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3 **UNITED STATES DISTRICT COURT**  
4 **NORTHERN DISTRICT OF CALIFORNIA**  
5 **SAN JOSE DIVISION**

6 MAUREEN CASSIDY,  
7 Plaintiff,

8 v.

9 CAROLYN W. COLVIN,  
10 Acting Commissioner of Social Security,  
11 Defendant.

Case No. 13-cv-01873-BLF

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

[Re: ECF 15, 18]

12 The court is faced with cross-motions for summary judgment in this appeal from an adverse  
13 determination of eligibility for Social Security Disability benefits. For the reasons below, Plaintiff's  
14 motion<sup>1</sup> is **GRANTED** and Defendant's cross-motion is **DENIED**.

15 **I. BACKGROUND**

16 Scott Allen Levander (Claimant) was struck by a car while crossing a street in November,  
17 2007. Record (R.) at 243, ECF 11. Following the accident, Claimant continued to suffer chronic  
18 pain in his back and neck, as well as numbness in his feet, severely limiting Claimant's ability to sit,  
19 stand, and walk. R. at 209. Claimant's physician reported that Claimant suffered from "[c]hronic  
20 cervical and lumbar strains (whiplash injury) with internal disc disruption, disc herniation," and  
21 "[r]ight shoulder internal derangement." R. at 267.

22 Claimant filed for a period of disability and disability insurance benefits on October 15, 2009,  
23 alleging disability beginning March 28, 2008. R. at 21, ECF 11. The application was initially denied  
24 on April 28, 2010. R. at 108. The initial determination found that Claimant was unable to perform  
25 past relevant work, but was able to perform other work—in particular, unskilled sedentary work. R.

26  
27 <sup>1</sup> As explained below, Scott Allen Levander (Claimant), whose denial of benefits is appealed in this  
28 action, is now deceased. This appeal is brought by Maureen Cassidy on behalf of Jackson Cassidy,  
Claimant's child, who filed a timely Notice of Substitution of Party upon Claimant's death. *See*  
Record (R.) at 140-41, ECF 11.

1 at 109-11. This determination was affirmed on reconsideration on August 26, 2010. R. at 112.  
2 Claimant filed a request for a hearing on August 30, 2010. R. at 21.

3 Claimant passed away before the hearing, but Maureen Cassidy (Plaintiff) continued to  
4 prosecute the application on behalf Jackson Cassidy, Claimant's child. R. at 21, 140-41. A hearing  
5 was held before an administrative law judge (ALJ) on September 13, 2011, which included  
6 testimony from Bijou Levander, Claimant's mother, as well as an impartial medical expert and  
7 vocational expert. R. at 21.

8 After hearing evidence, the ALJ found that Claimant had a residual functional capacity (RFC)  
9 to perform light work as defined in 20 CFR 404.1567(b). R. at 24. "Specifically, the claimant could  
10 lift and/or carry 20 pounds occasionally and 10 pounds frequently; he could stand and/or walk for  
11 two hours out of an eight-hour workday with regular breaks; he could sit for six hours out of an  
12 eight-hour workday with regular breaks; he could occasionally climb ramps and stairs; he could  
13 occasionally balance, stoop, kneel and crouch; he was precluded from climbing ladders, ropes and  
14 scaffolds; he was precluded from crawling; he could perform occasional overhead reaching; he  
15 should have avoided all exposure to extremes of cold, vibration and hazards; and he should not  
16 have held his neck in a rigid position for more than 20 minutes at a time." R. at 24.

17 The ALJ further found that Claimant had past relevant work experience as a consultant and  
18 that Claimant's RFC was within the physical demands of consultant work as actually and generally  
19 performed. R. at 29. Based on this finding, the ALJ determined that Claimant was capable of  
20 performing past relevant work and was therefore not under a disability from March 28, 2008,  
21 through the date of his death, July 3, 2011. R. at 30. Plaintiff now seeks review of this  
22 determination.

## 23 **II. LEGAL STANDARD**

### 24 **A. STANDARD OF REVIEW**

25 District courts "have power to enter, upon the pleadings and transcript of the record, a  
26 judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security,  
27 with or without remanding the cause for a rehearing." 42 USC § 405(g). However, the court's  
28 review of the Commissioner's decision is limited and deferential. *Massachi v. Astrue*, 486 F.3d 1149,

1 1152 (9th Cir. 2007). The court “may set aside a denial of benefits only if it is not supported by  
2 substantial evidence or if it is based on legal error.” *Id.* at 1152.

3 “‘Substantial evidence’ means more than a scintilla but less than a preponderance.” *Smolen v.*  
4 *Chater*, 80 F.3d 1273, 1279 (9th Cir. 1996). It is “such relevant evidence as a reasonable mind might  
5 accept as adequate to support a conclusion. In determining whether the Commissioner’s findings  
6 are supported by substantial evidence, [the court] must consider the evidence as a whole, weighing  
7 both the evidence that supports and the evidence that detracts from the Commissioner’s  
8 conclusion. [The court] must give the facts a full review and must independently determine  
9 whether the Commissioner’s findings are supported by substantial evidence.” *Id.* (internal citations  
10 omitted).

11 **B. CAPACITY TO PERFORM PAST RELEVANT WORK**

12 Under 20 C.F.R. §§ 404.1520(e) and 416.920(e), “a claimant will be found to be ‘not disabled’  
13 when it is determined that he or she retains the RFC [residual functional capacity] to perform:

- 14 1. The actual functional demands and job duties of a particular past relevant job; *or*
- 15 2. The functional demands and job duties of the occupation as generally required by  
16 employers throughout the national economy.”<sup>2</sup>

17 SSR 82-61; *see also Pinto v. Massanari*, 249 F.3d 840, 845 n.3 (9th Cir. 2001) (recognizing Social  
18 Security Rulings, including SSR 82-61 and SSR 82-62, as “binding on all components of the Social  
19 Security Administration”).

20 This “requires specific findings as to the claimant’s residual functional capacity, the physical  
21 and mental demands of the past relevant work, and the relation of the residual functional capacity  
22 to the past work.” *Pinto*, 249 F.3d at 845; SSR 82-62. “Past work experience must be considered  
23 carefully to assure that the available facts support a conclusion regarding the claimant’s ability or  
24 inability to perform the functional activities required in this work.” SSR 82-62. The procedures  
25 and requirements for considering past work experience are laid out in SSR 82-62:

26 The *claimant is the primary source for vocational documentation*, and statements by  
27 the claimant regarding past work are *generally sufficient* for determining skill level;

28 <sup>2</sup> This is “Step 4” of the 5-step analysis prescribed by 20 C.F.R. § 404.1520(a)(4).

1 exertional demands and nonexertional demands of such work. Determination of  
2 the claimant's ability to do PRW [past relevant work] requires a careful appraisal  
3 of (1) the individual's statements as to which past work requirements can no  
4 longer be met and the reason(s) for his or her inability to meet those requirements;  
5 (2) medical evidence establishing how the impairment limits ability to meet the  
6 physical and mental requirements of the work; and (3) in some cases,  
7 supplementary or corroborative information from other sources such as  
8 employers, the *Dictionary of Occupational Titles* [DOT], etc., on the requirements  
9 of the work as generally performed in the economy.

10 The decision as to whether the claimant retains the functional capacity to perform  
11 past work which has current relevance has far-reaching implications and must be  
12 developed and explained fully in the disability decision. Since this is an important  
13 and, in some instances, a controlling issue, every effort must be made to secure  
14 evidence that resolves the issue as clearly and explicitly as circumstances permit.

15 Sufficient documentation *will be obtained* to support the decision. Any case  
16 requiring consideration of PRW *will contain* enough information to permit a  
17 decision as to the individual's ability to return to such past work (or to do other  
18 work).

19 Adequate documentation of past work includes factual information about those  
20 work demands which have a bearing on the medically established limitations.  
21 Detailed information about strength, endurance, manipulative ability, mental  
22 demands and other job requirements *must be obtained* as appropriate. This  
23 information will be derived from a detailed job description of the work obtained  
24 from the claimant, employer, or other informed source. Information concerning  
25 job titles, dates work was performed, rate of compensation, tools and machines  
26 used, knowledge required, the extent of supervision and independent judgment  
27 required, and a description of tasks and responsibilities will permit a judgment as  
28 to the skill level and the current relevance of the individual's work experience. . . .  
If more than one job was performed during the 15-year period, *separate descriptions  
of each job will be secured.*

SSR 82-62 (emphasis added).

"The rationale for a disability decision must be written so that a clear picture of the case can be obtained. The rationale must follow an orderly pattern and show how specific evidence leads to a conclusion." *Id.* "In finding that an individual has the capacity to perform a past relevant job, the determination or decision *must contain* among the findings the following specific findings of fact:

1. A finding of fact as to the individual's RFC.
2. A finding of fact as to the physical and mental demands of the past job/occupation.
3. A finding of fact that the individual's RFC would permit a return to his or her past relevant job or occupation."

*Id.* (emphasis added).

1           In determining the physical and mental demands of the past job/occupation, either as actually  
2 performed or as generally required by employers throughout the national economy, reference to the  
3 Dictionary of Occupational Titles [DOT] may be helpful. *See* SSR 82-61. However, “[t]here may  
4 be cases involving significant variations between a claimant’s description and the description  
5 shown in the DOT. In some instances, an apparent variation may result from an incomplete or  
6 inaccurate description of past work. Employer contact or further contact with the claimant, may be  
7 necessary to resolve such a conflict.” *Id.*

8           **III. DISCUSSION**

9           The ALJ’s adverse determination of disability was based on the ALJ’s finding that Claimant  
10 was capable of performing past relevant work—specifically, that of a consultant. R. at 29-30. The  
11 ALJ determined that consultation was past relevant work for Claimant based on Claimant’s self-  
12 reporting of past work experience. R. at 29. Plaintiff disputes the ALJ’s determination that  
13 claimant’s RFC made him capable of performing past relevant work. After reviewing the record,  
14 the court agrees with Plaintiff that the ALJ’s determination is not supported by substantial  
15 evidence. Additionally, the ALJ committed legal error by departing from specific requirements  
16 dictated by SSR 82-61 and SSR 82-62. Specifically:

- 17           1. The ALJ failed to obtain separate descriptions of each job performed by Claimant in  
18           the relevant 15-year period. *See* SSR 82-62.
- 19           2. The ALJ failed to make a specific “finding of fact as to the physical and mental  
20           demands of the past job/occupation” to which the ALJ determined Claimant was  
21           capable of returning. *See* SSR 82-62.
- 22           3. The ALJ failed to resolve the conflict between Claimant’s job description and the  
23           description shown in the Dictionary of Occupational Titles when determining whether  
24           Claimant could perform the job of consultant as required by employers throughout the  
25           national economy. *See* SSR 82-61.

26           Because the ALJ’s errors in determining that Claimant was capable of performing past  
27 relevant work are dispositive, the court need not reach Plaintiff’s alternative argument that the ALJ  
28 failed to fully and fairly develop the record.

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**A. SUBSTANTIAL EVIDENCE**

The ALJ determined that Claimant was capable of performing past relevant work as a consultant “as actually and generally performed.” R. at 29. The court notes as an initial matter that there is *no* evidence in the record as to how Claimant’s consultant work was actually performed. The Vocational Expert (VE) testified to this fact during the hearing. *See* Hearing Transcript, R. at 96 (VE: “And the claimant worked as a sales -- doing sales for publishing -- a publishing company of some sort. This is the only one where there was a description of the job.”). Because there was no description of how Claimant’s “consultant” job was actually performed, there is no evidence that Claimant could continue to perform it as actually performed. This does not end the court’s review, however, because the ALJ’s finding that Claimant could perform the job of consultant as generally required by employers throughout the national economy—if supported by substantial evidence—would be sufficient to affirm the ALJ’s adverse determination of disability. Accordingly, the court turns next to that finding.

The ALJ determined that Claimant was capable of performing consultant work as generally performed by comparing Claimant’s RFC with the demands of a consultant as defined in the Dictionary of Occupational Titles (DOT) 189.167-010, which the Vocational Expert described as a sedentary job. R. at 96. Claimant’s counsel objected at the hearing that the VE’s “characterization of the jobs are completely different than what the claimant did.” R. at 99. The VE pointed out that she was “going by the DOT, because I have nothing else to go by.” Claimant’s attorney questioned the VE regarding whether the DOT positions she had testified about were actually the same positions performed by Claimant. R. at 100. The VE testified that a job requiring an individual to be out in the field at least two thirds of the day would not be classified as sedentary. R. at 100. When asked whether there was “another DOT that would be better descriptive,” the VE replied, “I don’t know without having more information.” R. at 100. Because the ALJ based his finding that Claimant was able to perform past work on the job description found at DOT 189.167-010, the question ultimately reduces to whether there is substantial evidence to support a conclusion that Claimant had prior work experience in the position described at DOT 189.167-010.

1           According to the DOT, a consultant “[c]onsults with [a] client to define [a] need or problem,  
2 conducts studies and surveys to obtain data, and analyzes data to advise on or recommend [a]  
3 solution, utilizing knowledge of theory, principles, or technology of [a] specific discipline or field of  
4 specialization.” DOT 189.167-010. According to Claimant, “I have been in  
5 Sales/Advertising/Marketing my entire career (23+ years) and need to be very active every day. . . .  
6 My work also requires me to travel and attend trade shows and special events, entertain clients,  
7 walk long distances and be on my feet for extended periods of time. I can not [sic] carry heavy  
8 objects, such as the activities listed above require me to do to be able to do my job.” R. at 194.  
9 Claimant’s job also required lifting boxes of up to 50 pounds “when doing special events.” R. at  
10 196.

11           The job described by Claimant bears essentially no resemblance to the job defined at DOT  
12 189.167-010. In scouring the record for some connection between DOT 189.167-010 and the job  
13 described by Claimant, the court is able to find only a form filled out by Claimant in which he lists  
14 “Consultant” in “Publishing” as a prior job. R. at 195. The title “Consultant” appears to be the  
15 only link between Claimant’s description of his past work experience and DOT 189.167-010. In all  
16 other respects, the jobs are completely divergent. While the fact that Claimant described himself as  
17 a “consultant” may constitute a “scintilla” of evidence, in light of all the evidence in the record, a  
18 reasonable mind could not accept it as adequate to support the conclusion that Claimant had  
19 performed the job whose general requirements are described at DOT 189.167-010. The only  
20 reasonable conclusion is that either (1) Claimant used the title “consultant” in a manner  
21 inconsistent with the DOT and to refer to an entirely different kind of job; or (2) the job of  
22 “consultant” in the Sales/Advertising/Marketing industry has substantially different requirements  
23 than those described at DOT 189.167-010.

24           The ALJ based his adverse determination of eligibility on the conclusion that Claimant was  
25 able to perform past relevant work. Because the ALJ based this finding on the job description found  
26 at DOT 189.167-010, and because there is not substantial evidence to support the conclusion that  
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1 Claimant ever worked in the job described at DOT 189.167-010, the ALJ's determination is not  
2 supported by substantial evidence.<sup>3</sup>

3 **B. FAILURE TO SECURE SEPARATE JOB DESCRIPTIONS**

4 The "procedures for determining a disability claimant's capacity to do past relevant work  
5 (PRW) as set forth in the regulations" are set forth in SSR 82-62 "to clarify the provisions so that  
6 they will be consistently applied." SSR 82-62, Statement of Purpose. "Past work experience must  
7 be considered carefully to assure that the available facts support a conclusion regarding the  
8 claimant's ability or inability to perform the functional activities required in this work." SSR 82-62.  
9 "Adequate documentation of past work includes factual information about those work demands  
10 which have a bearing on the medically established limitations. Detailed information about strength,  
11 endurance, manipulative ability, mental demands and other job requirements must be obtained as  
12 appropriate. This information will be derived from a detailed description of the work obtained from  
13 the claimant, employer, or other informed source." *Id.* Importantly, "[i]f more than one job was  
14 performed during the 15-year period, separate descriptions of each job *will be secured.*" *Id.*  
15 (emphasis added).

16 Claimant's list of jobs held in the past 15 years includes six jobs: Sales Account Executive,  
17 Title and Escrow Account Manager, Media Circulating & Marketing Director, Media Classified  
18 Manager, Publishing Consultant, and Publishing.<sup>4</sup> R. at 195. The last job, sales and marketing for a  
19 publishing company, is the only job for which the record contains a description. *See* Hearing  
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21 <sup>3</sup> Defendant places much emphasis on the fact that Claimant bore the burden of proof at this stage  
22 in the proceedings. However, as the Ninth Circuit has noted,  
23 the application of burdens of proof is particularly elusive in cases involving social  
24 security benefits, in part because the proceedings are not designed to be  
25 adversarial. In addition, the ALJ's *affirmative duty* to assist the claimant to develop  
26 the record further complicates the allocations of burdens. Notwithstanding the  
27 fact that the ALJ shares the burden at each step, we use the term burden of proof  
28 for convenience." *Tackett v. Apfel*, 180 F.3d 1094, 1098 n3 (9th Cir. 1999)  
(emphasis in original) (internal citations omitted).

26 Furthermore, Defendant has cited no authority for the proposition that the burden of proof relieves  
27 the ALJ of supporting his findings with substantial evidence. *See, e.g., Garcia v. Califano*, 463 F.  
28 Supp. 1098 (N.D. Ill. 1979) (finding that even though the record did not support the claimant, the  
lack of substantial evidence supporting the secretary required reversal).

<sup>4</sup> No separate job title was given for this last job, but Claimant described the job as "sales  
marketing." R. at 195.



1 Transcript, R. at 96 (VE: “And the claimant worked as a sales -- doing sales for publishing -- a  
2 publishing company of some sort. This is the only one where there was a description of the job.”).  
3 The ALJ had a duty, as dictated by SSR 82-62, to secure a separate description of each job. Of  
4 course, given that Claimant was deceased at the time of the hearing, the ALJ did not have recourse  
5 to “the primary source for vocational documentation,” SSR 82-62. However, claimant is not the  
6 only source from which an ALJ may obtain “[d]etailed information about strength, endurance,  
7 manipulative ability, mental demands and other job requirements.” *Id.* In particular, SSR 82-62  
8 contemplates that “[t]his information will be derived from a detailed description of the work  
9 obtained from the claimant, employer, or other informed sources.” *Id.*

10 In particular, Claimant’s mother, an “other informed source[],” was available to testify at the  
11 hearing:

12 Atty [for Claimant]: Okay, so the -- since the vocational experts don’t get very  
13 much in the way of the jobs, her characterization of the jobs are completely  
14 different than what the claimant did.

15 VE: I only have --

16 ALJ: How do you know that? Based on what?

17 Atty: Because I interviewed the claimant in preparation for this hearing.

18 ALJ: I know but -- but you’re not -- you don’t plan on testifying as to what he did,  
19 did you?

20 Atty: No but I -- I mean I could but I could also have his mother testify about what  
21 he did.

22 ALJ: Was his mother there working with him?

23 Atty: No, but she knows about the jobs he had.

24 Hearing Transcript, R. at 99.

25 The ALJ failed to secure from Claimant’s mother a detailed description of each job Claimant  
26 reported performing during the relevant 15-year period. The ALJ asked Claimant’s mother only a  
27 single question, which related to his sales position. *See* Hearing Transcript, R. at 105 (ALJ: “What  
28 kind of stuff was he selling?”). Because this departs from SSR 82-62’s dictate that “[i]f more than  
one job was performed during the 15-year period, separate descriptions of each job will be

1 secured,” SSR 82-62, which is “binding on all components of the Social Security Administration,”  
2 20 C.F.R. §§ 402.35(b)(1) and (2); *Pinto*, 249 F.3d at 845 n.3, the ALJ’s adverse determination of  
3 disability was based on legal error.

4 **C. FAILURE TO MAKE NECESSARY SPECIFIC FINDINGS OF FACT**

5 SSR 82-62 requires that “[i]n finding that an individual has the capacity to perform a past  
6 relevant job, the determination or decision must contain among the findings the following specific  
7 findings of fact:

- 8 1. A finding of fact as to the individual’s RFC.
- 9 2. A finding of fact as to the physical and mental demands of the past job/occupation.
- 10 3. A finding of fact that the individual’s RFC would permit a return to his or her past job  
11 or occupation.”

12 SSR 82-62.

13 It is undisputed that the ALJ made a specific finding of fact as to the Claimant’s residual  
14 functional capacity, satisfying requirement (1). *See* R. at 24. The ALJ’s finding that “[t]he claimant  
15 was capable of performing past relevant work as a consultant” is set out verbatim below:

16 The claimant was capable of performing past relevant work as a consultant. This  
17 work did not require the performance of work-related activities precluded by the  
18 claimant’s residual functional capacity (20 CFR 404.1565).

19 Based on the claimant’s reporting, the claimant worked as a consultant in the last  
20 15 years (see Ex. 2E).

21 Based on the evidence of record, the undersigned finds the above-described work  
22 was past relevant work because the claimant performed it in the last 15 years, for a  
23 sufficient length of time to learn and provide average performance, and at the level  
24 of substantial gainful activity.

25 In comparing the claimant’s residual functional capacity with the physical and  
26 mental demands of this work, the undersigned finds that the claimant was able to  
27 perform it as actually and generally performed. The vocational expert testified the  
28 claimant was able to perform this past relevant work even if he had the limitations  
assessed in this decision.

Pursuant to SSR 00-4p, the vocational expert’s testimony is consistent with the  
information contained in the Dictionary of Occupational Titles.

R. at 29.

1 The ALJ's determination, as quoted above, also clearly meets requirement (3) by making a  
2 specific finding of fact that "the individual's RFC would permit a return to his or her past job or  
3 occupation," SSR 82-62, as a consultant. However, nowhere in the ALJ's determination is there a  
4 specific finding of fact "as to the physical and mental demands of the past job/occupation,"  
5 SSR 82-62, to satisfy requirement (2). Because SSR 82-62, which is "binding on all components of  
6 the Social Security Administration," 20 C.F.R. §§ 402.35(b)(1) and (2); *Pinto*, 249 F.3d at 845 n.3,  
7 requires such a specific finding of fact, the ALJ's failure to make such a finding is legal error.

8 **D. FAILURE TO RESOLVE APPARENT VARIATION BETWEEN JOB**  
9 **DESCRIPTIONS**

10 SSR 82-61 recognizes that, with respect to information about past work, "[t]here may be cases  
11 involving significant variations between a claimant's description and the description shown in the  
12 DOT. In some instances, an apparent variation may result from an incomplete or inaccurate  
13 description of past work. Employer contact or further contact with the claimant, may be necessary  
14 to resolve such a conflict." SSR 82-61. This is clearly a case involving significant variations between  
15 Claimant's description of his former work and the description shown in the DOT.

16 For example, here is Claimant's description of his former work:

17 I have been in Sales/Advertising/Marketing my entire career (23+ years) and need  
18 to be very active every day. . . . My work also requires me to travel and attend trade  
19 shows and special events, entertain clients, walk long distances and be on my feet  
20 for extended periods of time. I can not [sic] carry heavy objects, such as the  
21 activities listed above require me to do to be able to do my job."

22 R. at 194. Claimant's job also required lifting boxes of up to 50 pounds "when doing special events.

23 R. at 196.

24 And here is Claimant's mother's description of Claimant's former work:

25 Well, he would go out on sales calls. He was responsible for a lot of sales people  
26 and whenever they needed to get a new client or whatever he would physically go  
27 out with them and make the sales calls and the sales pitches and --

28 . . .

-- and so he would go with the reps when they'd go into either the restaurants or  
any type of advertising that you would find in the Metro; and the Chronicle, he  
was classified advertising so it was basically the same thing, he would go with his  
sales reps. When he was in New York, he had to travel -- they'd have to walk to the  
path and take the subway into New York and walk quite a distance to get to the

1 jobs. And basically the publishing was the same thing, he still worked with his sales  
2 reps and the people to get the publications going.

3 R. at 105.

4 In sharp contrast, here is the DOT description that the ALJ accepted as descriptive of  
5 Claimant's former work:

6 CONSULTANT

7 Industry Designation: Professional and Kindred Occupations

8 Consults with client to define need or problem, conducts studies and surveys to  
9 obtain data, and analyzes data to advise on or recommend solution, utilizing  
10 knowledge of theory, principles, or technology of specific discipline or field of  
11 specialization: Consults with client to ascertain and define need or problem area,  
12 and determine scope of investigation required to obtain solution. Conducts study  
13 or survey on need or problem to obtain data required for solution. Analyzes data to  
14 determine solution, such as installation of alternate methods and procedures,  
15 changes in processing methods and practices, modification of machines or  
16 equipment, or redesign of products or services. Advises client on alternate  
17 methods of solving need or problem, or recommends specific solution. May  
18 negotiate contract for consulting service. May specialize in providing consulting  
19 service to government in field of specialization. May be designated according to  
20 field of specialization such as engineering or science discipline, economics,  
21 education, labor, or in specialized field of work as health services, social services,  
22 or investment services.

23 DOT 189.167-010.


24 This is a clear "case[] involving significant variations between a claimant's description and the  
25 description shown in the DOT." SSR 82-61. SSR dictates that "[e]mployer contact or further  
26 contact with the claimant, may be necessary to resolve such a conflict." SSR 82-61. The court  
27 recognizes that "further contact with the claimant" was not possible, but there is no indication that  
28 the ALJ made *any* attempt to reconcile this apparent conflict, through employer contact or through  
any other means. SSR 82-61, though not dictating the exact method through which such apparent  
conflicts must be resolved, clearly contemplates that such conflicts are to be resolved in making a  
determination as to a claimant's capacity to return to past relevant work. The ALJ made no attempt  
to resolve this conflict, instead simply presuming a resolution in favor of the DOT's description.  
This departure from SSR 82-61's guidelines constituted legal error.

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**IV. ORDER**

For the foregoing reasons, Plaintiff’s Motion for Summary Judgment is **GRANTED** and Defendant’s Motion for Summary Judgment is **DENIED**. The case is **REMANDED** for further proceedings not inconsistent with this decision.

Dated: February 18, 2015

  
BETH LABSON FREEMAN  
United States District Judge