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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JAMES T. CHILCOAT,)	No. CV 09-06301-VBK
)	
Plaintiff,)	MEMORANDUM OPINION
)	AND ORDER
v.)	
)	(Social Security Case)
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

Plaintiff raises the following issue:

1. The Commissioner's decision is not based on substantial

1 evidence.¹

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3 This Memorandum Opinion will constitute the Court's findings of
4 fact and conclusions of law. After reviewing the matter, the Court
5 concludes that the decision of the Commissioner must be affirmed.
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7 I

8 **SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSIONER'S DECISION**

9 The Court must affirm if the ALJ's decision is based on
10 substantial evidence in the record. Tommasetti v. Astrue, 533 F.3d
11 1035, 1038 (9th Cir. 2008).

12 In his portion of the JS, Plaintiff asserts he is disabled due to
13 continuing abdominal pain, nausea, heartburn, vomiting blood on
14 several occasions, severe reflux, anxiety, and depression.

15 The Administrative Law Judge's ("ALJ") decision (AR 11-20)
16 follows the familiar five-step sequential evaluation process set forth
17 in 20 C.F.R. §404.1520(a). (See JS at 12-13.) In Plaintiff's case,
18 after determining Plaintiff's residual functional capacity ("RFC"),
19 the ALJ made a Step Five determination that there are jobs that exist
20 in significant numbers in the national economy that Plaintiff can
21 perform, and he was therefore found not disabled under the Social
22 Security Act. (AR 19-20.)

23 Critical to the Court's analysis in this case is the date his
24 disability insurance expired, which is September 30, 2006. (AR 96.)
25 Consequently, it is Plaintiff's burden to demonstrate that he became
26

27 ¹ Plaintiff, representing himself in pro per, has not
28 specifically identified different issues. Thus, the Court has
identified Plaintiff's issue in the broadest fashion.

1 disabled on or before this date. See Tidwell v. Apfel, 161 F.3d 599,
2 601 (9th Cir. 1998).

3 The ALJ based his determination on evidence in the record, and
4 also received on June 5, 2008 at a hearing, at which time Plaintiff
5 was represented by counsel, and testimony was taken from Plaintiff, a
6 medical expert ("ME") and a vocational expert ("VE"). (AR 21-54.)

7 At the hearing before the ALJ, the ME testified that he reviewed
8 relevant evidence of Plaintiff's treating physicians. The ALJ noted
9 that Plaintiff underwent a ventral hernia repair operation on May 2,
10 2006 (AR 247), but as of August 2006, Plaintiff's wound was healing
11 well, his staples were removed, and he was advised that he could
12 resume normal activities. (AR 218.) In the opinion of the ME, based
13 upon his review of the records, Plaintiff's RFC would include the
14 ability to lift and/or carry 50 pounds occasionally, and 25 pounds
15 frequently; to sit for six hours; stand and/or walk for six hours;
16 posturing limited to occasional; avoidance of unprotected heights and
17 hazardous machinery; and no climbing of ladders, ropes or scaffolds.
18 (AR 41-42.) Utilizing this RFC in a hypothetical question, the VE
19 testified that at the Step Four level of the sequential evaluation,
20 Plaintiff would not be capable of performing his past relevant work;
21 however, the VE identified various jobs within Plaintiff's RFC that he
22 could perform. (AR 31-32.)

23 Plaintiff understandably objects to the ALJ's evaluation of his
24 non-disability status; however, much of his argument focuses on his
25 descriptions of subjective symptoms following the September 30, 2006
26 date when his disability insurance expired. Nor has Plaintiff made a
27 persuasive or credible argument that the ALJ's decision that he was
28 not disabled before that date was not based on substantial evidence in

1 the record. For example, while Plaintiff now asserts that his
2 abdominal pain has only increased and become worse, the evidence in
3 the record, such as an October 2005 discharge diagnosis, indicates
4 that his abdominal pain had at that time been resolved. (AR 256.)

5 Although Plaintiff has not specifically complained of an
6 erroneous credibility assessment, the Court notes that the ALJ did
7 find Plaintiff's credibility as to his subjective symptoms to be
8 depreciated. (AR 17.) This finding was based on a lack of sufficient
9 objective medical evidence to substantiate those claims; inconsistent
10 statements made by Plaintiff regarding his sobriety; and, finally, a
11 level of activities of daily living ("ADL") which were not only
12 inconsistent with the alleged degree of pain and impairment, but were
13 transferrable to the exertional requirements of work which he can do
14 under his RFC. As the Commissioner points out, even in February 2007,
15 Plaintiff injured his finger while he attempted to throw a sharp A
16 frame from his house. (AR 433, 437.) Further, Plaintiff did provide
17 testimony that although sometimes his medications were not effective,
18 at other times they did help. (AR 31, et seq.)

19 Thus, all in all, while Plaintiff makes heartfelt statements
20 about his deteriorating condition, increasing pain, and other
21 symptoms, the Court must review the adequacy of the record to
22 substantiate the ALJ's decision. Utilizing the substantial evidence
23 test, as noted, the Court cannot find error in the ALJ's decision.

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