



1 pressure, high cholesterol and memory loss. AR 135-36. After being denied initially and on  
2 reconsideration, Plaintiff requested a hearing before an Administrative Law Judge (“ALJ”). AR 73-  
3 76, 79-83, 85. On January 13, 2009, ALJ Brenton L. Rogozen held a hearing. AR 42-67. ALJ  
4 Rogozen issued a partially favorable decision on February 19, 2009, finding Plaintiff disabled  
5 beginning on October 15, 2004 and ending on August 29, 2007. AR 9-26. On September 2, 2010,  
6 the Appeals Council denied review. AR 1-4.

7 Hearing Testimony

8 ALJ Rogozen held a hearing on January 13, 2009, in San Jose, California. Plaintiff appeared  
9 with her attorney, Harvey P. Sackett. Vocational expert Darlene McQuary also appeared. AR 44.

10 At the outset of the hearing, Plaintiff’s counsel requested that Plaintiff’s previous application  
11 for DIB filed on July 12, 2004, be re-opened. The ALJ agreed to consider the request. AR 44-45.

12 Plaintiff was born in 1942 and was 66 years old at the time of the hearing. Plaintiff’s counsel  
13 indicated that they were going to talk about Plaintiff’s condition for the period between February  
14 2001, and when Plaintiff turned 65 in July of 2007. Plaintiff’s counsel explained that he was not  
15 going to ask Plaintiff questions about her current condition, stating “because legally it doesn’t  
16 matter.” AR 46.

17 Plaintiff completed the twelfth grade, but did not graduate from high school because she was  
18 52 credits short. She has no problems reading and writing in simple English. In her last 15 years of  
19 employment, she checked groceries and worked part-time in liquor, produce and milk areas of the  
20 grocery store. AR 47-53.

21 Plaintiff stopped in working in February 2001 because she fell at work. AR 53. She went on  
22 Worker’s Compensation and received checks for one year. During that time, she was not seen by a  
23 vocational rehabilitation person or vocational expert. AR 54-55. In 2001, her back, ankle and hands  
24 kept her from going back to work. She has had ankle surgeries and she fractured her foot around the  
25 time she stopped working. Her ankle was affecting her ability to do her job. She could not stand  
26 very long because she would “hurt very bad” from her back and ankle. She couldn’t stand and she  
27 couldn’t lift because her back was hurting all the time. Dr. Hopkins suggested that she go off work.

1 He has never suggested anything to the contrary. AR 56-57. At the time she stopped working, she  
2 could stand comfortably for fifteen minutes and was using a cane. She was not using the cane in the  
3 store. She had surgery on her foot after she stopped working. Her ankle still bothers her. AR 57.

4 The vocational expert (“VE”) also responded to questions. The VE reported that the DOT  
5 described Plaintiff’s past job as retail grocery clerk as being light and semi-skilled with an SVP of 3.  
6 The VE disagreed with the DOT, testifying that the grocery clerk was medium work. The VE based  
7 this opinion on her own experience, the items that can be lifted and by the claimant’s testimony. AR  
8 59. The VE did not believe that all retail clerks were medium and that there would be some light  
9 retail clerks. AR 61-62. The VE believed that there would be some vocational adjustment between  
10 working in a grocery store and working in a department store. Plaintiff’s skills were not transferrable  
11 to another setting. AR 63-66.

#### 12 Medical Record

13 On January 1, 2001, Dr. William Hopkins opined that Plaintiff was expected to be released to  
14 return to work on or about January 15, 2002, if her treatment was completed and she responded well.  
15 AR 226.

16 On January 18, 2001, Plaintiff reported to Dr. Hopkins that she continued to function very  
17 well, but she was experiencing increasing pain on getting out of bed, rising from a chair, sitting and  
18 similar activities. Examination demonstrated marked sensitivity in the lumbar paravertebral region  
19 and she had clear-cut zygapophyseal pain. Dr. Hopkins recommended a zygapophyseal/facet block.  
20 AR 258.

21 On February 1, 2001, Plaintiff underwent left L5-S1, left L4-5, right L5-S1, right L4-5 and  
22 right L3-4 zygapophyseal (facet) blocks. AR 201-03.

23 A lumbar spine MRI on March 1, 2001, showed mild to moderate spinal stenosis and  
24 bilateral foraminal narrowing at L5-S1 secondary to a combination of diffuse circumferential disc  
25 bulging and hypertrophy of facets and ligamentum flavum. She also had minimal diffuse  
26 circumferential disc bulging at T12-L1 and L1-2, degenerative disc disease throughout the lower  
27 thoracic and lumbar spine and minimal retrolisthesis of L5 on S1. AR 370-71.

1 On April 5, 2001, Plaintiff underwent a right L5 selective nerve root block and  
2 transforaminal epidural for persistent right L5 radiculopathy. AR 199-200. She felt excellent pain  
3 relief with the left block. AR 253-55.

4 On June 6, 2001, Plaintiff saw Dr. Hopkins for low back pain. She underwent a Radio  
5 Frequency Thermal Annuloplasty. Following the procedure, she was instructed to wear a back brace  
6 for several weeks. AR 186-91, 323.

7 On June 15, 2001, Dr. Hopkins stated that Plaintiff was unable to work through August 25,  
8 2001. AR 221. On June 18, 2001, he noted that she remained on total temporary disability. AR  
9 251.

10 On July 19, 2001, Plaintiff sought treatment from Dr. Eugene Carragee at Stanford Hospital  
11 and Clinics for complaints of low back pain with right lower extremity pain associated with right  
12 thigh pain, which was constant. AR 217. On physical examination, Plaintiff could walk normally  
13 without difficulty, straight-leg raising was negative and her motor strength was 5/5 bilaterally. A  
14 two-year-old MRI showed a high intensity signal in the anulus at the L4-5 level, which might  
15 represent a symptomatic anulus tear. Dr. Carragee diagnosed low back and leg pain without any  
16 evidence of radiculopathy. Dr. Carragee recommended a new MRI and advised Plaintiff to stay as  
17 active as possible. AR 217-18.

18 On August 9, 2001, Dr. Hopkins opined that Plaintiff could return to work on September 30,  
19 2001 only if diagnostic and therapeutic procedures were completed. AR 220. She complained of  
20 persistent reexacerbation of her right leg pain extending to her foot. On examination, her reflexes  
21 continued to be intact, but there was marked pain and slight hyperpathia over the dorsum of the foot.  
22 Review of her MRI revealed generalized degenerative spine changes, L5-S1 and L4-5 moderate  
23 spinal stenosis, ligamentum flavum hypertrophy and facet hypertrophy causing mild bilateral  
24 foraminal narrowing. Dr. Hopkins diagnosed degenerative spine disease, discogenic as well as facet  
25 hypertrophy producing radicular pain at L4 and L5. Dr. Hopkins recommended a selective nerve  
26 root block, which would provide dramatic, but temporary relief. AR 249.

27 On October 3, 2001, Plaintiff underwent a selective nerve root block for persistent and  
28

1 increasing back pain. AR 196, 197-98.

2 On October 22, 2001, Plaintiff complained that two days previously she awoke with severe  
3 pain radiating from her low back down her entire right leg. She reported being unable to lift or cross  
4 her right leg. AR 247.

5 On October 23, 2001, Dr. Hopkins opined that Plaintiff could not work through November 8,  
6 2001. AR 227.

7 On December 12, 2001, Plaintiff reported previous facial and leg weakness, which appeared  
8 to be Bell's palsy and resolved promptly. She also had chest pain, but a heart scan and  
9 electrocardiogram were reportedly negative. Plaintiff told Dr. Hopkins that her back pain was  
10 completely gone following her last block, but she continued to complain of right knee pain that  
11 increased with walking. On examination, her knee showed minimal, if any, swelling, but was  
12 painful to palpation both laterally and medially. Dr. Hopkins diagnosed resolved or quiescent low  
13 back pain and knee pain of undetermined etiology. He recommended that Plaintiff continue some  
14 lumbar extensor exercises as she had achieved pain relief from her last block and that she obtain a  
15 right knee MRI. AR 245.

16 The right knee MRI completed on January 8, 2002, showed no evidence of internal  
17 derangement. There was some subcutaneous edema anterior to the patella likely secondary to a  
18 contusion of the soft tissues. AR 366-67.

19 On January 25, 2002, Dr. Hopkins completed a treating Physician's Report of Disability  
20 Status form. He opined that Plaintiff was precluded from returning to work at her pre-injury  
21 occupation, but she was able to participate in vocational rehabilitations services with no  
22 lifting/bending and no standing for more than 45 minutes. He further opined that Plaintiff was  
23 physically able to perform light duties with no lifting, no bending and no standing more than 45  
24 minutes. AR 225.

25 On February 7, 2002, Dr. Hopkins opined that Plaintiff had been continuously disabled from  
26 February 25, 2001 through February 15, 2002. She was estimated to be able to return to work on  
27 March 15, 2002. AR 210-12.

1 On March 6, 2002, Dr. Hopkins noted that Plaintiff had “excellent transient relief” from a  
2 zygapophyseal block. He noted that her radicular pain appeared to not be so dramatic when she was  
3 able to maintain exercise. Her zygapophyseal pain appeared to be significant, but was dramatically  
4 relieved by the block. Dr. Hopkins recommended a permanent block. AR 366.

5 On April 12, 2002, Plaintiff again saw Dr. Hopkins for low back pain. She was to undergo a  
6 radio frequency thermal coagulation. AR 195. On April 15, 2002, Plaintiff underwent a lumbar  
7 dorsal ramus median branch rhizotomy, L5 and L4. AR 194, 206.

8 On August 23, 2002, Dr. Hopkins prepared a progress note. He indicated that Plaintiff had  
9 been doing reasonably well, but increased lifting and activity intensified her pain significantly. She  
10 reported to be doing a lot of walking in attempt to relieve her pain, but this had been inadequate. On  
11 examination, she rose from the chair with a mild but clear-cut antalgic posture and ambulated with a  
12 mild antalgic posture. Her deep tendon reflexes were normal throughout. Palpation demonstrated  
13 moderate to marked midline pain and moderate paravertebral pain. Dr. Hopkins diagnosed  
14 discogenic pain, zygapophyseal pain and lumbar extensor dysfunction. He recommended a repeat  
15 MRI, zygapophyseal blocks, lumbar epidural steroid injection and, very importantly, lumbar extensor  
16 rehabilitation trial. AR 240-41.

17 On October 7, 2002, Plaintiff reported that her pain was significantly less as long as her  
18 activity was much less. Dr. Hopkins noted marked joint pain bilaterally. He diagnosed facet pain  
19 and radiculopathy and recommend a joint block and repeat MRI. AR 239.

20 On March 12, 2003, Plaintiff reported that she was not taking any medication. Dr. Hopkins  
21 opined that Plaintiff’s clinical status had not changed and he questioned whether it was worsening.  
22 AR 238.

23 On October 14, 2004, Dr. L. Neena Madireddi completed a consultative orthopedic  
24 evaluation. On examination, Plaintiff had full range of motion of her neck and upper extremities  
25 with normal strength. She had no focal tenderness on palpation of her thoracolumbar paravertebral  
26 muscles and gluteal muscles. She declined lumbar range of motion in every single plane due to pain.  
27 She had full range of motion of her hips, knees and ankles with no tenderness or atrophy. Straight

1 leg raising was negative bilaterally. Her station and gait were normal, but she declined to squat,  
2 kneel, stand on toes, stand on heels, balance on one foot or tandem walk due to pain. Dr. Madireddi  
3 diagnosed mechanical lower back pain and opined that Plaintiff could lift and carry 25 pounds  
4 occasionally and 10 pounds frequently. She should avoid repetitive stooping, crouching and  
5 crawling, but could perform these activities occasionally. She had no restriction on kneeling,  
6 climbing steps or balancing. She would be able to sit for 6-8 hours cumulatively and would be able  
7 to stand and walk 6-8 hours cumulatively. She had no noted restrictions of her upper extremities.  
8 AR 261-63.

9 On August 27, 2005, Dr. Madireddi completed another consultative orthopedic evaluation.  
10 Plaintiff complained of chronic lower back pain, foot pain, and hand pain. She reported that she  
11 could not stand, sit, lie down, shower, bathe, grocery shop or wash clothes due to pain. On physical  
12 examination, Plaintiff had full range of motion of her cervical spine. She declined lumbar range of  
13 motion in all planes due to pain. She had full range of motion of her shoulders, elbows, wrists, hips,  
14 knees and ankles. Bilateral knee examination revealed some crepitus and Plaintiff stated that her  
15 knees were painful. Her station and gait were unremarkable, but slow. She declined to squat, kneel,  
16 stand on toes and heels, and balance on one foot due to pain. Dr. Madireddi diagnosed chronic  
17 lumbar pain possibly secondary to lumbar osteoarthritis and lumbar disc disease, chronic bilateral  
18 lower extremity pain involving the knees and feet possibly secondary to osteoarthritis or tendinitis,  
19 and bilateral wrist and hand pain, possibly secondary to tendinitis and possible carpal tunnel  
20 syndrome. Dr. Madireddi opined that Plaintiff could lift and carry 20 pounds occasionally and 10  
21 pounds frequently. She should avoid repetitive stooping, crouching and crawling activities, but  
22 could perform these activities occasionally. She had no restriction of the upper extremities. She was  
23 precluded from repetitive, but not occasional handling activities. She had no restrictions in feeling  
24 or in fingering. She could stand and walk 4 hours cumulatively and could sit 6 to 8 hours  
25 cumulatively. She should avoid more than occasional kneeling, climbing and crawling activities.  
26 AR 264-65.

27 A lumbar spine x-ray completed on August 29, 2005, revealed moderate degenerative  
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1 changes most pronounced at the L5-S1 level. AR 266.

2 On June 26, 2006, Plaintiff sought emergency room treatment for a right ankle fracture. On  
3 examination, she had no tenderness to palpation in her back. She was given a cast, crutches and  
4 Vicodin for pain. AR 354-58, 359.

5 On July 10, 2006, Dr. Gordon L. Levin completed an orthopedic evaluation. Plaintiff  
6 reportedly slipped on a grassy hill while she was ready to go fishing and twisted her right ankle. X-  
7 rays revealed a bimalleolar fracture of the right ankle. Dr. Levin planned to perform an open  
8 reduction internal fixation. AR 272. On July 11, 2006, Plaintiff underwent an open reduction  
9 internal fixation of her right ankle. AR 274, 278-79.

10 An April 2007 bone mineral density study of Plaintiff's lumbar spine and left hip was  
11 normal. AR 293.

12 On April 13, 2007, Plaintiff saw Dr. Richard Cherlin for her diabetes. AR 333. In May and  
13 2007, Plaintiff saw Dr. Cherlin and reported that she felt well. He noted her blood sugar levels. AR  
14 332.

15 On May 24, 2007, Dr. Lara Salamacha completed a consultative orthopedic evaluation.  
16 Plaintiff complained of low back pain and carpal tunnel syndrome. Plaintiff reported that she could  
17 walk for two hours at a time and did this every morning for fitness. She also could stand for 20-30  
18 minutes and sit for 30 minutes before needing to change position. She was able to perform all  
19 activities of daily living and self care. On examination, Plaintiff had a mildly antalgic gait favoring  
20 her left ankle, which she had recently sprained while vacuuming her closet. She declined toe  
21 walking secondary to pain in both ankles and feet. She was able to walk on both heels with adequate  
22 foot strength. Her low back examination revealed tenderness in the midline and in the paraspinous  
23 regions bilaterally. Facet signs were strongly positive. Following examination, Dr. Salamancha  
24 opined that Plaintiff could stand and walk for up to six hours in an eight-hour day. She had no  
25 restrictions regarding sitting with routine position changes. She could lift 10 pounds frequently and  
26 20 pounds occasionally. She could perform occasional bending, with rare stooping or crouching due  
27 to her repetitive ankle sprains. She could perform frequent, but not constant, reaching, handling,

1 feeling, fingering and grasping. She had no relevant visual, communicative or workplace  
2 environmental limitations. AR 295-99.

3 On May 30, 2007, Dr. Evangeline Murillo, a state agency physician, completed a Psychiatric  
4 Review Technique form. Plaintiff did not have a medically determinable psychiatric impairment.  
5 AR 300-10.

6 On July 30, 2007, Plaintiff saw Dr. Cherlin to learn about insulin. Her blood sugars were  
7 “still 200's.” AR 331.

8 On August 29, 2007, Plaintiff told Dr. Cherlin that she felt great. Dr. Cherlin noted her blood  
9 sugars and indicated she had no chest pain or shortness of breath. AR 331.

10 A November 4, 2008, lumbar spine MRI revealed mild to moderate multi-level degenerative  
11 changes in the lumbar spine. She also had mild spinal canal stenosis at the L4-5 level and moderate  
12 left lateral recess narrowing due to diffuse disc bulge and hypertrophic changes at the facet joints.  
13 AR 351.

14 On November 17, 2008, Dr. Hopkins performed right and left L4, L5 selective nerve root  
15 blocks for low back pain and lumbar spondylosis. AR 365.

#### 16 ALJ's Findings

17 The ALJ found that Plaintiff met the insured status requirements and had not engaged in  
18 substantial gainful activity since February 21, 2001. The ALJ further found that Plaintiff had the  
19 severe impairment of back pain. Despite this impairment, the ALJ determined that Plaintiff retained  
20 the residual functional capacity (“RFC”) to perform the full range of light work for the period from  
21 her alleged onset date to October 14, 2004. For the period from October 15, 2004 through August  
22 29, 2007, she had the RFC to perform sedentary work, was unable to perform her past relevant work  
23 and there were no other jobs in the national economy that she could perform. The ALJ determined  
24 that medical improvement occurred as of August 30, 2007. Based on her medical improvement, the  
25 ALJ found that for the period after August 29, 2007, Plaintiff had the RFC to perform the full range  
26 of light work. The ALJ concluded that for the period from her alleged onset date and prior to  
27 October 15, 2004, and the period after August 29, 2007, Plaintiff could perform her past relevant  
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1 work as a grocery clerk. AR 17-25.

## 2 SCOPE OF REVIEW

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

17 Here, Plaintiff contends that the ALJ's finding of "medical improvement" is not supported by  
18 substantial evidence. Plaintiff also contends that the ALJ erred in finding that she could return to her  
19 past relevant work.

## 20 DISCUSSION

### 21 **A. Medical Improvement**

22 Plaintiff argues that the ALJ's finding of medical improvement as of August 2007 is not  
23 supported. The Commissioner counters that Plaintiff's argument is inapposite because, as of that  
24 date, Plaintiff had already reached the full retirement age of 65 and was no longer entitled to  
25 disability benefits. [20 C.F.R. § 404.316\(b\)\(2\)](#) (a claimant's entitlement to disability benefits ends the  
26 month before the month she reaches full retirement age). The Commissioner is incorrect. According  
27 to the implementing regulations, full retirement age has been 65, but is being gradually raised to age  
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1 67 beginning with people born after January 1, 1938. 20 C.F.R. § 404.409. Plaintiff, who was born  
2 in July 1942, did not reach full retirement age until May 2008, when she reached 65 years and 10  
3 months. [20 C.F.R. §404.409\(a\)](#) (identifying full retirement age for persons born between 1/2/1942  
4 and 1/1/1943 as 65 years and 10 months). Thus, Plaintiff would be eligible for disability benefits at  
5 least through April 2008 (*e.g.*, the month before the month she reaches full retirement age).

6 At the hearing, Plaintiff’s counsel identified the relevant time period as the date when she  
7 became disabled in February 2001 through the date when she turned 65 in July 2007. AR 46. The  
8 Commissioner suggests that the Court should refuse to entertain an argument about any continuing  
9 disability beyond July 2007 because Plaintiff’s counsel conceded this issue at the hearing.  
10 Opposition, p. 5. The Court declines to accept the Commissioner’s suggestion. The ALJ did not  
11 limit the relevant time period as defined by Plaintiff’s counsel. Indeed, the ALJ found that Plaintiff’s  
12 disability continued at least through August 29, 2007. AR 17-25.

13 The Commissioner does not address Plaintiff’s substantive argument; that is, whether the  
14 ALJ’s finding of medical improvement as of August 30, 2007, is supported by substantial evidence.  
15 Once a claimant has been found to be disabled, “a presumption of continuing disability arises in her  
16 favor.” [Bellamy v. Sec’y of Health & Human Servs.](#), 755 F.2d 1380, 1381 (9th Cir.1985) (citing  
17 [Murray v. Heckler](#), 722 F.2d 499, 500 (9th Cir.1983)). The Commissioner has the “burden of  
18 producing evidence sufficient to rebut this presumption of continuing disability.” *Id.*; *see also*  
19 [Murray](#), 722 F.2d at 500 (“The Secretary ... has the burden to come forward with evidence of  
20 improvement.”). Relevant here, a claimant's benefits may be terminated where the Commissioner  
21 produces substantial evidence that: “(A) there has been any medical improvement in the individual's  
22 impairment or combination of impairments (other than medical improvement which is not related to  
23 the individual's ability to work), and (B) the individual is now able to engage in substantial gainful  
24 activity.” [42 U.S.C. § 423\(f\)\(1\)](#). The applicable regulation defines “medical improvement” as  
25 follows:

26 Medical improvement is any decrease in the medical severity of your impairment(s)  
27 which was present at the time of the most recent favorable medical decision that you  
28 were disabled or continued to be disabled. A determination that there has been a

1 decrease in medical severity must be based on changes (improvement) in the  
2 symptoms, signs and/or laboratory findings associated with your impairment(s)...

3 [20 C.F.R. § 404.1594\(b\)\(1\)](#). The Commissioner evaluates continuing disability under an eight-part  
4 analytical framework. [20 C.F.R. § 404.1594\(f\)\(1\)-\(8\)](#).

5 In this case, the ALJ determined that Plaintiff had experienced medical improvement as of  
6 August 30, 2007, primarily because she told Dr. Cherlin that she had no pain and felt “great.” AR  
7 24. Based on the entire record, however, the ALJ’s conclusion of medical improvement is not  
8 supported by substantial evidence. Plaintiff’s August 29, 2007 comment to Dr. Cherlin that she felt  
9 “great” provides little evidence of improvement in her back pain. See [Kellough v. Heckler, 785 F.2d](#)  
10 [1147, 1153 \(4th Cir.1986\)](#) (finding “isolated references in physician's notes to ‘feeling well’” was an  
11 insufficient basis for rejecting subjective limitations; notes did not provide substantial evidence  
12 demonstrating that claimant could perform past relevant work), cited with approval in [Holohan v.](#)  
13 [Massanari, 246 F.3d 1195, 1205 \(9th Cir. 2001\)](#). This is particularly true because the comment was  
14 made to a physician treating Plaintiff for diabetes-related issues, not lower back pain. The notes  
15 themselves make no mention of the range of activity that Plaintiff could perform nor do they  
16 establish that she no longer experienced back pain. AR 330-33. Further, the ALJ incorrectly found  
17 that Plaintiff reported “no pain.” AR 24. Rather, Plaintiff’s physician noted that Plaintiff had “no  
18 chest pain/SOB.” AR 331. The ALJ’s subsequent finding that “the record shows an absence of on-  
19 going treatment for back pain thereafter” also is not accurate. AR 25. According to the record, on  
20 November 4, 2008, Plaintiff underwent a MRI, which revealed mild to moderate multi-level  
21 degenerative changes in the lumbar spine and moderate left lateral recess narrowing due to diffuse  
22 disc bulge and hypertrophic changes at the facet joints. AR 350. Thereafter, on November 17, 2008,  
23 Dr. Hopkins administered Plaintiff right and left L4, L5 selective nerve root blocks for her low back  
24 pain and lumbar spondylosis. AR 365.

25 Based on the foregoing, the ALJ’s finding of medical improvement as of August 30, 2007, is  
26 not supported by substantial evidence.

27 **B. Past Relevant Work**

1 Plaintiff argues that the ALJ committed error by finding that she could return to her past  
2 relevant work for the period after August 30, 2007, based on her RFC for light work. In particular,  
3 Plaintiff faults the ALJ for rejecting the vocational expert's testimony, which deviated from the  
4 DOT, that Plaintiff's past relevant work was medium, not light, work. AR 59.

5 Given the Court's determination that the ALJ's finding of medical improvement as of August  
6 2007 is not supported by substantial evidence, it is not necessary to address whether Plaintiff could  
7 return to her past relevant work after that date.

8 **C. Remand**

9 The decision to remand to the Commissioner for further proceedings or simply to award  
10 benefits is within the discretion of the court. [Harman v. Apfel](#), 211 F.3d 1172, 1175-78 (9th Cir.  
11 2000); [McAllister v. Sullivan](#), 888 F.2d 599, 603 (9th Cir. 1989). "If additional proceedings can  
12 remedy defects in the original administrative proceedings, a social security case should be remanded.  
13 Where, however, a rehearing would simply delay receipt of benefits, reversal and an award of  
14 benefits is appropriate." [McAllister](#), 888 F.2d at 603 (citation omitted); *see also* [Varney v. Secretary](#)  
15 [of Health & Human Serv.](#), 859 F.2d 1396, 1399 (9th Cir.1988) ("Generally, we direct the award of  
16 benefits in cases where no useful purpose would be served by further administrative proceedings . . .  
17 or where the record has been thoroughly developed.").

18 Here, the Court finds that no useful purpose would be served by further administrative  
19 proceedings and that the record has been fully developed. A rehearing would simply delay receipt of  
20 benefits for the period after August 29, 2007, through the date Plaintiff reaches full retirement age.  
21 Accordingly, the Court recommends reversal and an award of benefits.

22 **RECOMMENDATION**

23 Based on the foregoing, the Court finds that the ALJ's decision is not supported by  
24 substantial evidence in the record as a whole. Accordingly, this Court RECOMMENDS that  
25 Plaintiff's appeal from the administrative decision of the Commissioner of Social Security be  
26 GRANTED and that the matter be REVERSED AND REMANDED for the award of benefits to  
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