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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

BRUCE BARTMANN,)	No. CV 09-03163 (CW)
)	
Plaintiff,)	DECISION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner, Social Security)	
Administration,)	
)	
Defendant.)	
_____)	

The parties have consented, under 28 U.S.C. § 636(c), to the jurisdiction of the undersigned Magistrate Judge. Plaintiff seeks review of the Commissioner’s denial of disability benefits. As discussed below, the court finds that judgment should be granted in favor of defendant, affirming the Commissioner’s decision.

I. BACKGROUND

Plaintiff Bruce Bartmann was born on March 16, 1962 and was forty-six years old at the time of his administrative hearing. [Administrative Record “AR” 24, 186.] He has a high school equivalency diploma (GED) and no past relevant work. [AR 24.]

1 Plaintiff alleges disability on the basis of psychiatric problems,
2 hallucinations, and back pain. [Id.]

3 **II. PROCEEDINGS IN THIS COURT**

4 Plaintiff's complaint was lodged on May 5, 2009, and filed on May
5 8, 2009. On October 19, 2009, defendant filed an Answer and
6 plaintiff's Administrative Record ("AR"). On January 26, 2010, the
7 parties filed their Joint Stipulation ("JS") identifying matters not
8 in dispute, issues in dispute, the positions of the parties, and the
9 relief sought by each party. This matter has been taken under
10 submission without oral argument.

11 **III. PRIOR ADMINISTRATIVE PROCEEDINGS**

12 Plaintiff Bartmann applied for supplemental security income
13 ("SSI") under Title XVI of the Social Security Act on November 14,
14 2005, alleging disability since April 1, 2003. [JS 2; AR 24.] After
15 the application was denied initially and on reconsideration, Plaintiff
16 requested an administrative hearing, which was held on February 13,
17 2008, before Administrative Law Judge ("ALJ") Lawrence D. Wheeler.
18 [Transcript, AR 399-423.] Plaintiff appeared with counsel, and
19 testimony was taken from plaintiff and a vocational expert. [Id.]
20 ALJ Wheeler denied benefits in a decision issued on April 22, 2008.
21 [Decision, AR 24-31.] When the Appeals Council denied review on
22 January 20, 2009, the ALJ's decision became the Commissioner's final
23 decision. [AR 6-8.]

24 **IV. STANDARD OF REVIEW**

25 Under 42 U.S.C. § 405(g), a district court may review the
26 Commissioner's decision to deny benefits. The Commissioner's (or
27 ALJ's) findings and decision should be upheld if they are free of
28 legal error and supported by substantial evidence. However, if the

1 court determines that a finding is based on legal error or is not
2 supported by substantial evidence in the record, the court may reject
3 the finding and set aside the decision to deny benefits. See Aukland
4 v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Tonapetyan v.
5 Halter, 242 F.3d 1144, 1147 (9th Cir. 2001); Osenbrock v. Apfel, 240
6 F.3d 1157, 1162 (9th Cir. 2001); Tackett v. Apfel, 180 F.3d 1094,
7 1097 (9th Cir. 1999); Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
8 1998); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); Moncada
9 v. Chater, 60 F.3d 521, 523 (9th Cir. 1995)(per curiam).

10 "Substantial evidence is more than a scintilla, but less than a
11 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence
12 which a reasonable person might accept as adequate to support a
13 conclusion." Id. To determine whether substantial evidence supports
14 a finding, a court must review the administrative record as a whole,
15 "weighing both the evidence that supports and the evidence that
16 detracts from the Commissioner's conclusion." Id. "If the evidence
17 can reasonably support either affirming or reversing," the reviewing
18 court "may not substitute its judgment" for that of the Commissioner.
19 Reddick, 157 F.3d at 720-721; see also Osenbrock, 240 F.3d at 1162.

20 **V. DISCUSSION**

21 **A. THE FIVE-STEP EVALUATION**

22 To be eligible for disability benefits a claimant must
23 demonstrate a medically determinable impairment which prevents the
24 claimant from engaging in substantial gainful activity and which is
25 expected to result in death or to last for a continuous period of at
26 least twelve months. Tackett, 180 F.3d at 1098; Reddick, 157 F.3d at
27 721; 42 U.S.C. § 423(d)(1)(A).

28 Disability claims are evaluated using a five-step test:

1 Step one: Is the claimant engaging in substantial
2 gainful activity? If so, the claimant is found not
3 disabled. If not, proceed to step two.

4 Step two: Does the claimant have a "severe" impairment?
5 If so, proceed to step three. If not, then a finding of not
6 disabled is appropriate.

7 Step three: Does the claimant's impairment or
8 combination of impairments meet or equal an impairment
9 listed in 20 C.F.R., Part 404, Subpart P, Appendix 1? If
10 so, the claimant is automatically determined disabled. If
11 not, proceed to step four.

12 Step four: Is the claimant capable of performing his
13 past work? If so, the claimant is not disabled. If not,
14 proceed to step five.

15 Step five: Does the claimant have the residual
16 functional capacity to perform any other work? If so, the
17 claimant is not disabled. If not, the claimant is disabled.

18 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995, as amended
19 April 9, 1996); see also Bowen v. Yuckert, 482 U.S. 137, 140-142, 107
20 S. Ct. 2287, 96 L. Ed. 2d 119 (1987); Tackett, 180 F.3d at 1098-99; 20
21 C.F.R. § 404.1520, § 416.920. If a claimant is found "disabled" or
22 "not disabled" at any step, there is no need to complete further
23 steps. Tackett, 180 F.3d 1098; 20 C.F.R. § 404.1520.

24 Claimants have the burden of proof at steps one through four,
25 subject to the presumption that Social Security hearings are non-
26 adversarial, and to the Commissioner's affirmative duty to assist
27 claimants in fully developing the record even if they are represented
28 by counsel. Tackett, 180 F.3d at 1098 and n.3; Smolen, 80 F.3d at
1288. If this burden is met, a prima facie case of disability is
made, and the burden shifts to the Commissioner (at step five) to
prove that, considering residual functional capacity ("RFC")¹, age,

¹ Residual functional capacity measures what a claimant can still do despite existing "exertional" (strength-related) and "nonexertional" limitations. Cooper v. Sullivan, 880 F.2d 1152, 1155 n.s. 5-6 (9th Cir. 1989). Nonexertional limitations limit ability to work without directly limiting strength, and include mental, sensory, postural, manipulative, and environmental limitations. Penny v.

1 education, and work experience, a claimant can perform other work
2 which is available in significant numbers. Tackett, 180 F.3d at 1098,
3 1100; Reddick, 157 F.3d at 721; 20 C.F.R. § 404.1520, § 416.920.

4 **B. THE ALJ'S EVALUATION IN PLAINTIFF'S CASE**

5 Here, the ALJ found that Plaintiff had not engaged in substantial
6 gainful activity since November 14, 2005, (step one) and that
7 plaintiff did not have a "severe" impairment (step two). [AR 29.]
8 Alternatively, when "interpreting the evidence in the most favorable
9 light to the claimant," the ALJ found that Plaintiff might have
10 "severe" impairments, namely mood disorder, personality disorder,
11 possibly "some psychotic disorder - albeit minor," and possibly a
12 lumbar spine condition (step two); and that Plaintiff did not have an
13 impairment or combination of impairments that met or equaled a
14 "listing" (step three). [AR 25, 29.] Plaintiff was found to have an
15 RFC that limited him to medium work including lifting and carrying
16 fifty pounds regularly and twenty-five pounds frequently, sitting for
17 six hours in an eight hour work day, and standing and/or walking six
18 of eight hours. [AR 30.] Additionally, the ALJ concluded that
19 Plaintiff should avoid public contact and more than minimal contact
20 with peers. Id. Plaintiff had no past relevant work (step four).
21 Based on the vocational expert ("VE") testimony that a person with
22 Plaintiff's RFC limitations would be able to perform jobs that exist
23 in significant numbers in the national economy such as packager and
24 small products assembler (step five), Plaintiff was found not
25 "disabled" as defined by the Social Security Act. [AR 31.]

26 _____
27 Sullivan, 2 F.3d 953, 958 (9th Cir. 1993); Cooper, 800 F.2d at 1155
28 n.7; 20 C.F.R. § 404.1569a(c). Pain may be either an exertional or a
nonexertional limitation. Penny, 2 F.3d at 959; Perminter v. Heckler,
765 F.2d 870, 872 (9th Cir. 1985); 20 C.F.R. § 404.1569a(c).

1 **C. ISSUE IN DISPUTE**

2 The parties' Joint Stipulation sets out the following disputed
3 issue: whether the ALJ properly considered the medical evidence as
4 contained in the examining opinion of Stephen Simonian, M.D.

5 **D. DR. SIMONIAN**

6 On April 19, 2007, Plaintiff underwent a psychiatric evaluation
7 conducted by Dr. Simonian. [AR 82-87.] Dr. Simonian reviewed
8 available medical records and took a psychiatric history, which noted
9 that Plaintiff had a history of psychiatric hospitalization while he
10 was in prison and addicted to drugs. [AR 83.] Dr. Simonian observed
11 that Plaintiff exhibited coherent thought processes, an appropriate
12 affect, and no delusional thinking or hallucinations. [AR 85.]
13 Additionally, the doctor found that his intellectual functioning,
14 memory, comprehension, abstract thinking, and ability to perform
15 calculations were all "intact and average." [Id.] Dr. Simonian
16 diagnosed Plaintiff with cocaine and methamphetamine abuse in
17 remission and depressive disorder and judged Plaintiff's functional
18 ability to be 55 percent. [AR 85-86.] As to Plaintiff's psychiatric
19 functional assessment, Dr. Simonian opined that Plaintiff was mildly
20 limited in his ability to interact with coworkers and the public,
21 adapt to stresses in the work environment, and maintain regular
22 attendance and perform work activity on a consistent basis. [AR 86.]

23 In the administrative decision, the ALJ did not specifically
24 discuss Dr. Simonian's evaluation. [AR 24-31.] Plaintiff contends
25 that this omission constitutes error and is significant because it
26 establishes Plaintiff was functionally limited to the point of
27 disability. [JS 9.] Upon review of the record, however, plaintiff's
28 contentions are without merit.

1 An ALJ is not required to discuss and develop every piece of
2 evidence in his decision. Vincent v. Heckler, 739 F. 2d 1393, 1394-95
3 (9th Cir. 1984). Here, the ALJ was not required to address Dr.
4 Simonian's evaluation unless he was rejecting "significant probative"
5 evidence. Id. Dr. Simonian's opinion was substantially similar to
6 that of Dr. Jobst Singer's March 2006 evaluation of Plaintiff. [AR
7 253-56.] Dr. Singer's main concern, noted by the ALJ, was that
8 Plaintiff suffered from drug dependency. [AR 255.] At the time of
9 Plaintiff's interview with Dr. Simonian, Plaintiff's drug problem was
10 diagnosed as in remission. [AR 85.] Although the ALJ accepted Dr.
11 Singer's report, he allowed that Plaintiff "likely has depression or
12 other mood disorder and a personality disorder." [AR 28.] It is
13 reasonable to infer that this allowance stems from Dr. Simonian's
14 report, as a diagnosis of depression is the only material difference
15 between the evaluations of Dr. Simonian and Dr. Singer. [AR 85, 255.]
16 See Magallanes v. Bowen, 881 F.2d 747, 755 (9th Cir. 1989) (A
17 reviewing court may draw specific and legitimate inferences from the
18 ALJ's opinion "if those inferences are there to be drawn.") Both
19 doctors assessed Plaintiff as mildly impaired in some respects, but
20 neither ascribed significant limitations such that Plaintiff would be
21 unable to perform work in the national economy. [AR 86, 256; see AR
22 420-22 (vocational expert testimony).] Further, their opinions are
23 supported by the Department of Corrections psychiatric services which
24 document Plaintiff as having minimal psychological problems while
25 incarcerated.² [AR 230, 233, 236, 357-59.] Therefore, the failure of

27 ² There is evidence in the record that, while Plaintiff was in
28 prison, he occasionally exhibited more serious psychological problems,
including suicidal threats. [AR 324.] Department of Corrections

1 the ALJ to discuss Dr. Simonian's opinion was not reversible error.
2 See Vincent, 739 F.3d at 1394-95.

3 **VI. ORDERS**

4 Accordingly, **IT IS ORDERED** that:

5 1. The decision of the Commissioner is **AFFIRMED**.

6 2. This action is **DISMISSED WITH PREJUDICE**.

7 3. The Clerk of the Court shall serve this Decision and Order
8 and the Judgment herein on all parties or counsel.

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10 DATED: July 20, 2010

11 
12 CARLA M. WOHRLE
13 United States Magistrate Judge
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28 psychologists linked these instances to Plaintiff's desire to change
cell mates or cell locations. [AR 316-17.] These records were also
noted by the ALJ. [AR 29.]