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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

RONALD KING,)	No. ED CV 08-00209-VBK
)	
Plaintiff,)	MEMORANDUM OPINION
)	AND ORDER
v.)	
)	(Social Security Case)
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

1 Plaintiff raises the following issues:¹

- 2 1. Whether the Administrative Law Judge ("ALJ") properly
- 3 considered the treating physician's opinion;
- 4 2. Whether the ALJ properly rated Plaintiff's mental
- 5 impairment;
- 6 3. Whether the ALJ properly developed the record; and
- 7 4. Whether the ALJ posed a complete hypothetical question to
- 8 the vocational expert ("VE").

9 This Memorandum Opinion will constitute the Court's findings of
10 fact and conclusions of law. After reviewing the matter, the Court
11 concludes that the decision of the Commissioner must be affirmed.

12
13 **I**

14 **THERE IS NO ERROR IN THE RECORD CONCERNING**
15 **THE ISSUE OF MENTAL IMPAIRMENT**

16 In his first issue, Plaintiff asserts that his treating
17 physician, Dr. Boutros, noted the word "depression" in an Adult
18 Progress Note dated November 13, 2006. (AR 221.) Plaintiff complains
19 that the ALJ failed to discuss this notation.

20 In his second issue, Plaintiff asserts that the ALJ erred by
21 failing to discuss Plaintiff's assertion in a "Disability Report -
22 Appeal" that, "I don't work and I stay home all the time. I'm a
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26
27 ¹ Although Plaintiff identifies four discrete issues, each is
28 related to Plaintiff's contention that the ALJ erred with regard to
the analysis of a possible mental impairment; e.g., depression. The
Court will consolidate its discussion of each issue in one section.

1 little depressed." (AR 178.)² Plaintiff then noted that he takes the
2 medication Elavil as a sleep aid, that it has helped his mood and,
3 that he is "not depressed like I was before." (AR 30.)

4 In Plaintiff's third issue, he asserts that the ALJ failed to
5 properly develop the record based on Plaintiff's belief that he has
6 depression. Plaintiff asserts that this evidence demonstrates that he
7 has a colorable mental condition.

8 Finally, Plaintiff asserts that in failing to include any mental
9 limitations in the hypothetical question to the VE, the ALJ committed
10 error.

11 As the Court will discuss, none of these claims have any
12 validity.

13
14 **A. Applicable Law.**

15 In the sequential evaluation process, it is Plaintiff's burden to
16 demonstrate that he has a severe impairment, as that term is defined
17 in the applicable regulations. (See 20 C.F.R. §404.1521.)

18 A severe impairment or combination of impairments is one which
19 significantly limits the physical or mental ability to perform basic
20 work activities. 20 C.F.R. §416.920. Basic work activities relate to
21 the aptitudes necessary to perform most jobs, such as the ability to
22 perform physical functions, the capacity for seeing and hearing, and
23 the ability to use judgment, respond to supervisors, and deal with
24 changes in the work setting. 20 C.F.R. §416.921; Bowen v. Yuckert,
25 482 U.S. 137, 141-42 (1987).

26
27 ² In his testimony at the hearing before the ALJ, Plaintiff
28 said that his insurance would not cover him to see a psychiatrist but
that, "I would love to because I think I have depression too." (AR
29.)

1 Plaintiff is not required to establish total disability at this
2 level of the evaluation. Rather, the severe impairment requirement is
3 a threshold element which plaintiff must prove in order to establish
4 disability within the meaning of the Act. Id. at 146. "The severity
5 requirement increases the efficiency and reliability of the evaluation
6 process by identifying at an early stage those claimants whose medical
7 impairments are so slight that it is unlikely they would be found to
8 be disabled even if their age, education, and experience were taken
9 into account." Id. at 153.

10 Pursuant to Social Security Ruling 85-28,

11 "An impairment or combination of impairments is found
12 'non-severe' and a finding of 'not disabled' is made at this
13 Step when medical evidence establishes only a slight
14 abnormality or a combination of slight abnormalities which
15 would have no more than a minimal effect on an individual's
16 ability to work even if the individual's age, education, or
17 work experience were specifically considered (i.e., the
18 person's impairment(s) has no more than a minimal effect on
19 his or her physical or mental ability(ies) to perform basic
20 work activities)."

21
22 In evaluating medical evidence, the ALJ need not discuss each and
23 every notation in the record; rather, relevant evidence must be
24 evaluated. Gonzalez v. Sullivan, 914 F.2d 1197, 1200-01 (9th Cir.
25 1990). Moreover, mere identification of symptoms by a medical
26 professional does not establish the types of functional deficits which
27 by definition preclude an ability to work. Morgan v. Commissioner,
28 169 F.3d 595, 601 (9th Cir. 1999). Finally, even a diagnostic opinion

1 does not suffice to demonstrate the existence of a severe impairment.
2 Sample v. Schweicker, 694 F.2d 639, 642-43 (9th Cir. 1989).

3 The ALJ does have a duty to develop the record when the evidence
4 is ambiguous or inadequate to allow for proper evaluation. Mayes v.
5 Massanari, 276 F.3d 453, 459 (9th Cir. 2001). Finally, all of the
6 demonstrated functional limitations of a claimant must be included in
7 the hypothetical question posed to a VE. Flores v. Shalala, 49 F.3d
8 562, 570-71 (9th Cir. 1995).

9
10 **B. Analysis.**

11 Plaintiff sought disability benefits because, he asserted, he had
12 an enlarged heart and dilated ascending aorta which made him unable to
13 lift as needed. (See Disability Report - Adult, AR 138-147, at 139.)
14 Further, there is no indication whatsoever in the record that
15 Plaintiff ever sought treatment for a mental impairment. While the
16 Court appreciates that Plaintiff's insurance might not allow him to
17 see a psychiatrist, as he testified (AR 29), there is no evidence he
18 ever complained to his primary care physician that he had issues
19 pertaining to a mental impairment. Plaintiff's treatment in fact
20 pertains to his heart condition. Moreover, the mere mention of the
21 word "depression" by Dr. Boutros certainly fails to qualify under any
22 definition as a diagnosis of a condition. There are no statements or
23 assessments by Dr. Boutros concerning any possible functional
24 limitations observed by the physician regarding Plaintiff's mental
25 health.

26 Looked at in the light most favorable to Plaintiff, even his own
27 testimony at the hearing indicated that he was taking a sleep
28 medication which helped his mood and led him to feel not as depressed

1 as he had been before. Plaintiff's belief that the ALJ should have
2 discussed this isolated statement in his testimony is simply not
3 supported by case law.

4 Plaintiff's third issue, concerning an asserted failure by the
5 ALJ to properly develop the record, is again without any merit.
6 Plaintiff asserts that the ALJ raised the issue of the absence of a
7 pulmonary function test (AR 17), but there is nothing in this brief
8 statement that indicates any belief on the part of the ALJ that such
9 a test was necessary. Plaintiff points to nothing in the record
10 indicating that the evidence was ambiguous or inadequate to allow
11 proper evaluation.

12 Finally, Plaintiff raises as his fourth issue that the ALJ failed
13 to pose a complete hypothetical question to the VE, in that no mental
14 limitations were incorporated in the hypothetical question. This is
15 factually correct, but legally insignificant. Simply put, there were
16 no mental limitations to be included in the hypothetical question. No
17 substantial evidence exists to support a mental limitation and for
18 that reason, no such limitations needed be placed into the
19 hypothetical question.

20 The decision of the ALJ will be affirmed. The Complaint will
21 be dismissed with prejudice.

22 **IT IS SO ORDERED.**

23
24 DATED: January 6, 2009

/s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE