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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DAMON ANDERSON,)	No. ED CV 10-01941-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 held

1 that Plaintiff can perform his past relevant work as a mail
2 clerk.

3 2. Whether the ALJ properly considered the demands of
4 Plaintiff's past relevant work.

5 3. Whether the ALJ properly considered Plaintiff's testimony
6 and made correct credibility findings.

7 (JS at 2-3.)

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

12
13 I

14 **THE ALJ PROPERLY DETERMINED THAT PLAINTIFF**
15 **CAN PERFORM HIS PAST RELEVANT WORK AS A MAIL CLERK**

16 Following an administrative hearing (AR 18-33), at which
17 testimony was taken from a vocational expert ("VE"), the ALJ issued a
18 Decision (AR 9-17), assessing that, at Step Four of the sequential
19 evaluation process, Plaintiff could return to his past relevant work
20 ("PRW") as a mail clerk, DOT 209.687-026. (AR 16.) This was based on
21 the ALJ's determination of Plaintiff's residual functional capacity
22 ("RFC"), which precluded Plaintiff, in part, from working with moving
23 machinery. (AR 13.)

24 In his first issue, Plaintiff contends that the ALJ erred because
25 his PRW as a mail clerk, as that occupation's non-exertional
26 requirements are defined in the Dictionary of Occupational Titles
27 ("DOT") would require him to work with moving machinery. Plaintiff
28 contends that there exists a deviation between the identified job and

1 the requirements of the DOT which was not sufficiently explained by
2 the ALJ.

3 In questioning the VE, the ALJ asked her to insure that her
4 testimony is consistent with the DOT, and if not, to identify the
5 deviation. (AR 31.) In response, the VE identified Plaintiff's PRW as
6 mail clerk. Plaintiff's argument that he is not capable of this job
7 because of the moving machinery preclusion is not well taken, because
8 the DOT definition of mail clerk does not require that the person work
9 around moving machinery. As identified, a mail clerk can open
10 envelopes by hand or machine, and can similarly seal envelopes in the
11 same fashion. As the Commissioner concedes, it might be argued that
12 the function of addressing mail could require use of machinery, but
13 this does not defeat the ALJ's identification of this job as being
14 within Plaintiff's RFC at Step Four, for several reasons. First, the
15 DOT contains a separate job identification entitled "Addressing -
16 Machine Operator (Clerical), DOT 208.582-010." Second, as a matter of
17 legal application, the DOT lists the maximum requirements of
18 occupations as they are generally performed. (See Social Security
19 Ruling ("SSR") 00-4p.) In this regard, where there might only be a
20 slight discrepancy between the job identification in the DOT and a
21 particular individual's RFC, a VE's testimony can resolve that
22 apparent distinction. Here, the deviation, if any, is so de minimis
23 as to allow expert VE testimony to identify that particular job as
24 available to this Plaintiff. Any more substantial deviation, however,
25 would require testimony by the VE to explain the deviation. Any other
26 rule would simply allow a VE's testimony, per se, and without any
27 explanation, to substitute for the exertional or non-exertional
28 requirements of a particular identified job. Here, the VE was

1 specifically asked to identify any available jobs in accordance with
2 the requirements of the DOT. It can be fair to presume, therefore,
3 that the slight variation or deviation between Plaintiff's RFC and the
4 general non-exertional requirements of the identified job was
5 sufficiently resolved by the VE's testimony, based upon her expertise.
6 In this circumstance, the Court cannot find any error.

7 Plaintiff's second issue does not merit substantial attention.
8 There he questions whether the ALJ properly considered the demands of
9 his past relevant work. His argument is that the ALJ performed
10 insufficient fact finding in determining "the actual physical and
11 mental demands of plaintiff's past relevant work." (JS at 8.)

12 This argument has no merit, because it is factually incorrect.
13 Indeed, there is substantial evidence in the record about Plaintiff's
14 PRW. For example, in his Disability Report - Adult, Plaintiff
15 described his duties in that job. (AR 128-134.) The ALJ further
16 considered vocational information in making his findings of fact. (AR
17 31-32, 129-30, 137, 146-48.) Further, as required by statute, the
18 Commissioner "will take administrative notice of reliable job
19 information available from various governmental and other publications
20 [including the DOT]." (See 20 C.F.R. §404.1566(d).)

21 Thus, the ALJ did take note of reliable and relevant job
22 information in determining that Plaintiff could return to his PRW.

23 24 II

25 THE ALJ PROPERLY CONSIDERED PLAINTIFF'S TESTIMONY AND CREDIBILITY

26 Plaintiff contends that the ALJ improperly rejected his
27 subjective descriptions concerning his seizure disorder. Plaintiff
28 cites a Seizure Questionnaire (AR 143-145), and his testimony at the

1 administrative hearing (AR 22-29).

2 The ALJ found that Plaintiff's credibility was limited to the
3 extent it was inconsistent with the defined RFC. In accordance with
4 the requirements of 20 C.F.R. §404.1529, and SSR 96-7p, the ALJ set
5 forth various reasons for depreciating Plaintiff's credibility. These
6 include the fact that Plaintiff is repeatedly not compliant with his
7 medications. (AR 175, 186, 187, 190, 192, 197, 211, 213, 214-15, 216-
8 17, 218-19, 222, 223, 230, 239, 278.) Plaintiff has not disputed the
9 accuracy of this interpretation of his treatment records. Failure to
10 take prescribed medication is a factor which undermines credibility.
11 See Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989).

12 Plaintiff also made inconsistent statements regarding his
13 seizures. As the ALJ noted, he reported in February 2005 that he had
14 not had a seizure since his Dilantin dose was increased. (AR 15, 203.)
15 In May 2005, however, he reported having seizures almost every day for
16 the last several months. (AR 202.) Such inconsistency in self-
17 reporting is a viable credibility assessment factor.

18 Finally, as the Commissioner notes, there is a lack of objective
19 clinical evidence which corroborates Plaintiff's subjective
20 complaints. These include EEG results which reflected no diagnostic
21 abnormalities (AR 15, 196), accompanied by an indication that if
22 Plaintiff were compliant with his medication, his seizures would be
23 reasonably controlled. (AR 232-233.) This lack of objective evidence
24 is, again, a relevant credibility factor.

25 The Court determines that the ALJ relied upon specific
26 credibility factors which are documented in the record to depreciate
27 Plaintiff's credibility regarding the nature and extent of his seizure
28 disorder.

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

IT IS SO ORDERED.

DATED: September 16, 2011

 /s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE