

<p>FILED - SOUTHERN DIVISION CLERK, U.S. DISTRICT COURT</p> <p style="text-align: center;">NOV 24 2009</p> <p>CENTRAL DISTRICT OF CALIFORNIA BY <i>SPK</i> DEPUTY</p>

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

<p>10 BIVEN J. JONES,</p> <p>11 Plaintiff,</p> <p>12 v.</p> <p>13 MICHAEL J. ASTRUE,</p> <p>14 Commissioner of the</p> <p>15 Social Security</p> <p>16 Administration,</p> <p style="text-align: center;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. CV 08-08562-MLG</p> <p>MEMORANDUM OPINION AND ORDER</p>
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I. Factual and Procedural Background

Plaintiff Biven J. Jones ("Plaintiff") seeks review of the Commissioner's final decision denying her application for disability insurance benefits ("DIB") pursuant to Title II of the Social Security Act. For the reasons stated below, the Commissioner's decision is affirmed.

Plaintiff was born on January 2, 1953. (Administrative Record ("AR") at 29). She has a high school education and relevant work experience as a telecommunications projects supervisor, power and framing supervisor, and communications technician. (AR at 29, 32).

Plaintiff filed an application for DIB on May 12, 2005, alleging

1 that she has been disabled since September 5, 1995, due to bilateral
2 carpal tunnel syndrome, asthma, bronchitis, chest pain, disc disease of
3 the lumbar spine, and depression.¹ (AR at 30-31, 314). The Social
4 Security Administration denied Plaintiff's application at the initial
5 and reconsideration levels. (AR at 300-04, 307-11).

6 At Plaintiff's request, a *de novo* hearing was held before
7 Administrative Law Judge Dale A. Garwal (the "ALJ") on March 26, 2007.
8 (AR at 960-77). Plaintiff was represented by counsel and testified in
9 her own behalf. (AR at 960-77). A vocational expert also testified at
10 the hearing. (AR at 971-75). On July 20, 2007, the ALJ issued a decision
11 denying Plaintiff's application for DIB. (AR at 29-34). The ALJ found
12 that Plaintiff: (1) has not engaged in substantial gainful activity
13 since her alleged onset date of disability (step 1);² (2) suffers from
14 the severe impairments of chronic obstructive pulmonary disease,
15 hypertension, and depressive disorder, NOS (step 2); (3) does not have
16 any impairments that meet or equal a Listed impairment (step 3); (4) has
17 the residual functional capacity ("RFC") to perform a range of light
18 work;³ (5) is unable to perform her past relevant work; but (6) is
19 capable of performing other work that exists in significant numbers in
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21 ¹ Plaintiff filed a prior application for DIB on March 20, 1996.
22 (AR at 29-30, 92-95). On December 18, 1997, an administrative law judge
23 denied Plaintiff's application after a hearing. (AR at 30, 58-69). The
Appeals Council denied review on May 19, 1999. (AR at 30, 54-55).

24 ² The ALJ further found, however, that Plaintiff had substantial
25 earnings for the years 1995, 1996, 2000, and 2005. (AR at 30).

26 ³ Specifically, the ALJ found that Plaintiff is able to lift and
27 carry 20 pounds occasionally and 10 pounds frequently, and can stand,
28 walk, and sit six hours in an eight-hour workday. (AR at 31). Plaintiff
is limited to performing simple, routine, repetitive tasks, and must
avoid exposure to dust, odors, fumes, gases, pollutants, and extreme
temperature changes. (AR at 31, 33).

1 the economy, including work as a bagger (garment) and garment folder.
2 (AR at 31-34). Plaintiff's date last insured was December 31, 2002. (AR
3 at 33). The Appeals Council denied review on October 27, 2008. (AR at 7-
4 9).

5 Plaintiff commenced this action for judicial review on January 8,
6 2009. On October 15, 2009, the parties filed a Joint Stipulation.
7 Plaintiff contends that the ALJ failed to present a complete
8 hypothetical question to the vocational expert ("VE").⁴ (Joint
9 Stipulation at 8-10, 12-15). Plaintiff seeks remand for payment of
10 benefits or, in the alternative, remand for further administrative
11 proceedings. (Joint Stipulation at 15). The Commissioner requests that
12 the ALJ's decision be affirmed. (Joint Stipulation at 15). The Joint
13 Stipulation has been taken under submission without oral argument.

14 15 **II. Standard of Review**

16 Under 42 U.S.C. § 405(g), a district court may review the
17 Commissioner's decision to deny benefits. The Commissioner's or ALJ's
18 findings and decision should be upheld if they are free from legal error
19 and are supported by substantial evidence based on the record as a
20 whole. 42 U.S.C. § 405(g); *Richardson v. Perales*, 402 U.S. 389, 401
21 (1971); *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
22 evidence means such evidence as a reasonable person might accept as
23 adequate to support a conclusion. *Richardson*, 402 U.S. at 401;
24 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more
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27 ⁴ Plaintiff also claimed that the doctrine of res judicata did not
28 apply to her mental impairment due to changed circumstances. (Joint
Stipulation at 4-8). Plaintiff now concedes that this claim is moot.
(Joint Stipulation at 8).

1 than a scintilla, but less than a preponderance. *Lingenfelter v. Astrue*,
2 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc. Sec. Admin.*,
3 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether substantial
4 evidence supports a finding, the reviewing court "must review the
5 administrative record as a whole, weighing both the evidence that
6 supports and the evidence that detracts from the Commissioner's
7 conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996). "If
8 the evidence can reasonably support either affirming or reversing," the
9 reviewing court "may not substitute its judgment" for that of the
10 Commissioner. *Id.* at 720-721.

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12 **III. The ALJ Posed a Complete Hypothetical Question to the VE**

13 In considering the severity of Plaintiff's mental impairment, the
14 ALJ applied a "special technique" in which he rated Plaintiff's
15 psychiatric limitations on a four-point scale in the following four
16 functional areas: activities of daily living; social functioning;
17 concentration, persistence, or pace; and episodes of decompensation. (AR
18 at 32); see 20 C.F.R. § 404.1520a(c)(3-4). The ALJ determined that
19 Plaintiff has moderate difficulties in maintaining concentration,
20 persistence or pace, mild restrictions in activities of daily living,
21 and mild difficulties in maintaining social functioning. (AR at 32); see
22 20 C.F.R. § 404.1520a(e)(1). Plaintiff contends that these findings were
23 not adequately presented to the VE in the ALJ's hypothetical. (Joint
24 Stip. at 8-10, 12-15). Specifically, the ALJ asked the VE to assume a
25 person with Plaintiff's background and physical restrictions, who was
26 limited to "simple routine tasks." (AR at 32, 973). Plaintiff contends
27 that the ALJ's failure to include the restrictions in concentration,
28 persistence, pace, daily living and social functioning in the

1 hypothetical was reversible error. The Court disagrees.

2 Plaintiff's argument conflates the ALJ's findings at Steps Two
3 through Five of the sequential analysis.⁵ The factors identified by the
4 ALJ under the "special technique" are relevant in determining whether a
5 claimant's mental impairment is severe at Step Two and whether it met or
6 equaled a listed impairment at Step Three. See SSR 96-8p, 1996 WL
7 374184, *4 (S.S.A. 1996). At Steps Four and Five, a more detailed mental
8 residual functional capacity assessment is required. *Id.* Although the
9 ALJ is responsible for informing the VE about all of a claimant's
10 limitations at Step Five, *DeLorme v. Sullivan*, 924 F.2d 841, 850 (9th
11 Cir. 1991), the ALJ is not obligated to repeat verbatim the findings
12 made under the "special technique" in the hypothetical. See, e.g.,
13 *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008) (finding
14 that the ALJ properly translated the claimant's specific mental
15 functional limitations, including moderate limitations in concentration,
16 persistence or pace, into "simple tasks"); see also *Hoopai v. Astrue*,
17 499 F.3d 1071, 1076 (9th Cir. 2007) (holding that a Step Two threshold
18 showing that a claimant's mental impairments are severe is not
19 dispositive of the Step Five determination). An ALJ's hypothetical
20 adequately captures a claimant's psychiatric limitations in
21 concentration, persistence, or pace if the assessment in the
22 hypothetical is consistent with restrictions identified in the medical
23 evidence. *Stubbs-Danielson*, 539 F.3d at 1174; accord *Howard v.*

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26 ⁵ The five steps are as follows: (1) whether the claimant is
27 engaged in substantial gainful activity; (2) whether the claimant's
28 impairment is "severe"; (3) whether the impairment meets or equals one
of the listings in 20 C.F.R. § 404, Subpart P, Appendix 1; (4) whether
the claimant is able to return to past relevant work; and (5) whether
the claimant can do other types of work. 20 C.F.R. § 404.1520(a)(4).

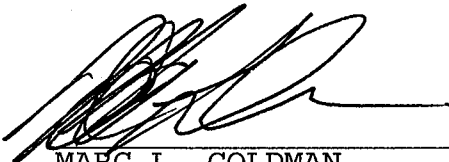
1 *Massanari*, 255 F.3d 577, 582 (8th Cir. 2001) ("the ALJ's hypothetical
2 concerning someone who is capable of doing simple, repetitive, routine
3 tasks adequately captures [the claimant's] deficiencies in
4 concentration, persistence, or pace").

5 Here, the ALJ's decision to include a restriction to simple,
6 routine tasks in the hypothetical was a generous interpretation of the
7 medical evidence. (AR at 32). For example, the state agency reviewing
8 physician, Dr. Mallare, considered Plaintiff's depressive disorder, but
9 concluded that Plaintiff did not suffer from a severe mental impairment.
10 (AR at 779-92). Consequently, a mental residual functional capacity
11 assessment was unnecessary and no psychiatric limitations were assessed.
12 (AR at 779, 789). Further, although Plaintiff received psychiatric
13 treatment during the relevant period, Plaintiff's treatment records fail
14 to establish that Plaintiff had any work-related restrictions. (AR at
15 657-74); see *Stubbs-Danielson*, 539 F.3d at 1174. For these reasons, the
16 ALJ's hypothetical limiting Plaintiff to simple, routine tasks more than
17 adequately captured her limitations. Therefore, the ALJ properly relied
18 upon the VE's opinion, and the conclusion that Plaintiff is not disabled
19 is supported by substantial evidence in the record.

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21 **IV. Conclusion**

22 For the reasons stated above, the decision of the Commissioner is
23 affirmed.

24 DATED: November 24, 2009

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MARC L. GOLDMAN
United States Magistrate Judge