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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEBORAH L. MARSHALL,

Plaintiff,

vs.

MICHAEL J. ASTRUE, Commissioner of
Social Security

Defendant.

CASE NO. 08cv1735-L(WMc)

**ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT, DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT, AND
REVERSING AND REMANDING
ACTION FOR FURTHER
ADMINISTRATIVE PROCEEDINGS**

Plaintiff Deborah L. Marshall filed a Complaint for Judicial Review and Remedy on Administrative Decision Under the Social Security Act. In accordance with 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.1(c)(1)(c), the case was referred to United States Magistrate Judge William McCurine, Jr. for a report and recommendation. The parties filed cross-motions for summary judgment. On February 8, 2010 Judge McCurine issued a report and recommendation recommending to grant in part Plaintiff's motion for summary judgment, deny Defendant's motion for summary judgment and remand the action for further administrative proceedings. For the reasons which follow, the Report and Recommendation is **ADOPTED**. This action is **REVERSED AND REMANDED**.

Upon review of the Administrative Law Judge's ("ALJ") decision, the record, and the parties' papers, Judge McCurine found that in denying benefits, the ALJ relied on the

1 vocational expert's opinion. The ALJ erred by failing to ask the vocational expert whether
2 his opinion conflicted with the Department of Labor's Dictionary of Occupational Titles
3 ("DOT"). Specifically, the ALJ found that one of Plaintiff's limitations was the she could
4 only occasionally reach overhead with her left arm. The vocational expert opined that
5 Plaintiff could perform three occupations all of which required more than occasional
6 reaching. The conflict between Plaintiff's limitations and the DOT requirements was not
7 explained in the ALJ's opinion. Accordingly, the Magistrate Judge recommended to
8 remand the action for further administrative proceedings.

9 A district judge "may accept, reject, or modify the recommended disposition" on a
10 dispositive matter prepared by a magistrate judge proceeding without the consent of the
11 parties for all purposes. Fed. R. Civ. P. 72(b); *see* 28 U.S.C. § 636(b)(1). "The court shall
12 make a *de novo* determination of those portions of the [report and recommendation] to
13 which objection is made." 28 U.S.C. § 636(b)(1). Section 636(b)(1) does not require
14 review by the district court under a lesser standard when no objections are filed. *Thomas v.*
15 *Arn*, 474 U.S. 140, 149-50 (1985). The "statute makes it clear that the district judge must
16 review the magistrate judge's findings and recommendations *de novo if objection is made,*
17 *but not otherwise."* *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en*
18 *banc*) (emphasis in the original); *see Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1225-26
19 & n.5 (D. Ariz. 2003). When no objections are filed, the *de novo* review is waived.

20 Neither party has filed any objections. The Report and Recommendation is
21 **ADOPTED**. Plaintiff's motion for summary judgment is **GRANTED IN PART**,
22 Defendant's summary judgment motion is **DENIED**. This action is **REVERSED AND**
23 **REMANDED** to the Social Security Administration for further proceedings consistent with
24 the Report and Recommendation.

25 **IT IS SO ORDERED.**

26 DATED: March 10, 2010

27 
28 M. James Lorenz
United States District Court Judge

COPY TO:

1 HON. WILLIAM McCURINE, Jr.
2 UNITED STATES MAGISTRATE JUDGE

3 ALL PARTIES/COUNSEL
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