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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JOHN RESTIFO,)	No. ED CV 10-01469-VBK
)	
Plaintiff,)	MEMORANDUM OPINION
)	AND ORDER
v.)	
)	(Social Security Case)
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

Plaintiff raises the following issues:

1. Whether the Administrative Law Judge ("ALJ") properly

1 considered the treating psychiatrist's opinion;

- 2 2. Whether the ALJ properly held that Plaintiff could perform
3 the jobs of a store labor person, an auto body repairer
4 helper and a hand packager.

5 (JS 3.)

6
7 This Memorandum Opinion will constitute the Court's findings of
8 fact and conclusions of law. After reviewing the matter, the Court
9 concludes that the decision of the Commissioner must be affirmed.

10
11 I

12 **THE ALJ PROPERLY EVALUATED THE OPINION**
13 **OF TREATING PSYCHIATRIST DR. BLUMBERG**

14 Plaintiff has been receiving treatment at the Riverside County
15 Mental Health Department since November 2004. (AR 236-289.) In a
16 Narrative Report prepared on April 27, 2010, Dr. Blumberg assessed the
17 following: disorganized thought process; no psychosis; moderately
18 impaired memory; intact judgment; confusion, depression and anxiety;
19 inability to maintain a sustained level of concentration or sustained
20 repetitive tasks for an extended period, or to adapt to new or
21 stressful situations; ability to interact appropriately with others,
22 but not with coworkers or with supervisors; pleasant but anxious
23 attitude; able to manage his own funds; unable to complete a 40-hour
24 workweek without decompensating; and a prognosis described as
25 "chronic" and "very guarded." Further, Dr. Blumberg wrote that
26 Plaintiff has a long history of severe anxiety and obsessive symptoms,
27 poor concentration and attention span and an inability to complete
28 tasks; that he is at times depressed and has been very refractory to

1 any treatment and unable to maintain consistent employment due to his
2 illness. (AR 289.)

3 In her decision, the ALJ briefly referenced Dr. Blumberg's
4 report, although mistakenly attributing it to a "medical source of
5 unknown qualifications." (AR 17.) The ALJ rejected the conclusions
6 set forth in this narrative report because they are "not consistent
7 with the mental status examinations recorded in the treatment records
8 or with the findings on examination by Dr. Rodriguez." (Id.)

9 Plaintiff asserts that the depreciation of Dr. Blumberg's
10 opinion, as set forth in this narrative report, is error,
11 necessitating a remand.

12
13 **A. Applicable Law.**

14 In evaluating mental impairments, 20 C.F.R. §404.1520a(c)(3)(4)
15 and §416.920a(c)(3)(4) mandate that consideration be given, among
16 other things, to activities of daily living ("ADLs"), social
17 functioning; concentration, persistence, or pace; and episodes of
18 decompensation. These factors are generally analyzed in a Psychiatric
19 Review Technique Form ("PRTF"). The PRTF is used at Step Three of the
20 sequential evaluation to determine if a claimant is disabled under the
21 Listing of Impairments; however, the same data must be considered at
22 subsequent steps unless the mental impairment is found to be not
23 severe at Step Two. See SSR 85-16.

24 20 C.F.R. §§404.1520a(c)(1) and 416.920a(c)(1) require
25 consideration of "all relevant and available clinical signs and
26 laboratory findings, the effects of your symptoms, and how your
27 functioning may be affected by factors including, but not limited to,
28 chronic mental disorders, structured settings, medication and other

1 treatment."¹

2 SSR 85-16 suggests the following as relevant evidence:

3 "History, findings, and observations from medical
4 sources (including psychological test results), regarding
5 the presence, frequency, and intensity of hallucinations,
6 delusions or paranoid tendencies; depression or elation;
7 confusion or disorientation; conversion symptoms or phobias;
8 psycho-physiological symptoms, withdrawn or bizarre
9 behavior; anxiety or tension. Reports of the individual's
10 activities of daily living and work activity, as well as
11 testimony of third parties about the individual's
12 performance and behavior. Reports from workshops, group
13 homes, or similar assistive entities."

14
15 It is also required under §404.1520a(c)(2) and §416.920a(c)(2)
16 that the ALJ must consider the extent to which the mental impairment
17 interferes with an "ability to function independently, appropriately,
18 effectively, and on a sustained basis" including "such factors as the
19 quality and level of [] overall functional performance, any episodic
20 limitations [and] the amount of supervision or assistance []
21 require[d]."

22 Pursuant to the September 2000 amendments to the regulations
23 which modify 20 C.F.R. §404.1520a(e)(2) and §416.920a(e)(2), the ALJ

24 _____
25 ¹ 20 C.F.R. §404.1545(c) and §416.945(c) also require
26 consideration of "residual functional capacity for work activity on a
27 regular and continuing basis" and a "limited ability to carry out
28 certain mental activities, such as limitations in understanding,
remembering, and carrying out instructions, and in responding
appropriately to supervision, co-workers, and work pressures in a work
setting."

1 is no longer required to complete and attach a PRTF. The revised
2 regulations identify five discrete categories for the first three of
3 four relevant functional areas: activities of daily living; social
4 functioning; concentration, persistence or pace; and episodes of
5 decomposition. These categories are None, Mild, Moderate, Marked, and
6 Extreme. (§404.1520a(c)(3), (4).) In the decision, the ALJ must
7 incorporate pertinent findings and conclusions based on the PRTF
8 technique. §404.1520a(e)(2) mandates that the ALJ's decision must show
9 "the significant history, including examination and laboratory
10 findings, and the functional limitations that were considered in
11 reaching a conclusion about the severity of the mental impairment(s).
12 The decision must include a specific finding as to the degree of
13 limitation in each of the functional areas described in paragraph (c)
14 of this section."

15 The Step Two and Three analyses (see Decision at AR 53-54) are
16 intended to determine, first, whether a claimant has a severe mental
17 impairment (Step Two), and if so, whether it meets or equals any of
18 the Listings (Step Three). It is also required under §404.1520a(c)(2)
19 and §416.920a(c)(2) that the ALJ must consider the extent to which the
20 mental impairment interferes with an "ability to function
21 independently, appropriately, effectively, and on a sustained basis"
22 including "such factors as the quality and level of [] overall
23 functional performance, any episodic limitations [and] the amount of
24 supervision or assistance [] require[d]."

25 These findings and conclusions are relevant to the Step Two and
26 Three analysis of whether a claimant has a severe mental impairment,
27 and if so, whether it meets or equals any of the Listings. (See 20
28 C.F.R. Part 4, subpart p, App. 1.) The discussion in Listing 12.00,

1 "Mental Disorders," is relevant:

2 "The criteria in paragraphs B and C describe
3 impairment-related functional limitations that are
4 incompatible with the ability to do any gainful activity.
5 The functional limitations in paragraphs B and C must be the
6 result of the mental disorders described in the diagnostic
7 description, that is manifested by the medical findings in
8 paragraph A.

9 In Listing 12.00C, entitled 'Assessment of Severity,'
10 it is stated that, 'we assess functional limitations using
11 the four criteria in paragraph B of the Listings: Activities
12 of daily living; social functioning; concentration;
13 persistence, or pace; and episodes of decompensation. Where
14 we use 'marked' as a standard for measuring the degree of
15 limitation, it means more than moderate but less than
16 extreme."

17
18 Social Security Ruling ("SSR") 96-8p makes the same point in
19 distinguishing evidence supporting a rating of mental severity at Step
20 Two, a Listing level impairment at Step Three, and the determination
21 of an individual's MRFC at Step Four.

22 In a recent Ninth Circuit opinion, the Court held that an ALJ's
23 failure to comply with 20 C.F.R. §404.1520a is not harmless error in
24 a case in which a claimant has a colorable claim of mental impairment.
25 (See Keyser v. Commissioner of Social Security Administration, 2011
26 DJDAR 7897 (June 1, 2011).

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1 **B. Analysis.**

2 In this case, the issue is not whether the ALJ complied with
3 statutory and regulatory requirements, as it is clear she did.
4 Rather, the issue raised is whether the ALJ had specific and
5 legitimate reasons, which are articulated in the decision, to reject
6 Dr. Blumberg's analysis, consistent with the requirements of such
7 seminal cases as Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995).

8 The ALJ's principal articulated reason for depreciating Dr.
9 Blumberg's analysis is that his opinion is not consistent with the
10 mental status examinations recorded in the treatment records, or with
11 the findings on examination by Dr. Rodriguez, a consultative
12 psychiatric consultant. (See AR at 204-210.) As to the former, the
13 Commissioner has delineated in the JS numerous of the mental status
14 examination reports concerning Plaintiff, prepared over the years by
15 the Riverside County Mental Health Department. Indeed, the Court
16 cannot dispute the Commissioner's summation that these reports almost
17 universally fail to support the conclusions reached by Dr. Blumberg on
18 April 27, 1010. These reports can be found at AR 239, 240, 242, 243,
19 244, 250, 257-258, 272, 275, 277, 279, 283, and 286. While it is
20 clear that Plaintiff has been prescribed a series of medications for
21 his mental condition, and that these have been adjusted over time by
22 Dr. Blumberg, he almost universally presented with appropriate
23 appearance, mood, affect, attention and concentration, but with
24 pressurized speech, and anxiety, which would appear to be consistent
25 with Dr. Blumberg's Axis I diagnosis of severe anxiety disorder, and
26 an obsessive compulsive disorder, ruling out Attention Deficit
27 Hyperactivity Disorder ("ADHD"). (AR 289.) The question, however, is
28 the extent of functional deficits as a result of Plaintiff's mental

1 impairment, and here, the Court must agree that the April 27, 2010
2 evaluation is almost completely inconsistent with the longitudinal
3 treatment records referenced in this decision.

4 Moreover, the mental residual functional capacity as assessed by
5 the ALJ is consistent with the November 4, 2008 complete psychiatric
6 evaluation performed by Dr. Rodriguez at the request of the Department
7 of Social Security, Disability and Adult Programs. As such, the ALJ's
8 analysis, and findings determining Plaintiff's mental RFC, are
9 consistent with the record as a whole, and are therefore supported by
10 substantial evidence. The Court finds no error with regard to
11 Plaintiff's first issue.

12 13 II

14 THE ALJ DID NOT ERR IN IDENTIFYING AVAILABLE JOBS 15 AT STEP FIVE OF THE SEQUENTIAL EVALUATION PROCESS

16 In Plaintiff's second issue, he contends that the ALJ erred in
17 identifying three jobs that he could perform at Step Five of the
18 sequential evaluation process (see AR at 18), because they conflict
19 with the Reasoning Level II skills required of these jobs, as
20 identified in the Dictionary of Occupational Titles ("DOT").
21 Plaintiff thus argues that the ALJ's limitation to simple, work-
22 related decisions would preclude him from performing work requiring
23 Reasoning Level II skills. (See JS at 15.)

24 Plaintiff's argument has been uniformly rejected in both District
25 Court and Ninth Circuit decisions. See, e.g., Abrew v. Astrue, 303
26 Fed.Appx. 567, 569 (9th Cir. 2008); Lara v. Astrue, 303 Fed.Appx. 324,
27 326 (9th Cir. 2008); Scott v. Astrue, 2011 U.S. Dist. LEXIS 45648, *16
28 (C.D. Cal. 2011); Meissl v. Barnhart, 403 Fed.Supp.2d 981, 983-984

1 (C.D. Cal. 2005).

2 Plaintiff attempts to make a distinction between his limitation
3 to simple, routine and repetitive tasks, which he agrees would allow
4 him to perform work requiring either Reasoning Level I or II, but that
5 his limitation to simple, work-related decisions would preclude that
6 work. Plaintiff cites no authority for this proposition, and the Court
7 fails to understand the distinction which Plaintiff seeks to make.

8 For the foregoing reasons, the Court finds no error with regard
9 to Plaintiff's second issue.

10 The decision of the ALJ will be affirmed. The Complaint will be
11 dismissed with prejudice.

12 **IT IS SO ORDERED.**

13
14 DATED: June 15, 2011

14 /s/
15 VICTOR B. KENTON
16 UNITED STATES MAGISTRATE JUDGE
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