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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CARLOS QUEZADA,	)	Case No. CV 10-4495-JEM
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
v.	)	AFFIRMING DECISION OF THE
	)	COMMISSIONER OF SOCIAL SECURITY
MICHAEL J. ASTRUE,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	
_____	)	

**PROCEEDINGS**

On June 24, 2010, Carlos Quezada (“Plaintiff” or “Claimant”) filed a complaint seeking review of the decision of the Commissioner of Social Security (“Commissioner”) denying Plaintiff’s application for Social Security Disability Insurance (“SSDI”) and Supplemental Security Income (“SSI”) benefits. The Commissioner filed an Answer on December 21, 2010. On February 25, 2011, the parties filed a Joint Stipulation (“JS”). The matter is now ready for decision.

Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before this Magistrate Judge. After reviewing the pleadings, transcripts, and administrative record (“AR”), the Court concludes that the Commissioner’s decision should be affirmed and this case dismissed with prejudice.

1 **BACKGROUND**

2 Plaintiff is a 50 year old male who was determined to have the medically determinable  
3 severe impairments of gout, osteoarthritis, chronic alcohol abuse, and depressive disorder.  
4 (AR 9.) Plaintiff alleged disability beginning May 1, 2004. (AR 7.)

5 Plaintiff's claim was denied initially on January 23, 2007, and on reconsideration on  
6 June 22, 1007. (AR 7.) He filed a timely request for hearing, which was held before  
7 Administrative Law Judge ("ALJ") Joseph D. Schloss on August 27, 2008, in San Bernardino,  
8 California. (AR 7-12.) Claimant appeared and testified. (AR 7.) Medical expert Samuel  
9 Landau and vocational expert ("VE") Troy L. Scott also testified. (AR 7.) Claimant was  
10 represented by Attorney Bill LaTour. (AR 7.)

11 The ALJ issued an unfavorable decision on October 7, 2008. (AR 7-12.) On October  
12 10, 2008, Plaintiff filed a timely request for review. (AR 4.) The Appeals Council denied  
13 review on April 23, 2010. (AR 1-3.)

14 **DISPUTED ISSUES**

15 As reflected in the Joint Stipulation, the disputed issues that Plaintiff is raising as  
16 grounds for reversal and remand are as follows:

- 17 1. Whether the ALJ's determination that Plaintiff is capable of performing past work  
18 as a warehouse worker is proper and consistent with the residual functional capacity.  
19 2. Whether the ALJ properly considered the actual mental and physical demands of  
20 Plaintiff's past work as a warehouse worker.

21 **STANDARD OF REVIEW**

22 Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether  
23 the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v.  
24 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846  
25 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and  
26 based on the proper legal standards).

27 Substantial evidence means "more than a mere scintilla'. . . but less than a  
28 preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson

1 v. Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is “such relevant evidence as a  
2 reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S.  
3 at 401 (internal quotations and citation omitted).

4 This Court must review the record as a whole and consider adverse as well as  
5 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).  
6 Where evidence is susceptible to more than one rational interpretation, the ALJ’s decision  
7 must be upheld. Morgan v. Comm’r, 169 F.3d 595, 599 (9th Cir. 1999). “However, a  
8 reviewing court must consider the entire record as a whole and may not affirm simply by  
9 isolating a ‘specific quantum of supporting evidence.’” Robbins, 466 F.3d at 882 (quoting  
10 Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495 F.3d  
11 625, 630 (9th Cir. 2007).

## 12 SEQUENTIAL EVALUATION

13 The Social Security Act defines disability as the “inability to engage in any substantial  
14 gainful activity by reason of any medically determinable physical or mental impairment which  
15 can be expected to result in death or . . . can be expected to last for a continuous period of  
16 not less than 12 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner  
17 has established a five-step sequential process to determine whether a claimant is disabled.  
18 20 C.F.R. §§ 404.1520, 416.920.

19 The first step is to determine whether the claimant is presently engaging in substantial  
20 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is  
21 engaging in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert,  
22 482 U.S. 137, 140 (1987). Second, the ALJ must determine whether the claimant has a  
23 severe impairment or combination of impairments. Parra, 481 F.3d at 746. An impairment is  
24 not severe if it does not significantly limit the claimant’s ability to work. Smolen v. Chater, 80  
25 F.3d 1273, 1290 (9th Cir. 1996). Third, the ALJ must determine whether the impairment is  
26 listed, or equivalent to an impairment listed, in Appendix I of the regulations. Id. If the  
27 impediment meets or equals one of the listed impairments, the claimant is presumptively  
28 disabled. Bowen v. Yuckert, 482 U.S. at 141. Fourth, the ALJ must determine whether the

1 impairment prevents the claimant from doing past relevant work. Pinto v. Massanari, 249  
2 F.3d 840, 844-45 (9th Cir. 2001). Before making the step four determination, the ALJ first  
3 must determine the claimant’s residual functional capacity (“RFC”).<sup>1</sup> 20 C.F.R. § 416.920(e).  
4 The RFC must consider all of the claimant’s impairments, including those that are not  
5 severe. 20 C.F.R. §§ 416.920(e), 416.945(a)(2); Social Security Ruling (“SSR”) 96-8p. If the  
6 claimant cannot perform his or her past relevant work or has no past relevant work, the ALJ  
7 proceeds to the fifth step and must determine whether the impairment prevents the claimant  
8 from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864, 869 (9th  
9 Cir. 2000).

10 The claimant bears the burden of proving steps one through four, consistent with the  
11 general rule that at all times the burden is on the claimant to establish his or her entitlement  
12 to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established by the  
13 claimant, the burden shifts to the Commissioner to show that the claimant may perform other  
14 gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support a  
15 finding that a claimant is not disabled at step five, the Commissioner must provide evidence  
16 demonstrating that other work exists in significant numbers in the national economy that the  
17 claimant can do, given his or her RFC, age, education, and work experience. 20 C.F.R.  
18 § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is disabled  
19 and entitled to benefits. Id.

## 20 THE ALJ DECISION

21 In this case, the ALJ determined at step one of the sequential evaluation that Plaintiff  
22 has not engaged in substantial gainful activity since May 1, 2004, the alleged onset date.  
23 (AR 9.)

24 At step two, the ALJ determined that Plaintiff has the following severe combination of  
25 impairments: gout, osteoarthritis, chronic alcohol abuse, and depressive disorder. (AR 9.)

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27 <sup>1</sup> Residual functional capacity (“RFC”) is what one “can still do despite [his or her]  
28 limitations” and represents an assessment “based on all the relevant evidence.” 20 C.F.R.  
§§ 404.1545(a)(1), 416.945(a)(1).

1 At step three, the ALJ found that Plaintiff does not have an impairment or combination  
2 of impairments that meets or medically equals one of the listed impairments. (AR 10.)

3 The ALJ found that Plaintiff has the RFC to perform medium work “except no hazards  
4 such as work at unprotected heights and operating moving machinery.” (AR 11.)

5 At step four, the ALJ found that the Claimant is capable of performing his past  
6 relevant work as a warehouse worker as it is generally performed. (AR 12.)

7 Consequently, the ALJ determined that Plaintiff was not disabled within the meaning  
8 of the Social Security Act. (AR 12.)

### 9 DISCUSSION

10 The Commissioner’s decision must be affirmed because a claimant able to perform  
11 medium level work with minimal restrictions obviously can perform many jobs in the national  
12 economy. Plaintiff does not challenge the ALJ’s medium work RFC. Plaintiff’s contentions  
13 focus on minor deficiencies that are inconsequential to the ultimate disability determination.

#### 14 **A. The ALJ Did Not Err In Concluding That Plaintiff 15 Can Perform His Past Relevant Work**

16 Plaintiff’s first argument is that the ALJ’s determination that Plaintiff can perform the  
17 job of warehouse worker as generally performed conflicts with the ALJ’s RFC. The RFC  
18 precludes “operating moving machinery.” (AR 11.) The warehouse worker description in the  
19 Dictionary of Occupational Titles (“DICOT”) requires Plaintiff to convey materials from  
20 receiving or production areas to other designated areas “by hand, handtruck or electric  
21 handtruck.” (DICOT 922.687-058, 1991 WL 688132) (emphasis added). Plaintiff asserts  
22 that conveying materials by electric handtruck is “operating moving machinery.” The  
23 Commissioner does not dispute directly that an electric handtruck is moving machinery.

24 The VE in his testimony did not address this apparent inconsistency nor did the ALJ in  
25 his decision. The ALJ has an affirmative responsibility to ask whether a conflict exists  
26 between a VE’s testimony and DICOT, and if so to obtain a reasonable explanation for the  
27 conflict. SSR 00-4p; Massachi v. Astrue, 486 F.3d 1149, 1153 (9th Cir. 2007). Here, the  
28

1 ALJ asked if there was a conflict but the VE did not indicate any inconsistency with DICOT.  
2 (AR 27-30.)

3 The ALJ suggests that warehouse workers do not operate in proximity to “moving  
4 mechanical parts,” citing the DICOT job description. This is a disingenuous argument. The  
5 RFC limitation was to moving machinery, not moving mechanical parts. The ALJ and VE at  
6 the hearing clearly referred to moving machinery (AR 30) and the medical expert testified  
7 that Plaintiff should not operate “motorized equipment” due to his alcohol problem. (AR 23.)  
8 An electric handcart is plainly motorized equipment or moving machinery.

9 More telling is the Commissioner’s argument that the DICOT job description allows for  
10 alternatives to conveyance by electric handtruck: “by hand, handtruck or electric handtruck.”  
11 DICOT 922.687-058 (emphasis added). The DICOT job description does not require Plaintiff  
12 to use an electric handtruck. He can perform the job by moving materials by hand or by non-  
13 motorized handtruck. Thus, the mere inclusion of an electric handtruck as one possible  
14 conveyance method would not preclude Plaintiff from performing the warehouse worker job  
15 as generally performed. There is no evidence or reason to believe the electric handtruck  
16 alternative would erode the job base significantly or preclude Plaintiff from performing the  
17 warehouse worker job as generally performed. Thus, any error by the ALJ in not addressing  
18 this issue directly was harmless because it was “inconsequential to the ultimate non-disability  
19 determination.” Stout v. Comm’r. Soc. Sec. Adm., 454 F.3d 1050, 1055 (9th Cir. 2006).<sup>2</sup>

20 Indeed, the Commissioner points out that any alleged error at step four of the  
21 sequential process would be harmless because the Medical Vocational Guidelines (the  
22 “grids”) would have required a finding of non-disability at step five of the sequential process.  
23 20 C.F.R. § 404, subpart P, App. 2, Table 3. A younger individual capable of performing  
24 medium work is “not disabled.” Id. Environmental restrictions like inability to work around

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26 <sup>2</sup> Plaintiff’s actual past work as a warehouse worker required operation of a forklift,  
27 which would be precluded by his RFC. (AR 12.) The VE testified that warehouse workers  
28 generally do not operate forklifts. (AR 30.) Thus, the ALJ did not find that Plaintiff could  
perform his prior work as actually performed but did conclude that Plaintiff could perform the  
warehouse worker job as generally performed.

1 heights or moving machinery would not change this result. SSR 85-15 (“A person . . . who is  
2 restricted only from being on unprotected elevations and near dangerous moving machinery  
3 is an example of someone whose environmental restriction does not have a significant effect  
4 on work that exist at all exertional levels”). Plaintiff never challenges the ALJ’s medium work  
5 RFC.

6 Plaintiff criticizes the Commissioner’s citation of Tommasetti v. Astrue, 533 F.3d 1035,  
7 1038 (9th Cir. 2008), as authority for his harmless error assertion. In Tommasetti, the ALJ’s  
8 erroneous determination at step four that Plaintiff could perform prior relevant work was  
9 considered harmless because of the ALJ’s alternate step five findings that Plaintiff could  
10 perform other work in the national economy and additionally that the grids required a finding  
11 of not disabled.

12 Plaintiff does not dispute the Commissioner’s contention that the grids would require a  
13 finding of non-disabled in this case. He argues only that the ALJ did not make any step five  
14 determinations as was the case in Tommasetti and that the Commissioner may not assume  
15 the role of the ALJ. Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003). Plaintiff’s  
16 argument would have merit if he offered any facts or reasons to believe that he could  
17 perform no work at all or that the grids would not direct a finding of disability. In their  
18 absence, the Court sees no value in a pointless remand. In any event, the Court already has  
19 determined that the ALJ’s step four decision that Plaintiff can perform his prior relevant work  
20 as a warehouse worker as generally performed was free of harmful error.

21 Plaintiff failed to carry his burden to demonstrate that he cannot perform his prior work  
22 as a warehouse worker as generally performed.

23 **B. Any Error In Describing The Warehouse Worker Job**  
24 **Demands Was Harmless**

25 The above considerations also require rejection of Plaintiff’s second argument.  
26 Plaintiff asserts that the ALJ made but a conclusory determination that, “In comparing the  
27 Claimant’s residual functional capacity with the physical and mental demands of this work, I  
28 find that the Claimant is able to perform it as generally performed.” (AR 12.) Plaintiff argues

1 that the ALJ was required to make a more detailed assessment about the demands of the  
2 warehouse worker position.

3 Plaintiff's argument, however, is once again undermined by the failure to demonstrate  
4 that any error was harmful. Plaintiff only repeats his initial argument that the warehouse  
5 worker involves operating electrical handtrucks. The Court already has rejected that  
6 contention, noting that operation of an electrical handtruck was only an alternative method of  
7 conveying materials, not a requirement.

8 **C. Summary**

9 In the final analysis, no rational argument can be made that someone determined to  
10 be capable of medium work with minor restrictions is disabled and cannot work at all.  
11 Plaintiff never disputed the ALJ's RFC for medium work. Plaintiff's contentions focus on  
12 minor deficiencies that are inconsequential to the ultimate non-disability determination.  
13 Stout, 454 F.3d at 1055. The ALJ's disability determination here is supported by substantial  
14 evidence and free of legal error.

15 **ORDER**

16 IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the  
17 Commissioner of Social Security and dismissing the case with prejudice.

18 LET JUDGMENT BE ENTERED ACCORDINGLY.

19  
20 DATED: March 8, 2011

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/s/ John E. McDermott  
JOHN E. MCDERMOTT  
UNITED STATES MAGISTRATE JUDGE