitled to relief.
20 See Roberts v. Commissioner, 644 F.3d 931, 933 (9th Cir. 2011)(stating
21 that the Hallex manual "'does not carry the force of law and is not
22 binding upon the agency.'").

23 "The Appeals Council will consider . . . any new and material
24 evidence to it which relates to the period on or before the date of the
25 administrative law judge hearing decision." 20 C.F.R. §§ 404.976(b)(1),
26 416.1476(b). When evidence is submitted which does not relate to the
27 period on or before the date of the ALJ's decision, the Appeals Council

28 ⁴ A copy of the additional evidence submitted by Plaintiff to
the Appeals Council has been provided to the Court. (See Docket No. 21
["Exhibit to Joint Stipulation"]).

1 will return the additional evidence . . . with an explanation as to why
2 it did not accept the additional evidence[.]” Id.

3
4 A claimant does not need to show good cause before submitting new
5 evidence to the Appeals Council. Brewes v. Commissioner of Social Sec.
6 Admin., 682 F.3d 1157, 1162 (9th Cir. 2012). New evidence is material
7 if it “‘bear[s] directly and substantially on the matter in dispute,’
8 and there is a ‘reasonabl[e] possibility that the new evidence would
9 have changed the outcome of the . . . determination.’” Bruton v.
10 Massanari, 268 F.3d 824, 827 (9th Cir. 2001)(quoting Booz v. Sec’y of
11 Health & Human Servs., 734 F.2d 1378, 1380 (9th Cir. 1984)).

12 Here, by stating that it was not considering the additional
13 evidence submitted by Plaintiff because the “new information is about a
14 later time” and therefore did not affect the disability determination
15 (see AR 2), the Appeals Council arguably was not using the proper
16 standard. As noted above, the question for the Appeals Council was
17 whether the additional evidence “relates to the period on or before the
18 date of the administrative law judge hearing decision,” see 20 C.F.R. §§
19 404.976(b)(1), 416.1476(b), which in this case was March 15, 2012.

20 Contrary to Plaintiff’s assertion (see Joint Stip. at 23-24), it
21 appears that most of the additional evidence, particularly the
22 additional Kaiser Permanente records (see Joint Stip. Exhibit at 20-
23 148), did not relate to the period on or before March 15, 2012.
24 However, as Plaintiff contends (see Joint Stip. at 23), the Orthopedic
25 Disability/Return to Work Assessment Narrative Report and the Multiple
26 Impairment Questionnaire prepared by consultative examiner Dr. Amin (see
27 Joint Stip. Exhibit at 1-19) did relate to the period on or before March
28 15, 2012, as Dr. Amin specifically stated that the description of
Plaintiff’s symptoms and limitations applied as early as March 2010 (see
Joint Stip. Exhibit at 18).

1 Moreover, Dr. Amin's reports extensively describe Plaintiff's
2 symptoms and provide an opinion about Plaintiff's limitations which was
3 more restrictive than the RFC found by the ALJ. Since Dr. Amin's
4 reports bear directly and substantially on Plaintiff's claim of
5 disability, and since there is a "reasonable possibility" that Dr.
6 Amin's reports would have changed the outcome of the ALJ's decision, the
7 Appeals Council erred by not considering them.

8 **B. Remand Is Warranted**

9
10 The decision whether to remand for further proceedings or order an
11 immediate award of benefits is within the district court's discretion.
12 Harman, supra, 211 F.3d at 1175-78. Where no useful purpose would be
13 served by further administrative proceedings, or where the record has
14 been fully developed, it is appropriate to exercise this discretion to
15 direct an immediate award of benefits. Id. at 1179 ("[T]he decision of
16 whether to remand for further proceedings turns upon the likely utility
17 of such proceedings."). However, where, as here, the circumstances of
18 the case suggest that further administrative review could remedy the
19 Commissioner's errors, remand is appropriate. McLeod v. Astrue, 640
20 F.3d 881, 888 (9th Cir. 2011); Harman, supra, 211 F.3d at 1179-81.

21 Since the Appeals Council failed to consider the additional
22 evidence submitted by Plaintiff, remand is appropriate. Because
23 outstanding issues must be resolved before a determination of disability
24 can be made, and "when the record as a whole creates serious doubt as to
25 whether the [Plaintiff] is, in fact, disabled within the meaning of
26 Social Security Act," further administrative proceedings would serve a
27 useful purpose and remedy defects. Burrell v. Colvin, 775 F.3d 1133,
28 1141 (9th Cir. 2014)(citations omitted).⁵

⁵ The Court has not reached any other issue raised by Plaintiff
except insofar as to determine that reversal with a directive for the
(continued...)

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ORDER

For the foregoing reasons, the decision of the Commissioner is reversed, and the matter is remanded for further proceedings pursuant to Sentence 4 of 42 U.S.C. § 405(g).

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: June 2, 2015.

/s/
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE

⁵ (...continued)
immediate payment of benefits would not be appropriate at this time. “[E]valuation of the record as a whole creates serious doubt that Plaintiff is in fact disabled.” See Garrison v. Colvin, 759 F.3d 995, 1021 (2014). Accordingly, the Court declines to rule on Plaintiff’s claims regarding the ALJ’s rejection of the opinion of the examining physician and certain portions of the opinion of the treating physician and the ALJ’s finding that Plaintiff’s testimony was not credible. [[Because this matter is being remanded for further consideration, these issues should also be considered on remand.]]