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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JIMMIE J. ADKISON,
Plaintiff,

No. 2:11-CV-1533-CMK

vs.

MEMORANDUM OPINION AND ORDER

COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

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Plaintiff, who is proceeding with retained counsel, brings this action for judicial review of a final decision of the Commissioner of Social Security under 42 U.S.C. § 405(g). Pursuant to the written consent of all parties, this case is before the undersigned as the presiding judge for all purposes, including entry of final judgment. See 28 U.S.C. § 636(c). Pending before the court are plaintiff's motion for summary judgment (Doc. 20) and defendant's cross-motion for summary judgment (Doc. 21).

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1 **I. PROCEDURAL HISTORY**

2 Plaintiff applied for social security benefits on August 5, 2006. Plaintiff's claim
3 was initially denied. Following denial of reconsideration, plaintiff requested an administrative
4 hearing, which was held on September 10, 2007, before Administrative Law Judge ("ALJ") Jean
5 Kingrey. In a October 26, 2007, decision, the ALJ concluded that plaintiff is not disabled based
6 on the following relevant findings:

- 7 1. The claimant has the following severe combination of impairments: disc
8 space narrowing with mild degenerative facet disease, bilaterally, at L3-
9 S1, as shown on x-rays of the lumbar spine; and alcohol-induced liver
10 disease and pancreatitis, both improved since the claimant stopped
11 drinking in July 2006;
- 12 2. The claimant does not have an impairment or combination of impairments
13 that meets or medically equals an impairment listed in the regulations;
- 14 3. The claimant's acute liver and pancreatic condition on compliance with
15 treatment and sobriety resolved inside 12 months of the alleged disability
16 onset date to allow him, in conjunction with a spinal impairment, to
17 perform a residual functional capacity for all functions of light work,
18 except for no performance of jobs with a high probability of major injury
19 due to clotting problems; and
- 20 4. Considering the claimant's age, work experience, age, education, residual
21 functional capacity, and vocational expert testimony, there are jobs that
22 exist in significant numbers in the national economy that plaintiff can
23 perform.

24 After the Appeals Council declined review on May 23, 2008, plaintiff sought judicial review in
25 this court. On September 30, 2009, the court issued a decision reversing the agency's final
26 decision and remanding the matter for further proceedings. The court instructed:

27 The court has found that a remand is required. The ALJ is directed
28 to give proper weight to the opinions of plaintiff's treating physicians,
29 after developing the record to the extent needed, and to credit plaintiff's
30 subjective symptom testimony, the testimony of plaintiff's stepfather, and
31 the written statement of plaintiff's mother.

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1 A second hearing was held on October 1, 2010, before ALJ Michael Gilbert, after
2 which the record was held open for 14 days to allow plaintiff to submit additional evidence,
3 which he did not do. In a February 23, 2011, decision, the ALJ again concluded that plaintiff
4 was not disabled based on the following relevant findings:

- 5 1. The claimant has the following severe impairments: lumbar lipomatosis,
6 great toe bursitis, and end-stage liver disease with alcohol-induced
7 pancreatitis;
- 8 2. The claimant does not have an impairment or combination of impairments
9 that meets or medically equals an impairment listed in the regulations;
- 10 3. The claimant has the residual functional capacity to perform light work,
11 except he is limited in all posturals to frequent, except climb ladders,
12 ropes, or scaffolds, which is occasionally; and
- 13 4. Considering the claimant's age, work experience, age, education, residual
14 functional capacity, and vocational expert testimony, there are jobs that
15 exist in significant numbers in the national economy that plaintiff can
16 perform.

17 After the Appeals Council declined further review, this second action for judicial review
18 followed.

19 II. STANDARD OF REVIEW

20 The court reviews the Commissioner's final decision to determine whether it is:
21 (1) based on proper legal standards; and (2) supported by substantial evidence in the record as a
22 whole. See Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). "Substantial evidence" is
23 more than a mere scintilla, but less than a preponderance. See Saelee v. Chater, 94 F.3d 520,
24 521 (9th Cir. 1996). It is ". . . such evidence as a reasonable mind might accept as adequate to
25 support a conclusion." Richardson v. Perales, 402 U.S. 389, 402 (1971). The record as a whole,
26 including both the evidence that supports and detracts from the Commissioner's conclusion,
must be considered and weighed. See Howard v. Heckler, 782 F.2d 1484, 1487 (9th Cir. 1986);
Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not affirm the
Commissioner's decision simply by isolating a specific quantum of supporting evidence. See

1 Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the
2 administrative findings, or if there is conflicting evidence supporting a particular finding, the
3 finding of the Commissioner is conclusive. See Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th
4 Cir. 1987). Therefore, where the evidence is susceptible to more than one rational interpretation,
5 one of which supports the Commissioner's decision, the decision must be affirmed, see Thomas
6 v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002), and may be set aside only if an improper legal
7 standard was applied in weighing the evidence, see Burkhart v. Bowen, 856 F.2d 1335, 1338
8 (9th Cir. 1988).

10 **III. DISCUSSION**

11 In his motion for summary judgment, plaintiff argues, among other things, that
12 the ALJ re-evaluated his testimony as well as testimony from his stepfather and mother despite
13 this court's instruction on remand that such evidence was to be credited. Defendant argues that
14 the district court's decision did not preclude re-evaluation of plaintiff's and lay witnesses'
15 statements. Defendant also argues that the district court's remand order was unclear given that,
16 on the one hand, the agency was instructed to credit plaintiff's and lay witnesses' statements
17 but, on the other hand, the agency was directed to hold another hearing.

18 Defendant's position is unconvincing. This court has already determined that the
19 agency erred with respect to plaintiff's statements and those from third-party witnesses.
20 Specifically, the court directed that such testimony should be credited. There was no provision
21 in the prior remand order from this court to re-evaluate this evidence. Contrary to defendant's
22 argument, the court's prior order was not unclear and did in fact preclude re-evaluation of the
23 evidence. The remand hearing contemplated by the court's remand order was not mandatory but
24 only required in order to allow new hypothetical questions to be posed to a vocational expert if
25 necessary. Nothing implicit or explicit in the court's prior remand order indicates that a hearing
26 was ordered to allow re-evaluation of plaintiff's statements or those from the lay witnesses.

