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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CEDRIC MORRIS,)	Case No. CV 11-10311-OP
Plaintiff,	}	
v.	}	MEMORANDUM OPINION; ORDER
MICHAEL J. ASTRUE,	}	
Commissioner of Social Security,	}	
Defendant.	}	

The Court¹ now rules as follows with respect to the disputed issues listed in the Joint Stipulation (“JS”).²

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¹ Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the United States Magistrate Judge in the current action. (ECF Nos. 7, 9.)

² As the Court stated in its Case Management Order, the decision in this case is made on the basis of the pleadings, the Administrative Record, and the Joint Stipulation filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g). (ECF No. 6 at 3.)

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I.

DISPUTED ISSUES

As reflected in the Joint Stipulation, the disputed issues raised by Plaintiff as the grounds for reversal and/or remand are as follows:

1. Whether the Administrative Law Judge (“ALJ”) properly considered the findings of the consultative examiner;
2. Whether the ALJ properly determined Plaintiff’s residual functional capacity (“RFC”);
3. Whether the ALJ presented the vocational expert (“VE”) with a complete hypothetical question;
4. Whether the ALJ properly developed the record regarding Plaintiff’s educational background; and
5. Whether the ALJ properly considered Plaintiff’s testimony.

(JS at 3.)

II.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to determine whether the Commissioner’s findings are supported by substantial evidence and whether the proper legal standards were applied. DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means “more than a mere scintilla” but less than a preponderance. Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Desrosiers v. Sec’y of Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir. 1988). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at 401 (citation omitted). The Court must review the record as a whole and consider adverse as well as supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30 (9th Cir. 1986). Where evidence is susceptible of more than one rational interpretation, the

1 Commissioner’s decision must be upheld. Gallant v. Heckler, 753 F.2d 1450,
2 1452 (9th Cir. 1984).

3 **III.**

4 **DISCUSSION**

5 **A. The ALJ’s Findings.**

6 The ALJ found that Plaintiff has severe physical and mental impairments,
7 including left eye blindness, borderline intellectual functioning, and history of
8 headaches. (AR at 13.) He also found that Plaintiff’s medically determinable
9 impairments cause significant limitations in his ability to perform basic work
10 activities. (Id.)

11 The ALJ further found that Plaintiff had the RFC to perform medium work,
12 limited by the following accommodations: no more than twenty to fifty pounds of
13 force occasionally, ten to twenty pounds frequently, and zero to ten pounds
14 constantly; stand and walk up to six hours in an eight-hour day; sit for up to six
15 hours in an eight-hour day; and no bilateral vision. (Id. at 14.) Plaintiff was
16 further limited to simple, routine, and repetitive work. (Id.)

17 Relying on the testimony of a VE, the ALJ determined that Plaintiff was
18 unable to perform his past relevant work of Air Conditioning Mechanic
19 (Dictionary of Occupational Titles (“DOT”) No. 620.281-010) and Automobile
20 Mechanic (DOT No. 620.261-010). (AR at 17.) The ALJ also relied on the VE’s
21 testimony to determine that there were alternative occupations such as Vehicle and
22 Equipment Cleaner (DOT No. 919.687-014), Dining Room Attendant (DOT No.
23 311.677-018), and Bakery Worker, Conveyor Line (DOT No. 524.687-022) that
24 exist in significant numbers in the national economy. (AR at 18.)

25 **B. The ALJ Properly Evaluated Plaintiff’s Residual Functional Capacity.**

26 In Plaintiff’s first three claims, he argues that the ALJ failed to properly
27 consider the consultative psychological examiner’s opinion that Plaintiff was
28 limited to three-step tasks, failed to properly determine Plaintiff’s RFC because

1 the ALJ determined that Plaintiff could perform simple, repetitive work despite the
2 consultative examiner's opinion that Plaintiff was limited to three-step tasks, and
3 failed to present a complete hypothetical question to the VE because the
4 hypothetical did not include a limitation to three-step tasks. All three of Plaintiff's
5 claims essentially challenge whether the ALJ's determination that Plaintiff can
6 perform simple, repetitive work is consistent with the consultative examiner's
7 finding that Plaintiff is limited to three-step tasks. (JS at 3-13.) The Court finds
8 that the ALJ's RFC assessment is consistent with, and encompasses, the
9 consultative examiner's opinion.

10 On May 7, 2009, consultative examiner Barbara Gayle, Ph.D., conducted a
11 Psychological Evaluation of Plaintiff. (AR at 215-19.) Dr. Gayle noted Plaintiff's
12 claims of illiteracy and impaired concentration and memory. (Id. at 216.) On
13 examination, Plaintiff exhibited a fund of knowledge in the impaired range. (Id. at
14 218.) In addition, Plaintiff's results on the Wechsler Adult Intelligence Scale were
15 in the impaired range. However, Dr. Gayle reported that "[t]hese scores are
16 considered suppressed by the claimant's limited academic skills" and that
17 Plaintiff's "[f]unctional intelligence is estimated to be in at least the borderline
18 range." (Id. at 218.) Dr. Gayle diagnosed Plaintiff with illiteracy and borderline
19 cognitive functioning. (Id.) She concluded that Plaintiff can manage his own
20 funds, provide for personal needs, use public transportation independently, interact
21 appropriately with others, and relate cooperatively with an authority figure. (Id. at
22 219.) Finally, she found that Plaintiff is able to understand, remember, and
23 implement three-part tasks. (Id.)

24 The ALJ concluded from this evidence that Plaintiff suffers from borderline
25 intellectual functioning and is limited to performing simple, routine, and repetitive
26 tasks. (Id. at 13, 14.) Moreover, during the hearing, the ALJ asked the VE to
27 consider a hypothetical individual who, among other exertional limitations, is
28 limited to simple, routine, repetitive tasks. (Id. at 58-59.) The VE testified that

1 such an individual could not perform Plaintiff's past work, but the individual
2 could perform alternative work. (Id. at 59-60.)

3 The ALJ's conclusion that Plaintiff is capable of performing simple, routine,
4 repetitive tasks is consistent with Dr. Gayle's conclusion that Plaintiff is limited to
5 three-part tasks. A limitation to simple, repetitive work, such as that imposed by
6 the ALJ here, is consistent with a Reasoning Level of 2 under the Dictionary of
7 Occupational Titles. Meissl v. Barnhart, 403 F. Supp. 2d 981, 984 (C.D. Cal.
8 2005). In turn, Reasoning Level 2 encompasses the ability to perform work
9 involving more than one- to two-step instructions. See Grigsby v. Astrue, No.
10 EDCV 08-1413 AJW, 2010 WL 309013, at *2 (C.D. Cal. 2010) (the restriction to
11 jobs involving no more than two-step instructions is what distinguishes Level 1
12 reasoning from Level 2 reasoning). Although the ALJ described Plaintiff's mental
13 impairment differently than Dr. Gayle, this difference does not render the ALJ's
14 assessment inaccurate. See Wentz v. Comm'n Soc. Sec. Admin., 401 F. App'x
15 189 (9th Cir. 2010) (finding that ALJ did not present improper hypothetical to
16 vocational expert where ALJ stated claimant was limited to "simple 1, 2, 3 step
17 work but found in his RFC assessment that Plaintiff was limited to "simple,
18 routine, repetitive work").

19 Because the ALJ's limitation to simple, repetitive work is consistent with
20 Dr. Gayle's limitation to three-step tasks, Plaintiff cannot show that the ALJ erred
21 in considering Dr. Gayle's opinion, improperly assessed Plaintiff's RFC, or
22 presented the vocational expert with an incomplete hypothetical by omitting a
23 limitation to three-step tasks. Thus, there was no error.

24 **C. The ALJ Did Not Improperly Fail to Develop the Record.**

25 Plaintiff argues that the ALJ failed to fully develop the record regarding
26 Plaintiff's educational background. Plaintiff contends that the evidence was
27 ambiguous as to whether or not he graduated from high school. Plaintiff further
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1 asserts that his education records would have shown that he satisfies Listing
2 12.05(c) (mental retardation). (JS at 13-15.)

3 The record indicates that Plaintiff has limited literacy. At the hearing before
4 the ALJ, Plaintiff testified that he was “passed through” the 12th grade but cannot
5 read or write. (AR at 29, 43.) Plaintiff further testified that he had been in special
6 education his entire life. (Id.) Moreover, during his consultative psychological
7 evaluation, Plaintiff informed the examiner that he could not read or spell, and that
8 he completed the 12th grade but did not graduate. (Id. at 216.) In a Disability
9 Report, Plaintiff again indicated that he completed the 12th grade but denied
10 having attended special education classes. (Id. at 134.)

11 During the hearing, the ALJ noted his desire to obtain Plaintiff’s junior high
12 school and high school records. (Id. at 47-48.) The ALJ informed Plaintiff’s
13 counsel that “[y]ou can get them or I can get them.” (Id.) Plaintiff’s counsel
14 stated that he would obtain Plaintiff’s school records, and the ALJ stated that he
15 would leave the record open for thirty days for counsel to submit the records. (Id.
16 at 47-48, 61.)

17 In his decision denying benefits, the ALJ noted that he had left the record
18 open for two months past the hearing, but Plaintiff had not submitted any
19 additional evidence. (Id. at 10.) The ALJ went on to explain that the record was
20 ambiguous as to whether Plaintiff graduated from high school:

21 The undersigned notes that there is conflicting testimony
22 regarding the claimant’s level of education. At the hearing, the claimant
23 testified he had not graduated from high school, but was “passed
24 through.” The claimant reported to Dr. Gayle that he completed the 12th
25 grade. In a Disability Report completed in connection with his claim for
26 disability benefits, the claimant indicated he had completed the 12th
27 grade in high school, but denied being in special education. As the
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1 claimant did not proffer education records, the claimant’s actual
2 educational background is unclear.

3 (Id. at 16 (citations omitted).) Ultimately, the ALJ found that Plaintiff suffered
4 from the severe impairment of “borderline intellectual functioning” and limited
5 him to “the performance of simple, routine and repetitive tasks.” (Id. at 13, 14.)

6 The ALJ has a “special duty to fully and fairly develop the record.” Smolen
7 v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996). “An ALJ’s duty to develop the
8 record further is triggered only when there is ambiguous evidence or when the
9 record is inadequate to allow for proper evaluation of the evidence.” Mayes v.
10 Massanari, 276 F.3d 453, 459-60 (9th Cir. 2001).

11 The ALJ did not err in failing to develop the record. At the hearing, the
12 ALJ offered to take on the task of securing the school records. However,
13 Plaintiff’s counsel explicitly agreed to provide the records to the ALJ. The ALJ
14 then agreed to leave the record open for thirty days to allow counsel to obtain the
15 records. In fact, the ALJ held the record open for two months past the hearing
16 date. The ALJ’s actions were sufficient to satisfy his duty to develop the record.
17 Tidwell v. Apfel, 161 F.3d 599, 602 (9th Cir. 1998) (ALJ satisfied his duty to
18 develop the record by holding the record open so that the claimant could
19 supplement the evidence); see also Petrosyan v. Massanari, 13 F. App’x 643, 644
20 (9th Cir. 2001) (same). Thus, there was no error.

21 **D. The ALJ Properly Considered Plaintiff’s Testimony.**

22 In his final claim, Plaintiff contends that the ALJ erred by failing to provide
23 clear and convincing reasons for discrediting Plaintiff’s testimony regarding his
24 subjective complaints. Plaintiff’s argument rests on the assertion that the ALJ did
25 not provide adequate reasoning for rejecting Plaintiff’s subjective complaints of
26 headaches, pain, and cramping in the right side, and blurred vision in his right eye.
27 (JS at 19-24.)
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1 An ALJ’s assessment of pain severity and claimant credibility is entitled to
2 “great weight.” Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v.
3 Heckler, 779 F.2d 528, 531 (9th Cir. 1986). When, as here, an ALJ’s disbelief of a
4 claimant’s testimony is a critical factor in a decision to deny benefits, the ALJ
5 must make explicit credibility findings. Rashad v. Sullivan, 903 F.2d 1229, 1231
6 (9th Cir. 1990); Lewin v. Schweiker, 654 F.2d 631, 635 (9th Cir. 1981); see also
7 Albalos v. Sullivan, 907 F.2d 871, 874 (9th Cir. 1990) (an implicit finding that
8 claimant was not credible is insufficient.)

9 Once a claimant has presented medical evidence of an underlying
10 impairment which could reasonably be expected to cause the symptoms alleged,
11 the ALJ may only discredit the claimant’s testimony regarding subjective pain by
12 providing specific, clear, and convincing reasons for doing so. Lingenfelter v.
13 Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007). An ALJ’s credibility finding
14 must be properly supported by the record and sufficiently specific to ensure a
15 reviewing court that the ALJ did not arbitrarily reject a claimant’s subjective
16 testimony. Bunnell v. Sullivan, 947 F.2d 341, 345-47 (9th Cir. 1991). An ALJ
17 may properly consider “testimony from physicians . . . concerning the nature,
18 severity, and effect of the symptoms of which [claimant] complains,” and may
19 properly rely on inconsistencies between claimant’s testimony and claimant’s
20 conduct and daily activities. See, e.g., Thomas, 278 F.3d at 958-59 (citation
21 omitted). An ALJ also may consider “[t]he nature, location, onset, duration,
22 frequency, radiation, and intensity” of any pain or other symptoms;
23 “[p]recipitating and aggravating factors”; “[t]ype, dosage, effectiveness, and
24 adverse side-effects of any medication”; “[t]reatment, other than medication”;
25 “[f]unctional restrictions”; “[t]he claimant’s daily activities”; “unexplained, or
26 inadequately explained, failure to seek treatment or follow a prescribed course of
27 treatment”; and “ordinary techniques of credibility evaluation,” in assessing the
28 credibility of the allegedly disabling subjective symptoms. Bunnell, 947 F.2d at

1 346-47; see also Soc. Sec. Ruling 96-7p; 20 C.F.R. ? 404.1529 (2005); Morgan,
2 169 F.3d at 600 (ALJ may properly rely on plaintiff’s daily activities, and on
3 conflict between claimant’s testimony of subjective complaints and objective
4 medical evidence in the record); Tidwell v. Apfel, 161 F.3d 599, 602 (9th Cir.
5 1998) (ALJ may properly rely on weak objective support, lack of treatment, daily
6 activities inconsistent with total disability, and helpful medication); Johnson v.
7 Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995) (ALJ may properly rely on the fact
8 that only conservative treatment had been prescribed); Orteza v. Shalala, 50 F.3d
9 748, 750 (9th Cir. 1995) (ALJ may properly rely on claimant’s daily activities and
10 the lack of side effects from prescribed medication).

11 Here, with respect to Plaintiff’s headaches, the ALJ did not reject his
12 complaints. Rather, the ALJ accepted Plaintiff’s complaints of headaches and the
13 ALJ’s “assessed residual functional capacity takes into consideration the degree of
14 functional loss attributable to headaches.” (AR at 15-16.) Significantly, in
15 challenging the ALJ’s RFC assessment, Plaintiff argues only that the ALJ failed to
16 consider Plaintiff’s limitation to three-step tasks. Plaintiff has not argued that the
17 ALJ’s RFC assessment was incompatible with Plaintiff’s complaints of headaches.

18 Next, Plaintiff argues that the ALJ failed to provide adequate reasons for
19 rejecting Plaintiff’s complaints of right eye blurring and right side pain and
20 cramping. While the ALJ did omit any reasoning in this regard, he was under no
21 duty to provide reasons for rejecting these complaints. The duty to provide
22 reasoning for rejecting a claimant’s subjective complaints is triggered by the
23 claimant’s presentation of medical evidence of an underlying impairment which
24 could reasonably be expected to cause the symptoms alleged. Lingenfelter, 504
25 F.3d at 1035-36. The record does not contain any medical evidence that Plaintiff
26 suffers from any impairment of the right eye or right side. Accordingly, the ALJ
27 did not err in failing to provide reasons for rejecting these complaints. Thus, there
28 was no error.

1 **IV.**
2 **ORDER**

3 Based on the foregoing, IT THEREFORE IS ORDERED that Judgment be
4 entered affirming the decision of the Commissioner, and dismissing this action
5 with prejudice.

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7 Dated: July 31, 2012



8 **HONORABLE OSWALD PARADA**
9 **United States Magistrate Judge**

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