

MAR 24 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL J. STOCKI,

Plaintiff - Appellant,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant - Appellee.

No. 07-35955

D.C. No. CV-06-01661-MA

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Malcolm F. Marsh, District Judge, Presiding

Argued and Submitted March 4, 2009
Portland, Oregon

Before: GRABER, FISHER and M. SMITH, Circuit Judges.

Daniel Stocki appeals the district court's order upholding the administrative law judge's denial of disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-434. We reverse and remand for payment of benefits.

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The ALJ found that Stocki was disabled within the meaning of the Social Security Act as of January 5, 1998, but not prior to December 31, 1996, the date Stocki was last insured for disability benefits. The ALJ did not adequately address the five submissions of Stocki's treating doctors that the Appeals Council's remand order required it to consider, and failed to provide "specific, legitimate reasons" for rejecting the opinions of those treating doctors regarding the onset date of his disability in favor of a non-examining psychologist's opinion. *Orn v. Astrue*, 495 F.3d 625, 632 (9th Cir. 2007) (quoting *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995)); *see also Smith v. Bowen*, 849 F.2d 1222, 1225 (9th Cir. 1988) ("[M]edical reports are inevitably rendered retrospectively and should not be disregarded solely on that basis."). Because this disregarded evidence, "when it is given the effect required by law," establishes that Stocki was disabled during the relevant period, we remand with instructions to remand to the Commissioner of Social Security for immediate payment of benefits. *Lester*, 81 F.3d at 834; *see Benecke v. Barnhart*, 379 F.3d 587, 593 (9th Cir. 2004).

REVERSED and REMANDED for payment of benefits.