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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LARRY ZAMARANO,)	No. ED CV 09-2207 PJW
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION AND ORDER
)	
MICHAEL J. ASTRUE,)	
Commissioner of the)	
Social Security Administration,)	
)	
Defendant.)	

I.

INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying his application for Supplemental Security Income ("SSI") benefits. He claims that the Administrative Law Judge ("ALJ") erred when he failed to: (1) take into account a treating physician's opinion that Plaintiff's medication caused side effects; and (2) obtain vocational expert testimony to determine if Plaintiff could work. (Joint Stip. at 2-8, 11-15.) Because the Agency's decision that Plaintiff was not disabled within the meaning of the Social Security Act is supported by substantial evidence, it is affirmed.

1 II.

2 SUMMARY OF FACTS AND PROCEEDINGS

3 Plaintiff applied for SSI on January 31, 2008, alleging that he
4 had been unable to work since June 1, 2007, because of rheumatoid
5 arthritis and gastroesophageal reflux disease. (AR 88, 92.) The
6 Agency denied his application initially and on reconsideration. (AR
7 37-49.) He then requested and was granted a hearing before an ALJ.
8 (AR 52-53.) Plaintiff appeared with counsel and testified at the
9 hearing on June 10, 2009. (AR 18-36.) On September 1, 2009, the ALJ
10 issued a decision denying benefits. (AR 6-17.) Plaintiff appealed to
11 the Appeals Council, which denied review. (AR 1-5.) He then
12 commenced the instant action.

13 III.

14 ANALYSIS

15 A. Side Effects

16 In his first claim of error, Plaintiff contends that the ALJ
17 erred when he failed to consider an April 2009 chart note by treating
18 physician Robert Schmitt that Plaintiff's pain medication caused side
19 effects. (Joint Stip. at 3-7.) Plaintiff contends that this chart
20 note constituted the doctor's opinion and, therefore, the ALJ was
21 required to set forth specific and legitimate reasons for rejecting
22 it, which he failed to do. (Joint Stip. at 3-4.) Alternatively,
23 Plaintiff argues that the ALJ was required to contact Dr. Schmitt and
24 have him explain what he meant by side effects in the chart note.
25 (Joint Stip. at 6-7.) For the following reasons, the Court rejects
26 these arguments.

27 Although the side effects of medication must be considered by an
28 ALJ in determining disability, 20 C.F.R. § 416.929(c)(3)(iv); see also

1 Social Security Ruling 96-8p, the claimant bears the burden of
2 presenting objective evidence establishing that the side effects are
3 impacting his ability to work. *Miller v. Heckler*, 770 F.2d 845, 849
4 (9th Cir. 1985) (holding claimant bears burden of presenting clinical
5 evidence that narcotics use impaired ability to work). Plaintiff has
6 failed to meet his burden.

7 Plaintiff submitted a disability report with his application for
8 SSI in 2008 in which he stated that Flomax, a prostate medication he
9 was taking, caused a runny nose. (AR 127.) After his application for
10 benefits was initially denied by the Agency, Plaintiff submitted a new
11 report, stating that Flomax made him dizzy.¹ (AR 117.)

12 A progress note from November 2007 states that Plaintiff
13 experienced side effects "with hytrin.," presumably Hydrocodone-
14 Acetaminophen, but it does not specify what those side effects were.
15 (AR 138, 141.) Plaintiff did not report any side effects to the
16 consultative examiner, Dr. William Boeck, in May 2008. (AR 150-54.)

17 In March 2009, Plaintiff reported to his treating physician, Dr.
18 Schmitt, that there were no "adverse effects" from his medications.
19 (AR 179.) Six weeks later, on April 27, 2009, Plaintiff reported to
20 Dr. Schmitt that he was experiencing side effects from his pain
21 medications, though the doctor did not note what the side effects
22 were. (AR 173.) Perhaps in response to this complaint, Dr. Schmitt
23 changed Plaintiff's pain medication from Endocet to Tramadol. (AR
24

25
26 ¹ Plaintiff also asserted in both reports that Vicodin, a pain
27 reliever he was taking, gave him a rash, slight nausea, and a dry
28 mouth. (AR 117, 127.) Obviously, these claimed side effects have no
impact on Plaintiff's ability to work, nor has he argued that they do.

1 175.) The April 2009 note is the last note from Dr. Schmitt in the
2 medical record.

3 Six weeks later, in June 2009, Plaintiff testified at the
4 administrative hearing that he had taken Tramadol, Hydrocodone, and
5 Oxycodone in the past and that he was currently taking Vicodin, Norco,
6 Flomax, and Prilosec. (AR 26-28.) He did not claim to be
7 experiencing any side effects from these medications or claim that
8 side effects impaired his ability to work. (AR 24-35.) When
9 specifically asked what symptoms, other than pain and lethargy,
10 prevented him from working, Plaintiff testified that it was
11 gastroesophageal reflux. (AR 29.)

12 Plaintiff now claims that the ALJ erred when he did not adopt Dr.
13 Schmitt's "opinion" that Plaintiff's side effects interfered with his
14 ability to work. The record simply does not support Plaintiff's
15 argument. The record of side effects is scant, at best. In 61 pages
16 of medical records, side effects are mentioned three times: once in
17 November 2007, when Plaintiff reported unspecified side effects; once
18 in March 2009, when Plaintiff reported no side effects; and once six
19 weeks later, in April 2009, when Plaintiff again reported unspecified
20 side effects. (AR 173, 179.) To characterize these entries as
21 doctors' opinions is simply misguided. Further, even if they were,
22 they were grounded in Plaintiff's subjective claims, which the ALJ
23 found were not credible. Thus, the ALJ was not required to credit
24 Plaintiff's claimed side effects. *See, e.g., Thomas v. Barnhart*, 278
25 F.3d 947, 960 (9th Cir. 2002) (affirming ALJ's rejection of claimant's
26 alleged side effects because claimant was not credible and the only
27 evidence of side effects was her statements that they existed). For
28 these reasons, the ALJ's failure to treat these cryptic entries as a

1 treating physician's opinion was not error. See *Osenbrock v. Apfel*,
2 240 F.3d 1157, 1164 (9th Cir. 2001) (holding ALJ did not err in
3 excluding alleged side effects from hypothetical question where the
4 record contained only "passing mentions of the side effects of
5 [claimant's] medication . . . but there was no evidence of side
6 effects severe enough to interfere with [claimant's] ability to
7 work").

8 Nor was the ALJ required to contact Dr. Schmitt for
9 clarification. Though an ALJ has a duty to contact a treating doctor
10 where the doctor's opinion is unclear, see *Tonapetyan v. Halter*, 242
11 F.3d 1144, 1150 (9th Cir. 2001) (noting ALJ has duty to fully develop
12 the record when evidence is ambiguous or inadequate such as to prevent
13 proper evaluation of claim); see also 20 C.F.R. § 416.912(e), the
14 entries in Dr. Schmitt's records did not rise to that level. Nothing
15 in Dr. Schmitt's chart notes suggests that the claimed side effects
16 were debilitating or that they would interfere with Plaintiff's
17 ability to work. In fact, a fair reading of Dr. Schmitt's notes and
18 the other medical records establish that side effects were a non-
19 issue. Further, given a chance at the administrative hearing to make
20 the case as to why he could not work, Plaintiff never mentioned side
21 effects, despite multiple opportunities to do so. In failing to
22 mention them, Plaintiff (and his lawyer) signaled to the ALJ (and this
23 Court) that side effects were not in issue. For these reasons, the
24 ALJ was not required to contact Dr. Schmitt for clarification and did
25 not err when he failed to do so. See *Bayliss v. Barnhart*, 427 F.3d
26 1211, 1217 (9th Cir. 2005).

27 Plaintiff, of course, disagrees. Citing *WebMD*, an internet
28 medical site, he argues that Flomax and Tramadol can produce a whole

1 host of side effects, including vomiting, constipation, dizziness,
2 weakness, drowsiness, headaches, restlessness, blurred vision, fever,
3 runny noses, and problems ejaculating, which could significantly
4 affect his ability to work. (Joint Stip. at 5, citing [http://](http://www.webmd.com)
5 www.webmd.com.) Whether or not these medications can, and in some
6 cases do, cause these side effects is irrelevant. The issue before
7 the ALJ and the Court is whether they caused these side effects in
8 Plaintiff and, if so, whether they impacted Plaintiff's ability to
9 work. The answer to both questions is no. Plaintiff never claimed to
10 suffer from most of the listed side effects and never claimed that the
11 ones he did suffer from impacted his ability to work. (AR 29.) In
12 fact, in his entire testimony at the administrative hearing, which
13 covers 17 pages of transcript, he never once mentioned any side
14 effects, never mind that they prevented him from working. (AR 20-36.)
15 For all these reasons, the Court concludes that the ALJ did not err in
16 failing to address Plaintiff's claimed side effects and, therefore,
17 this claim is denied.

18 B. The ALJ's Application of the Medical-Vocational Guidelines

19 In his second claim of error, Plaintiff contends that the ALJ
20 erred when he relied on the Medical-Vocational Guidelines (hereinafter
21 the "Grids") to determine that Plaintiff could work. (Joint Stip. at
22 11-15.) For the following reasons, the Court concludes that the ALJ
23 did not err.

24 The Grids are a set of rules that direct whether a claimant is or
25 is not disabled. An ALJ is authorized to rely on the Grids if they
26 "*completely and accurately* represent a claimant's limitations
27 In other words, a claimant must be able to perform the *full range* of
28 jobs in a given category". *Tackett v. Apfel*, 180 F.3d 1094, 1101 (9th

1 Cir. 1999) (emphasis in original). Conversely, the Grids may not be
2 used if a claimant has a severe, non-exertional impairment that would
3 significantly limit the range of work he could perform. See, e.g.,
4 *Thomas*, 278 F.3d at 960 (holding vocational expert must be consulted
5 when the Grids do not "adequately take into account claimant's
6 abilities and limitations").

7 Here, the ALJ determined that Plaintiff could perform medium work
8 as long as it involved no more than occasional climbing. (AR 12.) He
9 then applied Grid Rule 203.06 and concluded that Plaintiff was not
10 disabled. (AR 16-17.) Plaintiff argues that the ALJ should not have
11 relied on the Grids because Plaintiff suffered from significant, non-
12 exertional limitations--such as side effects from his medications and
13 pain. He contends that the ALJ should have, instead, relied on a
14 vocational expert. (Joint Stip. at 12-15, citing *Aukland v.*
15 *Massanari*, 257 F.3d 1033 (9th Cir. 2001).) For the following reasons,
16 the Court disagrees.

17 As explained in detail in Section A above, not even Plaintiff
18 believed that his alleged side effects interfered with his ability to
19 work. As to his claim of significant pain, the ALJ expressly found in
20 his adverse credibility finding and in his reliance on the uncontro-
21 verted opinions of the examining and reviewing physicians that
22 Plaintiff's non-exertional limitations were not significant. (AR 7-
23 8.) That finding is supported by substantial evidence in the record.
24 Where, as here, there are no non-exertional limitations that
25 significantly impact a claimant's ability to work, the ALJ is free to
26 use the Grids. *Osenbrock*, 240 F.3d at 1162. For these reasons, this
27 claim does not warrant reversal or remand.

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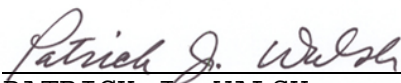
1 IV.

2 CONCLUSION

3 For the reasons set forth above, the Court finds that the
4 Agency's findings are supported by substantial evidence and are free
5 from material legal error. The decision of the Agency is, therefore,
6 affirmed.

7 IT IS SO ORDERED.

8 Dated: May 20, 2011

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12 PATRICK J. WALSH
13 UNITED STATES MAGISTRATE JUDGE
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