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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

STACY OLLEY,)	Case No. EDCV 08-00018-MLG
Plaintiff,)	
v.)	MEMORANDUM OPINION AND ORDER
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security)	
Defendant.)	

I. Procedural and Factual History

Plaintiff Stacy Olley ("Plaintiff") seeks judicial review of the Commissioner's final decision denying her application for Supplemental Security Income benefits ("SSI"). Plaintiff applied for SSI benefits on June 18, 2004 (Joint Stipulation ("Joint Stip.") at 2.) Plaintiff alleges disability beginning January 8, 2002 due to diabetes, gastroesophageal reflux disease with diarrhea, and status post hysterectomy. (Joint Stip. at 2).

Plaintiff was born on January 15, 1965 and was 41 years old at the time of the administrative hearing. (Administrative Record ("AR"))

1 at 17). She completed high school and one year of college. She has
2 no relevant work experience because she was a full-time homemaker. (AR
3 at 247). Plaintiff's application was denied at the initial stage of
4 the administrative process on September 16, 2004, and upon
5 reconsideration on July 1, 2005. (AR at 12). A de novo hearing was
6 held on October 11, 2006, before Administrative Law Judge ("ALJ")
7 Mason D. Harrell, Jr. (AR at 203-230). Plaintiff, unrepresented by
8 counsel, testified at the hearing. (AR at 245-257, 259-260). Sandra
9 Fioretti testified as a vocational expert. (AR at 257-259).

10 On November 6, 2006, the ALJ issued an unfavorable decision,
11 denying SSI benefits. (AR at 12-19). The ALJ determined that Plaintiff
12 suffers from the severe impairments of diabetes, gastroesophageal
13 reflux disease with diarrhea, and status post hysterectomy. (AR at
14 14). The ALJ found that there was insufficient evidence to show that
15 Plaintiff's claim of depression was "severe" within the meaning of the
16 Social Security regulations. (AR at 14); see 20 C.F.R. § 416.924(c).
17 The ALJ determined that Plaintiff does not have an impairment or
18 combination of impairments that meets or medically equals one of the
19 listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (AR
20 at 15); see 20 C.F.R. 416.920(d), 416.025 and 416.926). The ALJ
21 determined that the Plaintiff has the following residual functional
22 capacity ("RFC"):

23 After careful consideration of the entire record, the
24 undersigned finds that the claimant has the residual
25 functional capacity to perform light work with the following
26 limitations: The claimant can occasional lift and/or carry
27 20 pounds and 10 pounds frequently; within an eight-hour
28 workday, she can sit, stand, and/or walk for six hours;

1 occasionally use her right-hand for handling and fingering.
2 However, the claimant is restricted from using a forceful
3 grip or bilateral grasp. Additionally, while driving, the
4 claimant must be able to alternate her hands after 15
5 minutes. (AR at 15).

6 Based on the testimony of the vocational expert, the ALJ found that
7 there was work available to Plaintiff in the national and local economy
8 in significant numbers. (AR at 18). Therefore, the ALJ concluded that
9 Plaintiff was not disabled, as defined in the Social Security Act, at
10 any time from June 18, 2004 through the date of the decision. (AR at
11 18). Plaintiff appealed this determination to the Appeals Council.
12 On December 8, 2007, the Appeals Council denied Plaintiff's request for
13 review. (AR at 4-6).

14 Plaintiff timely commenced this action for judicial review.
15 Plaintiff alleges that the ALJ erred as follows: (1) by failing to
16 establish that Plaintiff could perform the jobs of Order Caller,
17 Cashier II, and Ticket Taker; (2) by failing to pose a complete
18 hypothetical to the vocational expert; (3) by failing to fully develop
19 the record; and (4) by failing to properly consider the type, dosage,
20 effectiveness, and side effects of Plaintiff's medication. (Joint Stip.
21 at 2-3.) Plaintiff asks this Court to order an award of benefits, or,
22 in the alternative, to remand for a new administrative hearing. (Joint
23 Stip. at 19.)

24 25 **II. Standard of Review**

26 Under 42 U.S.C. § 405(g), a district court may review the
27 Commissioner's decision to deny benefits. The Commissioner's or ALJ's
28 decision must be upheld unless "the ALJ's findings are based on legal

1 error or are not supported by substantial evidence in the record as a
2 whole." *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1990); *Parra*
3 *v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence
4 means such evidence as a reasonable person might accept as adequate to
5 support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971);
6 *Widmark v. Barnhart*, 454 F.3d 1063, 1066 (9th Cir. 2006). It is more
7 than a scintilla, but less than a preponderance. *Robbins v. Soc. Sec.*
8 *Admin.*, 466 F.3d 880, 882 (9th Cir. 2006). To determine whether
9 substantial evidence supports a finding, the reviewing court "must
10 review the administrative record as a whole, weighing both the evidence
11 that supports and the evidence that detracts from the Commissioner's
12 conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996). "If
13 the evidence can support either affirming or reversing the ALJ's
14 conclusion," the reviewing court "may not substitute its judgment for
15 that of the ALJ." *Robbins*, 466 F.3d at 882.

16

17 **III. Discussion and Analysis**

18 **A. The ALJ Properly Determined that Plaintiff Could Perform a**
19 **Class of Jobs Consistent with Her Physical Limitations**

20 Plaintiff asserts that the ALJ erred in determining that
21 Plaintiff could perform the jobs of Order Caller, Cashier II and
22 Ticket Taker. (Joint Stip. at 3-4). In assessing Plaintiff's RFC, the
23 ALJ found that Plaintiff was limited to no more than occasional use of
24 her right hand for handling and fingering, in addition to a variety of
25 other exertional and non-exertional restrictions. (AR at 15). Based
26 on this RFC and the testimony of the vocational expert, the ALJ
27 concluded that Plaintiff was capable of performing the jobs of Order
28 Caller, Cashier II and Ticket Taker as they are generally performed in

1 the national and local economy. (AR at 18).

2 Plaintiff alleges that she was precluded from performing these
3 jobs because the Dictionary of Occupational Titles ("DOT") establishes
4 that the jobs of Order Caller and Cashier II both require frequent
5 fingering and handling, and the job of Ticket Taker requires frequent
6 handling. (Joint Stip. at 3-4); see DOT 209.667-014 (Order Caller),
7 DOT 211.462-010 (Cashier II), DOT 344.667-010 (Ticket Taker).
8 Plaintiff claims that the ALJ's determination that Plaintiff could
9 perform these three jobs is inconsistent with the RFC, in which
10 Plaintiff may only occasionally use her right hand for handling and
11 fingering. (Joint Stip. at 3). The Commissioner argues that the ALJ
12 properly relied on the testimony of the vocational expert in
13 determining that Plaintiff has the ability to perform these jobs.
14 (Joint Stip. at 4-8).

15 Here, the ALJ properly relied on the testimony of the vocational
16 expert. (AR at 18, 258-259). "An ALJ may take administrative notice
17 of any reliable job information, including information provided by a
18 vocational expert." *Johnson v. Shalala*, 60 F.3d 1428, 1435 (9th Cir.
19 1995). A vocational expert's "recognized expertise provides the
20 necessary foundation for his or her testimony...[and]...no additional
21 foundation is required." *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th
22 Cir. 2005). The ALJ may properly take into account the testimony of
23 a vocational expert that a claimant, given his or her relevant
24 limitations, can perform specific jobs existing in significant numbers
25 in the economy. *Id.* at 1217-1218. In his hypothetical to the
26 vocational expert, the ALJ included all of the physical limitations

1 identified by Plaintiff and supported by the medical evidence.¹ Based
2 upon this information, the vocational expert found Plaintiff could
3 perform the jobs of Order Caller, Cashier II or Ticket Taker, each of
4 which captured Plaintiff's specific abilities and limitations. The
5 ALJ's reliance on testimony the vocational expert gave in response to
6 the ALJ's hypothetical was therefore proper. *Id.* at 1217.

7 Furthermore, the vocational expert provided testimony that all
8 three jobs existed in sufficient numbers in the national and local
9 economies.² The vocational expert even eroded the number of Cashier II
10 jobs available by 50% to account for Plaintiff's limitations, an action
11 adopted by the ALJ's decision. (AR at 18.) The vocational expert
12 testified that Plaintiff would not have to do more than *occasional*
13 handling and fingering with the right hand with a 50% erosion rate for
14 Cashier II jobs. (AR at 258). Thus, the vocational expert specifically
15 took into account Plaintiff's limitation in only being able to do
16 "occasional handling and fingering with the right hand" by stating
17 that, while this limitation "would certainly eliminate a number of
18 cashier jobs...there would be some left." (AR at 259). Therefore,
19 under these circumstances, the ALJ did not err in adopting the
20 vocational expert's testimony.

21
22 ¹ When the ALJ asked Plaintiff if he had left out any other
23 limitations from the hypothetical question, Plaintiff answered in the
24 negative. (AR at 258).

25 ² The vocational expert testified as follows: "There would be work
26 as an order caller. Order caller is light, unskilled, SVP 2.
27 Regionally, there are 1,000 positions; nationally, there are 15,000
28 positions. There would be work as a cashier 2, also light, unskilled,
SVP 2. I would erode the number of those jobs by 50 percent which
would leave 2,500 regionally and in excess of 50,000 nationally. [¶]
There would be work as a ticket taker which is light, unskilled, SVP 2.
Regionally, there are 500 positions; nationally, there are 8,300
positions." (AR at 258-259).

1 Additionally, the Court agrees with the Commissioner that
2 Plaintiff is qualified to do each of the jobs identified by the
3 vocational expert - Order Taker, Cashier II and Ticket Taker. None of
4 these jobs require that both hands be capable of frequent fingering
5 and handling, or that the fingering and handling be performed by the
6 dominant hand. (DOT Nos. 209.667-014, 211.462-010, and 344.667-010).
7 Therefore, even though Plaintiff is right-handed, because she has no
8 fingering or handling limitations as to her left hand, she is able to
9 perform each of these jobs.

10 Based on Plaintiff's RFC and the testimony of the vocational
11 expert, the ALJ properly concluded that Plaintiff was capable of
12 performing work that exists in significant numbers in the national and
13 local economies. Therefore, no relief is warranted on this issue.

14 **B. The ALJ Posed a Proper Hypothetical Question to the**
15 **Vocational Expert**

16 Plaintiff contends that the ALJ improperly posed a hypothetical
17 question to the vocational expert that did not include the restriction
18 on Plaintiff's using a forceful grip or a bilateral grasp, as provided
19 in the RFC. (Joint Stip. at 8). The hypothetical question posed by
20 the ALJ to the vocational expert is as follows:

21 [T]he situation we have is a 41-year-old individual who has a
22 high school education, and whose lifting capacity is limited
23 to 20 pounds occasionally and on a more frequent basis would
24 have to be under ten pounds; sitting, standing, and walking is
25 also somewhat limited and she needs to be able to - or she
26 can't do any one position the entire day. She can't do more
27 than six hours out of eight hours for any one of those
28 individual activities, not all at once. She'd have to have

1 normal breaks after two hours - or every two hours, but the
2 total after - over an eight-hour workday would total at eight
3 hours. *With regard to her right hand, she can only do*
4 *handling and fingering occasionally, and she is right-handed;*
5 *and can't do any forceful gripping or grasping with either*
6 *hand.* If she's doing an activity like driving, after ten or
7 15 minutes would have to alternate hands - use of the
8 hands....With those limitations, can you identify any
9 unskilled work that could be performed?

10 (AR at 257-258) (emphasis added).

11 The Court finds that the ALJ posed a complete hypothetical
12 question to the vocational expert, which properly took into account
13 the Plaintiff's limitations in using her hands. In the hypothetical
14 question, the ALJ specifically instructed the vocational expert to
15 consider that Plaintiff "can't do any forceful gripping or grasping
16 with either hand," which is substantially equivalent to a "forceful
17 grip or bilateral grasp." The point of a hypothetical question is to
18 "clearly present to the [vocational expert] a set of limitations that
19 mirror those of the claimant." *Roe v. Chater*, 92 F.3d 672, 676 (9th
20 Cir. 1996). "While the hypothetical question must set forth all of the
21 claimant's impairments, it need not use specific diagnostic or
22 symptomatic terms where other descriptive terms can adequately define
23 the claimant's impairments." *Id.* Here, while the hypothetical question
24 posed by the ALJ did not use the exact terminology of a "forceful grip
25 or bilateral grasp," nevertheless it "clearly present[ed]" to the
26 vocational expert Plaintiff's limitations on the use of her hands.

27 Further, none of the three identified jobs, Order Caller, Cashier
28 II, or Ticket Taker, requires forceful gripping or grasping. (DOT Nos.

1 209.667-014, 211.462-010, 344.667-010). Therefore, even if the ALJ had
2 not included a limitation on Plaintiff's ability to grip and grasp,
3 the vocational expert would still have determined that Plaintiff is
4 capable of performing these jobs. Accordingly, relief is not warranted
5 on this issue.

6 **C. The ALJ Properly Developed the Record**

7 Plaintiff claims that the ALJ failed to properly develop the
8 administrative record regarding Plaintiff's claim of depression (Joint
9 Stp. at 10-11). During the administrative hearing, Plaintiff testified
10 that she was on medication for depression. (AR at 252). In response
11 to a question posed by the ALJ as to whether Plaintiff was seeing
12 anyone for her depression, Plaintiff stated that her "regular doctor
13 gives [her] the medication." (AR at 259). When asked by the ALJ
14 whether the medication helped, Plaintiff testified that her doctor had
15 doubled the medication, but "it still doesn't work." (AR at 259).
16 Plaintiff did not name the medication or further elaborate on her
17 claim that she suffered from depression. Plaintiff contends that,
18 based solely on her testimony, the ALJ had a duty to further develop
19 the record regarding her alleged depression.

20 The ALJ has a "special duty to develop the record fully and
21 fairly and to ensure that the claimant's interests are considered,
22 even when the claimant is represented by counsel." *Tonapetyan v.*
23 *Halter*, 242 F.3d 1144, 1150 (9th Cir.2001). However, the ALJ has a
24 duty to develop the record "only when there is ambiguous evidence or
25 when the record is inadequate to allow for proper evaluation of the
26 evidence." *Id.*

27 A claimant for disability benefits bears the burden of producing
28 evidence to demonstrate that he or she was disabled within the

1 relevant time period. *Johnson*, 60 F.3d at 1432. The existence of a
2 severe impairment is demonstrated when the evidence establishes more
3 than a minimal effect on an individual's ability to do basic work
4 activities. *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996); 20
5 C.F.R. §§ 404.1521(a), 416.921(a).³ Furthermore, the "existence of
6 emotional disorder...is not *per se* disabling...there must be proof of
7 the impairment's disabling severity." *Sample v. Schweiker*, 694 F.2d
8 639, 642-643 (9th Cir. 1982) (internal citations omitted). To prove
9 that a disability is severe, the plaintiff "must present 'complete and
10 detailed objective medical reports of her condition from licensed
11 medical professionals.'" *Johnson*, 60 F.3d at 1432 (citing 20 C.F.R.
12 §§ 404.1512(a)-(b), 404.1513(d)).

13 Here, the ALJ had no duty to further develop the record because
14 the record before the ALJ in this case was neither ambiguous nor
15 inadequate to allow for proper evaluation of the evidence. Aside from
16 her brief testimony at the administrative hearing, Plaintiff did not
17 produce any evidence to show that her alleged depression was severe.
18 Plaintiff did not provide any medical evidence to show that she ever
19 complained to a physician that she suffered from severe depression or
20 that such depression limited or restricted her in any way. (AR 247-
21 257, 259-260). Plaintiff also failed to produce any record of a
22 physician's diagnosis of depression. (AR at 107-242). Similarly, in
23 her testimony at the administrative hearing, Plaintiff never mentioned
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25 ³ The regulations define "basic work activities" as "the abilities
26 and aptitudes necessary to do most jobs", which include physical
27 functions such as walking, standing, sitting, pushing, carrying;
28 capacities for seeing, hearing and speaking; understanding and
remembering simple instructions; responding appropriately in a work
setting; and dealing with changes in a work setting. 20 C.F.R. §
404.1521(b).

1 any limitations or restrictions as a result of her alleged depression.
2 (AR at 247-257, 259-260).

3 Further, the medical records provided to the ALJ include only one
4 reference to Plaintiff actual being prescribed an antidepressant
5 medication. On April 15, 2004, Plaintiff's physician, Dr. Mark
6 Lauron, prescribed Effexor, although there is no record that the
7 prescription was ever refilled. (AR at 114). Plaintiff did submit one
8 additional medical record to the Appeals Council, dated August 7,
9 2006, in which Dr. Neera Grover, a specialist in gastroenterology,
10 diagnosed Plaintiff with anxiety and "reactive depression," based on
11 Plaintiff's complaint of a "significant increase in stress due to
12 personal problems with her daughter." (AR at 238). Dr. Grover stated
13 that a "trial of Xanax or antidepressant may be considered." (Id.).
14 However, there is no medical record showing that Dr. Grover ever
15 prescribed Xanax or any other antidepressant medication to Plaintiff.

16 For the reasons noted above, the ALJ correctly determined that,
17 as to Plaintiff's claimed depression, "there [was] insufficient
18 evidence to show that it causes a limitation and/or restriction having
19 more than a minimal effect on her ability to do basic work
20 activities." (AR at 14). Therefore, the Court finds that the ALJ
21 properly developed the record and reached a conclusion that was
22 supported by substantial evidence.

23 **D. The ALJ Properly Considered the Type, Dosage, Effectiveness**
24 **and Side Effects of Plaintiff's Medication**

25 Plaintiff contends that the ALJ failed to properly consider the
26 side effects of her medication in reaching the disability
27 determination. (Joint Stip. at 15-17). In a disability report dated
28 July 22, 2004, Plaintiff claimed that Soma caused dizziness (AR at

1 70). In a disability report appeal dated April 19, 2005, Plaintiff
2 claimed that Nexium made her feel "sick." (AR at 91). In a disability
3 report appeal dated July 7, 2005, Plaintiff claimed additional side
4 effects from medication: aspirin gave Plaintiff stomach aches;
5 Methocarbamol and Carisoprodol made Plaintiff "sleepy" and "dizzy;"
6 and Oxybutynin gave Plaintiff "cotton mouth." (AR at 102). Plaintiff
7 also noted that she was taking Effexor for depression, but stated that
8 it did not produce any side effects. (AR at 91).

9 "The ALJ must consider *all* factors that might have a 'significant
10 impact on an individual's ability to work.'" *Erickson v. Shalala*, 9
11 F.3d 813, 817 (9th Cir. 1993) (quoting *Varney v. Secretary of Health*
12 *& Human Services*, 846 F.2d 581, 585 (9th Cir. 1987), *relief modified*,
13 859 F.2d 1396 (1988)). Such factors "may include side effects of
14 medications as well as subjective evidence of pain." *Erickson*, 9 F.3d
15 at 818; *Varney*, 846 F.3d at 585 ("[S]ide effects can be a 'highly
16 idiosyncratic phenomenon' and a claimant's testimony as to their
17 limiting effects should not be trivialized.") (citation omitted).
18 However, Plaintiff bears the burden of producing medical evidence to
19 show that any claimed side effects from medication are severe enough
20 to interfere with her ability to work. See *Osenbrock v. Apfel*, 240
21 F.3d 1157, 1164 (9th Cir. 2001) (finding that "passing mentions of the
22 side effects of...medication in some of the medical records" was
23 insufficient evidence).

24 As support for her claim, Plaintiff cites the *Complete Guide to*
25 *Prescription & Nonprescription Drugs*, 2007 Edition, for a myriad of
26 possible side effects of each of the above-referenced medications.
27 (Joint Stip. at 16). The Court notes that the Social Security
28 regulations do not require an ALJ to consider a claimant's medications

1 as part of every disability determination. The mere fact that a
2 claimant takes a certain medication, in and of itself, is not evidence
3 that the claimant also experiences any one of the myriad possible side
4 effects from that medication. Further, a simple recitation of
5 potential side effects from a particular medication does not establish
6 that *this* claimant experiences *these* side effects, which prevents him
7 or her from working for *these* reasons.

8 This specific information must be presented to the ALJ as part
9 of the claimant's burden to demonstrate disability. If Plaintiff's
10 medications prevent her from working, she has to say so. Only at that
11 point does the type, dosage, effectiveness, and side effects of
12 medication become relevant, so the ALJ can evaluate Plaintiff's
13 credibility. As the regulations make clear, the ALJ must consider
14 these factors only "[w]hen additional information is needed to assess
15 the credibility of the individual's statements about symptoms and
16 their effects," because "the adjudicator must make every reasonable
17 effort to obtain available information that could shed light on the
18 credibility of the individual's statements." SSR 96-7p, 1996 WL
19 374186, at *3 (S.S.A. 1996). Absent an individual's statements of
20 impairment at the outset, the ALJ has no duty to inquire as to the
21 claimant's medications.

22 The Court concludes that Plaintiff has failed to demonstrate that
23 side effects from her medications precluded her from engaging in any
24 substantial gainful activity. During her testimony at the
25 administrative hearing, Plaintiff never mentioned any side effects
26 from her medications or claimed that she was unable to work due to
27 side effects. (AR at 247-257, 259-260). Nor was there any evidence in
28 the record indicating that the side effects of Plaintiff's medications

1 would have impaired her ability to work. See *Osenbrock*, 240 F.3d at
2 1164. Plaintiff therefore failed to fairly present the issue to the
3 ALJ, who did not err by reaching his disability determination without
4 analyzing the type, dosage, effectiveness, and side effects of
5 Plaintiff's medication.

6

7 **V. Conclusion**


8 For the reasons stated above, the decision of the Social Security
9 Commissioner is **AFFIRMED**.

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11 Dated: October 9, 2008

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Marc L. Goldman
United States Magistrate Judge

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