UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

J.R.L., Plaintiff, v. ANDREW M. SAUL, Commissioner of Social Security, Defendant.	Case No. 5:20-cv-01227-SHK OPINION AND ORDER

Plaintiff J.R.L.[1] ("Plaintiff") seeks judicial review of the final decision of the Commissioner of the Social Security Administration ("Commissioner," "Agency," or "Defendant") denying his application for disability insurance benefits ("DIB"), under Title II of the Social Security Act (the "Act"). This Court has jurisdiction under 42 U.S.C. § 405(g), and, pursuant to 28 U.S.C. § 636(c), the parties have consented to the jurisdiction of the undersigned United States Magistrate Judge. For the reasons stated below, the Commissioner's decision is REVERSED and this action is REMANDED for further proceedings consistent with this Order.

/ / /

[1] The Court substitutes Plaintiff's initials for Plaintiff's name to protect Plaintiff's privacy with respect to Plaintiff's medical records discussed in this Opinion and Order.

I. BACKGROUND

Plaintiff filed an application for DIB on January 16, 2017, alleging disability beginning on May 7, 2015. Transcript ("Tr.") 247-51.[2] Following a denial of benefits, Plaintiff requested a hearing before an administrative law judge ("ALJ") and, on May 3, 2019, ALJ Clary Simmonds determined that Plaintiff was not disabled. Tr. 122-134. Plaintiff sought review of the ALJ's decision with the Appeals Council, however, review was denied on April 15, 2020. Tr. 1-6. This appeal followed.

II. STANDARD OF REVIEW

The reviewing court shall affirm the Commissioner's decision if the decision is based on correct legal standards and the legal findings are supported by substantial evidence in the record. 42 U.S.C. § 405(g); Batson v. Comm'r Soc. Sec. Admin., 359 F.3d 1190, 1193 (9th Cir. 2004). Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (citation and internal quotation marks omitted). In reviewing the Commissioner's alleged errors, this Court must weigh "both the evidence that supports and detracts from the [Commissioner's] conclusions." Martinez v. Heckler, 807 F.2d 771, 772 (9th Cir. 1986).

"'When evidence reasonably supports either confirming or reversing the ALJ's decision, [the Court] may not substitute [its] judgment for that of the ALJ.'" Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting Batson, 359 F.3d at 1196); see also Thomas v. Barnhart, 278 F.3d 947, 959 (9th Cir. 2002) ("If the ALJ's credibility finding is supported by substantial evidence in the record, [the Court] may not engage in second-guessing.") (citation omitted). A reviewing

---

[2] A certified copy of the Administrative Record was filed on November 2, 2020. Electronic Case Filing Number ("ECF No.") 15. Citations will be made to the Administrative Record or Transcript page number rather than the ECF page number.

court, however, "cannot affirm the decision of an agency on a ground that the agency did not invoke in making its decision." Stout v. Comm'r Soc. Sec. Admin., 454 F.3d 1050, 1054 (9th Cir. 2006) (citation omitted). Finally, a court may not reverse an ALJ's decision if the error is harmless. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citation omitted). "[T]he burden of showing that an error is harmful normally falls upon the party attacking the agency's determination." Shinseki v. Sanders, 556 U.S. 396, 409 (2009).

III. DISCUSSION

A. Establishing Disability Under The Act

To establish whether a claimant is disabled under the Act, it must be shown that:

> (a) the claimant suffers from a medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months; and
>
> (b) the impairment renders the claimant incapable of performing the work that the claimant previously performed and incapable of performing any other substantial gainful employment that exists in the national economy.

Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)). "If a claimant meets both requirements, he or she is 'disabled.'" Id.

The ALJ employs a five-step sequential evaluation process to determine whether a claimant is disabled within the meaning of the Act. Bowen v. Yuckert, 482 U.S. 137, 140 (1987); 20 C.F.R. § 404.1520(a). Each step is potentially dispositive and "if a claimant is found to be 'disabled' or 'not-disabled' at any step in the sequence, there is no need to consider subsequent steps." Tackett, 180 F.3d at 1098; 20 C.F.R. § 404.1520. The claimant carries the burden of proof at steps one through four, and the Commissioner carries the burden of proof at step five. Tackett, 180 F.3d at 1098.

The five steps are:

> Step 1. Is the claimant presently working in a substantially gainful activity [("SGA")]? If so, then the claimant is "not disabled" within the meaning of the [] Act and is not entitled to [DIB]. If the claimant is not working in a [SGA], then the claimant's case cannot be resolved at step one and the evaluation proceeds to step two. See 20 C.F.R. § 404.1520(b).
>
> Step 2. Is the claimant's impairment severe? If not, then the claimant is "not disabled" and is not entitled to [DIB]. If the claimant's impairment is severe, then the claimant's case cannot be resolved at step two and the evaluation proceeds to step three. See 20 C.F.R. § 404.1520(c).
>
> Step 3. Does the impairment "meet or equal" one of a list of specific impairments described in the regulations? If so, the claimant is "disabled" and therefore entitled to [DIB]. If the claimant's impairment neither meets nor equals one of the impairments listed in the regulations, then the claimant's case cannot be resolved at step three and the evaluation proceeds to step four. See 20 C.F.R. § 404.1520(d).
>
> Step 4. Is the claimant able to do any work that he or she has done in the past? If so, then the claimant is "not disabled" and is not entitled to [DIB]. If the claimant cannot do any work he or she did in the past, then the claimant's case cannot be resolved at step four and the evaluation proceeds to the fifth and final step. See 20 C.F.R. § 404.1520(e).
>
> Step 5. Is the claimant able to do any other work? If not, then the claimant is "disabled" and therefore entitled to [DIB]. See 20 C.F.R. § 404.1520(f)(1). If the claimant is able to do other work, then the Commissioner must establish that there are a significant number of jobs in the national economy that claimant can do. There are two ways for the Commissioner to meet the burden of showing that there is other work in "significant numbers" in the national economy that claimant can do: (1) by the testimony of a vocational expert [("VE")], or (2) by reference to the Medical-Vocational Guidelines at 20 C.F.R. pt. 404, subpt. P, app. 2. If the Commissioner meets this burden, the claimant is "not disabled" and therefore not entitled to [DIB]. See 20 C.F.R. §§ 404.1520(f), 404.1562. If the Commissioner cannot meet this burden, then the claimant is "disabled" and therefore entitled to [DIB]. See id.

Id. at 1098-99.

B. Summary Of ALJ's Findings

Before examining Plaintiff's claims under the above discussed five-step sequential evaluation process, the ALJ analyzed whether res judicata applied to Plaintiff's instant claim.[3] The ALJ first noted that "[Plaintiff] was found to be not disabled in a final decision by an [ALJ] dated May 6, 2015 that was affirmed by the Appeals Council based on a prior application for disability and [DIB] filed on May 17, 2013." Tr. 122 (citation omitted). The ALJ then found that although she "finds [Plaintiff] is not disabled during the period relevant to th[e] decision, the [ALJ] does not adopt the specific findings of the prior ALJ under the sequential evaluation process for determining disability." Id. The ALJ found that "the presumption of continuing nondisability has been rebutted and the prior ALJ decision has no res judicata effect with respect to the non-adjudicated period because there has been a showing of changed circumstances affecting the issue of disability and there is new and material evidence relating to the issue of disability." Id. (internal citations omitted). The ALJ noted that "[t]he new and material evidence showing changed circumstances includes [Plaintiff's] testimony at the hearing as well as the documentary medical evidence submitted subsequent to the date of the prior decision by an ALJ." Id.

The ALJ then turned to the five-step sequential evaluation process and determined that "[Plaintiff] last met the insured status requirements of the . . . Act

---

[3] "The principles of res judicata apply to administrative decisions, although the doctrine is applied less rigidly to administrative proceedings than to judicial proceedings." Chavez v. Bowen, 844 F.2d 691, 693 (9th Cir. 1988). Further, a binding determination of nondisability at the ALJ or Appeals Council level "creates a presumption that the claimant continued to be able to work after that date." Lester v. Chater, 81 F.3d 821, 827-28 (9th Cir. 1996) (internal quotation marks omitted). Thus, "in order to overcome the presumption of continuing nondisability arising from the first [ALJ's] findings on nondisability, [a claimant] must prove changed circumstances indicating a greater disability." Chavez, 844 F.2d at 693 (internal quotation marks omitted). Changed circumstances can include "[a]n increase in the severity of the claimant's impairment[,]" the alleged existence of a new impairment not previously considered, or "a change in the claimant's age category, as defined in the Medical–Vocational Guidelines." Lester, 81 F.3d at 827.

on December 31, 2016." Tr. 124. The ALJ then found at step one, that "[Plaintiff] did not engaged in [SGA] during the period from his alleged onset date of May 7, 2015 through his date last insured of December 31, 2016 (20 CFR 404.1571 et seq.)." Id. At step two, the ALJ found that "[t]hrough the date last insured, [Plaintiff] had the following severe impairments: internal derangement and osteoarthritis of the bilateral knees; diabetes; hypertension; and diabetic neuropathy (20 CFR 404.1520(c))." Id. At step three, the ALJ found that through the date last insured, "[Plaintiff] did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525 and 404.1526)." Tr. 127.

In preparation for step four, the ALJ found that through the date last insured, Plaintiff had the residual functional capacity ("RFC") to:

> perform light work as defined in 20 CFR 404.1567(b) except he can lift, carry, push, or pull up to 20 pounds occasionally and up to 10 pounds frequently; he cannot operate foot controls; he can sit for up to six hours in an eight hour workday and can stand or walk for up to six hours in a eight hour workday; he may use an assistive device for long-distance ambulation; he can occasionally climb ramps or stairs; and ladders, ropes, or scaffolds; he can occasionally balance, stoop, kneel, crouch, or crawl; and he should have no concentrated exposure to uneven terrain, to vibration, or to hazards, such as moving machinery and unprotected heights.

Id. The ALJ then found, at step four, that "[t]hrough the date last insured, [Plaintiff] was unable to perform any past relevant work (20 CFR 404.1565)." Tr. 133.

In preparation for step five, the ALJ noted that "[Plaintiff] was born on August 28, 1967 and was 49 years old, which is defined as an individual closely approaching advanced age, on the date last insured (20 CFR 416.1563)." Id. The ALJ observed that "[Plaintiff] has a limited education and is able to communicate in English (20 CFR 416.1564)." Id. The ALJ then added that "[t]ransferability of

job skills is not material to the determination of disability because using the Medical-Vocational Rules as a framework supports a finding that [Plaintiff] is 'not disabled,' whether or not [Plaintiff] has transferable job skills (See Social Security Regulation ("SSR") 82-41 and 20 CFR Part 404, Subpart P, Appendix 2)." Id.

At step five, the ALJ found that "[t]hrough the date last insured, considering [Plaintiff's] age, education, work experience, and [RFC], there were jobs that existed in significant numbers in the national economy that [Plaintiff] could have performed (20 CFR 404.1569, 404.1569a)." Id. Specifically, the ALJ found that Plaintiff could perform the "light, unskilled" occupations of "Assembler, electronic accessories," as defined in the Dictionary of Occupational Titles ("DOT") at DOT 729.687-010, and "Small products assembler, II, DOT 739.687-030." Tr. 134. The ALJ based her decision that Plaintiff could perform the aforementioned occupations "on the testimony of the [VE]" from the administrative hearing, after "determin[ing] that the [VE's] testimony [wa]s consistent with the information contained in the [DOT]." Id.

After finding that "[Plaintiff] was capable of making a successful adjustment to other work that existed in significant numbers in the national economy[,]" the ALJ concluded that "[a] finding of not disabled is . . . appropriate under the framework of the above-cited rule." Id. (internal quotation marks omitted). The ALJ, therefore, found that "[Plaintiff] was not under a disability, as defined in the . . . Act, at any time from May 7, 2015, the alleged onset date, through [December 31, 2016], the date last insured (20 CFR 404.1520(g))." Id.

C. Issues Presented

In this appeal, Plaintiff raises two issues, whether the ALJ appropriately: (1) "found Plaintiff's lumbar spine impairment to be non-severe at Step Two"; and (2) "appropriately analyzed and weighted the opinion evidence in a way that supports the final decision with substantial evidence." ECF No. 16, Joint Stip. at 17.

D. Court's Consideration Of Second Issue Raised By Plaintiff

1. Parties' Arguments

Plaintiff argues that the ALJ erred by according little weight to the opinions of Dr. Bergey and Dr. Wymore and that "[t]he ALJ did not have support for the conclusion that a cane was necessary only for long-distance ambulation during the relevant period. Id. at 25-31 (citations omitted).

Defendant responds that "[t]he ALJ properly evaluated the medical opinion evidence" but did not respond to Plaintiff's argument that Plaintiff needed a cane for more than long-distance ambulation. Id. at 31-36. The Court finds the issue of Plaintiff's cane use to be dispositive here and addresses it below.

2. ALJ's Consideration Of Plaintiff's Need For A Cane To Ambulate Long Distances

As noted above, the ALJ's RFC finding noted that Plaintiff "may use an assistive device for long-distance ambulation." Tr. 127. The ALJ, however, did not explain why Plaintiff needed a cane only for long-distance ambulation. The ALJ, however, did discuss extensive evidence demonstrating the severity of Plaintiff's knee problems and Plaintiff's use of a cane since 2011 following Plaintiff's first knee surgery. Consequently, the Court notes this evidence below. With respect to Plaintiff's knee impairment, the ALJ observed that:

- Plaintiff "asserted he used a cane since his first surgery in 2011[,]" Tr. 128;
- Plaintiff "had a history of degenerative changes of the bilateral knees that resulted in right knee surgery arthroscopic surgery in April 2015[,]" Tr. 129 (citations omitted);
- Plaintiff presented in June 2015 for an orthopedic evaluation with right knee pain and had "significant swelling over the peripatellar and tibial plateau of the right knee," "tenderness to palpation over the medical and

lateral joint lines and tibial plateau of the right knee," and "diminished range of motion on flexion and exertion[,]" id.;

- "A recent CT study of the right knee showed evidence of prior arthroscopic and partial medial meniscectomy, and abnormal morphology and the regularity of the inferior articular surface of the posterior horn and body of the medial meniscus that was suggestive of a re-tear," as well as "internal progression of the medial femoral condyle osteochondral injury, moderate grade cartilage loss of the medial tibial plateau, and low-to-moderate grade cartilage fissures in the patellofemoral compartment[,]" id. (citations omitted);
- Plaintiff "was referred for a second opinion with a knee specialist to address ongoing complaints and continued to receive medication treatment[,]" id. (citation omitted);
- Plaintiff was seen in July 2015 and "an examination of the right knee was consistent with prior findings, except there was no significant swelling and [Plaintiff] had positive McMurray's test[,]" id. (citations omitted);
- In September 2015, Plaintiff's treating physician, Dr. Bergey noted that Plaintiff presented with "palpable tenderness over the medial and lateral joint line and on the patella of the right knee and tenderness to palpation over the lateral joint line of the left knee[,]" id. (citations omitted);
- "An examination on September 17, 2015 showed [Plaintiff] walked with an antalgic gait favoring the left lower extremity, there was crepitus of the patella on the right knee, and there was diminished range of motion on extension and flexion bilaterally, but there was no evidence of tenderness to palpation[,]" id. (citations omitted);
- A November 2015 follow-up evaluation for Plaintiff's knees "showed an antalgic gait pattern with a brace on the right knee, and an examination showed tenderness over the bilateral knees, but no diminished range of

motion of the patella or crepitus of the patella bilaterally" and resulted in Plaintiff being "referred for a surgical consultation for the right knee[,]" and "[a] subsequent examination in December 2015 was consistent with these findings, but also showed diminished range of motion of the right knee on flexion and extension[,]" Tr. 129-30 (citations omitted);

- "A subsequent examination by Dr. Bergey on February 3, 2016 continued to show bilateral knee tenderness, diminished range of motion of the right knee, and mildly diminished range of motion of the left knee[,]" Tr. 130;
- A March 2016 "examination showed [Plaintiff] had significant swelling over the peripatellar and tibial plateau of the right knee, ongoing right knee tenderness, . . . right knee diminished range of motion" and "a moderate Varus instability on the right knee with pain[,]" id. (citations omitted);
- "[E]xaminations by Dr. Bergey through June 2016 generally continued to show bilateral knee tenderness, ongoing antalgic gait, diminished range of motion that was most severe in the right knee, and on some occasions, mild crepitus[,]" id. (citations omitted);
- A May 2016 orthopedic examination "was consistent with other findings, showing right knee tenderness and diminished range of motion, as well as positive McMurray sign and weakness in the right quadriceps[,]" id. (citations omitted);
- An August 2016 MRI study of Plaintiff's left knee showed a radial tear involving the posterior horn of the medial meniscus[,]" id. (citations omitted);
- An October 2016 report noted that Plaintiff's left knee reportedly "recently gave out and was painful" and "[a]n examination showed there was diminished left knee range of motion, [Plaintiff] had an antalgic gait, a[] McMurray's test was positive[,]" and "[a]n MRI study of the left knee

was obtained what showed a complex tear of the lateral meniscus[,]" id. (citations omitted); and

- Plaintiff "was seen on December 16, 2016 for ongoing complaints of bilateral knee pain and an examination showed he walked with a significant antalgic gait pattern, there was palpable tenderness to the medial joint line and over the patella of the right knee, and bilateral tenderness to palpation of the lateral joint line of the knees[,]" id. (citations omitted).

3. Standard To Review ALJ's Analysis Of Plaintiff's RFC

The RFC is the maximum a claimant can do despite his limitations. 20 C.F.R. § 404.1545. In determining the RFC, the ALJ must consider limitations imposed by all of a claimant's impairments, even those that are not severe, and evaluate all of the relevant medical and other evidence, including the claimant's testimony. SSR 96-8p, available at 1996 WL 374184. The ALJ is responsible for resolving conflicts in the medical testimony and translating the claimant's impairments into concrete functional limitations in the RFC. Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1174 (9th Cir. 2008). Only limitations supported by substantial evidence must be incorporated into the RFC and, by extension, the dispositive hypothetical question posed to the Vocational Expert. Osenbrock v. Apfel, 240 F.3d 1157, 1163-65 (9th Cir. 2001).

4. ALJ's Decision Is Not Supported By Substantial Evidence

Here, as an initial matter, although the parties did not raise the issue, the Court observes that the ALJ found that "[Plaintiff] has a limited education[,]" Tr. 133, a fact that is supported by Plaintiff's testimony at the administrative hearing, that he completed only the eleventh grade and did not complete any additional education after the eleventh grade, Tr. 47-48. The regulations state that the Administration "generally consider[s] that a 7th grade through the 11th grade level of formal education is a limited education[,]" 20 C.F.R. § 404.1564(b)(3), whereas,

a "[h]igh school education and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above[,]" id. at § 404.1564(b)(4).

In the hypothetical questions the ALJ posed to the VE at the administrative hearing, however, the ALJ asked the VE whether an "individual with a high school education" and various other limitations could perform work that exists in significant numbers in the national economy. See Tr. 58-62. The ALJ then concluded in the written decision that Plaintiff was not disabled at step five of the sequential evaluation process because, based "on the testimony of the [VE]" from the administrative hearing, and "considering [Plaintiff's] . . . education, . . . there were jobs that existed in significant numbers in the national economy that [Plaintiff] could have performed." Tr. 133-34.

Consequently, because the ALJ's step-five finding was based on the VE's response to a hypothetical question that incorrectly overstated Plaintiff's education, the ALJ's step five finding is not supported by substantial evidence in the record. See Osenbrock, 240 F.3d at 1165 ("An ALJ must propound a hypothetical to a VE that is . . . supported by substantial evidence in the record that reflects all the claimant's limitations.").

Turning now to the issue of Plaintiff's need for a cane, the ALJ found that Plaintiff needed a cane for only long-distance ambulation and propounded hypothetical questions to the VE based on this finding. However, the ALJ failed to explain why Plaintiff needed a cane only to ambulate long distances and pointed to no evidence in the record to support this finding and the Court can find none. Instead, the ALJ discussed extensive evidence suggesting that Plaintiff had issues with his knees that persisted even when Plaintiff had not ambulated long-distances, suggesting that Plaintiff's need for, and use of, a cane was for more than long-distance ambulation only.

For example, as noted above, the ALJ repeatedly observed that Plaintiff walked with an antalgic gait pattern that was at times described by his doctors as significant, and, notably, there was no indication in any of the records discussed by the ALJ that Plaintiff's gait was antalgic only after ambulating long distances.

Moreover, the ALJ noted that Plaintiff was observed by his doctors to have had diminished range of motion, swelling, and tenderness in one or both knees, that his left knee reportedly "gave out" on him, that he had "weakness" in his right quadriceps and positive McMurray's tests, and that Plaintiff had varus instability in his left knee. There was similarly no indication in any of the records discussed by the ALJ that any of these symptoms were onset only after ambulating long distances. Instead, it appears that Plaintiff presented to his examinations—that occurred regularly throughout the relevant time period—with these impairments.

Thus, it follows that Plaintiff's use of a cane throughout the relevant time period, and since 2011 as the ALJ observed, was for more than just ambulating long distances. This is especially likely when the ALJ discussed no evidence of Plaintiff ambulating long distances anywhere in the record and the Court can find none, and when the record demonstrates that Plaintiff had, for example, varus instability in the same knee that gave out on him at around the same time an MRI study of that knee revealed a "complex tear of the lateral meniscus." Tr. 130.

Moreover, in addition to the evidence discussed by the ALJ as noted above, there is evidence in the record that the ALJ did not consider or discuss that indicates that Plaintiff used his cane for more than just long distance ambulation as the ALJ found. For example, one of Plaintiff's doctors opined in June 2018 that "[f]or the right knee and his need for a cane[, Plaintiff] is limited to semi-sedentary work with the ability to sit and stand at will." Tr. 880. Although this evidence is from June 2018, which is outside the relevant time period and is of limited value for purposes of determining the extent of Plaintiff's limitations during the relevant time period, the evidence is relevant for purposes of explaining how and why

Plaintiff uses his cane. This record indicates that Plaintiff's right knee impairment contributes to Plaintiff's necessity for a cane. And as discussed above, Plaintiff had bilateral knee issues throughout the relevant time period and there was no indication that those issues were cause by long-distance ambulation only, or at all.

Similarly, Plaintiff's treatment providers indicated in February 2017, two months after the relevant time period, that Plaintiff presented to the examination "utilizing a brace on his right knee and a cane in the right upper extremity[,]" that Plaintiff "was observed ambulating slowly and stiffly without a cane[,]" and that the examination "was . . . limited . . . due to pain." Tr. 909-10. While this information is again of limited relevance for purposes of determining Plaintiff's limitations during the relevant time period, it is again probative for determining how and why Plaintiff used a cane. Thus, it follows that Plaintiff used a cane to ambulate regular distances because there is no indication in this record that Plaintiff walked slowly and stiffly when only trying to ambulate a long-distance.

Finally, Plaintiff's need for a cane to do more than ambulate long distances only is material to this case because the record indicates that Plaintiff "is right-hand dominant" and that Plaintiff presented to physical examinations "utilizing a brace on his right knee and a cane in the right upper extremity." Tr. 909. Thus, it follows that Plaintiff's use of a cane to do more than ambulate long distances could erode his ability to perform the occupations the ALJ found Plaintiff could perform at step five because Plaintiff's dominant right hand would be used to hold his cane, thus diminishing Plaintiff's ability to perform other work tasks with his dominant right hand while holding his cane.

Accordingly, the ALJ's failure to explain why Plaintiff need a cane to ambulate long distances only, when the record is void of evidence to support this limitation and the Court can find none, leaves a gap in the record that prevents the Court from determining whether the ALJ's decision is supported by substantial

evidence. Zavalin v. Colvin, 778 F.3d 842, 846 (9th Cir. 2015) (citation omitted). As such, the Court finds that remand for further proceedings is necessary.

On remand, the ALJ shall clarify Plaintiff's need for a cane to ambulate only long distances in light of the evidence discussed above and the ALJ shall also elicit new VE testimony in response to new hypothetical questions that provide for an accurate description of Plaintiff's limited education. Because the Court finds that the above discussed issues are dispositive here, it does not address Plaintiff's arguments.

IV. CONCLUSION

Because the Commissioner's decision is not supported by substantial evidence, IT IS HEREBY ORDERED that the Commissioner's decision is **REVERSED** and this case is **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. § 405(g). See Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014) (holding that under sentence four of 42 U.S.C. § 405(g), "[t]he court shall have power to enter . . . a judgment affirming, modifying, or reversing the decision of the Commissioner . . . , with or without remanding the cause for a rehearing.") (citation and internal quotation marks omitted).

IT IS SO ORDERED.

DATED: 4/27/2021

HONORABLE SHASHI H. KEWALRAMANI
United States Magistrate Judge