

1 Austin, United States Magistrate Judge.² After reviewing the administrative record and the
2 pleadings, the Court GRANTS Plaintiff's appeal IN PART. The case is remanded for further
3 proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

4 **II. BACKGROUND AND PRIOR PROCEEDINGS³**

5 Plaintiff filed applications for DIB and SSI on July 29, 2013, alleging a disability beginning
6 July 1, 2008. AR 12; 137-152. His application was denied on October 11, 2013. AR 24; 92-96.
7 Plaintiff requested a hearing before an administrative law judge ("ALJ"). AR 11; 100-103. ALJ
8 Christopher Inama conducted a hearing on August 20, 2014 (AR 38-66), and published an
9 unfavorable decision on November 25, 2014. AR 21-30. Plaintiff filed an appeal on January 23,
10 2015. AR 16-20. The Appeals Council denied the request for review on April 18, 2016, rendering
11 the order the final decision of the Commissioner. AR 1-8.

12 **III. THE DISABILITY DETERMINATION PROCESS**

13 To qualify for benefits under the Social Security Act, a plaintiff must establish that he or she
14 is unable to engage in substantial gainful activity due to a medically determinable physical or
15 mental impairment that has lasted or can be expected to last for a continuous period of not less
16 than twelve months. 42 U.S.C. § 1382c(a)(3)(A). An individual shall be considered to have a
17 disability only if:

18
19 . . . his physical or mental impairment or impairments are of such severity that he is not only
20 unable to do his previous work, but cannot, considering his age, education, and work
21 experience, engage in any other kind of substantial gainful work which exists in the national
22 economy, regardless of whether such work exists in the immediate area in which he lives, or
23 whether a specific job vacancy exists for him, or whether he would be hired if he applied for
24 work.

25 42 U.S.C. § 1382c(a)(3)(B).

26 To achieve uniformity in the decision-making process, the Commissioner has established a
27 sequential five-step process for evaluating a claimant's alleged disability. 20 C.F.R. §§
28 404.1520(a)-(f), 416.920(a)-(f). The ALJ proceeds through the steps and stops upon reaching a

² The parties consented to magistrate judge jurisdiction. (Docs. 6 and 8).

³ References to the Administrative Record will be designated as "AR," followed by the appropriate page number.

1 dispositive finding that the claimant is or is not disabled. 20 C.F.R. §§ 404.1520(a)(4),
2 416.920(a)(4). The ALJ must consider objective medical evidence and opinion testimony. 20
3 C.F.R. §§ 404.1527, 404.1529, 416.927, 416.929.

4 Specifically, the ALJ is required to determine: (1) whether a claimant engaged in substantial
5 gainful activity during the period of alleged disability, (2) whether the claimant had medically-
6 determinable “severe” impairments, (3) whether these impairments meet or are medically
7 equivalent to one of the listed impairments set forth in 20 C.F.R. § 404, Subpart P, Appendix 1,
8 (4) whether the claimant retained the residual functional capacity (“RFC”) to perform his past
9 relevant work, and (5) whether the claimant had the ability to perform other jobs existing in
10 significant numbers at the regional and national level. 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-
11 (f).

12 **IV. THE ISSUE PRESENTED**

13 As explained in more detail below, both parties agree that the ALJ committed error in this
14 case. The issue is whether the case should be remanded for an award of benefits, or remanded for
15 further proceedings.

16 Plaintiff filed for disability due to arthritis in his knees, shoulders, and back which limited
17 his ability to stand and walk. AR 47-53; 174. Using the five step evaluation outlined above, the
18 ALJ found that Plaintiff met the insured status requirements of the Social Security Act through
19 June 30, 2015, and that he had not engaged in substantial gainful activity since July 1, 2008, the
20 alleged onset date. AR 26. He also identified bilateral knee osteoarthritis - with the left side
21 worse than the right - as a severe impairment, but found that this impairment did not meet one of
22 the listing impairments. AR 26. The ALJ also determined that Plaintiff had the residual
23 functional capacity (“RFC”) to perform light work except that he could stand no more than four
24 hours in an eight hour day; he could occasionally climb ramps and stairs, balance, stoop, kneel,
25 crouch, and crawl; but he could never climb ladders, ropes, or scaffolds. The ALJ further found
26 Plaintiff could occasionally reach and frequently handle and finger with his non-dominant upper
27 extremity; occasionally reach with his left, non-dominant upper extremity; but had no
28 manipulative limits with his right, dominant upper extremity. AR 27. Given this RFC, the ALJ

1 determined that Plaintiff could not perform his past work as an auto mechanic nor a construction
2 worker. AR 29. However, he determined that Plaintiff could perform work as a surveillance
3 system monitor and a telemarketer.

4 In doing so, the ALJ applied the Medical –Vocational Guidelines (“the grids”) and found
5 that because Plaintiff was born on December 17, 1959 and was 48 years old on the alleged
6 disability date, he was not disabled regardless of whether he had transferable skills from his past
7 relevant work because he could perform light work, had a least a high school education, and
8 could speak English. AR 28-30. *See*, 20 C.F.R. pt. 404, subpt. P., app 2, §§ 202.14 and 202.15
9 (directing a finding of not disabled for an individual capable of light work who is closely
10 approaching advanced age with a least a high school education and skilled past relevant work
11 regardless of whether he had transferable skills).

12 Both parties agree that the ALJ should have used the grids, however, they also agree that the
13 ALJ applied the grids incorrectly. (Doc. 18, pgs. 5-6; Doc. 19, pgs. 3-4). Specifically, because
14 the VE only identified sedentary jobs that Plaintiff perform, the ALJ was required to use the
15 sedentary rather than the light grids as a framework for his decision. *See, Distasio v. Shalala*, 47
16 F. 3d 348, 350 (9th Cir. 1995) (mandatory application of Rule 201.14 (the sedentary grids)
17 despite a limited capacity for light exertion but only allowed for a limited range of sedentary
18 work); *Cooper v. Sullivan*, 880 F. 2d 1152, 1156-1157 (9th Cir. 1989) (mandatory application of
19 grid Rule 202.04 (the light grids) despite a limited capacity for medium exertion but only allowed
20 for a limited range of light work). Thus, both parties agree that the case should be remanded,
21 however, it is the breadth of the remand that is at issue.

22 Plaintiff argues that the case should be remanded for an award of benefits because when the
23 sedentary grids are applied (pursuant to 20 C.F.R. Pt. 404, Subpt P. App. 1, Rule 201.14),
24 Plaintiff is disabled - he is an individual over the age of fifty, with a high school education, who is
25 capable of sedentary work with no transferable skills. (Doc. 18, pgs. 5-7; Doc. 20, pg. 3-5). The
26 Commissioner contends that there are two sedentary grid rules that are applicable: 1) Rule 201.14
27 which Plaintiff relies upon, that renders Plaintiff disabled if he has no transferable skills, and 2)
28 Rule 201.15 that renders him not disabled if he possesses transferable skills. 20 C.F.R. pt 404,

1 subpt P, app. 2 §§ 201.14, 201.15. Thus, the issue is whether Plaintiff possesses transferable
2 skills.

3 Plaintiff contends that the ALJ found that “transferability of job skills is not determinative”
4 (AR 29) which establishes that Plaintiff has no transferable skills. He argues that this Court must
5 rely on this finding because any other explanation regarding transferable skills is a *post hoc*
6 explanation of the ALJ’s decision which is not permissible. Moreover, sedentary work for an
7 individual over 50, requires that there be little, if any, vocational adjustment applied to any
8 transferable skill, and the VE only found that Plaintiff could perform two jobs – a surveillance
9 system monitor and a telemarketer. (Doc. 20, pgs. 3-5). Conversely, Defendant argues that the
10 ALJ did not make a finding of transferability because he did not believe it was relevant to an
11 application of the light grids.

12 **V. STANDARD OF REVIEW**

13 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's decision to determine
14 whether: (1) it is supported by substantial evidence; and (2) it applies the correct legal standards.
15 See *Carmickle v. Commissioner*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d
16 1071, 1074 (9th Cir. 2007).

17 “Substantial evidence means more than a scintilla but less than a preponderance.”
18 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). It is “relevant evidence which,
19 considering the record as a whole, a reasonable person might accept as adequate to support a
20 conclusion.” *Id.* “Where the evidence is susceptible to more than one rational interpretation, one
21 of which supports the ALJ's decision, the ALJ's conclusion must be upheld.” *Id.*

22 **VI. DISCUSSION**

23 After reviewing the record, it is apparent that the ALJ never made a finding regarding the
24 transferability of Plaintiff’s skills. For example, when the ALJ found that transferability was not
25 determinative, he went on to state, “because using the Medical-Vocational Rules as a framework
26 supports a find that the claimant is ‘not disabled’: whether or not the claimant has transferable job
27 skills.” AR 29. Thus, it is clear that that the ALJ assumed (correctly) that when applying the light
28 grids, transferability of skills was not relevant because Plaintiff would not be disabled either way.

1 Moreover, when the vocational expert (“VE”) testified that Plaintiff’s previously worked as an
2 auto mechanic, and construction worker, the ALJ specifically asked whether either of those jobs
3 would transfer to light or sedentary work. The VE responded :

4 A: Yes, the auto mechanic, the – he knows the process for auto
5 repair, parts needed, tools needed, and would transfer to counter
6 person auto part. But you didn’t ask him that, I’m sorry.

7 Q: We’ll get there.

8 A: Okay [inaudible]

9 Q: We’ll see if it fits.

10 The ALJ then went on to present various hypotheticals to the VE and never returned to
11 whether Plaintiff’s skills were transferable. AR 62-64. Therefore, it is clear that that the record is
12 not complete on the issue of transferability of skills as the issue was not addressed by the ALJ nor
13 the VE. As a result, this Court is unable to make a disability determination based on the current
14 record. The case must be remanded for the ALJ to make a finding on this issue, and in turn,
15 determine whether Plaintiff is disabled pursuant to the sedentary grids. See, *Garrison v. Colvin*,
16 759 F. 3d 995, 1021 (9th Cir. 2014) (A court should remand with for an award of benefits only
17 when: (1) the record has been fully developed and further administrative proceedings would serve
18 no useful purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting
19 evidence, whether claimant testimony or medical opinion; and (3) if the improperly discredited
20 evidence were credited as true, the ALJ would be required to find the claimant disabled on
21 remand.) *Id.* at 1020.

22 Here, the ALJ’s error is clear, he erroneously applied the light grids (20 C.F.R. pt. 404,
23 subpt. P., app 2, §§ 202. 14, 202.15) instead of the sedentary grids. See, 20 C.F.R. pt 404, subpt P,
24 App. 2 §§ 201.14, 201.15. As a result, the ALJ never reached the issue of transferability of skills.
25 On remand, the ALJ shall apply the sedentary grids and assess the transferability of Plaintiff’s
26 skills to determine whether Plaintiff is disabled under the grids.

27 **VII. CONCLUSION**

28 Based on the foregoing, the Court finds that the ALJ’s decision is not supported by
substantial evidence and is not based on proper legal standards. Accordingly, this Court

1 GRANTS Plaintiff's appeal against the Commissioner of Social Security IN PART. This action is
2 REMANDED to the Commissioner for further administrative proceedings consistent with this
3 opinion. The Clerk of this Court shall enter judgment in favor of Plaintiff, Fredrick Boykin, and
4 against Nancy A. Berryhill, Commissioner of Social Security. The Clerk of the Court is directed
5 to close this action.

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

IT IS SO ORDERED.

Dated: May 4, 2017

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE