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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION**

CHRISTOPHER THOMPSON,  
Plaintiff,  
v.  
MICHAEL J. ASTRUE,  
Commissioner of Social Security,  
Defendant.



NO. EDCV 09-1182 AGR

**MEMORANDUM OPINION AND  
ORDER**

Christopher Thompson filed this action on July 1, 2009. Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before Magistrate Judge Rosenberg on July 23 and 31, 2009. (Dkt. Nos. 8 & 10.) On January 5, 2010, the parties filed a Joint Stipulation (“JS”) that addressed the disputed issues. The Court has taken the matter under submission without oral argument.

Having reviewed the entire file, the Court affirms the decision of the Commissioner.

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1 I.

2 **PROCEDURAL BACKGROUND**

3 On September 3, 2004, Thompson filed an application for Supplemental  
4 Security Income benefits alleging a disability onset date of June 16, 2004.  
5 Administrative Record (“AR”) 18, 232-33. The application was denied initially and  
6 upon reconsideration. AR 18, 153, 160. An Administrative Law Judge (“ALJ”)  
7 conducted a hearing on January 24, 2007, at which Thompson and a vocational  
8 expert (“VE”) testified. AR 70-89. On March 1, 2007, the ALJ issued a decision  
9 denying benefits. AR 18, 131-41. On July 23, 2007, the Appeals Council granted  
10 Thompson’s request for review, vacated the decision of the ALJ, and remanded.  
11 AR 190-92. On April 8, 2008, a different ALJ conducted a hearing at which  
12 Thompson and a VE testified. AR 90-113. On December 31, 2008, the ALJ  
13 issued a decision denying benefits. AR 15-34. The Appeals Council denied  
14 Thompson’s request for review on May 19, 2009. AR 7-9. This action followed.

15 II.

16 **STANDARD OF REVIEW**

17 Pursuant to 42 U.S.C. § 405(g), this Court reviews the Commissioner’s  
18 decision to deny benefits. The decision will be disturbed only if it is not supported  
19 by substantial evidence, or if it is based upon the application of improper legal  
20 standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995); *Drouin v.*  
21 *Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

22 “Substantial evidence” means “more than a mere scintilla but less than a  
23 preponderance – it is such relevant evidence that a reasonable mind might  
24 accept as adequate to support the conclusion.” *Moncada*, 60 F.3d at 523. In  
25 determining whether substantial evidence exists to support the Commissioner’s  
26 decision, the Court examines the administrative record as a whole, considering  
27 adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the  
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1 evidence is susceptible to more than one rational interpretation, the Court must  
2 defer to the Commissioner's decision. *Moncada*, 60 F.3d at 523.

3 **III.**

4 **DISCUSSION**

5 **A. Disability**

6 A person qualifies as disabled, and thereby eligible for such benefits, "only  
7 if his physical or mental impairment or impairments are of such severity that he is  
8 not only unable to do his previous work but cannot, considering his age,  
9 education, and work experience, engage in any other kind of substantial gainful  
10 work which exists in the national economy." *Barnhart v. Thomas*, 540 U.S. 20,  
11 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003).

12 **B. The ALJ's Findings**

13 Thompson has the following severe combination of impairments:  
14 "adhesive capsulitis of the left shoulder, degenerative joint disease of the lumbar  
15 spine . . . and substance abuse disorder."<sup>1</sup> AR 22. Thompson does not have an  
16 impairment or combination of impairments that meets or medically equals one of  
17 the listed impairments. *Id.*

18 Thompson has the residual functional capacity ("RFC") to perform light  
19 work limited to "simple, routine, repetitive tasks." AR 23. Thompson has no past  
20 relevant work. AR 32. Jobs involving unskilled light work exist in significant  
21 numbers in the national economy that Thompson can perform. AR 33-34.

22 **C. Compliance with the Appeals Council's Remand Order**

23 Thompson argues that the ALJ failed to comply with the terms of the  
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25 <sup>1</sup> The heading of Section 2 of the ALJ's decision lists "schizophrenia" as  
26 one of Thompson's severe impairments. AR 22. This appears to be a scrivener's  
27 error, however, because the ALJ explicitly rejected the contention that  
28 Thompson's mental impairments are severe in the text immediately below that  
heading: "The claimant's medically determinable mental impairments do not  
cause more than minimal limitation in the claimant's ability to perform basic  
mental work activities and [are] therefore nonsevere." *Id.*

1 Appeals Council's July 23, 2007 remand order to obtain, if available, treatment  
2 records from Dr. Tong, who opined in September 2006 that Thompson was  
3 completely disabled due to schizophrenia. JS 3 (citing AR 191-92, 360).  
4 According to Thompson, the ALJ's rejection of Dr. Tong's opinion, in part on the  
5 ground that Thompson had not produced his treatment records, was an improper  
6 attempt "to shift the burden of developing the record" because pursuant to the  
7 Appeals Council's order, the ALJ, not Thompson, was required to obtain those  
8 records. JS 4; AR 32.

9 Thompson's argument that the ALJ failed to comply with the Appeals  
10 Council's remand order is misdirected. After the Appeals Council remanded the  
11 matter (AR 191-92), the ALJ issued a new hearing decision in December 2008.  
12 AR 18-34. The Appeals Council denied Thompson's request for review of that  
13 decision.<sup>2</sup> AR 7-9. The ALJ's decision became the final decision of the  
14 Commissioner subject to judicial review. See 42 U.S.C. § 405(g); *Tyler*, 305 Fed.  
15 Appx. at 332 ("The district court properly declined to evaluate whether the ALJ's  
16 second decision satisfied the demands of the Appeals Council's remand . . . .  
17 [F]ederal courts only have jurisdiction to review the final decisions of  
18 administrative agencies. When the Appeals Council denied review of the ALJ's  
19 second decision, it made that decision final, and declined to find that the ALJ had  
20 not complied with its remand instructions.") Accordingly, the Court's role is to  
21 determine whether the ALJ's final decision is supported by substantial evidence  
22 (see *Moncada*, 60 F.3d at 523), not whether the ALJ complied with the Appeals  
23 Council's remand order.

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26 <sup>2</sup> By denying review of the ALJ's December 31, 2008 decision, the Appeals  
27 Council declined to find that the ALJ had not complied with its remand order and  
28 determined that the additional evidence obtained by the ALJ was sufficient to  
support the disability determination. *Tyler v. Astrue*, 305 Fed. Appx. 331, 332  
(9th Cir. 2008).

1           Construing Thompson’s argument as a claim that the ALJ failed to develop  
2 the record, the claim still fails. In its remand order, the Appeals Council directed  
3 the ALJ to obtain additional evidence concerning Thompson’s medical claims,  
4 including, “if available, Dr. Tong’s treatment notes, treatment notes from the  
5 sources listed in B83, and a consultative psychiatric examination with medical  
6 source statements about what the claimant can still do despite the impairment.”  
7 AR 191-92.

8           Pursuant to the remand order, on June 6, 2008, the ALJ obtained  
9 Thompson’s medical records from Kern Medical Center, which included the  
10 County of Kern Family Medicine Center where Dr. Tong practiced. AR 360, 398-  
11 624. The records forwarded by Kern Medical Center did not include treatment  
12 notes from Dr. Tong. The ALJ gave “little weight” to Dr. Tong’s opinion because  
13 “[t]here is little indication that Dr. Tong is a psychiatrist” and because Thompson  
14 “has not submitted treatment records from Dr. Tong to support this diagnosis.”  
15 AR 32. Contrary to Thompson’s argument that the ALJ improperly attempted to  
16 “shift the burden” of developing the record, the ALJ requested and received  
17 hundreds of pages of medical records from the medical center where Dr. Tong  
18 practiced. There is no evidence that treatment notes from Dr. Tong exist. At the  
19 hearing, Thompson did not indicate Dr. Tong had any treatment notes, much less  
20 bring them to the ALJ’s attention, or object to the absence of Dr. Tong’s treatment  
21 notes from the record. AR 92-112. Nor did Thompson supplement the record  
22 with Dr. Tong’s treatment notes following the hearing, even though the ALJ  
23 agreed to hold the record open for thirty days so that Thompson could obtain  
24 additional medical evidence. AR 112. The ALJ’s determination that Dr. Tong’s  
25 two-sentence opinion merited “little weight” is supported by substantial evidence.  
26 AR 32, 360; *see, e.g., Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002) (an  
27 “ALJ need not accept the opinion of any physician, including a treating physician,  
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1 if that opinion is brief, conclusory, and inadequately supported by clinical  
2 findings”).

3 The ALJ made no finding that the evidence was ambiguous or that the  
4 record was inadequate to allow for proper evaluation. See *Mayes v. Massanari*,  
5 276 F.3d 453, 459-60 (9th Cir. 2001) (“An ALJ’s duty to develop the record further  
6 is triggered only when there is ambiguous evidence or when the record is  
7 inadequate to allow for proper evaluation of the evidence.”). In addition to  
8 obtaining additional medical records, the ALJ also obtained a psychiatric  
9 consultative examination by psychiatrist Dr. Linda Smith. AR 375-87. The ALJ  
10 did not err.

11 **D. Severity of Thompson’s Mental Impairment**<sup>3</sup>

12 Thompson argues the ALJ improperly determined at step two that his  
13 mental impairment did not meet the criteria to be classified as “severe.” JS 14.

14 At step two of the sequential analysis, the claimant bears the burden of  
15 demonstrating a severe, medically determinable impairment that meets the  
16 duration requirement. 20 C.F.R. § 404.1520(a)(4)(ii); *Bowen v. Yuckert*, 482 U.S.  
17 137, 146 n.5, 107 S. Ct. 2287, 96 L. Ed. 2d 119 (1987). To satisfy the duration  
18 requirement, the severe impairment must have lasted or be expected to last for a  
19 continuous period of not less than 12 months. *Id.* at 140.

20 Your impairment must result from anatomical, physiological,  
21 or psychological abnormalities which can be shown by  
22 medically acceptable clinical and laboratory diagnostic  
23 techniques. A physical or mental impairment must be  
24 established by medical evidence consisting of signs,  
25 symptoms, and laboratory findings, not only by your  
26 statement of symptoms.

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27 <sup>3</sup> The Court will address the remainder of Thompson’s arguments in an  
28 order different than that presented in the JS.

1 20 C.F.R. § 404.1508; 20 C.F.R. § 416.908. “[T]he impairment must be one that  
2 ‘significantly limits your physical or mental ability to do basic work activities.’”<sup>4</sup>  
3 *Yuckert*, 482 U.S. at 154 n.11 (quoting 20 C.F.R. § 404.1520(c)); *Smolen v.*  
4 *Chater*, 80 F.3d at 1273, 1290 (9th Cir. 1996) (“[A]n impairment is not severe if it  
5 does not significantly limit [the claimant’s] physical ability to do basic work  
6 activities.”) (citation and quotation marks omitted).

7 “An impairment or combination of impairments may be found ‘not severe  
8 *only if* the evidence establishes a slight abnormality that has no more than a  
9 minimal effect on an individual’s ability to work.” *Webb v. Barnhart*, 433 F.3d  
10 683, 686-87 (9th Cir. 2005) (emphasis in original, citation omitted). Step two is “a  
11 *de minimis* screening device [used] to dispose of groundless claims” and the  
12 ALJ’s finding must be “clearly established by medical evidence.” *Id.* at 687  
13 (citations and quotations omitted). “[T]he ALJ must consider the combined effect  
14 of all of the claimant’s impairments on her ability to function, without regard to  
15 whether each alone was sufficiently severe.” *Smolen*, 80 F.3d at 1290. The ALJ  
16 is also “required to consider the claimant’s subjective symptoms, such as pain or  
17 fatigue, in determining severity.” *Id.* The Commissioner does not consider age,  
18 education, and work experience. 20 C.F.R. § 404.1520(c).

19 At step two, the ALJ did not find that Thompson had a severe mental  
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23 <sup>4</sup> Basic work activities are the “abilities and aptitudes necessary to do most  
24 jobs,” such as (1) physical functions like walking, standing, sitting, lifting, pushing,  
25 pulling, reaching, carrying, and handling; (2) the capacity for seeing, hearing, and  
26 speaking; (3) understanding, carrying out, and remembering simple instructions;  
27 (4) the use of judgment; (5) responding appropriately to supervision, co-workers,  
28 and usual work situations; and (6) dealing with changes in a routine work setting.  
20 C.F.R. § 416.921(b); Social Security Ruling (“SSR”) 85-15. Social security  
rulings do not have the force of law. Nevertheless, they “constitute Social  
Security Administration interpretations of the statute it administers and of its own  
regulations” and are given deference “unless they are plainly erroneous or  
inconsistent with the Act or regulations.” *Han v. Bowen*, 882 F.2d 1453, 1457  
(9th Cir. 1989).

1 impairment.<sup>5</sup> AR 22; see *supra* n.1. Even assuming without deciding that  
2 omission of a mental impairment constituted legal error at step two, such error  
3 was harmless. *Burch v. Barnhart*, 400 F.3d 676, 682 (9th Cir. 2005). Any  
4 prejudice to Thompson could occur only at step five because all other steps were  
5 decided in his favor. *Id.* The RFC assessment takes into account limitations  
6 imposed by all impairments, even those that are not severe. *Id.* at 683.

7 **E. Consultative Psychiatric Examiner’s Opinion**

8 The ALJ limited Thompson to “simple, routine, repetitive tasks.” AR 23.  
9 Thompson argues the ALJ improperly rejected the opinion of examining  
10 psychiatrist Dr. Kalman regarding his mental RFC.<sup>6</sup> JS 9. Thompson contends  
11 the ALJ’s reasons for giving greater weight to the opinion of Dr. Smith, who  
12 examined him at the request of the state agency, than to the opinion of Dr.  
13 Kalman, who examined him at the request of his lawyer, were legally insufficient.  
14 *Id.* (citing AR 27-29 & 32).

15 An ALJ may reject an uncontradicted examining physician’s medical  
16 opinion based on “clear and convincing reasons.” *Carmickle v. Comm’r, Soc.*  
17 *Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008) (quoting *Lester*, 81 F.3d at 830-  
18 31). When an examining physician’s opinion is contradicted, “it may be rejected  
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20 <sup>5</sup> In evaluating the severity of Thompson’s mental impairments, the ALJ  
21 considered the four broad functional areas set out in 20 C.F.R. § 404.1520a(c)(3)  
22 and section 12.00C of the Listing of Impairments: activities of daily living; social  
23 functioning; concentration, persistence or pace; and episodes of  
24 decompensation. AR 22. The ALJ found that Thompson had a mild limitation in  
25 his ability to perform activities of daily living; no limitation in social functioning;  
26 mild limitation in the area of concentration, persistence or pace; and no episodes  
27 of decompensation of extended duration. *Id.* The ALJ therefore concluded that  
28 Thompson’s mental impairments were not severe. *Id.* (citing 20 C.F.R. §  
404.1520a(d)(1) (“If we rate the degree of your limitation in the first three  
functional areas as ‘none’ or ‘mild’ and ‘none’ in the fourth area, we will generally  
conclude that your impairment(s) is not severe . . .”).

<sup>6</sup> Although Thompson refers in passing to “Dr. Kalman’s relevant treating  
source opinion,” the record establishes that Dr. Kalman was not Thompson’s  
treating psychiatrist, but rather examined Thompson at the request of  
Thompson’s lawyer. AR 28, 389-97.



1 for 'specific and legitimate reasons that are supported by substantial evidence in  
2 the record.'" *Id.* at 1164 (citation omitted). An examining physician's opinion  
3 constitutes substantial evidence when it is based on independent clinical findings.  
4 *Id.*

5 "When there is conflicting medical evidence, the Secretary must determine  
6 credibility and resolve the conflict." *Thomas*, 278 F.3d at 956-57 (citation and  
7 quotation marks omitted). "The ALJ is likewise responsible for resolving  
8 ambiguities." *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The  
9 Court must uphold the ALJ's decision when the evidence is susceptible to more  
10 than one rational interpretation. *Id.*

11 In a psychiatric evaluation dated March 30, 2008, Dr. Kalman did not make  
12 a diagnosis. He stated rule out schizoaffective disorder and rule out alcohol  
13 abuse. AR 391. Dr. Kalman reported that Thompson's responses were delayed,  
14 his memory was impaired, he had impaired attention and concentration, his mood  
15 was depressed, his affect was blunted, and his thought processes were  
16 "significant for poverty of ideas" and marked by vague, halting speech. AR 390-  
17 91. Thompson reported to Dr. Kalman that he does not get along with his family  
18 and has no friends. AR 391. On a typical day, "I'm tore up. I can't buy nothing. I  
19 can't eat well. No money. I'm very depressed." *Id.* For the last two years, he  
20 had auditory hallucinations telling him to kill himself. *Id.*

21 Dr. Kalman found that Thompson had mild limitations in his ability to  
22 remember locations and work-like procedures; understand, remember and carry  
23 out short and simple (one- or two-step) repetitive instructions or tasks; perform  
24 activities within a schedule, maintain regular attendance and be punctual; interact  
25 appropriately with the public; get along with co-workers; and maintain socially  
26 appropriate behavior. AR 394-96. Thompson had moderate limitations in his  
27 ability to understand, remember and carry out detailed instructions; maintain  
28 attention and concentration for extended periods; sustain an ordinary routine

1 without supervision; make simple work-related decisions; complete a normal  
2 workday and workweek without interruptions from psychologically based  
3 symptoms; perform at a consistent pace without an unreasonable number of rest  
4 periods; and accept instructions and respond appropriately to criticism from  
5 supervisors. AR 395-96. Thompson's condition was not expected to improve  
6 significantly in the next twelve months. AR 392, 397.

7 Dr. Smith, an examining physician, saw Thompson on October 2, 2007,  
8 and diagnosed alcohol abuse, possibly abstaining. AR 382. Dr. Smith found no  
9 evidence of any other Axis I disorder and did not believe Thompson was impaired  
10 in his ability to work "if he gave fair effort." *Id.* With respect to auditory  
11 hallucinations, Dr. Smith found that Thompson was unable to provide any details  
12 about what he hears. AR 377. She then fabricated details that are not typical for  
13 true hallucinations, and he responded positively. AR 377, 380. Dr. Smith opined  
14 that "the pattern is very typical for lay persons who are attempting to stage  
15 psychosis." AR 382. As to symptoms on Thompson's questionnaire, such as  
16 suicidal thoughts or anxiety, Thompson stated that the symptoms were resolved  
17 with medication. AR 376, 382. Thompson's thought processes were coherent  
18 and organized. AR 380.

19 Dr. Smith determined that Thompson was not impaired in his ability to:  
20 understand, remember or complete simple commands; understand, remember or  
21 complete complex commands; interact appropriately with supervisors, co-workers  
22 or the public; comply with job rules such as safety and attendance; respond to  
23 changes in the normal workplace setting; and maintain persistence and pace in a  
24 normal workplace setting. AR 383.

25 After a lengthy discussion of the medical evidence pertaining to  
26 Thompson's mental limitations (AR 26-32), including the findings of Dr. Kalman  
27 and Dr. Smith, the ALJ concluded:

28 The undersigned gives greater weight to the opinion of Dr. Smith

1 than to the opinion of Dr. Kalman. She asked the claimant much  
2 more detailed questions about his symptoms than Dr. Kalman did.  
3 Given the claimant's lack of mental health treatment, Dr. Smith's  
4 observations of the claimant's reluctance to answer question[s], Dr.  
5 Smith's observations of fabricated details and near misses in  
6 arithmetic calculations, and Dr. Kalman's opinion that the claimant's  
7 limitations may be due to a diagnosis of alcohol abuse, the  
8 undersigned finds that the claimant has not established the existence  
9 of a severe mental impairment.

10 AR 32.

11 Dr. Smith and Dr. Kalman were examining psychiatrists whose respective  
12 opinions were based on independent clinical findings arising from in-person  
13 examinations of Thompson. AR 375-97. As such, both opinions constitute  
14 "substantial evidence." *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir.  
15 2001) (examining doctor's opinion constitutes substantial evidence when it rests  
16 on his own independent examination of the claimant).

17 Although Thompson argues the ALJ's reasons for giving greater weight to  
18 Dr. Smith were not "legally sufficient," Thompson does not address any of the  
19 ALJ's reasons. JS 9.

20 As the ALJ explained, Dr. Smith's examination included questions that  
21 were much more detailed than Dr. Kalman's, particularly regarding Thompson's  
22 complaints of auditory and visual hallucinations. AR 32. Dr. Smith asked  
23 Thompson to describe his auditory hallucinations and followed up with specific  
24 questions about whether the voices came from inside or outside his head,  
25 whether the voices woke him up, and whether they were accompanied by  
26 feelings of dizziness. AR 377. Dr. Smith also asked Thompson to describe his  
27 visual hallucinations. *Id.* Dr. Smith found that Thompson's responses were  
28 "typical for lay persons who are attempting to stage psychosis." AR 382; see AR

1 377. In contrast, Dr. Kalman's report accepts Thompson's stated hallucinations  
2 at face value and provides no indication that Dr. Kalman asked probing  
3 questions. AR 389, 391.

4 The ALJ's determination that the treating records were "consistent with Dr.  
5 Smith's report that the claimant could not tell her what the voices said" is  
6 supported by substantial evidence. AR 31. Thompson sought treatment at Kern  
7 Medical Center Emergency Department approximately fifty times between July  
8 2005 and September 2007. AR 24, 398-624. On July 14, 2007, a physician  
9 evaluation/assessment form noted that Thompson "reports feeling 'super  
10 depressed' but affect not congruent." AR 478. A psychiatric history completed  
11 on the same day notes: "[Patient] came in for abdominal pain. Then reports he  
12 hears voices telling him to kill himself. [Patient] states he needs something to  
13 eat, he is homeless and is trying to get SSI and has been denied a couple of  
14 times. [Patient] kept requesting food instead of answering questions. [History] of  
15 poly sub[stance] abuse (currently denies), malingering, depression." AR 476.  
16 Four days later, Thompson reported a history of occasional auditory  
17 hallucinations, but said he was "unsure of what voices tell him. 'It just whistle[s], I  
18 am unsure of what the voices say.'" AR 469. Another record states that despite  
19 a reported history of schizophrenia, diagnosis of Thompson's mental state is  
20 tentative due to the need to rule out malingering.<sup>7</sup> AR 481.

21 The ALJ also properly relied on the inconsistency between Thompson's  
22 near misses on arithmetic calculations before Dr. Smith and Dr. Kalman. When  
23 Dr. Smith asked Thompson to subtract ten minus three, his answer was six. Dr.  
24 Smith found that this "was not a credible answer." AR 381. By contrast, as the  
25 ALJ noted, Thompson was able to calculate that "he would receive 80 cents

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27 <sup>7</sup> As the ALJ noted, Dr. Sophon, an examining orthopedic surgeon,  
28 observed that Thompson "is noted not to use full effort in performing the right grip  
strength test," the results of which indicated that Thompson had zero strength in  
his right (dominant) hand, despite no evidence of atrophy. AR 31, 362.

1 change from \$1.00 if he bought two oranges at 10 cents each” when asked to do  
2 calculations by Dr. Kalman. AR 31, 390. The ALJ concluded that Thompson’s  
3 answers showed “variability of effort, supporting Dr. Smith’s opinion that the  
4 claimant made mistakes typical for someone trying to stage a poor memory.” AR  
5 31, 381.

6 The ALJ gave specific and legitimate reasons, supported by substantial  
7 evidence, for giving greater weight to Dr. Smith’s opinion. The ALJ did not err.

8 **F. Incomplete Hypothetical**

9 Thompson argues the ALJ’s hypothetical was incomplete because it failed  
10 to reflect all of his limitations, particularly his “multiple mental limitations.” JS 18  
11 (citing AR 109).

12 The ALJ’s hypothetical to the VE at AR 109 concerned Thompson’s ability  
13 to perform his past relevant work. The ALJ, however, found that Thompson did  
14 not have any past relevant work. AR 32-33. The ALJ proceeded to step five of  
15 the sequential evaluation and did not rely on the VE’s testimony. Therefore,  
16 Thompson’s argument is moot.

17 **G. Medical Vocational Guidelines**

18 At step five, the ALJ found that Thompson was capable of performing  
19 unskilled light work and determined that jobs exist in significant numbers in the  
20 national economy that Thompson can perform. AR 33-34. The ALJ did not,  
21 however, identify specific jobs falling into that category. *Id.* Thompson argues  
22 the ALJ therefore failed to properly develop the record. JS 20.

23 At step five of the sequential analysis, the Commissioner bears the burden  
24 of demonstrating that there is other work in significant numbers in the national  
25 economy that the claimant can do. *Lounsbury v. Barnhart*, 468 F.3d 1111, 1114  
26 (9th Cir. 2006). If the Commissioner satisfies this burden, the claimant is not  
27 disabled and not entitled to disability benefits. If the Commissioner cannot meet  
28 this burden, the claimant is “disabled” and entitled to disability benefits. *Id.*

1           “There are two ways for the Commissioner to meet the burden of showing  
2 that there is other work in ‘significant numbers’ in the national economy that  
3 claimant can do: (1) by the testimony of a vocational expert, or (2) by reference to  
4 the Medical-Vocational Guidelines at 20 C.F.R. pt. 404, subpt. P, app. 2.” *Id.*  
5 “Where a claimant suffers only exertional limitations, the ALJ must consult the  
6 grids. Where a claimant suffers only non-exertional limitations, the grids are  
7 inappropriate, and the ALJ must rely on other evidence. Where a claimant  
8 suffers from both exertional and non-exertional limitations, the ALJ must consult  
9 the grids first.” *Id.* at 1115 (citations omitted).

10           The ALJ determined that Thompson was capable of performing light,<sup>8</sup>  
11 unskilled work. AR 23, 33. “Unskilled work” is “work which needs little or no  
12 judgment to do simple duties that can be learned on the job in a short period of  
13 time.” 20 C.F.R. § 416.968(a). In addition, “[t]he basic mental demands of  
14 competitive, remunerative, unskilled work include the abilities (on a sustained  
15 basis) to understand, carry out, and remember simple instructions; to respond  
16 appropriately to supervision, coworkers, and usual work situations; and to deal  
17 with changes in a routine work setting. A substantial loss of ability to meet any of  
18 these basic work-related activities would severely limit the potential occupational  
19 base.” SSR 85-15; AR 33.

20           The ALJ determined that Thompson was a “younger individual” when the  
21 application was filed, changed age category to “closely approaching advanced  
22 age” on January 30, 2006, had a high school education, and had no transferrable

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24           <sup>8</sup> “Light work” is work that “involves lifting no more than 20 pounds at a  
25 time with frequent lifting or carrying of objects weighing up to 10 pounds. Even  
26 though the weight lifted may be very little, a job is in this category when it requires  
27 a good deal of walking or standing, or when it involves sitting most of the time  
28 with some pushing and pulling of arm or leg controls. To be considered capable  
of performing a full or wide range of light work, you must have the ability to do  
substantially all of these activities. If someone can do light work, we determine  
that he or she can also do sedentary work, unless there are additional limiting  
factors such as loss of fine dexterity or inability to sit for long periods of time.”  
20 C.F.R. § 416.967(b); AR 23.

1 job skills. AR 33. A finding of “not disabled” would be directed under Rule  
2 202.20 and Rule 202.13 if Thompson had the ability to perform the full range of  
3 light work. *Id.* Finding that Thompson was able to perform unskilled light work  
4 and “[a]dditional limitations have little or no effect on the occupational base of  
5 unskilled light work,” the ALJ determined that Thompson was not disabled. AR  
6 33-34. The grid rules are premised on the availability of jobs at the unskilled  
7 level. 20 C.F.R. § 404, Subpart P, App. 2, § 202.00(a)-(b). Thompson has not  
8 identified any error in the ALJ’s analysis.

9 **IV.**

10 **ORDER**

11 IT IS HEREBY ORDERED that the decision of the Commissioner is  
12 affirmed.

13 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this  
14 Order and the Judgment herein on all parties or their counsel.

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17 DATED: July 27, 2010

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19 ALICIA G. ROSENBERG  
20 United States Magistrate Judge  
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