

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL MURRIETA,)	1:08cv01330 DLB
)	
)	
Plaintiff,)	ORDER REGARDING PLAINTIFF'S
)	SOCIAL SECURITY COMPLAINT
v.)	
)	
MICHAEL J. ASTRUE, Commissioner)	
of Social Security,)	
)	
Defendant.)	

BACKGROUND

Plaintiff Michael Murrieta (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying his applications for disability insurance benefits and supplemental security income pursuant to Titles II and XVI of the Social Security Act. The matter is currently before the Court on the parties’ briefs, which were submitted, without oral argument, to the Honorable Dennis L. Beck, United States Magistrate Judge.¹

¹ The parties consented to the jurisdiction of the United States Magistrate Judge. On December 24, 2008, the action was reassigned to the Honorable Dennis L. Beck for all purposes.

1 **FACTS AND PRIOR PROCEEDINGS²**

2 Plaintiff filed his initial applications on September 20, 2002, alleging disability since
3 August 15, 2002, due to asthma and hepatitis C. AR 120-122, 136-144, 495-497. After his
4 applications were denied initially and on reconsideration, Plaintiff requested a hearing before an
5 Administrative Law Judge (“ALJ”). AR 70-73, 79-83, 84. ALJ James Ross held a hearing on
6 September 27, 2005, and issued an order denying benefits on December 8, 2005. AR 60-69, 506-
7 529. On April 28, 2006, however, the Appeals Council vacated the decision and remanded the
8 action for further proceedings. AR 96-99.

9 On October 18, 2006, ALJ Christopher Larsen held a hearing. He issued an order
10 denying benefits on January 26, 2007. On July 8, 2008, the Appeals Council denied review. AR
11 7-9.

12 Hearing Testimony

13 _____ALJ Larsen held a hearing on October 18, 2006, in Fresno, California. Plaintiff attended
14 with his attorney, Melissa Proudian. Vocational expert (“VE”) Jose Chaparro also appeared and
15 testified. AR 530.

16 Plaintiff testified that he was 49 years old at the time of the hearing. He was 5 feet, 7
17 inches tall and weighed 172 pounds. He started losing weight about three years ago, when he
18 began Interferon treatment for his hepatitis C. AR 535.

19 Plaintiff has lived in a boarding house for about three years. AR 536-537. He takes care
20 of his room but does not cook or clean. AR 537. Plaintiff has a driver’s license but does not
21 drive. AR 537. He has a GED. AR 538.

22 _____Plaintiff testified that he last worked in August 2002 as a janitor. He stopped after about
23 three months because he got sick. AR 539-540.

24 When asked why he felt he couldn’t work, Plaintiff first explained that he has hepatitis C
25 and cirrhosis. The hepatitis C, which was diagnosed after a liver biopsy about five years ago,
26

27 _____
28 ² References to the Administrative Record will be designated as “AR,” followed by the appropriate page
number.

1 causes severe joint pain. It also causes him to be tired and confused. AR 542-543. He has been
2 laying down a couple of times a day, for 30 minutes to an hour, for “quite a few years.” AR 543.

3 Plaintiff explained that he participated in a special study at University Medical Center
4 where he received Interferon for one year. He also received several oral medications that caused
5 chest pains, shortness of breath, depression and anxiety. AR 544-545. At the end of the
6 program, his viral load was down, but he continued to have aching bones, tiredness and anxiety.
7 AR 547-548. His viral load was back up shortly after the program ended. AR 549.

8 Plaintiff thought the achiness in his bones had increased since he stopped treatment. He
9 explained that the pain is everywhere and occurs everyday. Plaintiff testified that Advil and
10 Ibuprofen do not take the pain away, but later stated that three Advil takes the pain away
11 completely. AR 550. He takes Celebrex for the pain only sometimes because it makes his head
12 feel “weird.” AR 551.

13 _____Plaintiff also has asthma and suffers from shortness of breath and wheezing everyday.
14 AR 551. He thought he could walk a half mile before becoming short of breath. AR 552.
15 Because of pain in his lower back, Plaintiff thought he could sit for 40 minutes, at most, before
16 needing to stand and stretch. AR 552. He could stand for about an hour before needing to lay
17 down. He could lift about five pounds. AR 553. He thought he could concentrate on one thing
18 for about 30 minutes. AR 555.

19 _____Plaintiff testified that he spent a typical day watching television, talking on the phone and
20 talking to people. AR 553. He sometimes visits friends. AR 555. He does not cook, clean, do
21 laundry or shop for groceries. AR 554. Plaintiff goes to church every Sunday but cannot sit
22 through the service. AR 556.

23 _____For the first hypothetical, the ALJ asked the VE to assume a person of Plaintiff’s age,
24 education and work experience. This person could lift and carry 20 pounds occasionally, 10
25 pounds frequently, can stand and walk a total of six hours and can sit for a total of six hours.
26 This person must avoid concentrated exposure to fumes, dust, odors, gases and poor ventilation.
27 The VE testified that this person could not perform Plaintiff’s past relevant work as a janitor, but
28

1 could perform other positions in the national economy. For example, Plaintiff could perform the
2 position of bottling line attendant, cashier II, and housekeeping cleaner. AR 562-563.

3 For the second hypothetical, the ALJ asked the VE to assume that this person could lift
4 and carry 10 pounds occasionally, less than 10 pounds frequently. He could stand and walk a
5 total of two hours and could sit for a total of three hours. This person could not maintain
6 concentration, persistence and pace reliably through an eight hour day, meaning that “he can
7 maintain concentration, persistence and pace much of the time, maybe even most of the time but
8 he’s not going to get through eight hours without tuning out at some point.” The VE testified
9 that this person could not perform any work. AR 563-564.

10 Medical Record

11 In August 2002, Plaintiff saw his treating physician, David Cardona, M.D., and indicated
12 that he was having a hard time breathing for the past two weeks. Dr. Cardona diagnosed asthma
13 exacerbation and prescribed medication. AR 268

14 _____ On September 13, 2002, Plaintiff was admitted to Community Medical Centers for acute
15 asthma exacerbation, most likely secondary to bronchitis. A chest x-ray was negative. AR 214.
16 An ultrasound of his liver showed only a single 1.5-cm single mobile stone but an otherwise
17 normal common bile duct. AR 210, 212. His liver function tests were mildly elevated. He was
18 discharged in stable condition on September 16, 2002. AR 210-211.

19 _____ Plaintiff began treating with U.S. Dhillon, M.D., on September 21, 2002. He set forth the
20 working diagnoses of probable hepatitis C with liver function abnormalities, reflux esophagitis,
21 and a history of bronchial asthma, anxiety, IV drug use and smoking. Dr. Dhillon ordered further
22 testing. AR 306-309.

23 _____ Plaintiff returned to Dr. Cardona on October 22, 2002, and complained of pain in his left
24 shoulder. AR 263. Range of motion was decreased. An x-ray showed degenerative changes
25 with suspected shoulder impingement syndrome. AR 263-264.

26 An upper endoscopy evaluation performed by Dr. Dhillon on November 13, 2002,
27 showed remarkable gastroesophageal reflux disease, grade B, with mild erosions in the
28 esophagus and a mild to moderate hiatal hernia. AR 298.

1 _____ On November 14, 2002, State Agency physician Brian Ginsburg, M.D., completed a
2 Physical Residual Functional Capacity Assessment form. He opined that Plaintiff had to avoid
3 concentrated exposure to fumes, odors, dusts, gases and poor ventilation, but had no other
4 limitations. AR 234-243.

5 _____ In December 2002, and January and February 2003, Plaintiff saw Dr. Cardona and
6 complained of coughing and shortness of breath. His examinations were positive for wheezing
7 and he was prescribed Advair and Albuterol. AR 260-262.

8 Plaintiff returned to Dr. Dhillon on March 24, 2003. His March 12, 2003, liver biopsy
9 showed a “clinical history of hepatitis C with current liver biopsy showing moderate portal
10 chronic inflammation with moderate activity (grade 3/4) with severe bridging portal fibrosis with
11 changes of cirrhosis (grade 4/4).” AR 291-293,

12 On April 28, 2003, Plaintiff began treatment for hepatitis C with Dr. Dhillon. He
13 received an injection of Interferon and oral medication. AR 289.

14 On July 8, 2003, Plaintiff saw Dr. Dhillon in follow-up. His platelet count had increased
15 and his white blood cell count was slightly depressed. Plaintiff complained of depression and
16 anxiety, which Dr. Dhillon characterized as depression secondary to the PEG Interferon
17 treatment. He was started on antidepressants and told to return next week for his injection. AR
18 282.

19 On July 17, 2003, Plaintiff saw Jill Ostrem, M.D., for an internal medicine consultive
20 examination. Plaintiff complained mainly of asthma and hepatitis C. Examination of his lungs
21 and chest was normal. On examination of his liver, Dr. Ostrem was able to palpate the lower
22 edge of the liver, which was slightly tender. There was no tenderness to palpation in the midline
23 or paraspinal areas of his back. Straight leg raising was negative, range of motion was within
24 normal limits and there were no muscle spasms. Range of motion in his upper and lower
25 extremities was within normal limits and his gait was normal. His neurological examination was
26 also normal. Dr. Ostrem diagnosed chronic liver disease from hepatitis C, asthma and possible
27 anxiety disorder. She opined that Plaintiff could lift and carry 20 pounds occasionally, 10
28

1 pounds frequently, and could stand and walk for six hours. She believed that Plaintiff could sit
2 without restriction. AR 269-273.

3 Plaintiff returned to Dr. Dhillon on July 25, 2003. His platelet count was getting low and
4 Dr. Dhillon decided to stop treatment for a couple of weeks. AR 394.

5 In a Psychiatric Review Technique dated August 1, 2003, State Agency physician Carmen
6 E. Lopez, M.D., found no medically determinable impairment. AR 275.

7 _____ Also on August 1, 2003, Dr. Lopez completed a Physical Residual Functional Capacity
8 Assessment form. She opined that Plaintiff had to avoid concentrated exposure to fumes, odors,
9 dusts, gases and poor ventilation, but had no other limitations AR 337-344. This opinion was
10 affirmed on March 1, 2004. AR 344.

11 _____ A CT of Plaintiff's abdomen and pelvis revealed a fatty liver, with no focal liver lesion
12 seen, cholelithiasis and mild asymmetry of the seminal vesicles, right larger than left. AR 317-
13 318.

14 A treatment note dated November 20, 2003, indicates that Plaintiff was on therapy for his
15 hepatitis C, but lost his insurance. His asthma was stable on Advair and Albuterol. AR 310.

16 Plaintiff underwent pulmonary function tests on January 21, 2004. The tests were normal
17 and showed that his asthma appeared to be in good control. AR 384.

18 A February 6, 2004, abdominal ultrasound revealed cholelithiasis with normal bile ducts.
19 AR 379.

20 _____ On March 16, 2004, State Agency physician Glenn Ikawa, M.D., completed a Psychiatric
21 Review Technique and opined that Plaintiff's anxiety-related disorders were not severe. AR 336.

22 An abdominal ultrasound performed on March 20, 2004, revealed cholelithiasis. AR 373.

23 Plaintiff started Interferon therapy again on May 7, 2004. AR 362.

24 A treatment note from July 12, 2004, sets forth Plaintiff's symptoms of fatigue and
25 general malaise. AR 359.

26 Treatment notes from October 11, 2004, indicate that Plaintiff was not responding to
27 treatment for his hepatitis C. AR 356.

1 On May 4, 2005, Plaintiff attended his screening visit for his next study treatment at
2 Community Medical Center. AR 492. He began treatment on June 3, 2005. AR 490.

3 On June 25, 2005, Plaintiff reported that he was fatigued and could not function
4 throughout the day. He also complained of feeling agitated. He was instructed to continue the
5 medications. AR 487.

6 Plaintiff complained of arthralgia and anxiety on June 30, 2005. AR 486.

7 On July 8, 2005, Keleni M. Tukia, M.D., the research coordinator from UCSF, Fresno
8 Medical Education Program, wrote a one page letter explaining that Plaintiff began treatment
9 with the Center for Clinical Research at UMC on June 3, 2005. Dr. Tukia further explained that
10 Plaintiff's medications "has [sic] many side effects, some of which include severe debilitating
11 fatigue, headaches, nausea, vomiting, joint pains, loss of appetite, insomnia, anemia, neuropenia,
12 anxiety and depression." Plaintiff had been experiencing consistent episodes of fatigue which
13 "leave him unable to participate in many physical activities." Medications for his other medical
14 conditions "may further prevent him from participating in some activities requiring long standing
15 and physical labor." His range of concentration is also limited, and "therefore [Plaintiff] feels
16 that he cannot adequately function in a normal capacity while he is on treatment." His treatment
17 would continue for 42 more weeks. AR 401.

18 On July 8, 2005, Plaintiff reported that he had arthralgia but was trying to remain active
19 and had been working outdoors. AR 485.

20 On July 27, 2005, Plaintiff complained of mild fatigue, arthralgia and headaches.

21 In September 2005, Plaintiff complained of mild headaches, mild fatigue, irritability and
22 mild arthralgia. AR 479-480.

23 Plaintiff was instructed to decrease his medications on October 17, 2005, after he
24 complained of a panic attack and chest pain. He also complained of moderate anxiety and was
25 started on Lexapro. AR 478.

26 On October 20, 2005, Plaintiff complained of ongoing mild fatigue. AR 477.
27
28

1 Plaintiff returned for follow-up on November 18, 2005. He complained of arthralgia,
2 fatigue, bronchitis, insomnia and headaches. His irritability had also increased. Plaintiff was
3 instructed to increase his medications. AR 471.

4 On February 13, 2006, the 36th week of treatment, Plaintiff complained of constant mild
5 fatigue where there was no change in daily activities, arthralgia, insomnia and mild headaches.
6 He also complained of a memory impairment. He was instructed to continue the current study
7 medications. AR 461.

8 Plaintiff sought emergency room treatment on February 27, 2006, for widespread aches
9 and pain, forgetfulness, paranoid thinking and increased bruising. Treatment notes report that
10 this may be rheumatological manifestations. Plaintiff was sent home with instructions to follow-
11 up with labs and another appointment. AR 446-449.

12 On March 20, 2006, Plaintiff's study medications were stopped temporarily because he
13 complained of chest pains and moderate arthralgia. AR 441.

14 On March 27, 2006, he complained of an ongoing unsteady gait, but he had no noticeable
15 limp. His medications were restarted. AR 440.

16 On April 13, 2006, Plaintiff complained of diffuse aches and pains and forgetfulness. AR
17 438. A pulmonary function test performed subsequently was normal. AR 438.

18 Plaintiff's treatment ended on May 5, 2006. AR 437.

19 Plaintiff returned in follow-up on June 2, 2006. He complained of ongoing fatigue,
20 headaches and arthralgia. Plaintiff was diagnosed with GERD, arthritis and asthma. AR 436.

21 On July 27, 2006, Plaintiff saw Dr. Sadda for his asthma and complaints of pain in his
22 joints, hands and legs. He also complained of needle-like pain over his liver. Dr. Sadda referred
23 Plaintiff to the hepatitis clinic and allowed three months of disability. AR 433-434.

24 On July 29, 2006, Plaintiff went to the emergency room complaining of chest tightness.
25 He was diagnosed with anxiety exacerbation and released. AR 408-412.

26 On October 19, 2006, Usman Javed, M.D., completed a form for the Department of Child
27 Support Services indicating that Plaintiff's chronic joint pain prevented repetitive, fine
28 movements. He also opined that Plaintiff was prevented from working, or was substantially

1 reduced in his ability to work, and it was uncertain when he could return. Dr. Javed diagnosed
2 hepatitis C and cirrhosis and noted that he last saw Plaintiff on October 19, 2006. Plaintiff was
3 scheduled to return to Dr. Javed in three months. AR 494.

4 ALJ's Findings

5 The ALJ determined that Plaintiff had the severe impairments of asthma, cirrhosis and
6 hepatitis C. AR 17. Despite these impairments, he found that Plaintiff retained the residual
7 functional capacity ("RFC") to lift and carry 20 pounds occasionally, 10 pounds frequently, and
8 to stand, walk and sit for six hours each in an eight-hour period. Plaintiff had to avoid
9 concentrated exposure to irritants. AR 18. Based on the testimony of the VE, the ALJ
10 determined that although Plaintiff could not perform his past relevant work, he could perform a
11 significant number of jobs in the national economy. AR 23. Examples of occupations included
12 bottling line attendant, cashier II and housekeeping cleaner. AR 23.

13 **SCOPE OF REVIEW**

14 Congress has provided a limited scope of judicial review of the Commissioner's decision
15 to deny benefits under the Act. In reviewing findings of fact with respect to such determinations,
16 the Court must determine whether the decision of the Commissioner is supported by substantial
17 evidence. [42 U.S.C. 405](#) (g). Substantial evidence means "more than a mere scintilla,"
18 [Richardson v. Perales, 402 U.S. 389, 402 \(1971\)](#), but less than a preponderance. [Sorenson v.](#)
19 [Weinberger, 514 F.2d 1112, 1119, n. 10 \(9th Cir. 1975\)](#). It is "such relevant evidence as a
20 reasonable mind might accept as adequate to support a conclusion." [Richardson, 402 U.S. at](#)
21 [401](#). The record as a whole must be considered, weighing both the evidence that supports and
22 the evidence that detracts from the Commissioner's conclusion. [Jones v. Heckler, 760 F.2d 993,](#)
23 [995 \(9th Cir. 1985\)](#). In weighing the evidence and making findings, the Commissioner must
24 apply the proper legal standards. E.g., [Burkhart v. Bowen, 856 F.2d 1335, 1338 \(9th Cir. 1988\)](#).
25 This Court must uphold the Commissioner's determination that the claimant is not disabled if the
26 Secretary applied the proper legal standards, and if the Commissioner's findings are supported by
27 substantial evidence. See [Sanchez v. Sec'y of Health and Human Serv., 812 F.2d 509, 510 \(9th](#)
28 [Cir. 1987\)](#).

1 **REVIEW**

2 In order to qualify for benefits, a claimant must establish that he is unable to engage in
3 substantial gainful activity due to a medically determinable physical or mental impairment which
4 has lasted or can be expected to last for a continuous period of not less than 12 months. [42](#)
5 [U.S.C. § 1382c](#) (a)(3)(A). A claimant must show that he has a physical or mental impairment of
6 such severity that he is not only unable to do her previous work, but cannot, considering his age,
7 education, and work experience, engage in any other kind of substantial gainful work which
8 exists in the national economy. [Quang Van Han v. Bowen, 882 F.2d 1453, 1456 \(9th Cir. 1989\)](#).
9 The burden is on the claimant to establish disability. [Terry v. Sullivan, 903 F.2d 1273, 1275 \(9th](#)
10 [Cir. 1990\)](#).

11 In an effort to achieve uniformity of decisions, the Commissioner has promulgated
12 regulations which contain, inter alia, a five-step sequential disability evaluation process. [20](#)
13 [C.F.R. §§ 404.1520](#) (a)-(f), 416.920 (a)-(f) (1994). Applying this process in this case, the ALJ
14 found that Plaintiff: (1) had not engaged in substantial gainful activity since the alleged onset of
15 his disability; (2) has an impairment or a combination of impairments that is considered “severe”
16 (asthma, cirrhosis and hepatitis C) based on the requirements in the [Regulations \(20 CFR §§](#)
17 [416.920\(b\)\)](#); (3) does not have an impairment or combination of impairments which meets or
18 equals one of the impairments set forth in Appendix 1, Subpart P, Regulations No. 4; (4) cannot
19 perform his past relevant work; but (5) retains the RFC to perform a significant number of jobs.
20 AR 17-23.

21 Here, Plaintiff argues that the ALJ erred in ignoring Dr. Javed’s opinions.

22 **DISCUSSION**

23 _____Plaintiff’s sole argument revolves around Dr. Javed’s October 19, 2006, form in which he
24 opined that Plaintiff was unable to work, or was substantially reduced in his ability to work. He
25 further opined that Plaintiff’s chronic joint pain prevented repetitive, fine movements. Dr. Javed
26 diagnosed hepatitis C and cirrhosis and noted that he last saw Plaintiff on October 19, 2006. AR
27 494. Plaintiff argues that the ALJ erred by failing to address this opinion.

1 Here, the ALJ gave substantial weight to the opinion of Dr. Ostrem, who examined
2 Plaintiff in July 2003 and found him capable of light work. AR 21. He gave less weight to the
3 State Agency physicians who found Plaintiff capable of work at the heavy level of exertion. AR
4 21. As to Dr. Tukia's August 2005, letter, the ALJ explained that it was not entitled to any
5 significant weight. AR 21.

6 Plaintiff correctly argues that the ALJ did not address Dr. Javed's letter in any way.
7 Plaintiff argues, and the Court agrees, that this violates SSR 96-8p, which states that the RFC
8 "must always consider and address medical source statements," and directs that if the RFC
9 assessment conflicts with an opinion from a medical source, "the adjudicator must explain why
10 the opinion was not adopted."

11 While to the extent to which Dr. Javed treated Plaintiff is not clear, it appears that he was
12 a treating physician. At the beginning of the hearing, Plaintiff's counsel asked to keep the record
13 open because Plaintiff would be seeing "his doctor" the following day, October 19, 2006, and
14 that he would be completing a child support form. Plaintiff also testified that he stopped seeing
15 Dr. Tukia in July 2006, though he could not remember his new treating physician's name. AR
16 549. Dr. Javed's form also evidences a treating physician relationship of some kind in stating
17 that Plaintiff would return in three months. AR 494.

18 In any event, Dr. Javed was a "medical source" and the ALJ erred by ignoring the
19 opinion. The ALJ did not reference Dr. Javed's opinion during his review of the medical
20 evidence, nor did he explain why he rejected Dr. Javed's opinion that Plaintiff's chronic joint
21 pain prohibited repetitive fine movements. AR 494. In *Lingenfelter v. Astrue*, the Ninth Circuit
22 found error where the ALJ ignored the opinions of two treating physicians, who corroborated the
23 claimant's alleged pain and limitations, "without explanation." [*Lingenfelter v. Astrue*, 504 F.3d](#)
24 [*1028, 1037 \(9th Cir. 2007\)*](#). Here, Dr. Javed's limitations are based at least in part on Plaintiff's
25 chronic joint pain, a complaint that Plaintiff makes repeatedly throughout the medical records
26 and during the hearing.

27 *Lingenfelter* also cites the importance of the Ninth Circuit's decision in *Orn v. Astrue*,
28 which also directs this Court's findings. In *Orn*, the Ninth Circuit reiterated and expounded upon

1 its position regarding the ALJ’s acceptance of the opinion an examining physician over that of a
2 treating physician. The Court held that a treating physician’s opinion must be given controlling
3 weight if it is well-supported and not inconsistent with the other substantial evidence in the
4 record. [Orn v. Astrue, 495 F.3d 625, 631-32 \(9th Cir.2007\)](#). Demonstrating the importance of a
5 treating physician’s opinion, the Court further explained that even if the opinion is not entitled to
6 “controlling weight,” it is “still entitled to deference and must be weighed using all the factors
7 provided in 20 [C.F.R. § 404.1527.](#)” *Id.* at 632-633.

8 The Court recognizes that Dr. Javed’s opinion was short and not thoroughly supported,
9 but given the deference entitled to a treating physician in the Ninth Circuit and the mandates of
10 SSR 96-8p, the Court must conclude that the ALJ erred by wholly ignoring the opinion. At the
11 very least, the ALJ should have discussed Dr. Javed’s opinion and set forth specific and
12 legitimate reasons for rejecting it. See [Lingenfelter, 504 F.3d at 1038, n. 10](#) (explaining that the
13 ALJ cannot avoid the treating physician requirements “simply by not mentioning the treating
14 physician’s opinion and making findings contrary to it.”). Better yet, perhaps the ALJ should
15 have inquired further into Dr. Javed’s treatment history by requesting additional records.

16 In opposing Plaintiff’s argument, Defendant uses various findings in arguing that the
17 “ALJ’s decision clearly shows that Dr. Javed’s opinion could not be given any weight.”
18 Opposition, at 4. For example, Defendant cites the ALJ’s discrediting of Plaintiff’s subjective
19 complaints of joint and bone pain and reasons that Dr. Javed’s opinion could not have been given
20 weight because it relies on Plaintiff’s chronic joint pain. However, neither Defendant nor this
21 Court can speculate as to what the ALJ may have done had he analyzed Dr. Javed’s opinion.
22 While the Court can draw inferences properly supported by the record, the Ninth Circuit’s
23 approach to treating physician’s opinions prevents the Court from doing so under the facts of this
24 case. The Court may not accept post hoc explanations, [Barbato v. Commissioner of Social Sec.](#)
25 [Admin., 923 F.Supp. 1273, 1276, n. 2 \(C.D.Cal. 1996\)](#), and it may not speculate as to the ALJ’s
26 findings or the basis of the ALJ’s unexplained conclusions, [Lewin v. Schweiker, 654 F.2d 631,](#)
27 [634-35 \(9th Cir. 1981\)](#).

1 Section 405(g) of Title 42 of the United States Code provides: “the court shall have the
2 power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying,
3 or reversing the decision of the Secretary, with or without remanding the cause for a rehearing.”
4 In social security cases, the decision to remand to the Commissioner for further proceedings or
5 simply to award benefits is within the discretion of the court. McAllister v. Sullivan, 888 F.2d
6 599, 603 (9th Cir. 1989). “If additional proceedings can remedy defects in the original
7 administrative proceedings, a social security case should be remanded. Where, however, a
8 rehearing would simply delay receipt of benefits, reversal and an award of benefits is
9 appropriate.” Id. (citation omitted); *see also Varney v. Secretary of Health & Human Serv., 859*
10 F.2d 1396, 1399 (9th Cir.1988) (“Generally, we direct the award of benefits in cases where no
11 useful purpose would be served by further administrative proceedings, or where the record has
12 been thoroughly developed.”).

13 The Court finds that additional proceedings can remedy the ALJ’s error and therefore
14 REMANDS the action for further proceedings. *Smolen v. Chater, 80 F.3d 1273, 1292 (9th Cir.*
15 *1996)*. On remand, the ALJ must explain his treatment of Dr. Javed’s opinion and should
16 consider gathering additional information.

17 CONCLUSION

18 Based on the foregoing, the Court finds that the ALJ’s decision is not supported by
19 substantial evidence and is therefore REVERSED and the case is REMANDED to the ALJ for
20 further proceedings consistent with this opinion. The Clerk of this Court is DIRECTED to enter
21 judgment in favor of Plaintiff Michael Murrieta and against Defendant Michael J. Astrue,
22 Commissioner of Social Security.

23 IT IS SO ORDERED.

24 **Dated: July 20, 2009**

25 /s/ Dennis L. Beck
26 UNITED STATES MAGISTRATE JUDGE
27
28