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15UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WILLIE LEE RIVERS,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. EDCV 16-0163-KK

MEMORANDUM AND ORDER

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Plaintiff Willie Lee Rivers (“Plaintiff”) seeks review of the final decision of the Commissioner of the Social Security Administration (“Commissioner” or “Agency”) denying his applications for Title II Disability Insurance Benefits (“DIB”) and Title XVI Supplemental Security Income Benefits (“SSI”). The parties have consented to the jurisdiction of the undersigned United States Magistrate Judge, pursuant to Title 28 of the United States Code, section 636(c). For the reasons stated below, the Commissioner’s decision is REVERSED and this action is REMANDED for further proceedings consistent with this Order.

I.**PROCEDURAL HISTORY**

On June 28, 2012, Plaintiff filed applications for DIB and SSI, alleging a disability onset date of March 22, 2008. Administrative Record (“AR”) at 143-52.

1 Plaintiff's applications were denied initially on December 17, 2012 and upon
2 reconsideration on June 26, 2013. Id. at 91-95, 99-104. On July 22, 2013, Plaintiff
3 requested a hearing before an Administrative Law Judge ("ALJ"). Id. at 105-06.
4 On April 28, 2014, Plaintiff appeared with counsel and testified at a hearing before
5 the assigned ALJ. Id. at 25-48. A vocational expert ("VE") also testified at the
6 hearing. Id. at 43-47. On August 20, 2014, the ALJ issued a decision denying
7 Plaintiff's applications for DIB and SSI. Id. at 11-21.

8 On September 4, 2014, Plaintiff filed a request to the Agency's Appeals
9 Council to review the ALJ's decision. Id. at 5-7. On December 1, 2015, the
10 Appeals Council denied Plaintiff's request for review. Id. at 1-4.

11 On January 28, 2016, Plaintiff filed the instant action. ECF Docket No.
12 ("Dkt.") 1, Compl. This matter is before the Court on the Parties' Joint
13 Stipulation ("JS"), filed November 22, 2016. Dkt. 22, JS.

14 II.

15 **PLAINTIFF'S BACKGROUND**

16 Plaintiff was born on October 22, 1963, and his alleged disability onset date is
17 March 22, 2008. AR at 143-152. He was forty-four years old on the alleged
18 disability onset date and fifty years old at the time of the hearing before the ALJ.
19 Id. Plaintiff has a high school education and prior work experience as a heavy truck
20 driver. Id. at 165-71. Plaintiff alleges disability based on Type 1 diabetes,
21 neuropathy, arthritis in right foot, and cataract in right eye. Id.

22 III.

23 **STANDARD FOR EVALUATING DISABILITY**

24 To qualify for DIB and SSI, a claimant must demonstrate a medically
25 determinable physical or mental impairment that prevents him from engaging in
26 substantial gainful activity, and that is expected to result in death or to last for a
27 continuous period of at least twelve months. Reddick v. Chater, 157 F.3d 715, 721
28 (9th Cir. 1998). The impairment must render the claimant incapable of performing

1 the work he previously performed and incapable of performing any other
2 substantial gainful employment that exists in the national economy. Tackett v.
3 Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999).

4 To decide if a claimant is disabled, and therefore entitled to benefits, an ALJ
5 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are:

- 6 1. Is the claimant presently engaged in substantial gainful activity? If so, the
7 claimant is found not disabled. If not, proceed to step two.
- 8 2. Is the claimant's impairment severe? If not, the claimant is found not
9 disabled. If so, proceed to step three.
- 10 3. Does the claimant's impairment meet or equal one of the specific
11 impairments described in 20 C.F.R. Part 404, Subpart P, Appendix 1? If so,
12 the claimant is found disabled. If not, proceed to step four.¹
- 13 4. Is the claimant capable of performing work he has done in the past? If so, the
14 claimant is found not disabled. If not, proceed to step five.
- 15 5. Is the claimant able to do any other work? If not, the claimant is found
16 disabled. If so, the claimant is found not disabled.

17 See Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d 949,
18 953-54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b)-(g)(1), 416.920(b)-(g)(1).

19 The claimant has the burden of proof at steps one through four, and the
20 Commissioner has the burden of proof at step five. Bustamante, 262 F.3d at 953-
21 54. Additionally, the ALJ has an affirmative duty to assist the claimant in
22 developing the record at every step of the inquiry. Id. at 954. If, at step four, the
23 claimant meets his burden of establishing an inability to perform past work, the
24 Commissioner must show that the claimant can perform some other work that
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26 ¹ “Between steps three and four, the ALJ must, as an intermediate step, assess
27 the claimant's [residual functional capacity],” or ability to work after accounting
28 for his verifiable impairments. Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219,
1222-23 (9th Cir. 2009) (citing 20 C.F.R. § 416.920(e)). In determining a
claimant's residual functional capacity, an ALJ must consider all relevant evidence
in the record. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006).

1 exists in “significant numbers” in the national economy, taking into account the
2 claimant’s residual functional capacity (“RFC”), age, education, and work
3 experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721; 20 C.F.R.
4 §§ 404.1520(g)(1), 416.920(g)(1).

5 IV.

6 THE ALJ’S DECISION

7 **A. STEP ONE**

8 At step one, the ALJ found Plaintiff “has not engaged in substantial gainful
9 activity since March 22, 2008, the alleged onset date” of disability. AR at 13.

10 **B. STEP TWO**

11 At step two, the ALJ found Plaintiff “ha[d] the following severe
12 impairments: disorder of the right shoulder, dysfunction of the right ankle, and
13 obesity.” Id.

14 **C. STEP THREE**

15 At step three, the ALJ found Plaintiff “does not have an impairment or
16 combination of impairments that meets or medically equals the severity of one of
17 the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.” Id. at 14.

18 **D. RFC DETERMINATION**

19 The ALJ found Plaintiff had the following RFC “to perform medium work as
20 defined in 20 CFR 404.1567(c) and 416.967(c), except [Plaintiff] is limited to
21 frequent right upper extremity above-the-shoulder work.” Id. at 15.

22 **E. STEP FOUR**

23 At step four, the ALJ found Plaintiff “is unable to perform any past relevant
24 work.” Id. at 19.

25 **F. STEP FIVE**

26 At step five, the ALJ found “[c]onsidering the claimant’s age, education,
27 work experience, and residual functional capacity, there are jobs that exist in
28 significant numbers in the national economy that the claimant can perform.” Id.

1 Thus, Plaintiff “has not been under a disability, as defined in the Social Security
2 Act, since March 22, 2008, through the date of this decision.” Id. at 20.

3 **V.**

4 **PLAINTIFF’S CLAIM**

5 Plaintiff presents two disputed issues: (1) whether the ALJ’s RFC
6 determination was supported by substantial evidence; and (2) whether the ALJ
7 properly considered Plaintiff’s subjective statements in assessing his credibility.

8 The Court finds the first issue dispositive of this matter and thus declines to
9 address the remaining issue. See Hiler v. Astrue, 687 F.3d 1208, 1212 (9th Cir.
10 2012) (“Because we remand the case to the ALJ for the reasons stated, we decline
11 to reach [Plaintiff’s] alternative ground for remand.”).

12 **VI.**

13 **STANDARD OF REVIEW**

14 Pursuant to Title 42 of the United States Code, section 405(g), a district
15 court may review the Commissioner’s decision to deny benefits. The ALJ’s
16 findings and decision should be upheld if they are free of legal error and supported
17 by substantial evidence based on the record as a whole. Richardson v. Perales, 402
18 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Parra v. Astrue, 481 F.3d
19 742, 746 (9th Cir. 2007).

20 “Substantial evidence” is evidence that a reasonable person might accept as
21 adequate to support a conclusion. Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th
22 Cir. 2007). It is more than a scintilla but less than a preponderance. Id. To
23 determine whether substantial evidence supports a finding, the reviewing court
24 “must review the administrative record as a whole, weighing both the evidence that
25 supports and the evidence that detracts from the Commissioner’s conclusion.”
26 Reddick, 157 F.3d at 720 (citation omitted); see also Hill v. Astrue, 698 F.3d 1153,
27 1159 (9th Cir. 2012) (stating that a reviewing court “may not affirm simply by
28 isolating a ‘specific quantum of supporting evidence’”) (citation omitted). “If the

1 evidence can reasonably support either affirming or reversing,” the reviewing court
2 “may not substitute its judgment” for that of the Commissioner. Reddick, 157
3 F.3d at 720-21; see also Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012)
4 (“Even when the evidence is susceptible to more than one rational interpretation,
5 we must uphold the ALJ’s findings if they are supported by inferences reasonably
6 drawn from the record.”).

7 The Court may review only the reasons stated by the ALJ in his decision
8 “and may not affirm the ALJ on a ground upon which he did not rely.” Orn v.
9 Astrue, 495 F.3d 625, 630 (9th Cir. 2007). If the ALJ erred, the error may only be
10 considered harmless if it is “clear from the record” that the error was
11 “inconsequential to the ultimate nondisability determination.” Robbins, 466 F.3d
12 at 885 (citation omitted).

13 VII.

14 DISCUSSION

15 **THE ALJ’S RFC DETERMINATION WAS NOT SUPPORTED BY** 16 **SUBSTANTIAL EVIDENCE**

17 Plaintiff argues the ALJ erred when he determined Plaintiff had the residual
18 functional capacity to perform medium work with limitations to frequent right
19 upper extremity above-the-shoulder work because this conclusion was not
20 supported by substantial medical evidence. JS at 4. To support his claim, Plaintiff
21 makes three arguments: (1) the ALJ failed to consider limitations resulting from
22 Plaintiff’s diabetes mellitus; (2) the ALJ’s “right upper extremity limitation” is not
23 supported by any medical evidence; and (3) the ALJ failed to consider the effect of
24 Plaintiff’s varicose veins. Id. at 4-6.

25 The Court first finds the ALJ properly considered limitations resulting from
26 Plaintiff’s diabetes because the medical record supported his conclusion that
27 Plaintiff’s diabetic symptoms could be controlled provided Plaintiff “adhere[d] to
28 recommended medical management and medication compliance.” Id. at 14, 395;

1 see Warre v. Comm’r of Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir. 2006)
2 (“Impairments that can be controlled effectively with medication are not disabling
3 for the purpose of determining eligibility for SSI benefits.”). However, as
4 discussed below, the Court finds the ALJ’s RFC determination was not supported
5 by substantial evidence because: (1) the ALJ did not sufficiently develop the record
6 in considering Plaintiff’s right shoulder limitation; and (2) the ALJ failed to
7 consider the effect Plaintiff’s varicose veins had on his ability to stand and walk.

8 **A. PLAINTIFF’S RIGHT SHOULDER LIMITATIONS**

9 “In social security cases, the ALJ has a special duty to fully and fairly
10 develop the record and to assure that the claimant’s interests are considered.”
11 Brown v. Heckler, 713 F.2d 441, 443 (9th Cir. 1983). “Ambiguous evidence, or the
12 ALJ’s own finding that the record is inadequate to allow for proper evaluation of
13 the evidence, triggers the ALJ’s duty to conduct an appropriate inquiry.”
14 Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir. 2001) (citing Smolen, 80 F.3d
15 at 1288) (quotation marks omitted). Still, “[a] specific finding of ambiguity or
16 inadequacy of the record is not necessary to trigger this duty to inquire, where the
17 record establishes ambiguity or inadequacy.” McLeod v. Astrue, 640 F.3d 881, 885
18 (9th Cir. 2010). “When the ALJ’s duty is triggered by inadequate or ambiguous
19 medical evidence, the ALJ has an obligation to obtain additional medical reports or
20 records from the claimant’s treating physicians.” Held v. Colvin, 82 F. Supp. 3d
21 1033, 1040 (N.D. Cal. 2015).

22 Here, the ALJ failed to sufficiently develop the record by not seeking
23 medical records from Plaintiff’s treating orthopedist following his September 2013
24 supraspinatus tear diagnosis. As of March 4, 2014, Dr. David Lanum, a doctor of
25 family medicine and Plaintiff’s treating physician, notes Plaintiff “is having no
26 improvement in pain or functionality of the shoulder,” and that the
27 “[s]upraspinatus tear of the right shoulder [is] not improving with current
28 measures.” AR at 352, 480-81. According to Dr. Lanum’s records, following

1 Plaintiff's September 2013 diagnosis, Plaintiff was seeing an orthopedist and
2 receiving steroid injections and physical therapy to help address significant pain
3 caused by his shoulder injury. Id. at 473, 480, 487. However, while Dr. Lanum's
4 reports indicate Plaintiff was receiving ongoing treatment from an orthopedist for
5 his shoulder pain, they also note that Dr. Lanum is "unable to see any orthopedic
6 notes" from Plaintiff's visits. Id. at 480, 481. For example, on March 4, 2014, Dr.
7 Lanum writes he "is unable to visualize any orthopedic notes as there are none that
8 have been scanned from [Plaintiff's] appointment on 11/26/13." Id. at 481.
9 Additionally, on March 25, 2014, Dr. Lanum writes he is "still awaiting evaluation
10 by Orthopedics Consult." Id. at 484. Lastly, on May 12, 2014, which is the most
11 recent record in the AR, Dr. Lanum notes, "Orthopedics is having [Plaintiff] on a
12 physical therapy regimen," but he does not include any further detail on Plaintiff's
13 prognosis. Id. at 487.

14 Despite references to a treating orthopedist, the AR does not appear to have
15 any record of medical reports from this doctor. While the ALJ references medical
16 records which "displayed normal range of motion and strength in the claimant's
17 right upper extremity," he comes to this conclusion without having reviewed the
18 most updated notes from Plaintiff's treating orthopedist. See id. at 17. The Court
19 recognizes the AR contains an evaluation conducted by referring orthopedist, Dr.
20 Vicente Bernabe, who documents a full range of motion in Plaintiff's right
21 shoulder. Id. at 236. However, Dr. Bernabe's evaluation was conducted on
22 December 11, 2012, *prior* to Plaintiff's supraspinatus tear and hypertrophy
23 diagnosis. Id.

24 Due to the fact that Plaintiff's most recent medical records from his treating
25 physician, Dr. Lanum, reference a treating orthopedist whose notes were not
26 included in the AR, in addition to the fact that Dr. Lanum clearly indicates he was
27 unable to review the orthopedist's notes, the ALJ's duty to "make reasonable
28 efforts to address and develop issues raised by the medical evidence" should have

1 been triggered. Held v. Colvin, 82 F. Supp. 3d 1033, 1040 (N.D. Cal. 2015)
2 (holding that the inadequacy of certain medical reports triggered the ALJ’s duty to
3 conduct an appropriate inquiry). The Court recognizes the ALJ did make an effort
4 to develop the record by leaving it open after the April 28, 2014 hearing so that
5 Plaintiff could provide updated documents from Plaintiff’s treating clinic. AR at
6 29. However, in light of the ALJ’s affirmative duties to develop the record and the
7 clear references to treatment from an orthopedist following Plaintiff’s September
8 2013 diagnosis in the AR, the ALJ failed to satisfy his duty to conduct a full and fair
9 inquiry. Thus, because the ALJ based his RFC determination on an incomplete
10 medical record, the Court cannot find that his determination regarding Plaintiff’s
11 shoulder limitations was based on substantial evidence.

12 **B. PLAINTIFF’S VARICOSE VEINS**

13 As to Plaintiff’s argument regarding the ALJ’s failure to consider his
14 varicose veins, the Court finds the ALJ’s failure to consider this medical issue also
15 resulted in an incomplete RFC determination. At the hearing, Plaintiff’s attorney
16 described Plaintiff’s “venous insufficiency” as causing swelling in Plaintiff’s legs,
17 making it difficult for Plaintiff to walk. Id. at 30, 37. The Court recognizes that,
18 despite various treating physicians who have diagnosed Plaintiff as having varicose
19 veins, the medical record does not indicate whether Plaintiff’s varicose veins
20 caused Plaintiff any physical limitations. See id. at 215, 261, 266, 269, 295, 348.
21 Nevertheless, an ALJ’s failure to give “specific, clear, and convincing reasons” to
22 reject Plaintiff’s claims regarding his varicose veins and the effect they have on his
23 ability to walk precludes the Court from conducting a meaningful review of the
24 ALJ’s reasoning. See Brown-Hunter, 806 F.3d at 489. Thus, because the ALJ did
25 not consider the effect Plaintiff’s varicose veins may have had in combination with
26 all of Plaintiff’s other ailments, the ALJ’s RFC determination was erroneous.

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VIII.
RELIEF

A. APPLICABLE LAW

“When an ALJ’s denial of benefits is not supported by the record, the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation.” Hill, 698 F.3d at 1162 (citation omitted). “We may exercise our discretion and direct an award of benefits where no useful purpose would be served by further administrative proceedings and the record has been thoroughly developed.” Id. (citation omitted). “Remand for further proceedings is appropriate where there are outstanding issues that must be resolved before a determination can be made, and it is not clear from the record that the ALJ would be required to find the claimant disabled if all the evidence were properly evaluated.” Id. (citations omitted); see also Reddick, 157 F.3d at 729 (“We do not remand this case for further proceedings because it is clear from the administrative record that Claimant is entitled to benefits.”).

B. ANALYSIS

In this case, the record has not been fully developed. The ALJ must reconsider Plaintiff’s RFC determination by (1) reassessing Plaintiff’s statements regarding his shoulder pain in light of all of his current and updated medical records; and (2) considering the impact of Plaintiff’s varicose veins. Accordingly, remand for further proceedings is appropriate.

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IX.
CONCLUSION

For the foregoing reasons, IT IS ORDERED that judgment be entered REVERSING the decision of the Commissioner and REMANDING this action for further proceedings consistent with this Order. IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order and the Judgment on counsel for both parties.

Dated: December 19, 2016



HONORABLE KENLY KIYA KATO
United States Magistrate Judge