

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VANESSA HERNANDEZ,)	CASE NO. ED CV 09-02036 RZ
)	
Plaintiff,)	
)	MEMORANDUM OPINION
vs.)	AND ORDER
)	
MICHAEL J. ASTRUE, Commissioner)	
of Social Security Administration,)	
)	
Defendant.)	
_____)	

This matter comes before the Court on Plaintiff’s action to review the Social Security Commissioner’s decision denying her application for disability benefits. Plaintiff asserted that she was disabled by virtue of back problems and mental impairments, but in this Court has dropped any argument about physical disabilities. The Court finds unpersuasive her arguments about her mental impairments.

The Administrative Law Judge found that Plaintiff had severe impairments consisting of anxiety, mood disorder and “history of substance abuse in questionable remission.” [AR 11] (The Court is unsure as to how the *history* of a problem constitutes an impairment, but neither party has addressed this matter, so the Court does not either.) Plaintiff’s arguments are a bit jumbled in this Court, but the Court discerns the following points.

1 First, Plaintiff argues that the Administrative Law Judge did not discuss
2 significant and probative evidence, and Plaintiff then goes on to list a variety of pieces of
3 evidence she says that the Administrative Law Judge did not discuss. The Administrative
4 Law Judge is not required to discuss every piece of evidence in the case, however. *Howard*
5 *ex rel. Wolff v. Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003) (citing *Black v. Apfel*, 143
6 F.3d 383, 386 (8th Cir. 1998) and *Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir.
7 1984)). He must explain why he rejects significant and probative evidence, if that is the
8 situation, *Vincent v. Heckler, supra*, 739 F.2d at 1395, but he is not required to discuss
9 everything. *Howard, supra*. While Plaintiff lists a variety of documents the
10 Administrative Law Judge did not directly address, she does not assert that the decision
11 necessarily or even likely would have differed had those documents been discussed. Stated
12 another way, there is no reason to believe that something significant and probative was
13 rejected by the Administrative Law Judge.

14 Second — and this also may be where Plaintiff’s first argument was heading
15 — Plaintiff asserts that the Administrative Law Judge needed to develop the record further.
16 Plaintiff asserts that a medical expert was needed to interpret the records, and that the
17 Administrative Law Judge should have re-contacted one of Plaintiff’s doctors. “An ALJ’s
18 duty to develop the record further is triggered only when there is ambiguous evidence or
19 when the record is inadequate to allow for proper evaluation of the evidence.” *Mayes v.*
20 *Massanari*, 276 F.3d 453,459-60 (9th Cir. 2001) (citing *Tonapetyan v. Halter*, 242 F.3d
21 1144, 1150 (9th Cir. 2001). Among the ways to further develop the record is to have an
22 updated consulting examination or to contact the treating physician for further information,
23 as appropriate. 20 C.F.R. §§ 404.1512(e) and (f); 416.912(e) and (f).

24 The Court does not find Plaintiff’s arguments well-taken. Plaintiff seeks to
25 create an ambiguity with respect to the medical records, indicating a question as to whether
26 and when a period of decompensation began. The Administrative Law Judge did not draw
27 the inference Plaintiff suggests, that the absence of treatment caused Plaintiff to
28 decompensate. (Plaintiff’s Memorandum in Support of Complaint at 10:21-24, citing AR

1 15). Rather, the Administrative Law Judge simply stated the facts that Plaintiff did, in fact,
2 stop treatment in January 2009, and two months later was hospitalized. [AR 15] Elsewhere,
3 the Administrative Law Judge noted that Plaintiff had experienced no episodes of
4 decompensation, and had been hospitalized on a psychiatric basis twice in four years. [AR
5 12 and n.1]. Plaintiff appears to argue that the Administrative Law Judge acted as a doctor,
6 not a judge, but the record does not support that view; the Administrative Law Judge
7 merely assessed the evidence, as she was obligated to do. Finally, Plaintiff acknowledges
8 that the Administrative Law Judge took her professed limitations into account when
9 fashioning her residual functional capacity, but then criticizes the Administrative Law
10 Judge for doing so, on the grounds that Plaintiff herself might not really know the extent
11 of her impairments. (Plaintiff's Memorandum in Support of Complaint at 13-14.) In the
12 Court's view, the Administrative Law Judge made adequate adjustments, based on the
13 medical record.

14 Third, Plaintiff argues that the Administrative Law Judge wrongly found her
15 not to be credible. As Plaintiff notes, the Administrative Law Judge did say, in part, that
16 Plaintiff's activities were inconsistent with her claims of total disability. Plaintiff asserts
17 that these activities were not inconsistent with her claims of mental impairments, but in the
18 administrative proceedings Plaintiff claimed that she was physically impaired as well.
19 Thus, it was quite proper for the Administrative Law Judge to conclude that Plaintiff was
20 not credible, and it certainly is appropriate to question a witness' credibility in other areas
21 based on inconsistent statements in this area. In addition, the Administrative Law Judge
22 pointed out another area of inconsistent testimony, where Plaintiff gave inconsistent
23 statements as to why she stopped working in March 2007. [AR 14] Finally, it is worth

24 ///

25 ///

26 ///

27 ///

28 ///

1 remembering, again, that the Administrative Law Judge adjusted the residual functional
2 capacity to take into account the mental limitations Plaintiff expressed.

3 The Court finds no reversible error. The decision of the Commissioner is
4 affirmed.

5 DATED: August 18, 2010

6
7 

8 _____
9 RALPH ZAREFSKY
10 UNITED STATES MAGISTRATE JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28