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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

JEROME JACKSON,)	Case No. EDCV 07-1449-MLG
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

Plaintiff Jerome Jackson seeks review of the Commissioner's final decision terminating payment of Supplemental Security Income ("SSI") benefits. For the reasons discussed below, the Commissioner's decision is affirmed.

I. Facts and Procedural History

Plaintiff was born on September 20, 1956,¹ and he has an eighth-grade education. (Administrative Record ("AR") at 216.) Plaintiff has no past relevant work experience within the meaning of the regulations, 20 C.F.R. § 416.965. (AR 18.)

Plaintiff filed an application for SSI benefits on August 11, 1998,

¹ The joint stipulation incorrectly states that Plaintiff is 31 years old. (Joint Stip. 2.)

1 alleging a disability onset date of October 14, 1997, due to impairments
2 of the musculoskeletal and cardiovascular systems, as well as a visual
3 impairment. (Joint Stip. 2.) After the Commissioner denied Plaintiff's
4 claim initially and upon reconsideration, a hearing was held on October
5 26, 1999, before Administrative Law Judge ("ALJ") Paul Tierney. (AR
6 393.) The ALJ determined that Plaintiff's severe impairments included
7 coronary artery disease, bilateral patella displacement, right shoulder
8 bursitis, and a vision defect. (AR 221.) On November 24, 1999, the ALJ
9 concluded that Plaintiff was under a disability as defined by the Social
10 Security Act, and Plaintiff began receiving SSI benefits shortly
11 thereafter. (AR 218, 60.)

12 The Commissioner conducted a continuing disability review in
13 November 2004, at the conclusion of which the Commissioner determined
14 that Plaintiff's medical impairments had improved and terminated his
15 benefits. (AR 229-32.) On March 10, 2005, a Disability Hearing Officer
16 also concluded that Plaintiff was no longer disabled. (AR 250-60.) At
17 Plaintiff's request, a hearing was held before ALJ F. Keith Varni on
18 July 17, 2006, for which Plaintiff failed to appear. (AR 444-46.) The
19 ALJ proceeded with the hearing and denied Plaintiff's claim, relying on
20 the record and a vocational expert's testimony in concluding that
21 Plaintiff was not disabled. (AR 42-47.) Plaintiff appealed the ALJ's
22 decision, claiming that he had not received notice of the hearing. (AR
23 37.) The Social Security Administration Appeals Council remanded the
24 case to ALJ Varni for a new hearing on October 16, 2006. (AR 35.) The
25 ALJ held a subsequent hearing on June 1, 2007, at which Plaintiff
26 testified and was represented by counsel. (AR 15.) A vocational expert
27 also testified at the hearing.

28 The ALJ issued a decision on August 17, 2007, concluding that

1 Plaintiff's disability had ended on November 1, 2004. (AR 20.) Applying
2 the analysis mandated by the regulations, the ALJ found that Plaintiff's
3 impairments did not meet or equal any listed impairment, and that
4 Plaintiff's "severe" impairments included only the musculoskeletal and
5 cardiovascular systems, not a vision defect. (AR 17.) The ALJ determined
6 that Plaintiff's impairments had improved since the prior ALJ's decision
7 awarding benefits on November 22, 1999, and that the improvement related
8 to Plaintiff's ability to work. (*Id.*) The ALJ then found that Plaintiff
9 retained the residual functional capacity ("RFC") to perform work at the
10 medium exertional level, with the following limitations:

11 The claimant can lift and carry 50 pounds occasionally and 25
12 pounds frequently. He can stand and walk for 2 hours out of an
13 8-hour work day, and he has no restrictions in sitting. He
14 cannot perform activities requiring active knee extension as
15 he would have difficulty with foot controls. He should never
16 climb or balance. He can occasionally kneel, crouch, crawl,
17 and stoop. He cannot perform hazardous duties such as working
18 with machinery or working at heights. He is unable to change
19 positions quickly.

20 (AR 17.) The ALJ noted that although Plaintiff had no past relevant work
21 to which he could return, he relied on the vocational expert's testimony
22 in concluding that Plaintiff could work as an assembler, packager, and
23 laundry sorter/folder. (AR 19.) The ALJ thus concluded that Plaintiff's
24 disability had ended on November 1, 2004, and that Plaintiff was no
25 longer entitled to SSI benefits. (*Id.*)

26 The Appeals Council denied Plaintiff's request for review on
27 October 13, 2007, and Plaintiff filed this action on November 7, 2007.
28 Plaintiff alleges that the ALJ erred by failed to consider an examining

1 physician's opinion regarding the limitations of Plaintiff's visual
2 impairment and a treating psychologist's opinion that Plaintiff was
3 unable to work. (Joint Stip. 3.) Plaintiff seeks an award of benefits or
4 a remand for a new administrative hearing. (Joint Stip. 14.)

6 **II. Standard of Review**

7 The Court must uphold the Social Security Administration's
8 disability determination unless it is not supported by substantial
9 evidence or is based on legal error. *Ryan v. Comm'r of Soc. Sec.*, 528
10 F.3d 1194, 1198 (9th Cir. 2008)(citing *Stout v. Comm'r of Soc. Sec.*
11 *Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006)). Substantial evidence means
12 more than a scintilla, but less than a preponderance; it is evidence
13 that a reasonable person might accept as adequate to support a
14 conclusion. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir.
15 2007)(citing *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir.
16 2006)). To determine whether substantial evidence supports a finding,
17 the reviewing court "must review the administrative record as a whole,
18 weighing both the evidence that supports and the evidence that detracts
19 from the Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715,
20 720 (9th Cir. 1996). "If the evidence can support either affirming or
21 reversing the ALJ's conclusion," the reviewing court "may not substitute
22 [its] judgment for that of the ALJ." *Robbins*, 466 F.3d at 882.

24 **III. Discussion**

25 As a preliminary matter, the two arguments Plaintiff presents in
26 the joint stipulation require the same legal analysis. Plaintiff argues
27 that the ALJ failed to discuss two medical opinions that bear on
28 Plaintiff's impairments and his ability to work. Plaintiff contends that

1 the ALJ should have provided "specific and legitimate" reasons for
2 "rejecting" these opinions, and his failure to do so requires remand for
3 a new hearing.

4 Both of the opinions upon which Plaintiff relies were rendered in
5 1999, prior to ALJ Tierney's decision awarding benefits, which is known
6 as the "comparison point decision" or "CPD". In arguing that the ALJ
7 should have specifically discussed particular aspects of these older
8 reports, Plaintiff relies on cases addressing initial disability
9 determinations, as opposed to termination of benefits cases. See
10 *Regennitter v. Comm'r of Soc. Sec. Admin.*, 166 F.3d 1294 (9th Cir. 1999)
11 (denial of disability insurance ("SSDI") benefits and SSI on initial
12 determination); *Andrews v. Shalala*, 53 F.3d 1035 (9th Cir. 1995) (denial
13 of SSDI benefits on initial determination); *Lester v. Chater*, 81 F.3d
14 821 (9th Cir. 1995) (denial of SSDI benefits on initial determination);
15 *Crain v. Callahan*, 996 F. Supp. 1003 (D. Or. 1997) (denial of SSDI
16 benefits and SSI on initial determination). (Joint Stip. 4.) This
17 distinction is important, because the analysis the ALJ must undertake is
18 different in the two types of cases.

19 For initial disability determinations, the ALJ must consider
20 whether the claimant is disabled, which is defined as "the inability to
21 do any substantial gainful activity by reason of any medically
22 determinable physical or mental impairment" for a certain period of
23 time. 20 C.F.R. § 416.905(a). The ALJ undertakes a five-step analytical
24 process in making this determination. In a termination of benefits case,
25 on the other hand, the ALJ must consider whether there has been any
26 medical improvement in the impairments that allows the claimant to
27 engage in substantial gainful activity. 20 C.F.R. § 416.994(b). Medical
28 improvement means "any decrease in the medical severity of [the

1 claimant's] impairment(s) which was present at the time of the most
2 recent favorable medical decision that [the claimant was] disabled or
3 continued to be disabled." *Id.* § 416.994(b)(1)(I).

4 The regulations outline a seven-step inquiry the ALJ must utilize
5 to determine whether a claimant continues to be disabled, which involves
6 consideration of the following questions: (1) whether the claimant's
7 impairments meet or equal one of the listings in 20 C.F.R. § 404,
8 Subpart P, Appendix 1; (2) whether medical improvement has occurred
9 since the original disability finding; (3) whether the medical
10 improvement, if any, is related to the claimant's ability to work; (4)
11 in the absence of medical improvement related to work, whether any of
12 the specified exceptions apply that would render the claimant not
13 disabled; (5) whether the impairments are "severe"; (6) whether the
14 claimant is able to return to past relevant work; and (7) whether the
15 claimant can do other types of work. 20 C.F.R. § 416.994(b)(5). The
16 steps are cumulative, meaning that the ALJ need not consider further
17 steps after finding that a step does not favor the claimant. In reaching
18 his decision that Plaintiff's disability had ended in November 2004, ALJ
19 Varni addressed each of these seven steps.

20 Plaintiff does not challenge ALJ Varni's conclusion that, since the
21 initial disability determination in 1999, Plaintiff had had a medical
22 improvement that would allow him to engage in substantial gainful
23 activity. Instead, Plaintiff claims that the ALJ erred by "rejecting"
24 the prior medical opinions. However, Plaintiff misinterprets both the
25 ALJ's decision and the proper legal analysis required for this
26 termination of benefits case. ALJ Varni did not "reject" the prior
27 medical opinions. ALJ Tierney had already credited those opinions when
28 he found Plaintiff to be disabled in 1999. Although the prior medical

1 records are certainly relevant to determining whether there has been a
2 medical improvement, ALJ Varni was not required to revisit ALJ Tierney's
3 decision. Instead, ALJ Tierney's decision, which is based on Plaintiff's
4 prior medical records, is the baseline for ALJ Varni's evaluation of
5 whether Plaintiff has medically improved in recent years. None of the
6 cases Plaintiff cites indicate that the ALJ in a termination of benefits
7 case must incorporate prior medical records into the improvement
8 analysis in the same way as for an initial disability determination.

9 Even if the regulations did require the ALJ to evaluate the prior
10 medical opinions as Plaintiff suggests, Plaintiff's arguments are still
11 without merit, for the reasons discussed below.

12 **A. Consultative Internal Medicine Evaluation**

13 Plaintiff relies on an April 17, 1999, report, in which examining
14 physician Joel Hendler, M.D., opined that Plaintiff could "use his hands
15 for repetitive hand and finger action, although his vision would limit
16 the fine details of what he could handle." (AR 170.) Plaintiff has
17 characterized this assessment as "the limitation regarding fine
18 details," and he argues, "Dr. Hendler has determined that the Plaintiff
19 does have significant physical impairments that cause limitations.
20 Indeed such limitations can prevent the Plaintiff from working." (Joint
21 Stip. 4, 9.) There are several problems with Plaintiff's arguments.

22 First, Dr. Hendler did not opine that Plaintiff's vision would pose
23 a significant impediment to Plaintiff's ability to work in general. Dr.
24 Hendler simply suggested that Plaintiff's vision would limit his ability
25 to work with fine details. Plaintiff does not explain why this
26 limitation, had the ALJ incorporated it into his RFC assessment, would
27 have precluded Plaintiff from working. Nor does Plaintiff offer any
28 theory as to how this limitation could have changed the ALJ's ultimate

1 conclusion that there had been medical improvement. In essence,
2 Plaintiff chose a relatively minor detail from an examining physician's
3 opinion issued before the CPD and, without explaining why this detail
4 has any bearing on the issues, insists that the ALJ's failure to discuss
5 it requires an entirely new hearing. However, the ALJ need not discuss
6 every piece of evidence in the record, only evidence that is significant
7 and probative. *Vincent ex rel. Vincent v. Heckler*, 739 F.2d 1393, 1394-
8 95 (9th Cir. 1984)(per curiam)(citation omitted). The Court is not
9 convinced, in light of the issues discussed below, that this detail is
10 significant or probative.

11 Second, the medical evidence in the record, as ALJ Varni discussed
12 in both of his decisions, does not support the conclusion that
13 Plaintiff's visual limitations are currently significant. To support his
14 claims of continuing disability, Plaintiff provided medical records and
15 appeared for two consultative examinations. These records show that on
16 September 20, 2004, Plaintiff's visual acuity was 20/30-2 in the right
17 eye and 20/25-3 in the left eye.² (AR 344, 363.) An independent medical
18 examination conducted on October 26, 2004, showed Plaintiff's corrected
19 visual acuity at 20/50 in the right eye, 20/40 in the left eye, and
20 20/30 with both eyes. (AR 347.) A later orthopedic consultation also
21 revealed Plaintiff's corrected visual acuity to be quite good: 20/40 in
22 the right eye, 20/40 in the left eye, and 20/30 with both eyes. (AR
23 371.) The orthopedist also noted that Plaintiff had no difficulty moving
24

25 ² This report from a treating physician also indicates that
26 Plaintiff has glaucoma in both eyes. The report states that Plaintiff
27 was referred to ophthalmology for a follow-up appointment, but it does
28 not appear from the record that he has pursued any treatment for
glaucoma. (AR 344.) The physician did not suggest that glaucoma had any
effect on Plaintiff's ability to work, nor did Plaintiff argue the point
in the Joint Stipulation.

1 around the office without assistance. (*Id.*)

2 Normal visual acuity is 20/20.³ By contrast, the Social Security Act
3 defines blindness as "central visual acuity of 20/200 or less in the
4 better eye with the use of a correcting lens." 42 U.S.C.A. § 416(i)(1)
5 (West 2008). All recent medical reports, including from Plaintiff's
6 treating physicians, indicate that Plaintiff's vision has successfully
7 been corrected nearly to normal. The ALJ's conclusion that Plaintiff's
8 visual impairment was not severe is supported by substantial evidence in
9 the record.

10 Finally, the jobs that the ALJ determined Plaintiff could perform
11 do not include "fine details." For example, the ALJ indicated that
12 Plaintiff could work as a laundry sorter/folder. (AR 19.) The Dictionary
13 of Occupational Titles defines "laundry laborer" as follows:

14 Prepares laundry for processing and distributes laundry,
15 performing any combination of the following duties: Opens
16 bundles of soiled laundry. Places bundles onto conveyor belt
17 or drops down chute for distribution to marking and
18 classification sections. Weighs laundry on scales and records
19 weight on tickets. Removes bundles from conveyor and
20 distributes to workers, using handtruck. Fastens
21 identification pins or clips onto laundry to facilitate
22 subsequent assembly of customers' orders. Sorts net bags
23 containing clean wash according to customers' identification
24 tags....

25 DICOT 361.687-018, 1991 WL 672992 (4th Ed. 1991). Even if the ALJ had
26 included in his RFC assessment that Plaintiff could not do "fine detail"

27
28 ³ American Optometric Ass'n, <http://www.aoa.org/myopia.xml>.

1 work, Plaintiff would still be able to work as a laundry sorter/folder.
2 Plaintiff has failed to demonstrate that inclusion of the "fine detail
3 limitation" would have had any effect on the ALJ's decision. Plaintiff
4 is not entitled to relief on this claim.

5 **B. Treating Psychologist's Opinion**

6 Plaintiff also relies on second report, dated February 22, 1999, in
7 which a psychologist appears to suggest that Plaintiff's frequent
8 conflicts at home might limit his ability to work. (AR 159.) Plaintiff
9 asserts, "Dr. Simonet has determined that the Plaintiff does have a
10 significant mental limitation that can prevent the Plaintiff from
11 working." (Joint Stip. 11.) Plaintiff argues that the ALJ's failure to
12 discuss this opinion warrants remand: "Here we have a treating
13 psychologist who opined that the Plaintiff is unable to work and has a
14 dysfunction rating of 'severe.' Simply put, the ALJ is not permitted to
15 ignore an opinion of disability from a treating source without
16 explanation." (Joint Stip. 14.) This argument is also without merit.⁴

17 Plaintiff was awarded SSI in 1999 based on several severe
18 impairments, which notably did not include mental illness. (AR 220-21.)
19 As discussed above, this is a termination of benefits case, so the ALJ
20 was required to determine whether Plaintiff's condition had improved
21 from the comparison point decision. The comparison point decision makes
22 no mention of a severe mental illness.

23 Moreover, Plaintiff has not provided any medical evidence to
24 suggest that he currently suffers from a mental impairment, and, as the
25 ALJ noted, he has received no mental health treatment since the

26
27 ⁴ Plaintiff's assertion that the psychologist gave Plaintiff a
28 "severe dysfunction rating" is incorrect. A review of the record reveals
that the psychologist gave Plaintiff a dysfunction rating of "moderate,"
(AR 159), which presumably means something less than "severe."

1 comparison point decision. (AR 20.) The ALJ attempted to determine
2 whether Plaintiff suffered from a mental impairment by ordering a
3 psychiatric consultation, but Plaintiff failed to appear for two
4 separate appointments. (AR 20, 390-92.) This failure alone is sufficient
5 for the ALJ to conclude that Plaintiff is no longer disabled. 20 C.F.R.
6 § 416.918(a) ("If you are already receiving benefits and do not have a
7 good reason for failing or refusing to take part in a consultative
8 examination or test which we arranged for you, we may determine that
9 your disability ... has stopped because of your failure or refusal.").
10 Additionally, Plaintiff did not raise his mental health at the hearing
11 when asked what impairments prevented him from working. (AR 454-55,
12 460.)

13 Plaintiff bears the burden of establishing the existence of a
14 disabling impairment. 20 C.F.R. § 416.912. Plaintiff has failed to meet
15 that burden here. The ALJ's conclusion that Plaintiff does not suffer
16 from a mental impairment is supported by substantial evidence in the
17 record. Plaintiff is not entitled to relief on this claim.

18
19 **IV. Conclusion**

20 For the reasons discussed above, the decision of the Social
21 Security Commissioner is affirmed.

22 DATED: October 2, 2008

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26 _____
MARC L. GOLDMAN
United States Magistrate Judge