

O

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BRENDA MAIDLOW, ) NO. EDCV 10-01970-MAN  
 )  
Plaintiff, )  
 ) MEMORANDUM OPINION  
v. )  
 ) AND ORDER  
MICHAEL J. ASTRUE, )  
Commissioner of Social Security, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Plaintiff filed a Complaint on December 29, 2010, seeking review of the denial by the Social Security Commissioner (the "Commissioner") of plaintiff's application for a period of disability ("POD") and disability insurance benefits ("DIB").<sup>1</sup> On January 21, 2011, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the

---

<sup>1</sup> Plaintiff's Complaint purportedly seeks review of not only the Commissioner's decision denying plaintiff's application for POD and DIB but also the Commissioner's decision allegedly denying plaintiff's application for social security income ("SSI"). The Commissioner only denied plaintiff's application for POD and DIB; it does not appear that plaintiff applied for SSI. (See generally A.R. 112-22.) Accordingly, the Court limits its review to the Commissioner's denial of plaintiff's application for POD and DIB.

undersigned United States Magistrate Judge. The parties filed a Joint Stipulation on September 12, 2011, in which: plaintiff seeks an order reversing the Commissioner's decision and remanding this case for the payment of benefits or, alternatively, for further administrative proceedings; and defendant requests that the Commissioner's decision be affirmed or, alternatively, remanded for further administrative proceedings. The Court has taken the parties' Joint Stipulation under submission without oral argument.

#### SUMMARY OF ADMINISTRATIVE PROCEEDINGS

Plaintiff filed an application for POD and DIB. (Administrative Record ("A.R.") 10.) Plaintiff, who was born on February 13, 1962 (A.R. 18),<sup>2</sup> claims to have been disabled since June 13, 2004 (A.R. 10), due to depression, bipolar disorder with psychotic features, panic disorder, "borderline intellectual functioning," knee pain, difficulties standing for long periods at a time, and seizures (A.R. 92, 97, 138, 251). Plaintiff has past relevant work experience as a warehouse worker, secretary, and production assembler. (A.R. 18.)

After the Commissioner denied plaintiff's claim initially and upon reconsideration (A.R. 92-101), plaintiff requested a hearing (see A.R. 104-09). On October 21, 2009, plaintiff, who was represented by counsel, appeared and testified at a hearing before Administrative Law Judge Sharilyn Hopson (the "ALJ"). (A.R. 53-89.) At the hearing,

---

<sup>2</sup> On the alleged disability onset date, plaintiff was 42 years old, which is defined as a younger individual. (A.R. 18; *citing* 20 C.F.R. § 404.1563.)

1 plaintiff's husband John Maidlow, vocational expert Corrine J. Porter,  
2 and medical expert Dr. David Glassmire,<sup>3</sup> a psychologist, also testified.  
3 On December 7, 2009, the ALJ denied plaintiff's claim (A.R. 10-19), and  
4 the Appeals Council subsequently denied plaintiff's request for review  
5 of the ALJ's decision (A.R. 1-3). That decision is now at issue in this  
6 action.

#### 7 8 **SUMMARY OF ADMINISTRATIVE DECISION** 9

10 The ALJ found that plaintiff has not engaged in substantial gainful  
11 activity since June 13, 2004, the alleged onset date of her disability.  
12 (A.R. 12.) The ALJ determined that plaintiff has the following severe  
13 impairments: "major depressive disorder; bipolar disorder; psychotic  
14 disorder NOS; disorders of muscle, ligament, and fascia; sprains and  
15 strains; and epilepsy." (A.R. 12.) The ALJ also determined that  
16 plaintiff does not have an impairment or a combination of impairments  
17 that meets or equals one of the listed impairments in 20 C.F.R. Part  
18 404, Subpart P, Appendix 1 (20 C.F.R. §§ 404.1520(d), 404.1525,  
19 404.1526). (A.R. 13.)  
20

21 After reviewing the record, the ALJ determined that plaintiff has  
22 the residual functional capacity ("RFC") to perform sedentary to light  
23 work as defined in 20 C.F.R. § 404.1567(b). (A.R. 14.) Specifically,  
24 the ALJ determined that plaintiff is capable of:  
25

---

26  
27 <sup>3</sup> There is a discrepancy in the record regarding the spelling of  
28 the name of the medical expert. (*Compare* A.R. 10, with A.R. 54.) For  
purposes of this memorandum opinion and order, the Court has adopted the  
spelling used by the ALJ in her decision

1 standing and/or walking for 2 hours, up to 30 minutes at one  
2 time; sitting for 8 hours with normal breaks such as every 2  
3 hours; lifting and/or carrying 10 pounds frequently and 20  
4 pounds occasionally; with no climbing of ladders, working at  
5 heights, or balancing; with no squatting, kneeling, crawling,  
6 running, or jumping; with no operation of motorized equipment  
7 or work around unprotected machinery; limited to simple  
8 repetitive tasks; with no public contact; with occasional  
9 contact with coworkers or supervisors; with no hypervigilance;  
10 and with no responsibility for the safety of others.

11  
12 (*Id.*)  
13

14 The ALJ concluded that plaintiff is unable to perform her past  
15 relevant work. (A.R. 18.) However, having considered plaintiff's age,  
16 education, work experience, RFC, and the testimony of the vocational  
17 expert, the ALJ found that jobs exist in the national economy that  
18 plaintiff could perform, including electronics worker, small products  
19 assembler - hospital products, and production inspector - eyeglasses.  
20 (A.R. 18-19.) Accordingly, the ALJ concluded that plaintiff has not  
21 been under a disability, as defined in the Social Security Act, from  
22 June 13, 2004, through the date of her decision. (A.R. 19.)  
23

#### 24 STANDARD OF REVIEW 25

26 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's  
27 decision to determine whether it is free from legal error and supported  
28 by substantial evidence in the record as a whole. Orn v. Astrue, 495

1 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is “such relevant  
2 evidence as a reasonable mind might accept as adequate to support a  
3 conclusion.” *Id.* (citation omitted). The “evidence must be more than  
4 a mere scintilla but not necessarily a preponderance.” Connett v.  
5 Barnhart, 340 F.3d 871, 873 (9th Cir. 2003). “While inferences from the  
6 record can constitute substantial evidence, only those ‘reasonably drawn  
7 from the record’ will suffice.” Widmark v. Barnhart, 454 F.3d 1063,  
8 1066 (9th Cir. 2006)(citation omitted).

9  
10 Although this Court cannot substitute its discretion for that of  
11 the Commissioner, the Court nonetheless must review the record as a  
12 whole, “weighing both the evidence that supports and the evidence that  
13 detracts from the [Commissioner’s] conclusion.” Desrosiers v. Sec’y of  
14 Health and Hum. Servs., 846 F.2d 573, 576 (9th Cir. 1988); see also  
15 Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). “The ALJ is  
16 responsible for determining credibility, resolving conflicts in medical  
17 testimony, and for resolving ambiguities.” Andrews v. Shalala, 53 F.3d  
18 1035, 1039 (9th Cir. 1995).

19  
20 The Court will uphold the Commissioner’s decision when the evidence  
21 is susceptible to more than one rational interpretation. Burch v.  
22 Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). However, the Court may  
23 review only the reasons stated by the ALJ in his or her decision “and  
24 may not affirm the ALJ on a ground upon which he [or she] did not rely.”  
25 Orn, 495 F.3d at 630; see also Connett, 340 F.3d at 874. The Court will  
26 not reverse the Commissioner’s decision if it is based on harmless  
27 error, which exists only when it is “clear from the record that an ALJ’s  
28 error was ‘inconsequential to the ultimate nondisability

determination.'" Robbins v. Soc. Sec. Admin., 466 F.3d 880, 885 (9th Cir. 2006)(quoting Stout v. Comm'r, 454 F.3d 1050, 1055 (9th Cir. 2006)); see also Burch, 400 F.3d at 679.

## DISCUSSION

Plaintiff claims that the ALJ failed to consider her moderate limitations in concentration, persistence, or pace ("CPP") properly. (Joint Stipulation ("Joint Stip.") at 3-6, 9-11.) Specifically, plaintiff claims that the ALJ's RFC assessment and hypothetical to the vocational expert, both of which included a restriction to simple repetitive work, inadequately capture her limitations in CPP.

It is well established that an ALJ must include all of claimant's restrictions in his or her RFC and in the hypothetical posed to the vocational expert. Sabin v. Astrue, 337 Fed. Appx. 617, 620 (9th Cir. 2009)(citing 20 C.F.R. §§ 404.1545, 416.945 and Bray v. Comm'r of SSA, 554 F.3d 1219, 1228 (9th Cir. 2009)). "[A]n ALJ's assessment of a claimant adequately captures restrictions related to [CPP] where the assessment is consistent with the restrictions identified in the medical testimony.'" *Id.* (citing Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1174 (9th Cir. 2008)); see also Bickford v. Astrue, 2010 WL 4220531, at \*11 (D. Or. Oct. 19, 2010)(finding that, "so long as the ALJ's decision is supported by medical evidence, a limitation to simple, repetitive work can account for moderate difficulties in [CPP]").

In Stubbs-Danielson, an examining physician opined that plaintiff was "'moderately limited' in her ability to 'perform at a consistent

1 pace without an unreasonable number and length of rest periods' and  
2 'mildly limited' in several other mental functioning areas." 539 F.3d  
3 at 1173. Similarly, a state agency reviewing physician opined that  
4 plaintiff had "'a slow pace, both in thinking [and] actions' and several  
5 moderate limitations in other mental areas." *Id.* Although the  
6 examining physician did not assess plaintiff's ability to perform work,  
7 the state agency physician "concluded [that plaintiff] retained the  
8 ability to 'carry out simple tasks as evidenced by her ability to do  
9 housework, shopping, work on hobbies, cooking and reading.'" *Id.*  
10 Accordingly, in assessing plaintiff's RFC, "the ALJ translated  
11 [plaintiff's] condition, including her pace and mental limitations, into  
12 the only concrete restrictions available to him -- [to wit, the state  
13 agency physician's] recommended restriction to 'simple tasks.'" *Id.* at  
14 1174. Because the ALJ's assessment was consistent with the medical  
15 testimony, the Ninth Circuit held that the ALJ's RFC assessment and  
16 hypothetical, both of which included a restriction to simple tasks,  
17 adequately captured plaintiff's deficiencies in CPP. *Id.* at 1174-75.

18  
19 Similarly, in Sabin, the ALJ found that plaintiff had moderate  
20 limitations in CPP. 337 Fed. Appx. at 620-21. The ALJ determined,  
21 however, that "the end result of [plaintiff's] moderate difficulties as  
22 to [CPP] was that she could do simple and repetitive tasks on a  
23 consistent basis." *Id.* at 621. Because the medical record was  
24 consistent with the ALJ's conclusion, the Ninth Circuit found that the  
25 ALJ's RFC assessment and hypothetical, both of which included a  
26 limitation to simple, repetitive tasks on a consistent basis, adequately  
27 captured the tasks plaintiff could perform notwithstanding her  
28 restrictions in CPP. *Id.*

1 In support of her assertion that the ALJ committed error in failing  
2 to specifically include plaintiff's deficiencies in CPP in the RFC  
3 assessment and hypothetical to the vocational expert, plaintiff cites,  
4 *inter alia*, Brink v. Comm'r SSA, 343 Fed. Appx. 211 (9th Cir. 2009), and  
5 Berjettel v. Astrue, 2010 WL 3056799 (D. Or. July 30, 2010) -- cases in  
6 which courts found that a restriction to "simple, repetitive work"  
7 failed to capture plaintiff's deficiencies in CPP. However, in this  
8 case, unlike the cases cited by plaintiff, and as detailed below, the  
9 medical expert, upon whom the ALJ relied both in determining plaintiff's  
10 RFC and crafting her hypothetical to the vocational expert, testified  
11 that plaintiff's deficiencies in CPP resulted in specific work  
12 restrictions -- to wit, a restriction to simple, repetitive work.  
13 Moreover and significantly, plaintiff does not allege, and the record  
14 does not support, greater limitations stemming from plaintiff's CPP than  
15 those found by the medical expert and adopted by the ALJ. See Dupree v.  
16 Astrue, 2011 WL 651886, at \*5 (C.D. Cal. Feb. 10, 2011)(noting that "a  
17 limitation *must be* included in the RFC determination *only where* the  
18 record provides substantial evidence of such limitations")(citing Brink,  
19 343 Fed. Appx. at 212). In fact, plaintiff does not even allege that  
20 the ALJ erred in relying on the opinion of Dr. Glassmire regarding  
21 plaintiff's ability to perform simple, repetitive tasks notwithstanding  
22 her deficiencies in CPP.

23  
24 Thus, in this case, as in Stubbs-Danielson and Sabin, the ALJ's RFC  
25 assessment and subsequent hypothetical to the vocational expert are  
26 consistent with the medical record and adequately capture plaintiff's  
27 restrictions related to CPP. In evaluating whether plaintiff's mental  
28 impairments met or equaled Listings 12.03 and/or 12.04, the ALJ looked



1 to the "paragraph B" criteria and concluded that plaintiff has no  
2 restrictions in daily living, moderate difficulties in social  
3 functioning and CPP, and no episodes of decompensation. (A.R. 13.) The  
4 ALJ specifically noted, however, that the "limitations identified in the  
5 'paragraph B' criteria are not [an RFC] assessment but are used to rate  
6 the severity of mental impairments at steps 2 and 3 of the sequential  
7 evaluation process." (*Id.*) The ALJ explained that, in contrast to her  
8 paragraph B findings, her RFC assessment for plaintiff "requires a more  
9 detailed assessment [-- an assessment which entails] itemizing various  
10 functions contained in the broad categories found in paragraph B" and  
11 "reflect[ing] the degree of limitation [she] has found in the 'paragraph  
12 B' mental function analysis." (*Id.*)

13  
14 In assessing plaintiff's RFC, the ALJ thoroughly reviewed  
15 plaintiff's medical records. The ALJ noted that medical expert Dr.  
16 Glassmire, a licensed and board-certified forensic psychologist, opined  
17 that plaintiff has severe mental impairments that result in moderate  
18 difficulties in social functioning and CPP but "allow for the  
19 performance of competitive remunerative work within the parameters as  
20 found herein." (A.R. 14.) In pertinent part, after reviewing  
21 plaintiff's medical record, Dr. Glassmire testified that plaintiff's  
22 "paragraph B criteria" of moderate difficulties with social functioning  
23 and CPP would result in "work limitations," including limitations to  
24 "simple, repetitive tasks," "no contact with the public," "only  
25 occasional contact with co-workers and supervisors," and no  
26 "responsib[ility] for the safety of others." (A.R. 69.)

27  
28 The ALJ also considered the opinions of Romualdo R. Rodriguez,

1 M.D., a psychiatrist, and Kevin Gregg, M.D., a state agency reviewing  
2 physician, both of whom found that plaintiff did not have any severe  
3 mental impairments. (A.R. 15.) Additionally, the ALJ noted that  
4 Charles R. Smith, M.D., a specialist in neurology, found plaintiff's  
5 mental status and CT scan of the brain to be normal. (A.R. 16, 353-54.)  
6 Although the ALJ recognized that "[u]pdated psychiatric records lend  
7 some additional support to [plaintiff's] mental allegations," the ALJ  
8 noted that "there are no documented signs or findings that demonstrate  
9 disabling limitations," "satisf[y] the durational requirement of the  
10 Act," or "require greater limitations than those found herein."<sup>4</sup> (A.R.  
11 17.) The ALJ further noted that plaintiff's condition has responded to  
12 medication and treatment, and that the "ongoing objective evidence does  
13 not comport with a preclusion from competitive remunerative work."  
14 (*Id.*)

15  
16 Upon review of plaintiff's medical record, the ALJ "agree[d] with  
17 medical expert [Dr. Glassmire] that [plaintiff's] condition does not  
18 preclude regular and continuing work." (A.R. 17.) Accordingly, in  
19 assessing plaintiff's RFC, the ALJ translated her paragraph B findings,  
20 including her finding that plaintiff has moderate limitations in CPP,  
21 into the only concrete restriction reflected in the record -- to wit,  
22 Dr. Glassmire's finding that plaintiff was restricted to simple,  
23 repetitive tasks, with no public contact, only occasional contact with  
24 co-workers and supervisors, and no responsibility for the safety of  
25 others. In other words, based on the evidence of record, the ALJ  
26 determined that the end result of plaintiff's moderate difficulties in

---

27  
28 <sup>4</sup> Additionally, plaintiff does not contest the ALJ's finding  
that plaintiff was less than credible.

1 CPP was that plaintiff was limited to simple, repetitive tasks. See  
2 Sabin, 337 Fed. Appx. at 621 (finding the ALJ properly assessed medical  
3 evidence in determining that despite moderate limitation difficulties as  
4 to CPP, claimant could perform simple and repetitive tasks on a  
5 consistent basis); see also Howard v. Massanari, 255 F.3d 577, 582 (8th  
6 Cir. 2001)(finding that a limitation of often having deficiencies of  
7 CPP, which was interpreted by a doctor into a functional capacity  
8 assessment of being "able to sustain sufficient concentration and  
9 attention to perform at least simple, repetitive, and routine cognitive  
10 activity without severe restriction of function," was adequately  
11 captured in a hypothetical for "someone who is capable of doing simple,  
12 repetitive, routine tasks")

13  
14 Accordingly, the ALJ's RFC assessment and hypothetical question  
15 posed to the vocational expert -- both of which included a restriction  
16 to simple, repetitive tasks -- are consistent with the medical record  
17 and adequately capture the tasks plaintiff can perform despite her  
18 difficulties with CPP. As such, the ALJ committed no reversible error  
19 in failing to specifically include plaintiff's deficiencies in CPP in  
20 either her RFC assessment for plaintiff or her subsequent hypothetical  
21 to the vocational expert.


## 22 23 CONCLUSION

24  
25 For the foregoing reasons, the Court finds that the Commissioner's  
26 decision is supported by substantial evidence and is free from material  
27 legal error. Neither reversal of the Commissioner's decision nor remand  
28 is warranted.

1       Accordingly, IT IS ORDERED that Judgment shall be entered affirming  
2 the decision of the Commissioner of the Social Security Administration.  
3 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of  
4 this Memorandum Opinion and Order and the Judgment on counsel for  
5 plaintiff and for defendant.

6  
7       LET JUDGMENT BE ENTERED ACCORDINGLY.

8  
9 DATED: November 2, 2011

10  
11         
12       \_\_\_\_\_  
13       MARGARET A. NAGLE  
14       UNITED STATES MAGISTRATE JUDGE  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28