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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

GENEVA TRIPLETT,	)	Case No. CV 09-4938 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 the Commissioner’s decision should be reversed and this matter remanded for further proceedings.

**I. BACKGROUND**

Plaintiff Geneva Triplett was born on January 24, 1949 and was fifty-nine years old at the time of her administrative hearing. [Administrative Record (“AR”) 35.] She has a high school education and past relevant work experience as a receptionist, apartment manager,

1 and data entry worker. [Joint Stipulation, "JS," 2.] Plaintiff alleges  
2 disability on the basis of cervical disease in the neck, carpal tunnel  
3 of both hands, hypertension, depression, pain in the neck and  
4 shoulder, and degenerative disc disease. [AR 131.]

5 **II. PROCEEDINGS IN THIS COURT**

6 Plaintiff's complaint was filed on July 9, 2009. On December 21,  
7 2009, defendant filed plaintiff's Administrative Record ("AR"). On  
8 March 15, 2010, the parties filed their Joint Stipulation ("JS")  
9 identifying matters not in dispute, issues in dispute, the positions  
10 of the parties, and the relief sought by each party. This matter has  
11 been taken under submission without oral argument.

12 **III. PRIOR ADMINISTRATIVE PROCEEDINGS**

13 Plaintiff Triplett applied for a period of disability and  
14 disability insurance benefits ("DIB") on February 5, 2007, alleging  
15 disability since September 23, 2004. [JS 2.] After the application  
16 was denied initially and on reconsideration, an administrative hearing  
17 was held on August 7, 2008, before an Administrative Law Judge  
18 ("ALJ"). [Transcript, AR 31.] Plaintiff appeared with counsel, and  
19 testimony was taken from plaintiff, two medical experts ("ME"), and a  
20 vocational expert ("VE"). [Id.] The ALJ denied benefits on January  
21 8, 2009. [Decision, AR 19.] When the Appeals Council denied review  
22 on May 14, 2009, the ALJ's decision became the Commissioner's final  
23 decision. [AR 1.]

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")<sup>1</sup>, age,

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<sup>1</sup> 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 September 23, 2004 (step one); that plaintiff  
7 had "severe" impairments, namely hypertension, obesity, cervical  
8 strain, dysthymic disorder, and pain disorder (step two); and that  
9 plaintiff did not have an impairment or combination of impairments  
10 that met or equaled a "listing" (step three). [AR 24-25.] Plaintiff  
11 was found to have an RFC enabling her to perform work at less than the  
12 full range of light work, including lifting and carrying twenty pounds  
13 occasionally, and ten pounds frequently. [AR 26.] Additionally,  
14 plaintiff was limited to occasional postural manipulations, occasional  
15 overhead reaching, and occasional twisting and manipulating of the  
16 wrists. Id. Plaintiff was found to have mild limitations in  
17 activities of daily living and in maintaining social functioning, with  
18 moderate limitations in maintaining concentration, persistence, and  
19 pace. Id. The vocational expert testified that a person with  
20 Plaintiff's functional capacity could perform Plaintiff's past  
21 relevant work as a receptionist, apartment manager, and data entry  
22 worker (step four). [AR 29.] Relying on the vocational expert's  
23 testimony that Plaintiff could perform her past relevant work, the  
24 ALJ's analysis did not proceed to the fifth step of the sequential  
25 evaluation. Id. The ALJ found that the claimant was not "disabled"

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 as defined by the Social Security Act. [AR 30.]

2 **C. ISSUES IN DISPUTE**

3 The parties' joint stipulation identifies two disputed  
4 issues:

5 1. Whether the ALJ's residual functional capacity assessment is  
6 supported by substantial evidence?

7 2. Whether the ALJ's finding that Geneva Triplett can perform  
8 her past relevant work is supported by substantial evidence?

9 [JS 2.]

10 Because Issue Two dispositive, the court need not address Issue  
11 One as presented in the joint stipulation.

12 **D. PLAINTIFF'S PAST RELEVANT WORK**

13 **Background**

14 Plaintiff was last employed as a receptionist for Pitney Bowes;  
15 she stopped working in September, 2004 after sustaining a a continuous  
16 use injury to her neck, shoulders, arms, and hands. [AR 36-37, 413-  
17 414.] Prior to her employment at Pitney Bowes, plaintiff worked as a  
18 temporary receptionist, data entry worker, and apartment manager. [AR  
19 37.] On November 3, 2004 plaintiff was diagnosed with cervical  
20 protrusion at C2-3, C5-6, and C6-7; cervical disc disease at 3 levels;  
21 bilateral shoulder sprain; and obesity. [AR 409.] On September 20,  
22 2007, Plaintiff was given a physical RFC assessment by medical  
23 consultant P.E. Boetcher. [AR 374-378.] Plaintiff was found to be  
24 exertionally limited to occasionally lifting twenty pounds, frequently  
25 lifting ten pounds, standing and/or walking for six hours and sitting  
26 for six hours in an eight-hour work day. [AR 375.] Plaintiff was also  
27 found to be limited in her ability to reach in all directions. [AR  
28 376.]

1 Plaintiff sought mental health treatment beginning in 2007. [AR  
2 303-14.] She reported experiencing "lethargy, tearfulness, GI  
3 problems, irritability, apathy, restlessness, difficulty with sleep  
4 and with concentration." [AR 303.] Her initial mental health diagnosis  
5 was of major depression, Axis I. [AR 305, 308.] She was prescribed  
6 medication, individual therapy, and group therapy. [AR 306.] On  
7 October 24, 2007, medical consultant Dr. Yvonne C. McDowell completed  
8 a mental RFC assessment of Plaintiff. [AR 392.] In pertinent part, Dr.  
9 McDowell found that Plaintiff retained the capacity to "understand,  
10 remember and follow simple instructions and carry out simple work-  
11 related tasks; sustain adequate concentration, persistence and pace;  
12 relate and maintain appropriate workplace social interaction; and  
13 adapt to normal workplace changes in routine." Id.

#### 14 Administrative Hearing

15 At the administrative hearing, after hearing testimony from two  
16 medical experts, the vocational expert ("VE") testified. [AR 59.] The  
17 VE testified that a person with Plaintiff's limitations could perform  
18 all of her past relevant work. [AR 61.] Specifically, the VE noted  
19 that "none of these jobs have any postural requirements" and that none  
20 of the jobs involved abduction and adduction of the wrist. [AR 61.]  
21 However, the ALJ did not question the VE as to whether her testimony  
22 was consistent with the DOT with respect to all of Plaintiff's  
23 limitations, particularly the limitation to occasional overhead  
24 reaching. Id.<sup>2</sup>

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26 <sup>2</sup> Plaintiff's attorney did ask the VE, "Where did you come up  
27 with the information with respect to the no abduction or adduction of  
28 the wrists? I know that's not in the DOT." [AR 61.] The VE replied:  
"This would be my personal experience with these jobs." Id. The VE  
testified that she had completed job analyses for these jobs, and

1            **Discussion**

2            Social Security Ruling 00-4p provides that "when a vocational  
3 expert . . . provides evidence about the requirements of a job or  
4 occupation, the adjudicator has an affirmative responsibility to ask  
5 about any possible conflict between that . . . evidence and  
6 information provided in the DOT." SSR 00-4p, 2000 SSR LEXIS 8, at \*8-  
7 9. In Massachi v. Astrue, 486 F.3d 1149, 1153-54 (9th Cir. 2007), the  
8 Ninth Circuit held that an ALJ may not rely on a VE's testimony  
9 without first inquiring about potential conflicts with the DOT. Id.  
10 at 1152. Under this authority, the ALJ improperly relied on the VE's  
11 testimony without making an inquiry as to whether there was a conflict  
12 between her testimony and the DOT. Without this query, the court  
13 could not determine whether "the ALJ properly relied on (the VE's)  
14 testimony," and thus could not "determine whether substantial evidence  
15 supports the ALJ's step-five finding." Id. at 1154 (citing Prouchaska  
16 v. Barnhart, 486 F.3d 731, 736 (7th Cir. 2006)(holding that an ALJ's  
17 failure to make the relevant inquiries under SSR 00-4p leaves  
18 "unresolved potential inconsistenc[ies] in the evidence").

19            Based on the record, there was an apparent conflict between the  
20 VE's testimony and the DOT as to each of plaintiff's past relevant  
21 positions, none of which were explained by the record. See DOT  
22 186.167-018 (apartment resident manager); 203.582-054 (data entry  
23 worker); 237.367-038 (receptionist). Each listing in the DOT requires  
24 frequent reaching and handling, defined as existing 1/3 to 2/3 of the  
25 time. Id. However, this is in apparent conflict with the ALJ's  
26 finding that Plaintiff is limited to occasional overhead reaching,  
27 \_\_\_\_\_  
28 performed them herself. [AR 61-62.]



1 with no explanation for the conflict. Id. Accordingly, the record  
2 is unclear as to whether substantial evidence supports the ALJ's step  
3 four finding that Plaintiff could perform her past relevant work. See  
4 Massachi, 486 F.3d at 1154. Further proceedings are therefore  
5 required for additional inquiry under SSR 00-4p.

6 **E. REMAND FOR FURTHER PROCEEDINGS**

7 The decision whether to remand for further proceedings is within  
8 the discretion of the district court. Harman v. Apfel, 211 F.3d 1172,  
9 1175-1178 (9th Cir. 2000). Where no useful purpose would be served by  
10 further proceedings, or where the record has been fully developed, it  
11 is appropriate to exercise this discretion to direct an immediate  
12 award of benefits. Harman, 211 F.3d at 1179 (decision whether to  
13 remand for further proceedings turns upon their likely utility).  
14 However, where there are outstanding issues that must be resolved  
15 before a determination can be made, and it is not clear from the  
16 record that the ALJ would be required to find the claimant disabled if  
17 all the evidence were properly evaluated, remand is appropriate. Id.  
18 Here, as set out above in Issue Two,<sup>3</sup> outstanding issues remain before  
19 a finding of disability can be made. Accordingly, remand is  
20 appropriate.

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27 <sup>3</sup> Issue One, assuming it was meritorious, would not direct a  
28 finding of disability on the basis of the existing record.

