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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

GERALDINE O. SERNA,	)	No. CV 08-01673-VBK
	)	
Plaintiff,	)	MEMORANDUM OPINION
	)	AND ORDER
v.	)	
	)	(Social Security Case)
MICHAEL J. ASTRUE,	)	
Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

Plaintiff raises the following issue:

1. Whether the Administrative Law Judge ("ALJ") properly

1 considered the mental residual functional capacity ("RFC")  
2 for the demands of work activity.

3  
4 This Memorandum Opinion will constitute the Court's findings of  
5 fact and conclusions of law. After reviewing the matter, the Court  
6 concludes that the decision of the Commissioner must be affirmed.

7  
8 **I**

9 **THE ALJ PROPERLY CONSIDERED THE EVALUATION OF PLAINTIFF'S**  
10 **MENTAL IMPAIRMENT IN THE DISABILITY ANALYSIS**

11 In his decision (AR 13-17), the ALJ found that Plaintiff has a  
12 severe depressive disorder. (AR 16, Finding 2.) Utilizing techniques  
13 set forth in 20 C.F.R. §416.920, the ALJ determined that Plaintiff has  
14 the following limitations: mild restriction of activities of daily  
15 living; moderate difficulties in maintaining social functioning;  
16 moderate deficiencies in concentration, persistence or pace resulting  
17 in failure to complete tasks in a timely manner; and no episodes of  
18 deterioration or decompensation. The ALJ determined that Plaintiff is  
19 restricted to simple, 1-2 step repetitive tasks with limited public  
20 contact. (AR 15.)

21 In making the foregoing determinations, the ALJ considered the  
22 psychiatric consultative examination ("CE") of Dr. Ho, performed on  
23 May 18, 2005 (AR 193-195), in which Dr. Ho rendered a prognosis that  
24 Plaintiff "is able to make simple social, occupational and personal  
25 adjustments." (AR 194.) Further, the ALJ relied upon the Psychiatric  
26 Review Technique Form ("PRTF") of the State Agency psychiatrist dated  
27 June 17, 2005 (AR 276-292), which assessed functional limitations and  
28 also made a mental RFC assessment. (AR 286-287, 290-292.) It was

1 opined therein that Plaintiff is capable of simple repetitive tasks of  
2 one to two steps, with limited public contact. (AR 292.)

3  
4 **A. Applicable Law.**

5 In evaluating psychiatric impairments, 20 C.F.R. §404.1520a(e)(1)  
6 and §416.920a(e)(1) require that consideration be given, among other  
7 things, to activities of daily living ("ADL"); social functioning;  
8 concentration, persistence or pace; and episodes of decompensation.

9 20 C.F.R. §§404.1520a(c)(1) and 416.920a(c)(1) require that  
10 consideration be given to "all relevant and available clinical signs  
11 and laboratory findings, the effects of your symptoms, and how your  
12 functioning may be affected by factors including, but not limited to  
13 chronic mental disorders, structured settings, medication and other  
14 treatment."

15 20 C.F.R. §§404.1545(c) and 416.945(c) require that consideration  
16 be given to "residual functional capacity for work activity on a  
17 regular and continuing basis" and "A limited ability to carry out  
18 certain mental activities, such as limitations in understanding,  
19 remembering, and carrying out instructions, and in responding  
20 appropriately to supervision, co-workers, and work pressures in a work  
21 setting, [which] may reduce your ability to ... work."

22 The types of relevant evidence to be assessed in making these  
23 considerations are set forth in Social Security Ruling ("SSR") 85-16,  
24 and include such factors as history, findings, and observations from  
25 medical sources, reports of the individual's activities of daily  
26 living and work activity, as well as testimony of third parties about  
27 the individual's performance and behavior.

28 Under 20 C.F.R. §404.1520a(c)(2) and §416.920a(c)(2),

1 consideration must be given to the extent to which a mental impairment  
2 interferes with an "ability to function independently, appropriately,  
3 effectively, and on a sustained basis ..."

4 The degree of functional limitations in four broad areas (ADLs;  
5 social functioning; concentration, persistence or pace; and episodes  
6 of decompensation) are evaluated; that is, as to the first three  
7 functional areas, the following five-point scale is utilized: none,  
8 mild, moderate, marked, and extreme. With regard to the fourth area,  
9 a four-point scale is utilized: none, one or two, three, four or more.  
10 (20 C.F.R. §§416.920a(3),(4) and 404.1520a(c)(3),(4).

11 Following the September 2000 amendments to the regulations which  
12 modified 20 C.F.R. §404.1520a(e)(2) and §416.920a(e)(2), the ALJ is no  
13 longer required to complete and attach a PRTF. Instead, these  
14 regulations require that in the decision, the ALJ,

15 "[M]ust incorporate the pertinent findings and conclusions  
16 based on the [PRTF] technique. The decision must show the  
17 significant history, including examination and laboratory  
18 findings, and the functional limitations that were  
19 considered in reaching a conclusion about the severity of  
20 the mental impairment(s). The decision must include a  
21 specific finding as to the degree of limitation in each of  
22 the functional areas described in paragraph (c) of this  
23 section." [that is, ADLs; social functioning; concentration,  
24 persistence or pace; and episodes of decompensation.]

25  
26 Further guidance is provided in SSR 85-16, which, although it  
27 does not specifically mention concentration, persistence or pace, does  
28 note, "Ability to sustain activities, interests, and relate to others

1 over a period of time. The frequency, appropriateness, and  
2 independence of the activities must also be considered" as well as  
3 "ability to function in a work-like situation."

4 When there is finding of "moderate" difficulties in the area of  
5 maintaining concentration, persistence or pace, this factor must be  
6 included in any hypothetical question posed at a hearing to a  
7 vocational expert ("VE"). Thus, one court has held that referring  
8 merely to "simple jobs" or "unskilled sedentary work" in a  
9 hypothetical question is insufficient to describe and to accommodate  
10 difficulties in this functional area. See Newton v. Chater, 92 F.3d  
11 688 (8<sup>th</sup> Cir. 1996).

12 The regulations do not provide a standard definition of  
13 "moderate." (See 20 C.F.R. §416.902a(c)(4).) They do note, however,  
14 that a finding of "none" or "mild" in the first three areas "will  
15 generally [mean] that your impairment(s) is not severe, ..." See 20  
16 C.F.R. §920a(d)(1).

17 The Commissioner has issued a Policy Operations and Manual of  
18 Systems ("POMS"), which is an internal employee guidance manual.  
19 While not having the force of law, this manual can be persuasive  
20 authority. See Warre v. Commissioner, Social Sec. Admin., 439 F.3d  
21 1001, 1005 (9<sup>th</sup> Cir. 2006). POMS provides guidance for the completion  
22 of the Functional Capacity Assessment form (Form SSA-4734-F4-Sup) and  
23 instructs that a reviewing source should check "[M]oderately limited'  
24 when the evidence supports the conclusion that the individual's  
25 capacity to perform the activity is impaired." The degree and extent  
26 of the capacity or limitation should be set forth in a narrative  
27 format in the form.

28 HALLEX is the Hearings Appeals and Litigation Law Manual, which

1 is also an internal agency guide. HALLEX requires that when an ALJ  
2 requests a consultative examination, the ALJ should provide the  
3 corresponding state agency with a "medical source statement form."  
4 (See HALLEX I-2-5-20.) Form HA-1152, the Medical Assessment of  
5 Ability to do Work-Related Activities (Mental), provides definitions  
6 for the ratings of none, slight, moderate, marked, and extreme. Thus,  
7 a moderate rating is defined as "there is moderate limitation in this  
8 area but the individual is still able to function satisfactorily."

9 In LaCroix v. Barnhart, 465 F.3d 881, 888 (8<sup>th</sup> Cir. 2006), the  
10 Eighth Circuit upheld an ALJ's finding that a claimant found to have  
11 a moderate limitation in her ability to respond appropriately to work  
12 pressures in a usual work setting would still be able to  
13 satisfactorily function in this area. (Id. at 888.) The Appellate  
14 Court noted that the evaluation form (HA-11) defined moderate as  
15 indicating that the individual could still function satisfactorily.  
16 (Id.)

17  
18 **B. Analysis.**

19 Plaintiff does not quibble with the opinions of the State Agency  
20 physician describing her moderate limitations. (See JS at 8, lines 6-  
21 8.) Plaintiff further agrees that these opinions "are wholly  
22 consistent with the opinions of Dr. Ho and the treatment records."  
23 (Id.) Plaintiff's argument may be summarized in the following portion  
24 of the JS:

25 "However, for a person closely approaching advanced age  
26 with a limited education, the erosive nature of moderate  
27 impairments in 10 areas of important aspects of the mental  
28 residual functional capacity do far more than narrow the

1 occupational base, they eradicate it." (JS at 7.)

2  
3 At the hearing, the ALJ posed hypothetical questions concerning  
4 Plaintiff's mental impairment to the vocational expert ("VE").  
5 Indeed, as framed, the ALJ posited an individual who was moderately  
6 limited "in regards to virtually all of the mental functions of work  
7 ..." (AR 450.) Clearly, this exceeds the found limitations;  
8 therefore, the VE's resulting analysis of available work can only  
9 inure to Plaintiff's benefit. The ALJ refined the hypothetical to  
10 limit Plaintiff to "very simple repetitive tasks such as one and two  
11 steps instructions and with limited public contact, ..." (AR 450.)  
12 These limitations were exactly as found by Dr. Ho and by the State  
13 Agency physician, conclusions with which Plaintiff does not disagree.

14 Based on the foregoing, the Court finds that the ALJ's decision,  
15 with regard to assessment of Plaintiff's mental impairments and the  
16 effect of such impairments on her ability to work, is consistent with  
17 the evidence in the record, complies with applicable regulations and  
18 law, and the decision is therefore supported by substantial evidence  
19 and must be affirmed.

20 The decision of the ALJ will be affirmed. The Complaint will be  
21 dismissed with prejudice.

22 **IT IS SO ORDERED.**

23  
24 DATED: December 9, 2008

\_\_\_\_\_  
/s/  
VICTOR B. KENTON  
UNITED STATES MAGISTRATE JUDGE