UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARK DOMINGUEZ, Plaintiff, v. MICHAEL J. ASTRUE, Commissioner of Social Security, Defendant.	Case No. EDCV 11-725 JC MEMORANDUM OPINION

I. SUMMARY

On May 16, 2011, plaintiff Mark Dominguez ("plaintiff") filed a Complaint seeking review of the Commissioner of Social Security's denial of plaintiff's applications for benefits. The parties have consented to proceed before a United States Magistrate Judge.

This matter is before the Court on the parties' cross motions for summary judgment, respectively ("Plaintiff's Motion") and ("Defendant's Motion"). The Court has taken both motions under submission without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; June 14, 2011 Case Management Order ¶ 5.

///

Based on the record as a whole and the applicable law, the decision of the Commissioner is AFFIRMED. The findings of the Administrative Law Judge ("ALJ") are supported by substantial evidence and are free from material error.[1]

II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION

On July 27, 2007, plaintiff filed applications for Supplemental Security Income benefits and Disability Insurance Benefits. (Administrative Record ("AR") 10, 130, 138). Plaintiff asserted that he became disabled on November 30, 2006, due to depression and psychotic features. (AR 151-52). The ALJ examined the medical record and heard testimony from plaintiff (who was represented by counsel) and a vocational expert on May 11, 2009. (AR 22-69).

On August 24, 2009, the ALJ determined that plaintiff was not disabled through the date of the decision. (AR 18). Specifically, the ALJ found: (1) plaintiff suffered from the following severe impairments: hepatitis C virus, obesity, hypertension, and a depressive disorder (AR 12); (2) plaintiff's impairments, considered singly or in combination, did not meet or medically equal one of the listed impairments (AR 12-13); (3) plaintiff retained the residual functional capacity to perform medium work (20 C.F.R. §§ 404.1567(c), 416.967(c))) with certain additional limitations[2] (AR 14); (4) plaintiff could

---

[1]The harmless error rule applies to the review of administrative decisions regarding disability. See Batson v. Commissioner of Social Security Administration, 359 F.3d 1190, 1196 (9th Cir. 2004) (applying harmless error standard); see also Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1054-56 (9th Cir. 2006) (discussing contours of application of harmless error standard in social security cases).

[2]The ALJ determined that plaintiff (i) could perform medium work; (ii) could frequently climb ramps and stairs but could not climb ladders, ropes or scaffolds; (iii) could frequently balance, bend, stoop, crouch, and kneel; (iv) should not work at unprotected heights or around dangerous, moving machinery; (v) could perform moderately detailed, complex tasks that do not involve working with the general public; (vi) could not perform jobs that are high-quota, (continued...)

perform his past relevant work as a stock clerk (AR 18); and (5) plaintiff's allegations regarding his limitations were not credible to the extent they were inconsistent with the ALJ's residual functional capacity assessment. (AR 14).

The Appeals Council denied plaintiff's application for review. (AR 1).

III. APPLICABLE LEGAL STANDARDS

A. Sequential Evaluation Process

To qualify for disability benefits, a claimant must show that the claimant is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least twelve months. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citing 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant incapable of performing the work claimant previously performed and incapable of performing any other substantial gainful employment that exists in the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

In assessing whether a claimant is disabled, an ALJ is to follow a five-step sequential evaluation process:

(1) Is the claimant presently engaged in substantial gainful activity? If so, the claimant is not disabled. If not, proceed to step two.

(2) Is the claimant's alleged impairment sufficiently severe to limit claimant's ability to work? If not, the claimant is not disabled. If so, proceed to step three.

///

---

[2](...continued)
production oriented (*e.g.*, assembly line); (vii) could have only occasional, nonintense interaction with supervisors and co-workers; and (viii) could not be involved with safety operations or be in charge of the safety of others. (AR 14).

(3) Does the claimant's impairment, or combination of impairments, meet or equal an impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1? If so, the claimant is disabled. If not, proceed to step four.

(4) Does the claimant possess the residual functional capacity to perform claimant's past relevant work? If so, the claimant is not disabled. If not, proceed to step five.

(5) Does the claimant's residual functional capacity, when considered with the claimant's age, education, and work experience, allow claimant to adjust to other work that exists in significant numbers in the national economy? If so, the claimant is not disabled. If not, the claimant is disabled.

Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th Cir. 2006) (citing 20 C.F.R. §§ 404.1520, 416.920).

The claimant has the burden of proof at steps one through four, and the Commissioner has the burden of proof at step five. Bustamante v. Massanari, 262 F.3d 949, 954 (9th Cir. 2001) (citing Tackett); see also Burch, 400 F.3d at 679 (claimant carries initial burden of proving disability).

B. Standard of Review

Pursuant to 42 U.S.C. section 405(g), a court may set aside a denial of benefits only if it is not supported by substantial evidence or if it is based on legal error. Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir. 2006) (citing Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457 (9th Cir. 1995)). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (citations and quotations omitted). It is more than a mere scintilla but less than a preponderance. Robbins, 466 F.3d at 882 (citing Young v. Sullivan, 911 F.2d 180, 183 (9th Cir. 1990)).

To determine whether substantial evidence supports a finding, a court must "'consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [Commissioner's] conclusion.'" Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming or reversing the ALJ's conclusion, a court may not substitute its judgment for that of the ALJ. Robbins, 466 F.3d at 882 (citing Flaten, 44 F.3d at 1457).

IV. DISCUSSION

In short, plaintiff contends that the ALJ failed adequately to evaluate the medical evidence, and that, consequently, the ALJ's decision was not supported by substantial evidence. (Plaintiff's Motion at 2-17). More specifically, plaintiff argues that: (1) the ALJ failed adequately to consider the opinion of a state-agency reviewing psychiatrist that plaintiff was limited to performing only simple repetitive tasks; (2) the ALJ erroneously failed to include in his residual functional capacity assessment or in the hypothetical question posed to the vocational expert the state-agency psychiatrist's opinion that plaintiff was limited to performing simple repetitive tasks; and (3) as a result, the ALJ erred at step five in finding that plaintiff could perform his past relevant work as a stock clerk because the mental demands of such job are inconsistent with a limitation to simple, repetitive tasks. (Plaintiff's Motion at 2-17).

The Court concludes that a reversal or remand on these grounds is not warranted.

A. Pertinent Law

In Social Security cases, courts employ a hierarchy of deference to medical opinions depending on the nature of the services provided. Courts distinguish among the opinions of three types of physicians: those who treat the claimant ("treating physicians") and two categories of "nontreating physicians," namely those who examine but do not treat the claimant ("examining physicians") and

those who neither examine nor treat the claimant ("nonexamining physicians"). Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1996) (footnote reference omitted). A treating physician's opinion is entitled to more weight than an examining physician's opinion, and an examining physician's opinion is entitled to more weight than a nonexamining physician's opinion.[3] See id.

"The Commissioner may reject the opinion of a nonexamining physician by reference to specific evidence in the medical record." Sousa v. Callahan, 143 F.3d 1240, 1244 (9th Cir. 1998). However, while "not bound by findings made by State agency or other program physicians and psychologists, [the ALJ] may not ignore these opinions and must explain the weight given to the opinions in their decisions." SSR 96-6p; see also 20 C.F.R. §§ 404.1527(f)(2)(i), 416.927(f)(2)(i) ("State agency medical and psychological consultants and other program physicians and psychologists are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation. Therefore, administrative law judges must consider findings of State agency medical and psychological consultants or other program physicians or psychologists as opinion evidence. . . ."); Sawyer v. Astrue, 303 Fed. Appx. 453, 455 (9th Cir. 2008) ("An ALJ is required to consider as opinion evidence the findings of state agency medical consultants; the ALJ is also required to explain in his decision the weight given to such opinions.").[4]

///

///

[3]Cf. Le v. Astrue, 529 F.3d 1200, 1201-02 (9th Cir. 2008) (not necessary or practical to draw bright line distinguishing treating physicians from non-treating physicians; relationship is better viewed as series of points on a continuum reflecting the duration of the treatment relationship and frequency and nature of the contact) (citation omitted).

[4]The Court may cite unpublished Ninth Circuit opinions issued on or after January 1, 2007. See U.S. Ct. App. 9th Cir. Rule 36-3(b); Fed. R. App. P. 32.1(a).

B. Pertinent Facts

The report of a May 12, 2006 mental status evaluation of plaintiff noted that plaintiff was alert and oriented in all four spheres, plaintiff had some difficulty with concentration, but plaintiff had no other cognitive deficits. (AR 338).

The report of an August 27, 2006 Adult Psychiatric Evaluation of plaintiff noted a mental status evaluation for plaintiff that was within normal limits. (AR 328-29).

On September 25, 2007, Dr. H. Skopec, a state-agency reviewing psychiatrist, completed a Psychiatric Review Technique form in which he opined that plaintiff had (i) mild restriction of activities of daily living; (ii) moderate difficulties in maintaining social functioning; (iii) moderate difficulties in maintaining concentration, persistence or pace; and (iv) no repeated episodes of decompensation of extended duration. (AR 283, 291). In a Case Analysis form also dated September 25, 2007, Dr. Skopec opined, based on his review of the administrative record, that plaintiff retained the mental residual functional capacity to perform "at least [simple repetitive tasks]." (AR 295).

In his decision, the ALJ noted the following with respect to Dr. Skopec's September 25, 2007 opinions:

> State Agency review psychiatrists concluded that [plaintiff] had a severe affective disorder but could perform simple, repetitive, nonpublic tasks. [Plaintiff] would have mild limitation in activities of daily living, moderate difficulty maintaining social functioning, moderate difficulty maintaining concentration, persistence or pace and no repeated episodes of decompensation, each of extended duration. . . .

(AR 17) (citing Exhibits 5F-6F [AR 283-95]).

///

///

C. Discussion

First, although plaintiff asserts that Dr. Skopec limited plaintiff to performing "*only* [] simple repetitive tasks" (Plaintiff's Motion at 4) (emphasis added), such an assertion is belied by the record. In the September 25, 2007 Case Analysis Dr. Skopec opined that plaintiff retained the mental residual functional capacity to do "*at least* [simple repetitive tasks]." (AR 295) (emphasis added).

Second, substantial evidence supports the ALJ's assessment that plaintiff retained the mental residual functional capacity to perform moderately detailed, complex tasks. See Magallanes v. Bowen, 881 F.2d 747, 751, 755 (9th Cir. 1989) (court may draw specific and legitimate inferences from ALJ's opinion). Again, Dr. Skopec opined that plaintiff could do *at least* simple repetitive tasks. (AR 295). As the ALJ also noted, the record contains mental status evaluations of plaintiff which, apart from some difficulty with concentration, were within normal limits. (AR 17) (citing Exhibit 10F at 15, 24 [AR 329, 338]). While plaintiff suggests that such evidence supports greater mental limitations, this Court cannot second-guess the ALJ's reasonable determination that it does not. See Lewis v. Apfel, 236 F.3d 503, 509 (9th Cir. 2001) (citation omitted). It was sole province of the ALJ to resolve any conflict or ambiguities in the properly supported medical evidence. Id.; Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citation omitted).

Finally, since the ALJ's determination that plaintiff retained the mental ability to perform moderately detailed, complex tasks is supported by substantial evidence, the ALJ did not err in omitting a limitation to simple repetitive tasks from his residual functional capacity assessment and the hypothetical question posed to the vocational expert, and consequently, plaintiff fails to demonstrate that ALJ erred at step five in finding that plaintiff could perform his past relevant work as a stock clerk.

///

Accordingly, the Court concludes that a reversal or remand is not warranted on any of plaintiff's grounds.

V. CONCLUSION

For the foregoing reasons, the decision of the Commissioner of Social Security is affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: January 26, 2012

/s/

Honorable Jacqueline Chooljian
UNITED STATES MAGISTRATE JUDGE