

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

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOEL RODRIGUEZ,	)	Case No. ED CV 14-1820-PJW
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
v.	)	
	)	
CAROLYN W. COLVIN,	)	
Acting Commissioner of the	)	
Social Security Administration,	)	
	)	
Defendant.	)	

---

I. INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying his application for Social Security Insurance ("SSI") and Disability Insurance Benefits ("DIB"). He claims that the Administrative Law Judge ("ALJ") erred when she relied on the vocational expert's testimony to conclude that Plaintiff could work and when she rejected the treating doctor's opinion. For the following reasons, the ALJ's decision is reversed and the case is remanded for further proceedings.

II. SUMMARY OF PROCEEDINGS

In November 2011, Plaintiff applied for SSI and DIB, alleging that he had been disabled since October 2011, due to cirrhosis of the

1 liver, esophageal varices, hernia (groin), degenerative disc disease,  
2 anemia, depression, and post-traumatic stress disorder. (Administra-  
3 tive Record ("AR") 188-215.) His applications were denied initially  
4 and on reconsideration and he requested and was granted a hearing  
5 before an ALJ. In April 2013, he appeared with counsel and testified  
6 at the hearing. (AR 33-67.) Thereafter, the ALJ issued a decision  
7 denying benefits. (AR 9-20.) Plaintiff appealed to the Appeals  
8 Council, which denied review. (AR 1-3.) He then filed this action.

### 9 III. ANALYSIS

#### 10 A. The Vocational Expert's Testimony

11 The ALJ determined that Plaintiff was not capable of performing  
12 "fast-paced work such as assembly line work." (AR 13.) Despite this  
13 limitation, she concluded that Plaintiff could perform his past work  
14 as a user support analyst and as a telemarketer. (AR 19.) Plaintiff  
15 argues that the ALJ erred in reaching that conclusion because both  
16 jobs could require him to "work quickly and at a fast pace," which  
17 would be inconsistent with a limitation on fast-paced work. (Joint  
18 Stip. at 3-8.) There is no merit to this argument.

19 A user support analyst is someone who sits in an office and  
20 answers telephone calls from computer users who are having trouble  
21 operating their computers. See Dictionary of Occupational Titles  
22 ("DOT"), No. 032.262-010. Nothing about the description of this job  
23 in the DOT or in the record suggests that this is fast-paced work,  
24 like on an assembly line. The same is true for the telemarketing job,  
25 DOT No. 299.357-014. The fact that employers could impose quotas or  
26 time limits for these jobs does not transform them into fast-paced,  
27 assembly line work. Plaintiff's argument to the contrary--void of any  
28 support in the law or the record--is rejected.

1 B. The Treating Doctor's Opinion

2 Plaintiff's treating doctor, Dr. Diep Bui, opined that, as a  
3 result of Plaintiff's liver disease and hernia, he would have to lie  
4 down every hour and would miss work more than three times per month.  
5 (AR 439-41.) He also believed that these ailments prevented Plaintiff  
6 from sitting, standing, or walking for more than two hours and  
7 required him to change position every five minutes. (AR 439.) Had  
8 the ALJ accepted Dr. Bui's findings, she would have had to conclude  
9 that Plaintiff could not work. But she rejected it because she found  
10 that it was not supported by the objective medical evidence. (AR 17.)  
11 She highlighted the fact that X-rays of the spine, shoulder, and hip  
12 showed mild, unremarkable changes. (AR 17.) She pointed out that an  
13 examining doctor saw no evidence of "any significant kyphosis,  
14 lordosis or noticeable scoliosis" and no pain upon palpation of the  
15 muscle running along the spine. (AR 17.) And she noted that sitting  
16 and standing straight-leg testing was negative for both legs. (AR  
17 17.) Plaintiff argues that the ALJ's reasons were not specific and  
18 legitimate. (Joint Stip. at 13.) For the following reasons, the  
19 Court agrees.

20 All things being equal, ALJs are required to favor treating  
21 doctors' opinions over non-treating doctors' opinions. *Orn v. Astrue*,  
22 495 F.3d 625, 631 (9th Cir. 2007); *see also Morgan v. Comm'r*, 169 F.3d  
23 595, 600 (9th Cir. 1999) (explaining that a treating physician's  
24 opinion "is given deference because 'he is employed to cure and has a  
25 greater opportunity to know and observe the patient as an  
26 individual'"). But an ALJ may reject the opinion of a treating doctor  
27 in favor of a conflicting opinion of an examining doctor for specific  
28 and legitimate reasons that are supported by substantial evidence in

1 the record. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1042 (9th Cir.  
2 2007) (quoting *Orn*, 495 F.3d at 632).

3 Dr. Bui determined that Plaintiff was severely limited because of  
4 his liver disease and hernia. (AR 439-41.) The ALJ rejected Dr.  
5 Bui's opinion because she found that the X-rays, straight-leg testing  
6 results, and absence of pain on palpation of his back were  
7 inconsistent with Dr. Bui's opinion. (AR 17.) The problem with the  
8 ALJ's analysis is that it was not based on the reasons Dr. Bui cited  
9 for his opinion. Dr. Bui did not conclude that Plaintiff's  
10 musculoskeletal ailments caused him to be impaired; he concluded that  
11 Plaintiff's liver disease and hernia did. The ALJ never addressed  
12 those issues. Her rejection of Dr. Bui's opinion for reasons not  
13 relied on by Dr. Bui was in error. See *Orn*, 495 F.3d at 635 ("An ALJ  
14 may not exclude a physician's testimony for a lack of objective  
15 evidence of impairments not referenced by the physician. Rather, an  
16 ALJ must evaluate the physician's assessment using the grounds on  
17 which it is based."). For this reason, the ALJ's finding is reversed  
18 and the case is remanded.

1 IV. CONCLUSION

2 The Agency's decision denying Plaintiff's applications is hereby  
3 reversed and the case is remanded for further consideration.<sup>1</sup>

4 IT IS SO ORDERED.

5 DATED: March 25, 2016



6  
7 PATRICK J. WALSH  
8 UNITED STATES MAGISTRATE JUDGE  
9

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24 S:\PJW\Cases-Social Security\RODRIGUEZ, J 1820\Memorandum Opinion and Order.wpd  
25

---

26 <sup>1</sup> Plaintiff requested (in the alternative) that the case be  
27 remanded for an award of benefits. (Joint Stip. at 19-20.) The Court  
28 finds that such relief is not warranted because it is not clear that  
Plaintiff is entitled to benefits.