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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

SUZANNE GETCHEL,	)	No. SACV 08-1278 (CW)
	)	
Plaintiff,	)	DECISION AND ORDER
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner, Social	)	
Security Administration,	)	
	)	
Defendant.	)	
_____	)	

The parties have consented, under 28 U.S.C. § 636(c), to the jurisdiction of the undersigned magistrate judge. Plaintiff seeks review of the denial of disability benefits. The court finds that judgment should be granted in favor of defendant, affirming the Commissioner's decision.

**I. BACKGROUND**

Plaintiff Suzanne Getchel was born on March 24, 1947, and was sixty-one years old at the time of her administrative hearing. [Administrative Record ("AR") 6, 9.] She has two years of college education and past relevant work experience as a teacher's aide. [AR

1 9.] Plaintiff alleges disability on the basis of severe headaches and  
2 multiple work-related injuries to her neck, shoulders, arms, back and  
3 legs. [AR 45.]

4 **II. PROCEEDINGS IN THIS COURT**

5 Plaintiff's complaint was lodged on November 12, 2008, and filed  
6 on November 19, 2008. On July 13, 2009, defendant filed an answer and  
7 plaintiff's Administrative Record ("AR"). On June 26, 2009, the  
8 parties filed their Joint Stipulation ("JS") identifying matters not  
9 in dispute, issues in dispute, the positions of the parties, and the  
10 relief sought by each party. This matter has been taken under  
11 submission without oral argument.

12 **III. PRIOR ADMINISTRATIVE PROCEEDINGS**

13 Plaintiff applied for a period of disability and disability  
14 insurance benefits ("DIB") under Title II of the Social Security Act  
15 on April 5, 2007, alleging disability since December 22, 2005. [AR 30,  
16 107.] After the application was denied initially and on  
17 reconsideration, plaintiff requested an administrative hearing, which  
18 was held on July 30, 2008, before Administrative Law Judge ("ALJ")  
19 Kevin M. McCormick. [AR 6-24.] Plaintiff appeared with counsel, and  
20 testimony was taken from plaintiff and vocational expert Aida  
21 Worthington. [AR 7.] The ALJ denied benefits in a decision dated  
22 August 21, 2008. [AR 30-37.] When the Appeals Council denied review  
23 on September 19, 2008, the ALJ's decision became the Commissioner's  
24 final decision. [AR 1-3.]

25 **IV. STANDARD OF REVIEW**

26 Under 42 U.S.C. § 405(g), a district court may review the  
27 Commissioner's decision to deny benefits. The Commissioner's (or  
28 ALJ's) findings and decision should be upheld if they are free of

1 legal error and supported by substantial evidence. However, if the  
2 court determines that a finding is based on legal error or is not  
3 supported by substantial evidence in the record, the court may reject  
4 the finding and set aside the decision to deny benefits. See Aukland  
5 v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Tonapetyan v.  
6 Halter, 242 F.3d 1144, 1147 (9th Cir. 2001); Osenbrock v. Apfel, 240  
7 F.3d 1157, 1162 (9th Cir. 2001); Tackett v. Apfel, 180 F.3d 1094,  
8 1097 (9th Cir. 1999); Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.  
9 1998); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); Moncada  
10 v. Chater, 60 F.3d 521, 523 (9th Cir. 1995)(per curiam).

11 "Substantial evidence is more than a scintilla, but less than a  
12 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence  
13 which a reasonable person might accept as adequate to support a  
14 conclusion." Id. To determine whether substantial evidence supports  
15 a finding, a court must review the administrative record as a whole,  
16 "weighing both the evidence that supports and the evidence that  
17 detracts from the Commissioner's conclusion." Id. "If the evidence  
18 can reasonably support either affirming or reversing," the reviewing  
19 court "may not substitute its judgment" for that of the Commissioner.  
20 Reddick, 157 F.3d at 720-721; see also Osenbrock, 240 F.3d at 1162.

## 21 V. DISCUSSION

### 22 A. THE FIVE-STEP EVALUATION

23 To be eligible for disability benefits a claimant must  
24 demonstrate a medically determinable impairment which prevents the  
25 claimant from engaging in substantial gainful activity and which is  
26 expected to result in death or to last for a continuous period of at  
27 least twelve months. Tackett, 180 F.3d at 1098; Reddick, 157 F.3d at  
28 721; 42 U.S.C. § 423(d)(1)(A).

1 Disability claims are evaluated using a five-step test:

2 Step one: Is the claimant engaging in substantial  
3 gainful activity? If so, the claimant is found not  
4 disabled. If not, proceed to step two.

5 Step two: Does the claimant have a "severe" impairment?  
6 If so, proceed to step three. If not, then a finding of not  
7 disabled is appropriate.

8 Step three: Does the claimant's impairment or  
9 combination of impairments meet or equal an impairment  
10 listed in 20 C.F.R., Part 404, Subpart P, Appendix 1? If  
11 so, the claimant is automatically determined disabled. If  
12 not, proceed to step four.

13 Step four: Is the claimant capable of performing his  
14 past work? If so, the claimant is not disabled. If not,  
15 proceed to step five.

16 Step five: Does the claimant have the residual  
17 functional capacity to perform any other work? If so, the  
18 claimant is not disabled. If not, the claimant is disabled.

19 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995, as amended  
20 April 9, 1996); see also Bowen v. Yuckert, 482 U.S. 137, 140-142, 107  
21 S. Ct. 2287, 96 L. Ed. 2d 119 (1987); Tackett, 180 F.3d at 1098-99; 20  
22 C.F.R. § 404.1520, § 416.920. If a claimant is found "disabled" or  
23 "not disabled" at any step, there is no need to complete further  
24 steps. Tackett, 180 F.3d 1098; 20 C.F.R. § 404.1520.

25 Claimants have the burden of proof at steps one through four,  
26 subject to the presumption that Social Security hearings are non-  
27 adversarial, and to the Commissioner's affirmative duty to assist  
28 claimants in fully developing the record even if they are represented  
by counsel. Tackett, 180 F.3d at 1098 and n.3; Smolen, 80 F.3d at  
1288. If this burden is met, a prima facie case of disability is  
made, and the burden shifts to the Commissioner (at step five) to  
prove that, considering residual functional capacity ("RFC")<sup>1</sup>, age,

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<sup>1</sup> Residual functional capacity measures what a claimant can still do despite existing "exertional" (strength-related) and "nonexertional" limitations. Cooper v. Sullivan, 880 F.2d 1152, 1155 n.s. 5-6 (9th Cir. 1989). Nonexertional limitations limit ability to

1 education, and work experience, a claimant can perform other work  
2 which is available in significant numbers. Tackett, 180 F.3d at 1098,  
3 1100; Reddick, 157 F.3d at 721; 20 C.F.R. § 404.1520, § 416.920.

4 **B. THE ALJ'S EVALUATION IN PLAINTIFF'S CASE**

5 Here, the ALJ found that plaintiff had not engaged in substantial  
6 gainful activity since her alleged disability onset date (step one);  
7 that plaintiff had "severe" impairments, namely mild cervical  
8 spondylosis, a cervical strain, left C5-6 radiculopathy, diffuse  
9 osteopenia of the spine, a sprain of both shoulders, a contusion and  
10 sprain of the right knee, lateral epicondylitis of both elbows,  
11 moderate degenerative disc disease of the thoracic spine, moderate  
12 facet degeneration of the lumbar spine, a thorocolumbar strain and  
13 moderate degenerative changes of the acromioclaviular joint of both  
14 shoulders (step two); and that plaintiff did not have an impairment or  
15 combination of impairments that met or equaled a "listing" (step  
16 three). [AR 32.] The ALJ found that Plaintiff had an RFC for "light  
17 work which permits lifting and/or carrying 30 pounds occasionally and  
18 15 pounds frequently; standing and walking for six hours out of an  
19 eight hour workday in two hour intervals with no limitation on  
20 sitting; occasional bending and stooping; with the left upper  
21 extremity, occasionally push and pull, frequent use of hand controls  
22 and tools, frequent simple gripping and frequent distal fine  
23 coordinate movements with the left hand and fingers; with the right  
24 upper extremity the claimant can frequently push and pull, frequent

25 \_\_\_\_\_  
26 work without directly limiting strength, and include mental, sensory,  
27 postural, manipulative, and environmental limitations. Penny v.  
28 Sullivan, 2 F.3d 953, 958 (9th Cir. 1993); Cooper, 800 F.2d at 1155  
n.7; 20 C.F.R. § 404.1569a(c). Pain may be either an exertional or a  
nonexertional limitation. Penny, 2 F.3d at 959; Perminter v. Heckler,  
765 F.2d 870, 872 (9th Cir. 1985); 20 C.F.R. § 404.1569a(c).

1 operation of hand controls, avoid using heavy power tools, frequent  
2 simple gripping and frequent distal fine coordinated movements with  
3 the right hand and fingers." [AR 32-33.] The vocational expert  
4 testified that a person with Plaintiff's RFC could perform Plaintiff's  
5 past relevant work as a teachers aide, as it is generally performed in  
6 the national economy (step four). [AR 36.] Accordingly, Plaintiff was  
7 found not "disabled" as defined by the Social Security Act. [Id.]

8 **C. ISSUES IN DISPUTE**

9 The parties' Joint Stipulation sets out the following disputed  
10 issues:

- 11 1. Whether the ALJ properly considered the opinion of the  
12 examining physician, Dr. Robert A. Moore;
- 13 2. Whether the ALJ posed a complete hypothetical question to  
14 the vocational expert based on Dr. Moore's opinion; and
- 15 3. Whether the ALJ properly determined that Plaintiff could  
16 return to her past relevant work.

17 [JS 2-3.]

18 **D. DR. MOORE'S OPINION**

19 In September 2007, Plaintiff underwent a Neurological Evaluation  
20 conducted by Dr. Robert A. Moore. [AR 222-26.] Plaintiff reported a  
21 "ten year history of symptomatology," including pain in her neck, left  
22 shoulder and lower back. Dr. Moore's review of Plaintiff's medical  
23 records included a September 2006 MRI scan revealing "2-3 mm  
24 discogenic lesions at C3 through C7," an MRI scan of the left shoulder  
25 revealing "supraspinatus tendinopathy on the left" and a November 2006  
26 EMG revealing "some abnormalities in the left brachioradialis and  
27 biceps." [AR 223.] Plaintiff's medications included fluoxetine,  
28 Fosamax, Soma, atenolol and an estrogen supplement. [Id.]

1           Upon physical examination, Dr. Moore noted, among other things,  
2 that Plaintiff had tenderness in the left lower paracervical and  
3 trapezius muscles and minor tenderness over the lower paralumbar  
4 muscles without associated paralumbar muscle spasm. [AR 223-24.] Upon  
5 neurological examination, Dr. Moore noted, among other things, that  
6 Plaintiff was alert and oriented to person, place and time, that her  
7 speech was normal, and that she had a normal and spontaneous gait. [AR  
8 224.] Dr. Moore diagnosed Plaintiff with mild cervical and lumbar  
9 spondylosis and tendinitis of the left shoulder and right elbow. [AR  
10 225.]

11           For purposes of Plaintiff's functional capacity, Dr. Moore stated  
12 that in his opinion, Plaintiff could stand and walk for six hours out  
13 of an eight-hour workday, sit in an unrestricted manner, occasionally  
14 bend and stoop and operate foot controls. [AR 225.] However, with  
15 Plaintiff's left arm, "because of her neck and left shoulder, the  
16 claimant can only occasionally push and pull. She would have slight  
17 difficulty operating hand controls and using tools. She can perform  
18 frequent simple gripping and frequent distal fine coordinated  
19 movements with the left hand and fingers." As for Plaintiff's right  
20 arm, "because of her tendinitis of the right elbow, the claimant can  
21 frequently push and pull. She would have slight difficulty operating  
22 hand controls. She should avoid using heavy power tools. She can  
23 perform occasional to frequent simple gripping and frequent distal  
24 fine coordinated movements with the right hand and fingers." [Id.]  
25 Dr. Moore's final determination was that Plaintiff could  
26 "intermittently lift and carry 30 pounds and more frequently lift and  
27 carry 15 pounds." [AR 226.]

28           The ALJ found that Dr. Moore's opinion "is persuasive and is

1 given the greatest weight in determining the claimant's residual  
2 functional capacity" because it was based on a physical examination  
3 and a review of the medical records and was corroborated by other  
4 medical evidence. [AR 35.] At the administrative hearing, the ALJ  
5 asked the vocational expert to refer to Dr. Moore's opinion and asked  
6 whether a person with the limitations set out by Dr. Moore, including  
7 "with the right upper extremity and perform occasional to frequent -  
8 can perform up to frequent simple gripping and frequent distal fine  
9 coordinative movements with the right hands and fingers," could  
10 perform Plaintiff's past relevant work as it is either customarily or  
11 actually performed. [AR 17-18.] The vocational expert responded that  
12 such a person could perform Plaintiff's past relevant work as a  
13 teacher's aide as it was customarily, but not actually, performed. [AR  
14 18.] The vocational expert also testified that a person with  
15 Plaintiff's limitations "should be able to perform that job using the  
16 right upper extremity [as] necessary." [AR 19.] Based on this  
17 vocational evidence, the ALJ found plaintiff not disabled. [AR 36.]

18 Plaintiff asserts that the ALJ's decision was not supported by  
19 substantial evidence because the ALJ disregarded Dr. Moore's opinion  
20 that Plaintiff was limited to "occasional to frequent simple gripping"  
21 with the right hand [JS 3 (Claim One)], failed to incorporate this  
22 limitation into the hypothetical question asked to the vocational  
23 expert [JS 8 (Claim Two)], and failed to account for the inconsistency  
24 between Plaintiff's limitation and the description of the teacher's  
25 aide job in the Dictionary of Occupational Titles ("DOT"), which calls  
26 for "frequent handling" [JS 11 (Claim Three)]. None of these claims  
27 has merit.

28 The record shows that the ALJ did credit all of Dr. Moore's



1 limitations and accounted for them in the hypothetical question asked  
2 to the vocational expert. [AR 18.] Although the description of the  
3 limitation provided by Dr. Moore did not correspond exactly to the  
4 wording of the ALJ's RFC finding or to the hypothetical question asked  
5 of the vocational expert, the question did clearly account for a  
6 limitation to "occasional to frequent simple gripping" with the right  
7 hand and fingers; moreover, the ALJ requested that the vocational  
8 expert refer directly to Dr. Moore's opinion prior to answering the  
9 question. [Id.] Accordingly, the record indicates that the vocational  
10 expert was made aware of all of the limitations described by Dr. Moore  
11 before giving her testimony.

12 Plaintiff further argues that the ALJ disregarded the  
13 inconsistency between Dr. Moore's limitation of Plaintiff to  
14 "occasional to frequent simple gripping" of the right hand with the  
15 description of the teacher's aide position in the Dictionary of  
16 Occupational Titles (DOT 249.367-074: Teacher Aide II), which states  
17 that the job requires "frequent" handling. [JS 11.] However, the  
18 vocational expert explained that Plaintiff should be able to perform  
19 that job as it is generally performed using the right upper extremity  
20 as necessary. Moreover, the record does not suggest that Plaintiff is  
21 limited to less than frequent handling of all types with her right  
22 hand, given that Dr. Moore stated she could perform frequent distal  
23 fine coordinated movements with the right hand and fingers. Neither  
24 does the record indicate that Plaintiff has a significant limitation  
25 in her ability to perform handling with her left hand nor that her  
26 limitations derive primarily from her hands. Under these  
27 circumstances, this claim does not warrant reversal of the  
28 Commissioner's decision.

