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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SHARON A. PALMER,)	No. CV 09-1171 CW
)	
Plaintiff,)	DECISION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner, Social Security)	
Administration,)	
)	
Defendant.)	
_____)	

The parties have consented, under 28 U.S.C. § 636(c), to the jurisdiction of the undersigned Magistrate Judge. Plaintiff seeks review of the Commissioner’s denial of disability benefits. The court finds that judgment should be granted in favor of defendant, affirming the Commissioner’s decision.

I. BACKGROUND

Plaintiff Sharon A. Palmer was born on January 16, 1946, and was sixty-three years old at the time of her administrative hearing. [Administrative Record (“AR”) 63, 324.] She has one year of college education and past relevant work as an apartment manager, legal

1 assistant, and housekeeper. [AR 69, 72.] Plaintiff alleges disability
2 on the basis of depression, anxiety, back degeneration and right ankle
3 fracture. [AR 68.]

4 **II. PROCEEDINGS IN THIS COURT**

5 Plaintiff's complaint was lodged on June 16, 2009, and filed on
6 June 24, 2009. On October 23, 2009, defendant filed Plaintiff's
7 Administrative Record ("AR"). On January 12, 2010, the parties filed
8 their Joint Stipulation ("JS") identifying matters not in dispute,
9 issues in dispute, the positions of the parties, and the relief sought
10 by each party. This matter has been taken under submission without
11 oral argument.

12 **III. PRIOR ADMINISTRATIVE PROCEEDINGS**

13 Plaintiff applied for supplemental security income ("SSI") on
14 February 22, 2007, alleging disability since January 15, 2003. [JS
15 2.] After the application was denied initially and upon
16 reconsideration, Plaintiff requested an administrative hearing, which
17 was held on February 11, 2009, before Administrative Law Judge ("ALJ")
18 Michael Radensky. [AR 324.] Plaintiff appeared with counsel, and
19 testimony was taken from Plaintiff and vocational expert Troy Scott.
20 [Id.] The ALJ denied benefits on March 30, 2009. [AR 11.] When the
21 Appeals Council denied review on May 19, 2009, the ALJ's decision
22 became the Commissioner's final decision. [AR 3.]

23 **IV. STANDARD OF REVIEW**

24 Under 42 U.S.C. § 405(g), a district court may review the
25 Commissioner's decision to deny benefits. The Commissioner's (or
26 ALJ's) findings and decision should be upheld if they are free of
27 legal error and supported by substantial evidence. However, if the
28 court determines that a finding is based on legal error or is not

1 supported by substantial evidence in the record, the court may reject
2 the finding and set aside the decision to deny benefits. See Aukland
3 v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Tonapetyan v.
4 Halter, 242 F.3d 1144, 1147 (9th Cir. 2001); Osenbrock v. Apfel, 240
5 F.3d 1157, 1162 (9th Cir. 2001); Tackett v. Apfel, 180 F.3d 1094,
6 1097 (9th Cir. 1999); Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
7 1998); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); Moncada
8 v. Chater, 60 F.3d 521, 523 (9th Cir. 1995)(per curiam).

9 "Substantial evidence is more than a scintilla, but less than a
10 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence
11 which a reasonable person might accept as adequate to support a
12 conclusion." Id. To determine whether substantial evidence supports
13 a finding, a court must review the administrative record as a whole,
14 "weighing both the evidence that supports and the evidence that
15 detracts from the Commissioner's conclusion." Id. "If the evidence
16 can reasonably support either affirming or reversing," the reviewing
17 court "may not substitute its judgment" for that of the Commissioner.
18 Reddick, 157 F.3d at 720-721; see also Osenbrock, 240 F.3d at 1162.

19 **V. DISCUSSION**

20 **A. THE FIVE-STEP EVALUATION**

21 To be eligible for disability benefits a claimant must
22 demonstrate a medically determinable impairment which prevents the
23 claimant from engaging in substantial gainful activity and which is
24 expected to result in death or to last for a continuous period of at
25 least twelve months. Tackett, 180 F.3d at 1098; Reddick, 157 F.3d at
26 721; 42 U.S.C. § 423(d)(1)(A).

27 Disability claims are evaluated using a five-step test:

28 Step one: Is the claimant engaging in substantial

1 gainful activity? If so, the claimant is found not
2 disabled. If not, proceed to step two.

3 Step two: Does the claimant have a "severe" impairment?
4 If so, proceed to step three. If not, then a finding of not
5 disabled is appropriate.

6 Step three: Does the claimant's impairment or
7 combination of impairments meet or equal an impairment
8 listed in 20 C.F.R., Part 404, Subpart P, Appendix 1? If
9 so, the claimant is automatically determined disabled. If
10 not, proceed to step four.

11 Step four: Is the claimant capable of performing his
12 past work? If so, the claimant is not disabled. If not,
13 proceed to step five.

14 Step five: Does the claimant have the residual
15 functional capacity to perform any other work? If so, the
16 claimant is not disabled. If not, the claimant is disabled.

17 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995, as amended
18 April 9, 1996); see also Bowen v. Yuckert, 482 U.S. 137, 140-142, 107
19 S. Ct. 2287, 96 L. Ed. 2d 119 (1987); Tackett, 180 F.3d at 1098-99; 20
20 C.F.R. § 404.1520, § 416.920. If a claimant is found "disabled" or
21 "not disabled" at any step, there is no need to complete further
22 steps. Tackett, 180 F.3d 1098; 20 C.F.R. § 404.1520.

23 Claimants have the burden of proof at steps one through four,
24 subject to the presumption that Social Security hearings are non-
25 adversarial, and to the Commissioner's affirmative duty to assist
26 claimants in fully developing the record even if they are represented
27 by counsel. Tackett, 180 F.3d at 1098 and n.3; Smolen, 80 F.3d at
28 1288. If this burden is met, a prima facie case of disability is
made, and the burden shifts to the Commissioner (at step five) to
prove that, considering residual functional capacity ("RFC")¹, age,

¹ Residual functional capacity measures what a claimant can
still do despite existing "exertional" (strength-related) and
"nonexertional" limitations. Cooper v. Sullivan, 880 F.2d 1152, 1155
n.s. 5-6 (9th Cir. 1989). Nonexertional limitations limit ability to
work without directly limiting strength, and include mental, sensory,
postural, manipulative, and environmental limitations. Penny v.
Sullivan, 2 F.3d 953, 958 (9th Cir. 1993); Cooper, 800 F.2d at 1155

1 education, and work experience, a claimant can perform other work
2 which is available in significant numbers. Tackett, 180 F.3d at 1098,
3 1100; Reddick, 157 F.3d at 721; 20 C.F.R. § 404.1520, § 416.920.

4 **B. THE ALJ'S EVALUATION IN PLAINTIFF'S CASE**

5 Here, the ALJ found that Plaintiff had not engaged in substantial
6 gainful activity since February 22, 2007 (step one); that Plaintiff
7 had "severe" impairments, namely mild back degeneration, history of
8 right ankle fracture, and mood disorder (step two); and that Plaintiff
9 did not have an impairment or combination of impairments that met or
10 equaled a "listing" (step three). [AR 13.] Plaintiff was found to
11 have an RFC for light work, except with a non-exertional limitation of
12 no more than occasional public (face to face) contact. [AR 14.] The
13 vocational expert testified that a person with Plaintiff's RFC could
14 return to Plaintiff's past relevant work as a legal assistant (step
15 four). [AR 19, 348.] Accordingly, Plaintiff was found not "disabled"
16 as defined by the Social Security Act. [AR 20.]

17 **C. PLAINTIFF'S PRESENT CLAIMS**

18 The parties' Joint Stipulation sets out the following disputed
19 issues:

- 20 1. Whether the ALJ properly considered the treating
21 psychiatrist's and psychologist's opinion.
- 22 2. Whether the ALJ properly considered the examining
23 psychologist's opinion.

24 [JS 2.]
25
26

27 n.7; 20 C.F.R. § 404.1569a(c). Pain may be either an exertional or a
28 nonexertional limitation. Penny, 2 F.3d at 959; Perminter v. Heckler,
765 F.2d 870, 872 (9th Cir. 1985); 20 C.F.R. § 404.1569a(c).

1 **D. ISSUE ONE: TREATING PSYCHIATRIST'S AND PSYCHOLOGIST'S**
2 **OPINION**

3 On August 19, 2008, Plaintiff began going to the Phoenix
4 Outpatient Clinic. [AR 308.] Dr. Rene Roberg, Psy.D, completed an
5 Adult Clinical Assessment form of Plaintiff on that day. [AR 319.] He
6 noted that Plaintiff was disheveled with poor hygiene, that she seemed
7 depressed, that her thought process was slow, and that she had poor
8 insight and judgment. [AR 322.] On August 28, 2008, Dr. Han V. Nguyen,
9 M.D., completed an Adult Psychiatric evaluation of Plaintiff. [AR
10 318.] He checked off boxes indicating that Plaintiff had intrusive
11 behavior, rapid speech, a depressed mood, suicidal ideation, flight of
12 ideas, fair insight and judgment, and paranoia. [AR 318.] Dr. Nguyen
13 also indicated that Plaintiff had a global assessment of functioning
14 ("GAF") score of 48.² [Id.] After these initial assessments, Plaintiff
15 began seeing Dr. Gurmit Sekhon, M.D., with five appointments in the
16 record through January 28, 2009. [AR 311-316.] On February 9, 2009,
17 Dr. Sekhon indicated in a letter to the Social Security Administration
18 that Plaintiff continued to be a patient of the Phoenix Outpatient
19 Clinic and opined that Plaintiff was "unable to work" and "continue[d]
20 to be eligible for SSI benefits." [AR 305.]

21 In the administrative decision, the ALJ made no explicit
22 reference to the assessments completed by Dr. Nguyen or Dr. Roberg,
23 but discussed Plaintiff's treatment at the Phoenix Outpatient Clinic
24

25 ² A GAF score represents a clinical evaluation of an
26 individual's overall level of functioning. A GAF score of 41 to 50
27 indicates "serious symptoms (e.g., suicidal ideation, severe
28 obsessional rituals, frequent shoplifting) OR any serious impairment
in social, occupational or school functioning (e.g., no friends,
unable to keep job)." DSM-IV, American Psychiatric Association,
(Washington, 1994).

1 as a whole and gave "limited probative weight" to Dr. Sekhon's
2 opinion. [AR 17-19.] The ALJ made a finding that Plaintiff's
3 appointments with Dr. Sekhon "generally consisted of medication
4 management with no indication that treatment should be anymore
5 aggressive," which Plaintiff does not dispute. [Id.] The ALJ also
6 addressed the GAF score in conjunction with additional GAF scores in
7 the record, which ranged on the whole from 48 to 70,³ and determined
8 that they were "of limited evidentiary value," revealing "only
9 snapshots of impaired and improved behavior." [AR 18.] Plaintiff
10 asserts that the ALJ's findings constitute reversible error because
11 the ALJ failed to consider the assessments by Drs. Nguyen and Roberg
12 and did not provide specific and legitimate reasons for rejecting the
13 opinions of these treating doctors. [JS 4.]

14 The record indicates, however, that both the reports of Drs.
15 Nguyen and Roberg were assessments completed before Plaintiff began
16 seeing Dr. Sekhon at the Phoenix Clinic and did not necessarily
17 reflect the record as a whole with regard to Plaintiff's mental
18 impairments. [AR 17-19.] The ALJ did evaluate the record on the
19 whole, including considering Dr. Sekhon's letter⁴ and medical reports
20 from examining sources indicating Plaintiff could return to work,
21 found that Plaintiff was not entirely credible about her symptoms, and
22 noted consultative examinations and state agency assessments

24
25 ³ A GAF score of 61 to 70 indicates "some mild symptoms (e.g.,
26 depressed mood and mild insomnia) OR some difficulty in social,
27 occupational, or school functioning (e.g., occasional truancy, or
28 theft within the household), but generally functioning pretty well,
has some meaningful interpersonal relationships."

⁴ Plaintiff does not challenge the ALJ's evaluation of Dr.
Sekhon's letter.

1 indicating Plaintiff did not have any significant functional
2 limitations. [AR 17-19, 137-190, 249-273, 282.] Under these
3 circumstances, the initial Phoenix Clinic evaluations were not
4 significant or probative evidence as to the issue of disability
5 independently. Therefore, the ALJ's omission of a reference to this
6 evidence was not reversible error. See Vincent v. Heckler, 739 F.2d
7 1393, 1395 (9th Cir. 1984)(ALJ need not discuss all evidence presented
8 if it is not significant or probative).

9 **E. THE EXAMINING PSYCHOLOGIST'S OPINION**

10 On May 15, 2006, Dr. Raymond J. Coffin, Psy.D., performed a
11 psychological assessment of Plaintiff. [AR 170-179.] A comprehensive
12 psychiatric evaluation was then created by Dr. Perry Maloff, M.D, the
13 head doctor, in conjunction with Dr. Coffin on July 14, 2006. [AR 140-
14 168.] This report detailed Plaintiff's mental history and her current
15 mental limitations. [Id.] The Plaintiff asserts that the ALJ failed to
16 address the assessment of Dr. Coffin and that this constitutes
17 reversible error. However, the ALJ discussed the report by Dr.
18 Maloff, which incorporated the findings and results of Dr. Coffin's
19 assessment and was created by Dr. Maloff in conjunction with Dr.
20 Coffin. [AR 17-19, 157-57.] The ALJ noted that in this report, Dr.
21 Maloff opined that Plaintiff's condition should "stabilize in the next
22 several months" and that she should be "encouraged to return to some
23 type of gainful employment in the near future." [AR 19, 167-168.] The
24 ALJ factored this opinion into his assessment of Plaintiff's RFC. [AR
25 19.] Accordingly, Issue Two is without merit.

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1 VI. ORDERS

2 Accordingly, **IT IS ORDERED** that:

3 1. The decision of the Commissioner is **AFFIRMED**.

4 2. This action is **DISMISSED WITH PREJUDICE**.

5 3. The Clerk of the Court shall serve this Decision and Order
6 and the Judgment herein on all parties or counsel.

7
8 DATED: July 26, 2010

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10

CARLA M. WOHRLE
United States Magistrate Judge