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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF WASHINGTON
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7 DAMAN THOMAS CALDWELL,

No. 2:14-CV-0245-JTR

8 Plaintiff,

ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

9
10 v.

11 CAROLYN W. COLVIN,
12 Commissioner of Social Security,

13 Defendant.
14

15 **BEFORE THE COURT** are cross-Motions for Summary Judgment. ECF
16 Nos. 14, 16. Attorney Dana C. Madsen represents Daman Thomas Caldwell
17 (Plaintiff); Special Assistant United States Attorney Alexis L. Toma represents the
18 Commissioner of Social Security (Defendant). The parties have consented to
19 proceed before a magistrate judge. ECF No. 7. After reviewing the administrative
20 record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion
21 for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

22 **JURISDICTION**

23 Plaintiff filed applications for Disability Insurance Benefits (DIB) and
24 Supplemental Security Income (SSI) on February 19, 2012, alleging disability
25 beginning August 31, 2008. Tr. 213-19. The applications were denied initially
26 and upon reconsideration. Tr. 118-20, 121-124, 131-35, 136-42. Administrative
27 Law Judge (ALJ) Moira Austems held a hearing on November 6, 2013, at which
28 Plaintiff, represented by counsel, testified as did Jennifer Caldwell and medical

1 expert Donna Veraldi, Ph.D. Tr. 26-56. After the hearing, the ALJ requested
2 Plaintiff undergo an additional psychological evaluation, which was conducted by
3 Jeanette Higgins, Psy.D. on November 26, 2013. Tr. 198-99, 573-82.

4 On March 10, 2014, the ALJ issued a partially favorable decision finding
5 Plaintiff's impairments met the listings beginning February 19, 2012, through the
6 date of the decision. Tr. 8-25. The Appeals Council denied review. Tr. 1-4. The
7 ALJ's decision became the final decision of the Commissioner, which is
8 appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this
9 action for judicial review on July 29, 2014. ECF No. 1, 4. Plaintiff argues that the
10 ALJ erred by determining that Plaintiff's disability onset date was February 19,
11 2012, (the application date) instead of August 31, 2008, (Plaintiff's alleged onset
12 date). This determination effectively precludes Plaintiff from recovering DIB
13 because Plaintiff's insured status expired on September 30, 2010. Tr. 16.

14 **STATEMENT OF FACTS**

15 The facts of the case are set forth in the administrative hearing transcript, the
16 ALJ's decision, and the briefs of the parties. They are only briefly summarized
17 here.

18 Plaintiff was 38 years old at the time of the hearing. Tr. 45. Plaintiff did not
19 graduate from high school but does have a GED. Tr. 45-46. Plaintiff has worked
20 many different jobs, but none usually lasted longer than a month or two. Tr. 31.
21 Plaintiff testified that he cannot work because he "just can't cope with society . . .
22 [or] deal with people . . . [or] deal with things that maybe other people can deal
23 with." Tr. 32.

24 **STANDARD OF REVIEW**

25 The ALJ is responsible for determining credibility, resolving conflicts in
26 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
27 1039 (9th Cir. 1995). The Court reviews the ALJ's determinations of law de novo,
28 deferring to a reasonable interpretation of the statutes. *McNatt v. Apfel*, 201 F.3d

1 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is
2 not supported by substantial evidence or if it is based on legal error. *Tackett v.*
3 *Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as
4 being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put
5 another way, substantial evidence is such relevant evidence as a reasonable mind
6 might accept as adequate to support a conclusion. *Richardson v. Perales*, 402
7 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational
8 interpretation, the court may not substitute its judgment for that of the ALJ.
9 *Tackett*, 180 F.3d at 1097; *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595,
10 599 (9th Cir. 1999). Nevertheless, a decision supported by substantial evidence
11 will still be set aside if the proper legal standards were not applied in weighing the
12 evidence and making the decision. *Browner v. Secretary of Health and Human*
13 *Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence supports the
14 administrative findings, or if conflicting evidence supports a finding of either
15 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*
16 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

17 SEQUENTIAL EVALUATION PROCESS

18 The Commissioner has established a five-step sequential evaluation process
19 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
20 416.920(a); *see Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one
21 through four, the burden of proof rests upon claimants to establish a prima facie
22 case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This
23 burden is met once claimants establish that physical or mental impairments prevent
24 them from engaging in their previous occupations. 20 C.F.R. §§ 404.1520(a)(4),
25 416.920(a)(4). If claimants cannot do their past relevant work, the ALJ proceeds
26 to step five, and the burden shifts to the Commissioner to show that (1) the
27 claimants can make an adjustment to other work, and (2) specific jobs exist in the
28 national economy which claimants can perform. *Batson v. Comm'r of Soc. Sec.*,

1 359 F.3d 1190, 1193-1194 (2004). If claimants cannot make an adjustment to
2 other work in the national economy, a finding of “disabled” is made. 20 C.F.R. §§
3 404.1520(a)(i-v), 416.920(a)(4)(i-v).

4 **ADMINISTRATIVE DECISION**

5 On March 10, 2014, the ALJ issued a decision finding Plaintiff was disabled
6 as defined in the Social Security Act from February 19, 2012, through the date of
7 the ALJ’s decision. Tr. 19.

8 The ALJ first addressed the onset date of Plaintiff’s disability. Tr. 12-13.
9 As set forth by the ALJ, Plaintiff filed two previous applications for DIB.¹
10 Plaintiff filed his first application on May 24, 2010, which was denied initially on
11 September 9, 2010, and on reconsideration December 1, 2010. Tr. 57-58, 108-13.
12 Plaintiff did not further pursue that application. He filed a second application for
13 DIB on August 11, 2011, Tr. 211-12, which was denied on September 29, 2011,
14 based on the doctrine of res judicata. Tr. 59, 114-17. Again, he did not pursue his
15 second application beyond the reconsideration level.

16 For purposes of Plaintiff’s application that is the subject of this appeal, the
17 ALJ determined that Plaintiff did not submit any new and material evidence
18 establishing clear error that constituted good cause to reopen the December 1,
19 2010, determination. Tr. 12. The ALJ determined that the December 1, 2010,
20 determination was the final and binding determination of the Commissioner and
21 that the principle of res judicata (already adjudicated) applied to preclude Plaintiff
22 from recovering DIB earlier than December 2, 2010. Tr. 13.

23 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
24 activity since February 19, 2012, the application date. Tr. 15.

27 ¹Plaintiff also filed two previous SSI applications, which were denied
28 because of excess income and resources. Tr. 13.

1 At step two, the ALJ determined that beginning February 19, 2012, Plaintiff
2 has had the following severe impairments: schizoaffective disorder, bipolar type;
3 generalized anxiety disorder; narcissistic personality disorder; and cannabis
4 dependence. Tr. 15.

5 At step three, the ALJ found that, since February 19, 2012, the severity of
6 Plaintiff's impairments met Listing 12.04. Tr. 15.

7 The ALJ further concluded that Plaintiff was not disabled prior to February
8 19, 2012, and that his substance use disorder was not a contributing factor material
9 to disability. Tr. 18. The ALJ found Plaintiff eligible for SSI, but dismissed
10 Plaintiff's DIB application as Plaintiff's insured status ended on September 30,
11 2010. Tr. 19.

12 ISSUE

13 The question presented is whether the Court has jurisdiction to review the
14 ALJ's decision to not reopen Plaintiff's prior DIB application.

15 DISCUSSION

16 Defendant argues that the Court does not have subject-matter jurisdiction to
17 review the ALJ's decision not to reopen Plaintiff's prior application. ECF No. 16
18 at 4-5.

19 A federal court has jurisdiction over a Social Security appeal after the
20 Commissioner renders a final decision. 42 U.S.C. § 405(g). Section 405(g)
21 "clearly limits judicial review to a particular type of agency action, a *final decision*
22 of the Secretary made *after a hearing*." *Subia v. Comm'r of Soc. Sec.*, 264 F.3d
23 899, 902 (9th Cir. 2001) (quoting *Califano v. Sanders*, 430 U.S. 99, 108 (1977)).
24 "[T]he Secretary's decision not to re-open a previously adjudicated claim for
25 social security benefits' is purely discretionary and is therefore not considered a
26 'final' decision within the meaning of § 405(g)." *Krumpelman v. Heckler*, 767
27 F.2d 586, 588 (9th Cir. 1985) (quoting *Davis v. Schweiker*, 665 F.2d 934, 935 (9th
28 Cir. 1982)); *see also* 20 C.F.R. § 404.903(l). "District courts, therefore, have no

1 jurisdiction to review a refusal to re-open a claim for disability benefits or a
2 determination that such a claim is res judicata.” *Krumpelman*, 767 F.2d at 588
3 (citing *Davis*, 665 F.2d at 935); *see also Lester v. Chater*, 81 F.3d 821, 827 (9th
4 Cir. 1995) (“the Commissioner’s refusal to reopen her decision as to an earlier
5 period is *not* subject to judicial review.”).

6 In this case, as an initial matter, Plaintiff did not exhaust his administrative
7 remedies with respect to the earlier applications at issue, so that no final decision
8 entered.² Furthermore, an ALJ’s decision to grant or deny a claimant’s request to
9 reopen prior applications is discretionary, and in this case, the ALJ concluded that
10 good cause did not exist to reopen Plaintiff’s December 2010 determination. Tr.
11 12. The denial of a request to reopen is not a final decision of the Commissioner
12 made after a hearing and, thus, is not subject to judicial review. *Krumpelman*, 767
13 F.2d at 588; *Lester*, 81 F.3d at 827. Because the Court concludes that it lacks
14 subject-matter jurisdiction, it will not address the merits of Plaintiff’s arguments.

15 In his reply, Plaintiff cites to *Lester v. Chater* arguing that “the principle of
16 res judicata should not be rigidly applied in administrative proceedings.” ECF No.
17 17 at 2 (citing *Lester*, 81 F.3d at 827-28).

18 But *Lester* is distinguishable from the case at bar. In *Lester*, the question
19 before the Court was whether res judicata barred the claimant’s disability claim for
20 a period *subsequent* to a prior determination. 81 F.3d at 827. In that case, the ALJ

21 ²The principal of exhaustion is an important one as exhaustion

22
23 [I]s generally required as a matter of preventing premature
24 interference with agency processes, so that the agency may function
25 efficiently and so that it may have an opportunity to correct its own
26 errors, to afford the parties and the courts the benefit of its experience
27 and expertise, and to compile a record which is adequate for judicial
28 review.

Weinberger v. Salfi, 422 U.S. 749, 765 (1975) (citation omitted).

1 denied the claimant’s application in 1985. *Id.* The claimant filed another
2 application in 1988, which the ALJ also denied based, at least in part, on res
3 judicata. *Id.* The claimant did not challenge the Commissioner’s application of res
4 judicata *prior* to 1985, but argued that the Commissioner should not be allowed to
5 rely on res judicata to bar consideration of the evidence of his impairments *after*
6 1985. *Id.* The Ninth Circuit agreed and listed several situations where the
7 Commissioner should not “rigidly appl[y]” the doctrine of res judicata, including
8 when, subsequent to a prior determination, the severity of the claimant’s
9 impairments increase or the claimant “raises a new issue, such as the existence of
10 an impairment not considered in the previous application.” *Id.* In *Lester*, the Court
11 concluded that the Commissioner erred in using res judicata to avoid consideration
12 of Plaintiff’s impairment *subsequent* to 1985 because Plaintiff had alleged different
13 impairments and changed circumstances in his 1988 application. *Id.* at 828.

14 In this case, Plaintiff argues that the ALJ erred in relying upon res judicata
15 as grounds to not reopen his 2010 determination. In *Lester*, the Ninth Circuit
16 reiterated the general rule that “[t]he Commissioner may . . . apply res judicata to
17 bar reconsideration of a period with respect to which she has already made a
18 determination, by declining to reopen the prior application.” *Id.* at 827. This is the
19 rule that applies in Plaintiff’s situation. Plaintiff does not argue that the ALJ erred
20 in using res judicata to bar consideration of his impairments after the 2010
21 determination. The situations listed in *Lester* where res judicata should not be
22 rigidly applied do not apply to Plaintiff’s case. Plaintiff’s reliance on *Lester* to
23 argue that res judicata should not be rigidly applied to bar reopening of his 2010
24 determination is misplaced and his argument fails.

25 CONCLUSION

26 Having reviewed the record and the ALJ’s findings, the Court determines
27 that it does not have subject matter jurisdiction over the issue raised by Plaintiff.
28 Accordingly, **IT IS ORDERED:**

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1. Defendant’s Motion for Summary Judgment, **ECF No. 16**, is
GRANTED.

2. Plaintiff’s Motion for Summary Judgment, **ECF No. 14**, is **DENIED.**
The District Court Executive is directed to file this Order and provide a copy
to counsel for Plaintiff and Defendant. **Judgment shall be entered for Defendant**
and the file shall be **CLOSED.**

DATED May 28, 2015.



A handwritten signature in black ink, appearing to be "M" or "Rodgers".

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE