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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARGARITA GUTIERREZ,)	Case No. CV 10-9690-PJW
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
COMMISSIONER OF THE)	
SOCIAL SECURITY ADMINISTRATION,)	
)	
Defendant.)	

I. INTRODUCTION

Before the Court is Plaintiff's appeal of a decision by Defendant Social Security Administration ("the Agency"), denying her applications for Supplemental Security Income ("SSI") and Disability Insurance Benefits ("DIB"). Plaintiff claims that the Administrative Law Judge ("ALJ") erred when he ignored the opinion of the reviewing doctor and when he relied on the vocational expert's testimony that Plaintiff could work despite her limitations. (Joint Stip. at 5-6.) For the reasons explained below, the ALJ's decision is reversed and the case is remanded for further proceedings.

1 II. SUMMARY OF PROCEEDINGS

2 In September 2008, Plaintiff applied for SSI and DIB, alleging,
3 ultimately, that she was disabled due to diabetes, high blood
4 pressure, back problems, depression, and pain. (Administrative Record
5 ("AR") 89-106, 114, 148.) The Agency denied the applications
6 initially and on reconsideration. (AR 51-59.) Plaintiff then
7 requested and was granted a hearing before an ALJ. Plaintiff, who was
8 not represented by counsel, testified at the hearing on January 22,
9 2010. (AR 18-46.) The ALJ subsequently issued a decision denying
10 benefits. (AR 8-17.) Plaintiff appealed to the Appeals Council,
11 which denied review. (AR 5-7.) She then commenced this action.

12 III. DISCUSSION

13 A. The ALJ's Reliance on the Vocational Expert's Testimony

14 The ALJ determined that Plaintiff was capable of performing light
15 work but was moderately limited in her ability to maintain
16 concentration and attention and could only use her left hand
17 occasionally. (AR 14.) The ALJ accepted the vocational expert's
18 testimony that, despite these limitations, Plaintiff could still
19 perform her former jobs of sales clerk, accounting clerk, and credit
20 card control clerk. (AR 16.) Plaintiff claims that the ALJ erred in
21 doing so. She points out that the vocational expert never testified
22 about the sales clerk position and that the ALJ never asked the
23 vocational expert if her testimony was consistent with the Dictionary
24 of Occupational Titles ("DOT"), as required under the regulations.
25 (Joint Stip. at 5-6.)

26 The Agency concedes that the vocational expert never testified
27 about the sales clerk position, but argues that the error was harmless
28 because she did testify about the other two positions and that

1 testimony is enough to support the ALJ's finding that Plaintiff could
2 work. (Joint Stip. at 7, n.3.) The harmless error analysis turns on
3 the resolution of Plaintiff's other argument here, i.e., that the ALJ
4 failed to ask the vocational expert about any apparent or actual
5 conflicts between her testimony and the DOT. The Agency concedes that
6 the ALJ erred here, too, when he failed to ask the vocational expert
7 if her testimony was consistent with the DOT, but argues that any
8 error was harmless because there was no inconsistency. (Joint Stip.
9 at 7-8.) For the following reasons, the Court sides with the Agency.

10 The DOT is the presumptive source on the characteristics of jobs
11 in the national economy. See *Pinto v. Massanari*, 249 F.3d 840, 845-46
12 (9th Cir. 2001). Nevertheless, it is not the sole source of this
13 information and the Agency may rely on the testimony of a vocational
14 expert for information on jobs. *Johnson v. Shalala*, 60 F.3d 1428,
15 1435 (9th Cir. 1995). But, before relying on a vocational expert's
16 testimony, an ALJ must inquire whether the testimony conflicts with
17 the DOT. *Massachi v. Astrue*, 486 F.3d 1149, 1152 (9th Cir. 2007);
18 Social Security Ruling 00-4p. Failure to do so requires reversal
19 unless the error was harmless, i.e., there was no actual or apparent
20 conflict or the vocational expert provided sufficient support for her
21 conclusion so as to explain away any conflicts. *Coleman v. Astrue*,
22 423 Fed. App'x 754, 756 (9th Cir. 2011); *Massachi*, 486 F.3d at 1154
23 n.19.

24 Though it is not clear from her brief, Plaintiff seems to argue
25 that there is a conflict or an apparent conflict between the
26 vocational expert's testimony that Plaintiff could work as an
27 accounting clerk and the DOT description of this job. (Joint Stip. at
28 6.) Presumably, this conflict is between the "specific vocational

1 preparation," or SVP, of 5, which requires six months to one year of
2 training, and Plaintiff's limitations in her ability to maintain
3 concentration and attention. (Joint Stip. at 6.) Though not clear
4 from the single sentence she devotes to this issue, she is,
5 apparently, arguing that her mental limitations preclude her from
6 learning how to perform this job.

7 Plaintiff, however, has not explained how it is that any
8 limitations she suffers as a result of her mental impairment--which,
9 arguably, would interfere with her efforts to master the duties of a
10 job--would preclude her from performing a job that she already knows
11 how to perform and, in fact, already has performed. Nothing in this
12 record suggests that Plaintiff's impairment has caused her to lose the
13 fountain of knowledge she had before she suffered her mental
14 impairment. As such, this argument is rejected.

15 Plaintiff also argues that the vocational expert's testimony is
16 inconsistent with the descriptions of the jobs of credit card control
17 clerk and accounting clerk because they require frequent or constant
18 reaching, handling, and fingering and Plaintiff can only occasionally
19 use her left hand. (Joint Stip. at 6-7.) The Court does not find
20 that there is any actual or potential conflict between the DOT and the
21 vocational expert's testimony that Plaintiff could perform these jobs
22 despite this limitation. The DOT job descriptions for these two jobs
23 do not include a requirement for use of both hands. See DOT Nos.
24 216.482-010 (accounting clerk) and 249.367-026 (credit card control
25 clerk). And, generally speaking, the requirement that an employee
26 frequently use his hands to perform a job does not mean that he has to
27 be able to use both hands. See, e.g., *Carey v. Apfel*, 230 F.3d 131,
28 146 (5th Cir. 2000) (holding vocational expert's testimony that

1 claimant, whose left arm had been amputated, could perform work as
2 cashier or ticket seller was *not* inconsistent with DOT requirement of
3 occasional or frequent handling and fingering where DOT did not
4 specifically require use of both hands).

5 Plaintiff argues that the ALJ and, in turn, the Court, should
6 rely on the *Revised Handbook for Analyzing Jobs*, which Plaintiff
7 describes as a companion publication to the DOT. (Joint Stip. at 5-
8 6.) In Plaintiff's view, this handbook supports her position that two
9 hands are needed for the clerk positions identified by the ALJ. The
10 Court does not find the handbook binding on the Court or the ALJ, nor
11 did Plaintiff cite any authority to suggest that it was. Further,
12 even if the ALJ had consulted it, the result of this case would not
13 have been different because, as Plaintiff points out in her brief, the
14 handbook defines "handling" as "working with hand or hands." (Joint
15 Stip. at 6, citing *Revised Handbook for Analyzing Jobs*, page 12-6.)

16 Thus, because there was no actual or apparent conflict between
17 the DOT and the vocational expert's testimony, the ALJ's error in not
18 asking the vocational expert about any conflict was harmless. For
19 this reason, Plaintiff's first claim is denied.

20 B. The ALJ's Treatment of Plaintiff's Mental Impairment

21 Plaintiff complains that the ALJ failed to properly consider the
22 opinion of reviewing doctor P.M. Balson, who concluded, it seems, that
23 Plaintiff was only capable of understanding and carrying out simple,
24 one- and two-step instructions. (Joint Stip. at 12-14.) The Agency
25 disagrees. It argues that the limitation to simple, one- and two-step
26 instructions was proposed by a disability evaluation analyst, not Dr.
27 Balson, and, therefore, was not relevant. (Joint Stip. at 12-14.)
28 For the following reasons, the Court finds that the ALJ erred here.

1 Plaintiff was examined and tested by psychiatrist David Bedrin,
2 who ultimately concluded that she suffered from depression, which
3 limited her to performing simple tasks. (AR 244-50.) In Dr. Bedrin's
4 view, Plaintiff "may have some impairment in her ability to perform
5 complex tasks secondary to concentration problems." (AR 249.)

6 Dr. Bedrin's opinion was reviewed by Dr. Balson, an Agency
7 reviewing physician. (AR 252-65.) Dr. Balson set forth his or her
8 opinion in two mostly check-the-box forms. (AR 252-65.) On the first
9 page of the first form, entitled, "Psychiatric Review Technique," Dr.
10 Balson's name is typed twice, once on a signature line and directly
11 below it on a line requesting the signator to print his or her name.
12 (AR 252.) Several boxes are checked on the first page, indicating the
13 doctor's opinion regarding Plaintiff's condition. (AR 252.) Pages
14 two through eight do not contain any check marks or writings. (AR 253-
15 59.) Pages nine and ten of the form contain check marks, indicating
16 the doctor's opinion regarding Plaintiff's limitations. (AR 260-61.)
17 The eleventh and final page of the first form contains typed notes
18 summarizing Plaintiff's complaints and her claim history with regard
19 to her mental impairment. (AR 262.) This page also includes the
20 following entry: "***COMPLETED BY GLENN RAMOS, DEA III." (AR 262.)

21 The second form, a "Mental Residual Functional Capacity
22 Assessment," is three pages long. (AR 263-65.) The first two pages
23 are statements with boxes that have been checked, indicating the
24 author's opinion regarding Plaintiff's mental impairment. (AR 263-
25 64.) The third page contains a "Functional Capacity Assessment"
26 section, under which various notes are typed, including, "Able to
27 understand, carry out, and remember simple one and two-step
28 instructions" and "Able to make simple work-related judgments and

1 decisions." (AR 265.) Typed underneath these entries are the words
2 "***COMPLETED BY GLENN RAMOS/DEA III." (AR 265.) Underneath that
3 entry is the statement, "These findings complete the medical portion
4 of the disability determination." (AR 265.) Underneath that
5 statement is Dr. Balson's name typed in on the signature line.

6 Dr. Balson's name on the signature line below the entry by Mr.
7 Ramos suggests to the Court that Dr. Balson endorsed the finding that
8 Plaintiff was limited to simple, one- and two-step instructions.
9 Assuming Plaintiff was so limited, she would not be able to perform
10 the jobs of accounting clerk or credit card control clerk, as they
11 involve reasoning level three and four, respectively, which is beyond
12 simple, one- and two-step instructions. In fact, a limitation to
13 simple, one- and two-step instructions is more akin to level one
14 reasoning, which involves being able to:

15 Apply commonsense understanding to carry out simple one- or
16 two-step instructions. Deal with standardized situations
17 with occasional or no variables in or from these situations
18 encountered on the job.

19 See DOT, Appendix C, Components of the Definition Trailer, 1991 WL
20 688702 (4th ed. rev. 1991); see also *Garcia v. Astrue*, 2011 WL
21 2173806, at *2 (C.D. Cal. June 1, 2011) (concluding restriction to
22 work involving one- and two-part instructions precluded work involving
23 Level 2 reasoning).

24 The Agency disagrees. It argues, it seems, that the Court should
25 simply brush aside the limitation to simple, one- and two-step
26 instructions as the musings of an untrained Agency disability
27 evaluation analyst, whatever that is. (Joint Stip. at 15-16.) It
28 argues that no doctor found that Plaintiff was limited to simple, one-

1 and two-step tasks. This argument is rejected. Dr. Balson's
2 signature under Mr. Ramos's entries signify that Dr. Balson was
3 accepting and endorsing these findings. The Agency cannot sever that
4 portion of the opinion from the rest of the opinion or discount it
5 under the assumption that Dr. Balson must have ignored it or not seen
6 it. The Court presumes a certain regularity with the medical records
7 presented in these cases and, thus, when a doctor signs off on a
8 medical form that may have been prepared at least in part by another
9 the Court presumes that the doctor read and understood the form and
10 that he or she meant to endorse all of it when he or she signed off on
11 it.

12 With that understanding, the Court concludes that the record
13 contains an opinion from a reviewing doctor that Plaintiff is limited
14 to simple, one- and two-step instructions, a limitation that is
15 incompatible with a finding that she can perform work at reasoning
16 level three and four. The ALJ never addressed this conflict and
17 remand is, therefore, required. See 20 C.F.R. § 416.927(f)(2)(i)-
18 (ii); and *Sawyer v. Astrue*, 303 Fed. App'x 453, 455 (9th Cir. 2008).

19 Plaintiff requests that Dr. Balson's opinion be credited as true
20 and that the Court remand the case to the Agency for an award of
21 benefits. (Joint Stip. at 14, 19.) Though the Court recognizes it
22 has the authority to do this, it declines to do so. It is not clear
23 on this record that Plaintiff is entitled to benefits. Further
24 proceedings are necessary to resolve this issue. See *Vasquez v.*
25 *Astrue*, 547 F.3d 1101, 1106-07 (9th Cir. 2008) (noting that "credit-
26 as-true" rule should not apply if there are outstanding issues to be
27 resolved before a proper disability determination can be made),
28

1 amended in other respects on denial of reh'g en banc, 572 F.3d 586
2 (9th Cir. 2009). For this reason, this request is denied.

3 IV. CONCLUSION

4 For the foregoing reasons, the Agency's decision is reversed and
5 the case is remanded for further proceedings consistent with this
6 Memorandum Opinion and Order.

7
8 IT IS SO ORDERED.

9 DATED: January 24, 2012

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PATRICK J. WALSH
12 UNITED STATES MAGISTRATE JUDGE
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