

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LILIA CARRILLO,)	Case No. CV 12-00282-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 January 12, 2012, Lilia Carrillo (“Plaintiff” or “Claimant”) filed a complaint seeking review of the decision by the Commissioner of Social Security (“Commissioner”) denying Plaintiff’s applications for Social Security Disability Insurance benefits and Supplemental Security Income benefits. The Commissioner filed an Answer on May 14, 2012. On September 10, 2012, 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 must be affirmed and this case dismissed with prejudice.

BACKGROUND

1
2 Plaintiff is a 60 year old female who applied for Social Security Disability Insurance
3 benefits on July 28, 2009, and Supplemental Security Income benefits on July 31, 2009,
4 alleging disability beginning August 26, 2008. (AR 16.) Plaintiff has not engaged in substantial
5 gainful activity since August 26, 2008, the alleged onset date. (AR 18.)

6 Plaintiff's claims were denied initially on December 3, 2009. (AR 16.) Plaintiff filed a
7 timely request for hearing, which was held before Administrative Law Judge ("ALJ") Robert S.
8 Eisman on March 29, 2011, in Downey, California. (AR 16.) Claimant appeared at the hearing
9 and testified with the assistance of a Spanish interpreter. (AR 16.) Plaintiff was represented by
10 counsel. (AR 16.) Vocational expert ("VE") Freeman Leeth Jr. also appeared and testified at
11 the hearing. (AR 16.)

12 The ALJ issued an unfavorable decision on May 13, 2011. (AR 16-26.) The Appeals
13 Council denied review on November 25, 2011. (AR 1-8.)

DISPUTED ISSUES

14
15 As reflected in the Joint Stipulation, Plaintiff only raises the following disputed issue as
16 the ground for reversal and remand:

- 17 1. Whether the ALJ properly determined the past relevant work of Plaintiff.

STANDARD OF REVIEW

18
19 Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether
20 the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v.
21 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846
22 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and
23 based on the proper legal standards).

24 Substantial evidence means "more than a mere scintilla,' but less than a
25 preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v.
26 Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is "such relevant evidence as a
27 reasonable mind might accept as adequate to support a conclusion." Richardson, 402 U.S. at
28 401 (internal quotation marks and citation omitted).

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

9 THE SEQUENTIAL EVALUATION

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

16 The first step is to determine whether the claimant is presently engaging in substantial
17 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging
18 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,
19 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or
20 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not
21 significantly limit the claimant's ability to work. Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir.
22 1996). Third, the ALJ must determine whether the impairment is listed, or equivalent to an
23 impairment listed, in 20 C.F.R. Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d
24 at 746. If the impediment meets or equals one of the listed impairments, the claimant is
25 presumptively disabled. Bowen v. Yuckert, 482 U.S. at 141. Fourth, the ALJ must determine
26 whether the impairment prevents the claimant from doing past relevant work. Pinto v.
27 Massanari, 249 F.3d 840, 844-45 (9th Cir. 2001). Before making the step four determination,
28

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

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

17 Id.

18 THE ALJ DECISION

19 In this case, the ALJ determined at step one of the sequential process that Plaintiff has
20 not engaged in substantial gainful activity since August 26, 2008, the alleged onset date. (AR
21 18.)

22 At step two, the ALJ determined that Plaintiff has the following combination of medically
23 determinable severe impairments: status post colles and ulnar styloid fracture, and sleep
24 apnea. (AR 18.)

25
26
27 ¹ Residual functional capacity ("RFC") is what one "can still do despite [his or her] limitations"
28 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 determined that Plaintiff does not have an impairment or
2 combination of impairments that meets or medically equals one of the listed impairments. (AR
3 20.)

4 The ALJ then found that the Plaintiff had the RFC to perform light work, as defined in 20
5 C.F.R. §§ 404.1567(b) and 416.967(b), with the following limitations:

6 . . . can exert up to 20 pounds of force occasionally and/or up to 10 pounds
7 of force frequently and/or a negligible amount of force constantly to move
8 objects. Claimant can stand and walk up to 6 hours and sit up to 6 hours in
9 an 8-hour workday with normal breaks. She can perform work that does not
10 require climbing ladders, ropes or scaffolds, and no more than occasional
11 climbing of ramps or stairs, stooping, kneeling, crouching or crawling.
12 Claimant can perform work that does not require any exposure to
13 environmental respiratory irritants or poorly ventilated areas (i.e., asthma
14 precautions), and does not require even moderate exposure to hazardous
15 machinery, unprotected heights, or other high risk, hazardous or unsafe
16 conditions.

17 (AR 20.) In determining this RFC, the ALJ also made an adverse credibility determination. (AR
18 21-22.)

19 At step four, the ALJ found that Plaintiff is capable of performing her past relevant work
20 as a sewing machine operator I as generally performed. (AR 26.) Consequently, the ALJ
21 concluded that Claimant is not disabled within the meaning of the Social Security Act. (AR 26.)

22 DISCUSSION

23 Plaintiff contends that the ALJ's step four finding that she can perform her past relevant
24 work ("PRW") as a sewing machine operator as generally performed is not supported by
25 substantial evidence. The Court disagrees.

26 A. Relevant Federal Law

27 A claimant has the burden of proving that he or she no longer can perform past relevant
28 work ("PRW"). Pinto, 249 F.3d at 844. The ALJ, however, has a duty to make the requisite

1 factual findings to support his conclusion on PRW. Id. This is done by examining a claimant's
2 RFC and the physical and mental demands of the claimant's PRW. Id. at
3 844-45.

4 A claimant must be able to perform: (1) the functional demands and job duties of a
5 particular past relevant job as he or she actually performed it, or (2) the functional demands and
6 job duties of the occupation as generally required by employers throughout the national
7 economy. SSR 82-61; Pinto, 249 F.3d at 845. In making this determination, the ALJ must
8 make the following findings of fact:

- 9 1. A finding of fact as to the individual's RFC.
- 10 2. A finding of fact as to the physical and mental demands of the past
11 job/occupation.
- 12 3. A finding of fact that the individual's RFC would permit a return to his
13 or her past job or occupation.

14 SSR 82-62. Past work experience "must be considered carefully to assure that the available
15 facts support a conclusion regarding the claimant's ability or inability" to perform the functional
16 activities of past work. Id. The ALJ's decision "must be developed and explained fully in the
17 disability decision." Id.

18 Social Security regulations advise the ALJ to consider first whether the individual still can
19 do PRW as he or she actually performed it because individual jobs within a category may not
20 entail all of the requirements of a job in that category set forth in the Dictionary of Occupational
21 Titles ("DICOT"). SSR 96-8p; Pinto, 249 F.3d at 845. The claimant is an important source of
22 information about his or her PRW. SSR 82-41; Pinto, id. Other sources of information that may
23 be consulted include vocational expert ("VE") testimony and DICOT. 20 C.F.R. §§ 404.1560
24 (b)(2) and 416.960 (b)(2); SSR 82-61.

25 The ALJ then can proceed to determine whether a claimant can perform his or her PRW
26 as generally performed. Id. Typically, the best source of how a job is generally performed in
27 the national economy is the DICOT. Id. An ALJ may accept vocational expert testimony that
28 varies from the DICOT, but the record must contain "persuasive evidence to support the

1 deviation.” Id. at 846 (quoting Johnson v. Shalala, 60 F.3d 1428, 1435 (9th Cir. 1995)). The
2 ALJ has an affirmative responsibility to ask whether a conflict exists between a VE’s testimony
3 and the DICOT. SSR 00-4p; Massachi v. Astrue, 486 F.3d 1149, 1153 (9th Cir. 2007). If there
4 is a conflict, the ALJ must obtain a reasonable explanation for the conflict and then must decide
5 whether to rely on the VE or DICOT. Id.; Massachi, 486 F.3d at 1153. Failure to do so,
6 however, can be harmless error where there is no conflict or the VE provides sufficient support
7 to justify variation from DICOT. Id. at 1154 n.19.

8 **B. Analysis**

9 The ALJ’s RFC provides that Plaintiff can perform a reduced range of light work that
10 should not involve “even moderate exposure to hazardous machinery, unprotected heights, or
11 other high risk, hazardous or unsafe conditions.” (AR 20.) At the hearing, the ALJ asked the
12 vocational expert whether a person who must avoid “even moderate exposure to hazardous
13 machinery” could perform her PRW as a sewing machine operator I (DICOT 787.682-066). (AR
14 55-56.) The VE answered yes, as generally performed (AR 55-56), and also testified that his
15 opinion was consistent with the information in the DICOT job description. (AR 56-57.) Based
16 on the VE’s testimony, the ALJ found that Claimant is able to perform her PRW as a sewing
17 machine operator as generally performed. (AR 26.)

18 The ALJ’s PRW finding is supported by substantial evidence. The DICOT job description
19 for sewing machine operator I (787.682-066) requires exposure to “moving mechanical parts”
20 frequently, meaning that the condition exists from 1/3 to 2/3 of the time. There is no mention in
21 DICOT 787.682-066 of anything hazardous, nor are sewing machines described as hazardous
22 machinery.

23 To interpret the job element of moving mechanical parts, however, Plaintiff refers to The
24 Revised Handbook For Analyzing Jobs published by the United States Department of Labor
25 (“Handbook”). Plaintiff contends that page 12-11 of the Handbook establishes that proximity to
26 moving mechanical parts involves exposure to bodily injury. Plaintiff therefore asserts that a
27 conflict exists between the DICOT and the VE testimony because an individual precluded from
28 work requiring even moderate exposure to hazardous machinery cannot perform work requiring

1 frequent proximity to moving mechanical parts that results in “exposure to possible bodily
2 injury.”

3 Closer scrutiny of page 12-11, however, indicates that it does not apply to sewing
4 machines or to all jobs that require working with moving parts but to particular, specified jobs
5 with moving mechanical parts that do involve exposure to possible bodily injury. The complete
6 text relied on by Plaintiff is as follows:

7 **8. PROXIMITY TO MOVING MECHANICAL PARTS**

8 Exposure to possible bodily injury from moving mechanical parts of
9 equipment, tools, or machinery.

10 MP:1 Sets up and operates variety of woodworking machines to surface,
11 cut and shape lumber, and to fabricate parts for wood products.

12 Worker is subject to possible cuts, abrasions, injury to eyes, and loss
13 of extremities.

14 MP:2 Tends fabricating machines, such as shears, brakes, straightening
15 presses, and punches to shape and bend metal plates, sheets, and
16 structural shapes. Worker is subject to possible injury, such as cuts,
17 fractures, crushed hands or feet, hernia, and eye injury from
18 metalworking machinery.

19 MP:3 Constructs, erects, installs, and repairs structures and fixtures of
20 wood, plywood, and wallboard. Worker is subject to possible bodily
21 injury from power saws and other power tools.

22 MP:4 Inspects and adjusts automatic pinsetters. Worker is subject to
23 possible bodily injury from machinery.

24 This passage refers to woodworking machines that could result in loss of extremities,
25 fabricating machines that could result in crushed hands, construction that could result in injury
26 from power tools, and working around automatic pinsetters that could result in injury. There is
27 no mention of sewing machines, no characterization of sewing machines as hazardous, and no
28 specification of injuries commonly expected to occur in operating sewing machines. Each of

1 the machines described appears to be hazardous. The Court does not think it reasonable to
2 interpret page 12-11 as applicable to all jobs involving moving parts, including sewing
3 machines.

4 Plaintiff's RFC does not preclude working with machinery containing moving parts. She
5 was precluded from exposure to hazardous machinery. Neither DICOT 787.682-066 nor page
6 12-11 of the DICOT establish that sewing machines are hazardous or that their moving parts
7 expose their operators to possible bodily injury.

8 The ALJ asked the VE if there was a conflict between his testimony and the DICOT, and
9 he answered "No." (AR 56-57.) Plaintiff complains that the ALJ did not ask for an explanation
10 for the deviation from DICOT but there was no conflict between the VE's testimony and the
11 DICOT. Plaintiff's counsel had the opportunity to cross-examine the VE but did not raise the
12 Handbook or ask if there was any potential for injury from sewing machine moving parts. The
13 ALJ did not violate his duties under Massachi or SSR 00-4p.

14 We must remember that Plaintiff has the burden of establishing that she no longer can
15 perform her PRW. Pinto, 249 F.3d at 844. Even if there is ambiguity, when the evidence is
16 susceptible to more than one rational interpretation, the ALJ's conclusion must be upheld.
17 Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). The ALJ's interpretation of the evidence
18 here was reasonable and should not be second-guessed. Rollins v. Massanari, 261 F.3d 853,
19 857 (9th Cir. 2001).

20 The ALJ's step four PRW finding was supported by substantial evidence. The ALJ's
21 non-disability determination was supported by substantial evidence and free of legal error.

22 ORDER

23 IT IS HEREBY ORDERED that the decision of the Commissioner of Social Security is
24 AFFIRMED and this case dismissed with prejudice.

25 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

26 DATED: September 18, 2012

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