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

MARLA McPETERS,  
Plaintiff,  
v.  
MICHAEL J. ASTRUE,  
Commissioner of Social Security,  
Defendant.



NO. EDCV 10-01258 AGR

**MEMORANDUM OPINION AND  
ORDER**

Marla McPeters filed this action on September 7, 2010. (Dkt. No. 3.) Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the magistrate judge on September 22 and October 1, 2010. (Dkt. Nos. 8, 9.) On May 13, 2011, the parties filed a Joint Stipulation that addressed the disputed issue. (Dkt. No. 14.) This court took the matter under submission without oral argument. The decision of the Commissioner is affirmed.

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I.

**PROCEDURAL BACKGROUND**

On December 14, 2007, McPeters filed an application for disability insurance benefits and supplemental security income benefits, alleging an onset date of June 6, 1995. Administrative Record (“AR”) 100-10. The application was denied initially and upon reconsideration. AR 9, 48-52, 56-61. McPeters requested a hearing before an Administrative Law Judge (“ALJ”). AR 62. On May 21, 2009, the ALJ conducted a hearing at which McPeters and a vocational expert appeared and testified. AR 18-43. On September 3, 2009, the ALJ issued a decision denying benefits. AR 9-17. On July 23, 2010, the Appeals Council denied the request for review. AR 1-3. This action followed.

II.

**STANDARD OF REVIEW**

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

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

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III.

**DISCUSSION**

**A. Disability**

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

**B. The ALJ’s Findings**

The ALJ found that McPeters had the severe physical impairment of “carpal tunnel syndrome.” AR 11. The ALJ found that the “mental impairment of depression does not cause more than minimal limitations in [her] ability to perform basic mental work activities and is therefore nonsevere.” *Id.* The ALJ determined McPeters had the residual functional capacity (“RFC”) to perform medium work, except that she was limited to frequent handling and fingering.<sup>1</sup> AR 12. The ALJ concluded McPeters was capable of performing past relevant work as a drafter. AR 16.

**C. Mental Impairment**

McPeters argues the ALJ improperly determined that her mental impairment of depression was not severe at step two of the sequential analysis.

At step two, the claimant bears the burden of demonstrating a severe, medically determinable impairment that meets the duration requirement. 20 C.F.R. § 404.1520(a)(4)(ii); *Bowen v. Yuckert*, 482 U.S. 137, 146 n.5, 107 S. Ct. 2287, 96 L. Ed. 2d 119 (1987). To satisfy the duration requirement, the severe

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<sup>1</sup> “Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighting up to 25 pounds.” 20 C.F.R. §§ 404.1567(c), 416.967(c).

1 impairment must have lasted or be expected to last for a continuous period of not  
2 less than 12 months. *Id.* at 140.

3 Your impairment must result from anatomical, physiological,  
4 or psychological abnormalities which can be shown by  
5 medically acceptable clinical and laboratory diagnostic  
6 techniques. A physical or mental impairment must be  
7 established by medical evidence consisting of signs,  
8 symptoms, and laboratory findings, not only by your  
9 statement of symptoms.

10 20 C.F.R. § 404.1508; 20 C.F.R. § 416.908. “[T]he impairment must be one that  
11 ‘significantly limits your physical or mental ability to do basic work activities.’”<sup>2</sup>  
12 *Yuckert*, 482 U.S. at 154 n.11 (quoting 20 C.F.R. § 404.1520(c)); *Smolen v.*  
13 *Chater*, 80 F.3d at 1273, 1290 (9th Cir. 1996) (“[A]n impairment is not severe if it  
14 does not significantly limit [the claimant’s] physical ability to do basic work  
15 activities.”) (citation and quotation marks omitted).

16 “An impairment or combination of impairments may be found ‘not severe  
17 *only if* the evidence establishes a slight abnormality that has no more than a  
18 minimal effect on an individual’s ability to work.” *Webb v. Barnhart*, 433 F.3d  
19 683, 686-87 (9th Cir. 2005) (emphasis in original, citation omitted). Step two is “a  
20 *de minimis* screening device [used] to dispose of groundless claims” and the  
21 ALJ’s finding must be “clearly established by medical evidence.” *Id.* at 687

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23 <sup>2</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 (citations and quotation marks omitted). “[T]he ALJ must consider the combined  
2 effect of all of the claimant’s impairments on her ability to function, without regard  
3 to whether each alone was sufficiently severe.” *Smolen*, 80 F.3d at 1290.

4 In finding McPeters’ mental impairment non-severe, the ALJ “considered  
5 the four broad functional areas set out in the disability regulations for evaluating  
6 mental disorders.” AR 12. Applying that analytic framework, the ALJ determined:

7 The first functional area is activities of daily living. In this area, the claimant  
8 has no limitation. The next functional area is social functioning. In this  
9 area, the claimant has no limitation. The third functional area is  
10 concentration, persistence or pace. In this area, the claimant has no  
11 limitation. The fourth functional area is episodes of decompensation. In  
12 this area, the claimant has experienced no episodes of decompensation.  
13 Because [McPeters’] medically determinable mental impairment causes no  
14 more than “mild” limitation in any of the first three functional areas and “no”  
15 episodes of decompensation which have been of extended duration in the  
16 fourth area, it is nonsevere (20 CFR 404.1520a(d)(1) and 416.920a(d)(1)).

17 *Id.*

18 Substantial evidence supports the ALJ’s conclusion that McPeters’ mental  
19 impairment was not severe. The examining psychiatrist, Dr. Abejuela, performed  
20 a psychiatric evaluation of McPeters. AR 263-69. Dr. Abejuela assessed no  
21 limitations in activities of daily living, mild difficulties in social functioning, mild  
22 limitations in concentration, persistence and pace, and no repeated episodes of  
23 deterioration. AR 268. As an examining physician's opinion based on  
24 independent clinical findings, Dr. Abejuela’s opinion constitutes substantial  
25 evidence. *Orn v. Astrue*, 495 F.3d 625, 632 (9th Cir. 2007). The state agency  
26 nonexamining physician reports also indicated that McPeters had no severe  
27 mental impairments. AR 276, 295. A non-examining physician's opinion may  
28 also constitute as substantial evidence when it is supported by other evidence in

1 the record and consistent with it. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th  
2 Cir. 1995).

3 Even assuming error at step two, such error was harmless. *Burch v.*  
4 *Barnhart*, 400 F.3d 676, 682 (9th Cir. 2005). Any prejudice could occur only at  
5 step four because all prior steps were decided in her favor. *Id.* As the ALJ  
6 acknowledged here, the RFC assessment takes into account limitations imposed  
7 by all impairments, even those that are not severe. *Id.* at 683 (citing SSR 96-8p);  
8 AR 11. Contrary to McPeters' argument, the ALJ did examine the mental health  
9 records in assessing her RFC. AR 14. The ALJ also cited Dr. Abejuela's report,  
10 which assessed McPeters' psychiatric limitations as none to mild. AR 14, 269.  
11 Essentially, McPeters argues that her tearfulness during psychological treatment  
12 sessions means that she would be subject to crying spells at work. Her treatment  
13 records belie that argument. For example, she reported that when she is with  
14 good friends, "her mood is generally good and may remain so for rest of the day."  
15 AR 360. On the other hand, she "[d]reads coming to see doctors" because it is  
16 "indicative that something is wrong with her." *Id.* Her psychologist recommended  
17 volunteer work to raise her low motivation level. AR 337. She followed through  
18 with volunteer work at a thrift store (although her volunteer work is limited when  
19 she lacks funds for bus fare). AR 400. The ALJ's decision is supported by  
20 substantial evidence.

21 **IV.**

22 **ORDER**

23 IT IS HEREBY ORDERED that the decision of the Commissioner is  
24 affirmed.

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26 DATED: August 31, 2011

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28 ALICIA G. ROSENBERG  
United States Magistrate Judge