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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NEHEMIAH LEWIS JR.,	)	NO. CV 07-8200-E
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM OPINION</b>
	)	
MICHAEL J. ASTRUE, COMMISSIONER	)	
OF SOCIAL SECURITY ADMINISTRATION,	)	
	)	
Defendant.	)	
_____	)	

PROCEEDINGS

Plaintiff filed a Complaint on December 14, 2007, seeking review of the Commissioner's denial of benefits. The parties filed a consent to proceed before a United States Magistrate Judge on January 11, 2008.

Plaintiff filed a motion for summary judgment on July 24, 2008. Defendant filed a cross-motion for summary judgment on September 10, 2008. The Court has taken both motions under submission without oral argument. See L.R. 7-15; "Order," filed December 17, 2007.

1                                   **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**  
2

3                   Plaintiff, a former bus driver, asserted disability based on a  
4 variety of impairments, including alleged heart problems and obesity  
5 (Administrative Record ("A.R.") 7-382). Following a previous court-  
6 ordered remand, an Administrative Law Judge ("ALJ") examined the  
7 medical record and heard testimony from Plaintiff, a medical expert,  
8 and a vocational expert. Id. Because Plaintiff returned to  
9 substantial gainful activity on May 15, 2006, at issue before the ALJ  
10 was whether Plaintiff was disabled from August 27, 2003 to May 14,  
11 2006 (A.R. 290, 356-57).  
12

13                   The ALJ concluded Plaintiff was not disabled from August 27,  
14 2003 to May 14, 2006 (A.R. 290-98). The ALJ found Plaintiff had the  
15 severe impairments of "status post-aortic valve replacement; mild  
16 gout; hypertension; sleep apnea; and obesity," but that these  
17 impairments, individually or in combination, did not meet or equal any  
18 of the Listings (A.R. 293). The ALJ determined Plaintiff had the  
19 residual functional capacity "to perform light work except he is able  
20 to stand/walk 4 out of 8 hours a day, occasionally balance, climb,  
21 kneel, stoop, crouch and crawl, and should not drive or work at  
22 unprotected heights" (A.R. 293). The ALJ found Plaintiff was unable  
23 to perform Plaintiff's past relevant work, but also found, in reliance  
24 on the vocational expert's testimony, that there exist significant  
25 numbers of other jobs Plaintiff could have performed during the  
26 relevant time period (A.R. 296-98).  
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1                                   **SUMMARY OF PLAINTIFF'S CONTENTIONS**  
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3           Plaintiff contends:  
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5           1.       The ALJ failed to explain sufficiently the ALJ's  
6           conclusion Plaintiff did not meet or equal the Listings;  
7

8           2.       The ALJ failed to consider properly a certain  
9           aspect of the medical expert's testimony; and  
10

11          3.       The ALJ's hypothetical questioning of the  
12          vocational expert was incomplete.  
13

14                                   **STANDARD OF REVIEW**  
15

16           Under 42 U.S.C. section 405(g), this Court reviews the  
17           Commissioner's decision to determine if: (1) the Commissioner's  
18           findings are supported by substantial evidence; and (2) the  
19           Commissioner used proper legal standards. See Swanson v. Secretary,  
20           763 F.2d 1061, 1064 (9th Cir. 1985). Substantial evidence is "such  
21           relevant evidence as a reasonable mind might accept as adequate to  
22           support a conclusion." Richardson v. Perales, 402 U.S. 389, 401  
23           (1971) (citation and quotations omitted).  
24

25           This Court "may not affirm [the Administration's] decision  
26           simply by isolating a specific quantum of supporting evidence, but  
27           must also consider evidence that detracts from [the Administration's]  
28           conclusion." Ray v. Bowen, 813 F.2d 914, 915 (9th Cir. 1987)

1 (citation and quotations omitted). However, the Court cannot disturb  
2 findings supported by substantial evidence, even though there may  
3 exist other evidence supporting Plaintiff's claim. See Torske v.  
4 Richardson, 484 F.2d 59, 60 (9th Cir. 1973), cert. denied, 417 U.S.  
5 933 (1974); Harvey v. Richardson, 451 F.2d 589, 590 (9th Cir. 1971).

6  
7 The harmless error rule applies to the review of administrative  
8 decisions regarding disability. See Curry v. Sullivan, 925 F.2d 1127,  
9 1129 (9th Cir. 1991); see also Batson v. Commissioner, 359 F.3d 1190,  
10 1196 (9th Cir. 2004); Tonapetyan v. Halter, 242 F.3d 1144, 1148 (9th  
11 Cir. 2001).

#### 12 13 **DISCUSSION**

14  
15 After consideration of the record as a whole, Defendant's  
16 motion is granted and Plaintiff's motion is denied. The  
17 Administration's findings are supported by substantial evidence and  
18 are free from material legal error.

19  
20 Plaintiff has the burden of demonstrating disability under the  
21 Listings. Roberts v. Shalala, 66 F.3d 179, 182 (9th Cir. 1995), cert.  
22 denied, 517 U.S. 1122 (1996); see Sullivan v. Zebley, 493 U.S. 521,  
23 530-31 (1990) (burden is on the claimant to show that his impairment  
24 meets all of the specified medical criteria for a listing, or present  
25 medical findings equal in severity to all the criteria for the one  
26 most similar listed impairment); Johnson v. Barnhart, 390 F.3d 1067,  
27 1070 (8th Cir. 2004) ("The burden of proof is on the plaintiff to  
28 establish that his or her impairment meets or equals a listing.").

1 Plaintiff utterly has failed to carry this burden. Indeed,  
2 Plaintiff's motion fails even to suggest how the medical evidence  
3 conceivably might prove Plaintiff met or equaled any particular  
4 Listing.

5  
6 The ALJ discussed the medical evidence thoroughly (A.R. 293-98;  
7 see also A.R. 11-19 (prior administrative decision adopted by  
8 reference in present administrative decision)). Contrary to  
9 Plaintiff's argument, the ALJ's Listings discussion sufficed under  
10 these circumstances. See Gonzalez v. Sullivan, 914 F.2d 1197, 1201  
11 (9th Cir. 1990) ("It is unnecessary to require the [Administration],  
12 as a matter of law, to state why a claimant failed to satisfy every  
13 different section of the Listing of Impairments. The  
14 [Administration's] four page 'evaluation of the evidence' is an  
15 adequate statement of the 'foundations on which the ultimate factual  
16 conclusions are based'"); see also Young v. Sullivan, 911 F.2d 180,  
17 185 n.2 (9th Cir. 1990) ("This case does not involve the refusal to  
18 credit a finding made by an alternative diagnostic technique or  
19 multiple impairments. Therefore, we find that the circumstances of  
20 this case make more detailed findings regarding equivalence  
21 unnecessary"); Key v. Heckler, 754 F.2d 1545, 1549 n.2 (9th Cir. 1985)  
22 ("the ALJ examined the medical reports submitted by the various  
23 physicians and concluded that the preponderance of the evidence did  
24 not establish the existence of the findings necessary to support a  
25 showing of disability under the Listing of Impairments"); Linsky v.  
26 Astrue, 2008 WL 2128143 \*5 (N.D. Cal. May 20, 2008) (rejecting  
27 plaintiff's argument regarding sufficiency of ALJ's Listings analysis  
28 where Plaintiff failed to meet plaintiff's burden to demonstrate she

1 met each and every element described in the Listing or to offer a  
2 theory as to how her impairments equaled a Listing).

3  
4 Plaintiff's contention regarding the medical expert's testimony  
5 also fails. Plaintiff argues the ALJ failed properly to consider  
6 testimony from the medical expert purportedly opining that Plaintiff  
7 had a sedentary residual functional capacity. The medical expert did  
8 not so opine. The medical expert equivocated, saying that Plaintiff's  
9 residual functional capacity was light and "could have even been at  
10 less . . . may have been at the sedentary [level]" (A.R. 372).

11 Moreover, to the extent the medical expert may have believed  
12 Plaintiff's residual functional capacity deteriorated to a sedentary  
13 level, any such deterioration lasted only for a "short period of  
14 time," according to the medical expert. Id. Thus, Plaintiff failed  
15 to carry his burden of demonstrating that any alleged sedentary  
16 restriction lasted for twelve continuous months. See Krumpelman v.  
17 Heckler, 767 F.2d 586, 589 (9th Cir. 1985), cert. denied, 475 U.S.  
18 1025 (1986). In any event, even assuming, arguendo, the medical  
19 expert clearly opined Plaintiff's exertional capacity was at the  
20 sedentary level for twelve continuous months, the law would not  
21 require the ALJ to detail reasons for an implicit disregard of this  
22 aspect of the medical expert's testimony. See Nyman v. Heckler, 779  
23 F.2d 528, 531 (9th Cir. 1986) (ALJ need not explicitly detail reasons  
24 for rejecting the contradicted opinions of non-treating physicians);  
25 Vincent v. Heckler, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (ALJ need  
26 not discuss all evidence presented). Consequently, the ALJ did not  
27 err in the ALJ's analysis of Plaintiff's residual functional capacity.

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1 Finally, the ALJ did not err in the hypothetical questioning of  
2 the vocational expert. Hypothetical questions posed to a vocational  
3 expert need not include all conceivable limitations that a favorable  
4 interpretation of the record might suggest to exist - only those  
5 limitations the ALJ finds to exist. See, e.g., Bayliss v. Barnhart,  
6 427 F.3d 1211, 1217-18 (9th Cir. 2005); Rollins v. Massanari, 261 F.3d  
7 853, 857 (9th Cir. 2001); Magallanes v. Bowen, 881 F.2d 747, 756-57  
8 (9th Cir. 1989); Martinez v. Heckler, 807 F.2d 771, 773-74 (9th Cir.  
9 1986). Here, the hypothetical question posed to the vocational expert  
10 included all limitations the ALJ found to exist (A.R. 293, 378-79).  
11 No material error occurred.

12  
13 **CONCLUSION**

14  
15 For all of the reasons discussed herein, Plaintiff's motion for  
16 summary judgment is denied and Defendant's motion for summary judgment  
17 is granted.

18  
19 LET JUDGMENT BE ENTERED ACCORDINGLY.

20  
21 DATED: October 9, 2008.

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23 \_\_\_\_\_/S/\_\_\_\_\_  
24 CHARLES F. EICK  
25 UNITED STATES MAGISTRATE JUDGE  
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