UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TYRONE BROWN, Plaintiff, v. MICHAEL J. ASTRUE, Commissioner of Social Security, Defendant.	Case No. CV 08-6821 JC MEMORANDUM OPINION

I. SUMMARY

On October 20, 2008, plaintiff Tyrone Brown ("plaintiff") filed a Complaint seeking review of the Commissioner of Social Security's denial of plaintiff's application for benefits. The parties have filed a consent to proceed before a United States Magistrate Judge.

This matter is before the Court on the parties' cross motions for summary judgment, respectively ("Plaintiff's Motion") and ("Defendant's Motion"). The Court has taken both motions under submission without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; October 23, 2008 Case Management Order ¶ 5.

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Based on the record as a whole and the applicable law, the decision of the Commissioner is AFFIRMED. The findings of the Administrative Law Judge ("ALJ") regarding plaintiff's ability to do work are supported by substantial evidence and are free from material error.[1]

II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION

On February 14, 2006, plaintiff, a former dishwasher/bus boy, filed an application for Supplemental Security Income Benefits. (Administrative Record ("AR") 82-84, 107). Plaintiff asserted that he became disabled on March 16, 2004, due to "mental illness, depression, pain in back, leg, arm, seizures, former alcoholic, can remember events that took place years ago, but not present events, hear voices, claustrophobia, lack of concentration." (AR 82, 106). The Social Security Administration denied plaintiff's application initially and on reconsideration. (AR 49-54). Plaintiff requested a hearing, which an ALJ conducted on October 2, 2007. (AR 8, 24-48). The ALJ examined the medical record and heard testimony from plaintiff (who was represented by counsel), and a vocational expert. (AR 24-48).

On October 16, 2007, the ALJ determined that plaintiff was not disabled through the date of the decision. (AR 12-22). Specifically, the ALJ found: (1) plaintiff suffered from the following severe combination of impairments: "depressive disorder; history of alcoholism with history of alcohol related seizures; lumbar strain and bilateral bunions" (AR 14); (2) plaintiff's impairments, including his substance use disorder, met the listed impairments for 12.04 and

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[1]The harmless error rule applies to the review of administrative decisions regarding disability. See Batson v. Commissioner of Social Security Administration, 359 F.3d 1190, 1196 (9th Cir. 2004) (applying harmless error standard); see also Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1054-56 (9th Cir. 2006) (discussing contours of application of harmless error standard in social security cases).

12.09 of 20 C.F.R. Part 404, Subpart P, Appendix 1 (AR 15); (3) if plaintiff stopped the substance use, plaintiff would continue to have a severe impairment or combination of impairments, but those impairments would not meet or medically equal any of the listed impairments (AR 17); (4) if plaintiff stopped the substance use, he would have the residual functional capacity to perform a limited range of medium work[2] (AR 18); (5) plaintiff had no past relevant work (AR 21); and (6) if plaintiff stopped the substance use, there would be a significant number of jobs in the national economy that he could perform, specifically a hand packager and assembler (AR 21-22).

The Appeals Council denied plaintiff's application for review. (AR 4-5).

III. APPLICABLE LEGAL STANDARDS

A. Sequential Evaluation Process

To qualify for disability benefits, a claimant must show that he is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least twelve months. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citing 42 U.S.C.

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[2]"Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, [the Administration] determine[s] that he or she can also do sedentary and light work." See 20 C.F.R. § 416.967(c). SSR 83-10 provides in pertinent part:

> The regulations define medium work as lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. A full range of medium work requires standing or walking, off and on, for a total of approximately 6 hours in an 8-hour workday in order to meet the requirements of frequent lifting or carrying objects weighing up to 25 pounds. As in light work, sitting may occur intermittently during the remaining time. Use of the arms and hands is necessary to grasp, hold, and turn objects, as opposed to the finer activities in much sedentary work, which require precision use of the fingers as well as use of the hands and arms.

See SSR 83-10.

§ 423(d)(1)(A)). The impairment must render the claimant incapable of performing the work he previously performed and incapable of performing any other substantial gainful employment that exists in the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

In assessing whether a claimant is disabled, an ALJ is to follow a five-step sequential evaluation process:

(1) Is the claimant presently engaged in substantial gainful activity? If so, the claimant is not disabled. If not, proceed to step two.

(2) Is the claimant's alleged impairment sufficiently severe to limit his ability to work? If not, the claimant is not disabled. If so, proceed to step three.

(3) Does the claimant's impairment, or combination of impairments, meet or equal an impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1? If so, the claimant is disabled. If not, proceed to step four.

(4) Does the claimant possess the residual functional capacity to perform his past relevant work?[3] If so, the claimant is not disabled. If not, proceed to step five.

(5) Does the claimant's residual functional capacity, when considered with the claimant's age, education, and work experience, allow him to adjust to other work that exists in significant numbers in the national economy? If so, the claimant is not disabled. If not, the claimant is disabled.

Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th Cir. 2006) (citing 20 C.F.R. §§ 404.1520, 416.920). The claimant has the burden

[3]Residual functional capacity is "what [one] can still do despite [ones] limitations" and represents an "assessment based upon all of the relevant evidence." 20 C.F.R. § 416.945(a).

of proof at steps one through four, and the Commissioner has the burden of proof at step five. Bustamante v. Massanari, 262 F.3d 949, 953-54 (9th Cir. 2001) (citing Tackett); see also Burch, 400 F.3d at 679 (claimant carries initial burden of proving disability).

If the ALJ determines that a claimant is disabled and there is medical evidence that the claimant suffers from drug addiction or alcoholism, the regulations dictate that the ALJ conduct a drug and alcohol analysis (a "DAA") to determine which of a claimant's identified limitations would remain if the claimant stopped using drugs or alcohol. See 20 C.F.R. § 416.935(b). If the remaining limitations would be disabling, the claimant's substance abuse is not a contributing factor material to his disability. If the remaining limitations would not be disabling, then the claimant's substance abuse is material and benefits must be denied. See 20 C.F.R. § 416.935(b); 42 U.S.C. § 423(d)(2)(C) ("An individual shall not be considered to be disabled. . . if alcoholism or drug addiction would. . . be a contributing factor material to the Commissioner's determination that the individual is disabled."); see also Parra v. Astrue, 481 F.3d 742, 746-47 (9th Cir. 2007) (discussing same), cert. denied, 128 S. Ct. 1068 (2008); Bustamante, 262 F.3d at 955 (DAA must be conducted after a finding of disability under the sequential evaluation process).

B. Standard of Review

Pursuant to 42 U.S.C. section 405(g), a court may set aside a denial of benefits only if it is not supported by substantial evidence or if it is based on legal error. Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir. 2006) (citing Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457 (9th Cir. 1995)). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (citations and quotations omitted). It is more than a

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mere scintilla but less than a preponderance. Robbins, 466 F.3d at 882 (citing Young v. Sullivan, 911 F.2d 180, 183 (9th Cir. 1990)).

To determine whether substantial evidence supports a finding, a court must "'consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [Commissioner's] conclusion.'" Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming or reversing the ALJ's conclusion, a court may not substitute its judgment for that of the ALJ. Robbins, 466 F.3d at 882 (citing Flaten, 44 F.3d at 1457).

IV. DISCUSSION

Plaintiff contends that the ALJ erred in considering the opinions of nonexamining state agency physician, Dr. Y.C. McDowell, who completed a Mental Residual Functional Capacity Assessment Form for plaintiff. Plaintiff alleges that Dr. McDowell found greater, more detailed limitations than the ALJ found to exist in determining plaintiff's residual functional capacity, and the ALJ should have incorporated such limitations into the residual functional capacity determination. Without Dr. McDowell's specified limitations, plaintiff alleges the ALJ's hypothetical question to the vocational expert was incomplete and the ALJ's opinion that plaintiff can perform work at step five based on the vocational expert's testimony was in error. (Plaintiff's Motion at 4-6). As explained below, this Court disagrees. Substantial evidence supports the ALJ's conclusion that plaintiff can work.

A. The Medical Record

The medical record includes mental health treatment records from the Los Angeles County Department of Mental Health Downtown Mental Health Center from August 2005 through August 2007. (AR 165-177, 218-237). At the outset, plaintiff complained of depression, poor sleep, poor appetite, feelings of hopelessness, loneliness, withdrawal, and problems with anger and concentration/

memory. (AR 172). Plaintiff reported hearing voices since 2003, and seeing shadows since 1995. (AR 172). Plaintiff also reportedly believed that others were out to get him. (AR 172).

Plaintiff claimed to have suffered seven seizures, and reported a history of being hit in the head with a hammer and lower back pain from falling down a ladder. (AR 173).[4] Plaintiff acknowledged a history of alcohol and marijuana use and about twenty alcohol-related arrests. (AR 174-75). Plaintiff had been homeless on and off for the past thirty years. (AR 175). Plaintiff's intake examiner initially diagnosed plaintiff with major depressive disorder with psychotic features and polysubstance dependence. (AR 177).

Thereafter, on August 15, 2005, Dr. Ed Cavanagh, M.D., evaluated and diagnosed plaintiff with depression, not otherwise specified, and "ETOH" dependence, and prescribed Lexapro. (AR 170). Plaintiff reported drinking "every day" at one point and having his last drink two weeks earlier. (AR 169). Dr. Cavanagh assigned plaintiff a Global Assessment of Functioning ("GAF") score of 52.[5] Treatment notes indicate that plaintiff continued to take Lexapro

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[4]The record reflects that on November 25, 2004, plaintiff visited the emergency room at the Los Angeles County/USC Medical Center and complained of lower back pain. (AR 153-54). Plaintiff reported a history of substance abuse. (AR 153 (noting "EHOH Abuse")). Plaintiff was prescribed Motrin and Vicodin for his pain. (AR 153). The record also reflects that in 2005, plaintiff visited the emergency room at the Martin Luther King Drew Medical Center on three occasions. (AR 156-63). Plaintiff complained of having chronic back pain for two years. (AR 159). On examination, plaintiff had a full range of motion in his spine and a straight leg raising test was negative. (AR 160).

[5]A GAF score is the clinician's judgment of the individual's overall level of functioning. It is rated with respect only to psychological, social, and occupational functioning, without regard to impairments in functioning due to physical or environmental limitations. See American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, 32 (4th ed. 2000) (hereinafter "DSM IV"). A GAF of 51-60 indicates "[m]oderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks or moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers)." DSM IV at 34.

with positive results. (AR 165-68). Notes from a January 2006 visit reflect that plaintiff had been clean and sober for eight to nine months. (AR 226). However, notes from a September 2006 visit reflect that plaintiff reportedly became clean and sober only two months earlier. (AR 223).

On September 11, 2007, one of plaintiff's treating physicians, Dr. James R. Jones from the Downtown Mental Health Center, completed a "Medical Statement Concerning Depression for Social Security Claim." (AR 239-41). Dr. Jones diagnosed plaintiff with bipolar disorder, type I, and assigned a current GAF of 48.[6] (AR 239). Dr. Jones circled that plaintiff has "marked" restrictions of activities of daily living and difficulty maintaining social functioning, and circled that deficiencies in concentration would result in "frequent failure to complete tasks in a timely manner," with "[r]epeated [e]pisodes of deterioration or decompensation in work or work-like settings[.]" (AR 239). Dr. Jones checked boxes indicating that plaintiff had "marked" impairments in all of his work-related abilities except the ability to carry out short and simple instructions. (AR 240-41). Dr. Jones commented:

> The severity and frequency of Mr. Brown's symptoms significantly impair his ability to be successfully gainfully employed. He is manifesting memory impairment, concentration difficulty, thoughts about suicide and is extremely lethargic. Another significant impediment to gainful employment is the fact that he is functionally illiterate.

(AR 241).[7] Dr. James made no mention of plaintiff's alcohol use.[8]

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[6]A GAF score between 41 and 50 indicates "[s]erious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job)." DSM-IV at 32.

[7]In his initial assessment at the Downtown Mental Health Center, plaintiff reported that he had completed high school, was in regular school, and had average grades. (AR 175).

(continued...)

Plaintiff underwent a Complete Internal Medical Evaluation by Dr. James Paule on or about May 10, 2006. (AR 179-84). Dr. Paule interviewed plaintiff but reviewed no medical records. (AR 179). Although plaintiff complained of suffering from "seizures" for three years while drinking alcohol heavily, upon questioning, plaintiff explained that by "seizures" he meant lost consciousness and admitted that he never had a "seizure" when he had been off alcohol completely. (AR 179). Two MRIs of plaintiff's brain were negative. (AR 180). Plaintiff reported that he began drinking daily in 1977, but decreased his alcohol intake over the past two years and claimed to only drink a six pack of beer on weekends. (AR 180). Plaintiff also reported suffering for two years from lumbar pain that did not radiate. (AR 180).

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[7](...continued)
Elsewhere, plaintiff reported that he likes to read. (AR 119, 123).

[8]The ALJ rejected Dr. Jones's check-the-box evaluation, reasoning:

> This report is so extreme and so inconsistent with the evidence of record, especially [Dr. Jones'] own treatment notes, as to be implausible. Not only do his notes show that the claimant is doing well and is asymptomatic on his medication, but the claimant has never expressed thought of suicide to Dr. Jones or to any other examiner at this clinic. In addition, there is no evidence that the claimant is functionally illiterate. . . . There always exists a possibility that a doctor may express an opinion in an effort to assist a patient with whom he sympathizes or maybe the patient is quite insistent in seeking supportive notes. While it is difficult to confirm the presence of such motives, they are more likely in situations where the opinion in question departs substantially from the rest of the evidence of record as in this case. I cannot give controlling weight to this opinion which is completely unsupported by the evidence.

(AR 20). Plaintiff does not challenge the ALJ's rejection of Dr. Jones' opinion. The Court notes that the ALJ could properly reject Dr. Jones' treating physician opinion, which conflicts with other examining physician opinions, by making findings setting forth specific, legitimate reasons for doing so that are based on substantial evidence in the record, as the ALJ did here. Orn v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007); Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002) (ALJ can meet burden by setting out detailed and thorough summary of facts and conflicting clinical evidence, stating his interpretation thereof, and making findings) (citations and quotations omitted).

Dr. Paule's noted no abnormalities in his examination of plaintiff. (AR 181-83). Dr. Paule diagnosed plaintiff with seizure disorder, depression by history, history of alcoholism, bilateral bunions, and lumbar strain. (AR 184). Dr. Paule opined that plaintiff could perform medium work with no postural, manipulative, visual or communicative limitations. (AR 184). Dr. Paule noted that plaintiff should avoid machinery and heights and should not drive. (AR 184).[9]

Plaintiff underwent a Complete Psychiatric Examination on or about August 7, 2006, by Dr. Christopher Ho. (AR 185-89). Plaintiff reported a ten or fifteen year history of back problems due to a job related injury while working construction, suffering from depression for about thirty years, and drinking alcohol heavily when depressed. (AR 185-86). Plaintiff reportedly stopped drinking six weeks before his exam. (AR 185).

Plaintiff said he sometimes became violent and angry, talked to himself, could not concentrate or remember things, had difficulty sleeping and had a poor appetite. (AR 186). Plaintiff claimed he had trouble maintaining a regular work schedule due to his alcohol use. (AR 186). Dr. Ho diagnosed plaintiff with a history of alcohol abuse and dependence and depressive disorder, not otherwise specified, and gave plaintiff a current GAF of 45, with a GAF of 60 for the past year. (AR 188). Dr. Ho noted that it was possible that plaintiff's alcohol use had contributed significantly to his history of depression. (AR 188).

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[9]State agency physician, Dr. V.A. Casillas, reviewed plaintiff's treating/examining source statements and completed a Physical Residual Functional Capacity Assessment Form for plaintiff dated September 7, 2006. (AR 206-10). Like Dr. Paule, Dr. Casillas found plaintiff capable of performing medium work, avoiding hazards (machinery, heights, etc.), given a "seizure precaution." (AR 209). Dr. Casillas noted that plaintiff did have a lumbar spine strain that limited his lifting and carrying abilities and that plaintiff appeared undernourished. (AR 210).

Dr. Ho concluded that plaintiff:

> can follow simple instructions but would have difficulties with more complex tasks. He would have difficulties working over long-term periods, primarily due to his alcohol use. The patient was able to do most tasks on the mental status exam. He interacted appropriately today. He can arrange transportation. His history of substance abuse has limited his ability to function.

(AR 188). Dr. Ho gave plaintiff a "guarded" prognosis, but noted that plaintiff was able to make simple social, occupational and personal adjustments. (AR 188).

Nonexamining state agency physician, Dr. Y.C. McDowell, completed Psychiatric Review Technique and Mental Residual Functional Capacity Assessment forms for plaintiff. (AR 190-205). Dr. McDowell noted that plaintiff suffered from a depressive disorder and alcohol abuse and dependence, and checked boxes indicating that plaintiff would have mild restrictions of daily living, moderate difficulties maintaining social functioning, and maintaining concentration, persistence, or pace. (AR 193, 198, 200). More specifically, Dr. McDowell checked boxes indicating that plaintiff would have moderate limitations in the ability to understand and remember and carry out detailed instructions, in the ability to maintain attention and concentration for extended periods, and in the ability complete a work week and to perform activities within a schedule and maintain a regular attendance and be punctual. (AR 203-04). Dr. McDowell also checked boxes indicating that plaintiff would have moderate limitations in his ability to interact appropriately with the general public, to accept instructions and respond appropriately to criticism, to get along with coworkers or peers, to maintain socially appropriate behavior, and to set realistic goals or make plans independently of others. (AR 204). In a narrative, Dr. McDowell explained:

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> The claimant is able to remember, understand and perform simple and repetitive tasks. Although the claimant has a problem with alcohol dependence/abuse he is still able to maintain concentration, persistence and pace to do unskilled work over a forty hour work week. The claimant is isolative/withdrawn as well as having aggressiveness and anger towards others. Therefore he should work in a job setting with limited contact. However, he is able to adapt to changes in the work place.

(AR 205).

B. The ALJ's Residual Functional Capacity Determination

As summarized above, the ALJ found that plaintiff could perform medium work with some limitations. Specifically, the ALJ determined that plaintiff:

> would be able to perform simple work involving simple judgments and decisions, but would be unable to perform detailed or complex work involving detailed or complex judgments or decisions. He would be unable to have more than occasional contact with supervisors, co-workers or the public, and would be unable to work at jobs requiring a production rate pace with production quota measured periodically throughout the work day, but quotas can be met at the end of the work day or work week. He should work in a job environment with less than occasional changes in the environment where these changes are only simple in character. He should avoid concentrated exposure to hazards including unprotected heights and dangerous machinery.

(AR 18). In making this determination, the ALJ summarized the findings from Dr. Ho's examination and noted that the ALJ's residual functional capacity assessment was consistent with Dr. Ho's opinion. (AR 20). The ALJ also noted that the residual functional capacity conclusions reached by the state agency

physicians (including Dr. McDowell), supported a finding of not disabled and concurred with such assessments. (AR 21, citing the state agency physician opinions at AR 190-205, 211-16)).

Plaintiff does not dispute the ALJ's determination that he could perform medium work. Rather, plaintiff asserts that the ALJ's residual functional capacity assessment does not adequately incorporate Dr. McDowell's check-the-box assessment. (Plaintiff's Motion at 5-6).[10]

C. The ALJ Properly Evaluated Medical Opinion Evidence

In Social Security cases, courts employ a hierarchy of deference to medical opinions depending on the nature of the services provided. Courts distinguish among the opinions of three types of physicians: those who treat the claimant ("treating physicians") and two categories of "nontreating physicians," namely those who examine but do not treat the claimant ("examining physicians") and those who neither examine nor treat the claimant ("nonexamining physicians"). Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1996) (footnote reference omitted). A treating physician's opinion is entitled to more weight than an examining physician's opinion, and an examining physician's opinion is entitled to more weight than a nonexamining physician's opinion.[11] See id.

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[10]Plaintiff also appears to argue that the ALJ's single statement regarding the state agency physicians' opinions is indicative of the fact that the ALJ actually adopted all of Dr. McDowell's opinions, but nonetheless neglected to include such limitations in his residual functional capacity determination or in the hypothetical question posed to the vocational expert. Plaintiff's premise is flawed. The ALJ's statement regarding the state agency physicians (including Dr. McDowell), can reasonably be interpreted to mean that the ALJ adopted such physicians' broader assessments that plaintiff was not disabled, as opposed to adopting each individual opinion contained in their reports. As noted above, if the evidence can reasonably support either affirming or reversing the ALJ's conclusion, a court may not substitute its judgment for that of the ALJ.

[11]Cf. Le v. Astrue, 529 F.3d 1200, 1201-02 (9th Cir. 2008) (not necessary or practical to draw bright line distinguishing treating physicians from non-treating physicians; relationship is better viewed as series of points on a continuum reflecting the duration of the treatment relationship and frequency and nature of the contact) (citation omitted).

Here, the ALJ adopted a residual functional capacity assessment consistent with Dr. Ho's assessment based on Dr. Ho's independent examination of plaintiff, and consistent with Dr. McDowell's assessment as explained by Dr. McDowell's narrative (finding that plaintiff can "maintain concentration, persistence and pace to do unskilled work over a forty hour work week"), and containing many of the limitations that Dr. McDowell checked on plaintiff's forms. The ALJ need not have adopted any greater limitations than he did.

First, opinions of consultative examiners, like Dr. Ho, are substantial evidence and may be relied upon by an ALJ in determining a claimant's residual functional capacity when those opinions are supported by independent clinical findings. Orn, 495 F.3d at 633. The ALJ was entitled to rely on Dr. Ho's evaluation.

Second, contrary to plaintiff's assertion, the ALJ did consider Dr. McDowell's opinion and incorporated the opinion to the extent the ALJ deemed appropriate. The ALJ was required to do no more. To the extent plaintiff may assert that the ALJ was required to adopt all of Dr. McDowell's individual opinions, the court notes that a nonexamining physician's opinion "with nothing more" cannot constitute substantial evidence. Andrews v. Shalala, 53 F.3d 1035, 1042 (9th Cir. 1995). Reports of a nonexamining advisor may only serve as substantial evidence when those reports are supported by other evidence in the record and are consistent with such evidence. Id. at 1042. The boxes that Dr. McDowell checked on plaintiff's forms, without more, are not substantial evidence and need not have been accepted. See Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002) (finding that ALJ "need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory, and inadequately supported by clinical findings") (citing Matney v. Sullivan, 981 F.2d 1016, 1019 (9th Cir. 1992)); Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989) (same); see also Crane v. Shalala, 76 F.3d 251, 253 (9th Cir. 1996) (ALJ

properly rejected doctors' opinions because they were check-off reports that did not contain any explanation for the bases of their conclusions).

To the extent plaintiff claims that the hypothetical question posed to the vocational expert was incomplete because it did not contain all of the limitations in the boxes checked by Dr. McDowell, plaintiff is not entitled to relief. While a hypothetical question posed by an ALJ to a vocational expert must set out all the limitations and restrictions of the particular claimant, Light v. Social Security Administration, 119 F.3d 789, 793 (9th Cir.), as amended (1997) (citing Andrews v. Shalala, 53 F.3d 1035, 1044 (9th Cir. 1995)), an ALJ's hypothetical question need not include limitations not supported by substantial evidence in the record. Osenbrock v. Apfel, 240 F.3d 1157, 1163-64 (9th Cir. 2001) (citation omitted). Because the hypothetical question the ALJ posed included all the limitations the ALJ properly found to exist, the ALJ committed no error.

V. CONCLUSION

For the foregoing reasons, the decision of the Commissioner of Social Security is affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: October 27, 2009

/s/
Honorable Jacqueline Chooljian
UNITED STATES MAGISTRATE JUDGE