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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DAVID R. VALADEZ,	)	Case No. CV 10-4782 PJW
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
COMMISSIONER OF THE	)	
SOCIAL SECURITY ADMINISTRATION,	)	
	)	
Defendant.	)	

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I. INTRODUCTION

Before the Court is Plaintiff's appeal from a decision by Defendant Social Security Administration ("the Agency"), denying his application for Supplemental Security Income ("SSI") and Disability Insurance benefits ("DIB"). Plaintiff claims that the Administrative Law Judge ("ALJ") erred when he overlooked two reviewing doctors' opinions that Plaintiff was too limited to work. For the reasons explained below, the Court concludes that the ALJ did not err and affirms the Agency's decision denying benefits.

II. SUMMARY OF PROCEEDINGS

On January 21, 2005, Plaintiff applied for SSI, alleging that he was disabled as of December 26, 2003, due to a head injury, hearing

1 loss, loss of equilibrium, dizzy spells, inability to focus,  
2 blackouts, and headaches. (Administrative Record ("AR") 55-59, 70-71,  
3 224-25.) His claim was denied initially and on reconsideration. He  
4 then requested and was granted a hearing before an ALJ. On January  
5 18, 2007, Plaintiff appeared and testified at the hearing. (AR 230-  
6 50.) On February 7, 2007, the ALJ issued a decision denying benefits.  
7 (AR 16-23.) Plaintiff appealed to the Appeals Council, which denied  
8 review. He then filed an action in this court. On October 30, 2008,  
9 the Court reversed the Agency's decision and remanded the case for  
10 further proceedings. On March 30, 2010, the ALJ held another hearing.  
11 (AR 478-514.) On April 28, 2010, the ALJ issued a decision denying  
12 benefits. (AR 251-65.) This appeal followed.

### 13 III. DISCUSSION

14 Reviewing physician Greta Johnson determined that Plaintiff had a  
15 cognitive disorder, which resulted in moderate impairment in work-  
16 related functions. (AR 442-44, 453-62.) The ALJ found that Plaintiff  
17 had the residual functional capacity to perform "simple routine work  
18 with no more than occasional public contact." (AR 261.) Plaintiff  
19 contends that the ALJ erred in this finding because it is inconsistent  
20 with Dr. Johnson's opinion, which the ALJ expressly adopted. (Joint  
21 Stip. at 4-5.) Plaintiff suspects that the ALJ simply overlooked Dr.  
22 Johnson's residual functional capacity assessment as evidenced by the  
23 fact that the ALJ did not mention it. (Joint Stip. at 5.) For the  
24 following reasons, the Court rejects Plaintiff's argument.

25 The ALJ expressly identified Dr. Johnson's residual functional  
26 capacity assessment. That assessment is identified in the record as  
27 Exhibit 8F and found at pages 442-44 in the record. In addressing Dr.  
28 Johnson's work, the ALJ identified the exhibit and in fact noted that,

1 in it, Dr. Johnson had concluded that Plaintiff could perform simple,  
2 repetitive tasks. (AR 261.) Thus, Plaintiff's argument that the ALJ  
3 overlooked Dr. Johnson's assessment as evidenced by the fact that he  
4 did not mention is rejected because it is contradicted by the record.

5 Plaintiff complains that, assuming that the ALJ had considered  
6 the assessment, he never explained why he was rejecting it and that  
7 that, in and of itself, was error. (Joint Stip. at 5.) Here,  
8 Plaintiff's argument has a little more traction.

9 The ALJ never specifically explained his reasons for rejecting  
10 Dr. Johnson's findings that Plaintiff was moderately impaired in  
11 essentially every functional ability necessary to perform work, i.e.,  
12 to understand and remember, to concentrate and persist, and to work  
13 with supervisors and the general public. The ALJ should have done so,  
14 but, for the reasons explained below, the ALJ's error was harmless  
15 because it did not affect the ultimate non-disability determination.  
16 *See Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir.  
17 2006) (explaining, in the Social Security context, an error is  
18 harmless if it is "inconsequential to the ultimate non-disability  
19 determination"). To begin with, the ALJ qualified his reliance on  
20 Dr. Johnson's opinion by explaining that he was only "generally"  
21 relying on it. (AR 261.) Further, as the ALJ noted, Dr. Johnson  
22 concluded that, despite Plaintiff's limitations, he was able to  
23 perform simple, repetitive work. (AR 261, 444.) Finally, the ALJ  
24 also relied on examining doctor Steven Brawer's opinion. (AR 261.)  
25 After conducting a complete psychological examination, which included  
26 intelligence testing, Dr. Brawer concluded that Plaintiff would have  
27 little or no limitations on his ability to perform the various  
28 functions necessary for work. (AR 445-61.) Since Dr. Brawer was an

1 examining doctor, his opinion was entitled to more weight than Dr.  
2 Johnson's, all things being equal. See, e.g., *Smolen v. Chater*, 80  
3 F.3d 1273, 1285-86 (9th Cir. 1996) (citing *Pitzer v. Sullivan*, 908  
4 F.2d 502 (9th Cir. 1990)). This is especially true where, as here,  
5 Dr. Johnson's opinion was set forth in two check-the-box forms and Dr.  
6 Brawer's was explained in a seven-page individualized report. See  
7 *Murray v. Heckler*, 722 F.2d 499, 501 (9th Cir. 1983) (noting  
8 individualized medical opinions are preferred over check-the-box  
9 forms). For these reasons, the Court concludes that the ALJ's failure  
10 to explain why he was not accepting certain parts of Dr. Johnson's  
11 opinion and was, instead, accepting the corresponding parts of Dr.  
12 Brawer's decision was harmless.<sup>1</sup>

13 Plaintiff also contends that the ALJ erred by failing to explain  
14 why he did not accept reviewing physician Dr. Estrin's finding that  
15 Plaintiff could not perform work that involved balancing. (Joint  
16 Stip. at 5, 7.) This claim is not supported by the record. The ALJ  
17 found that Plaintiff could not perform work that required balancing in  
18 his residual functional capacity determination and incorporated that  
19 limitation in the hypothetical question to the vocational expert. (AR  
20 257, 510.) As such, this argument does not require reversal.<sup>2</sup>

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22 <sup>1</sup> It does not take much to justify the rejection of a non-  
23 examining doctor's opinion; specific evidence in the medical record is  
24 all that is required. *Sousa v. Callahan*, 143 F.3d 1240, 1244-45 (9th  
25 Cir. 1998) ("The Commissioner may reject the opinion of a non-  
26 examining physician by reference to specific evidence in the medical  
27 record.").

28 <sup>2</sup> Plaintiff had also argued that the ALJ erred in failing to  
provide any reasons for rejecting the stooping limitation found by Dr.  
Estrin (Joint Stip. at 5-6), but withdrew that argument in light of  
the Agency's argument in opposition to that claim.

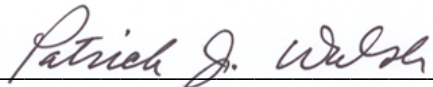
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IV. CONCLUSION

For the reasons set forth above, the Court concludes that the ALJ did not err. The Agency's decision, therefore, is affirmed and the case is dismissed with prejudice.

IT IS SO ORDERED.

DATED: August 22, 2011.

  
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PATRICK J. WALSH  
UNITED STATES MAGISTRATE JUDGE