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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GAIL TAKAHASHI,  
  
Plaintiff,  
  
v.  
  
CAROLYN W. COLVIN, Acting  
Commissioner of the Social  
Security Administration  
  
Defendant.

Case No. CV 13-4905 SS

MEMORANDUM DECISION AND ORDER

I.  
INTRODUCTION

Gail Takahashi ("Plaintiff") seeks review of the final decision of the Commissioner of the Social Security Administration (the "Commissioner" or the "Agency") denying her application for a period of disability and Disability Insurance Benefits. The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate

\\

1 Judge. For the reasons stated below, the decision of the  
2 Commissioner is REVERSED and REMANDED for further proceedings.

3  
4 **II.**

5 **PROCEDURAL HISTORY**

6  
7 On July 9, 2010, Plaintiff filed an application for  
8 Insurance Benefits, claiming that she became disabled on May 14,  
9 2007. (Administrative Record ("AR") 145-47). The Agency denied  
10 Plaintiff's application on October 15, 2010, based on a  
11 determination that Plaintiff's condition was "not severe enough  
12 to keep [her] from working" and that she could still perform her  
13 former job as a computer operator. (AR 92). On December 2,  
14 2010, Plaintiff filed a request for reconsideration with the  
15 agency, on the basis that she was "totally disabled due to [her]  
16 physical and emotional condition." (AR 95). The Agency denied  
17 reconsideration on July 22, 2011. (AR 96-100).

18  
19 Plaintiff requested a hearing, which was held before  
20 Administrative Law Judge ("ALJ") Sally Reason on April 30, 2012  
21 ("ALJ Hearing"). (AR 48-72). Elizabeth Brown-Ramos, a  
22 Vocational Expert ("VE") also testified. (AR 67-71, 128). On  
23 May 15, 2012, the ALJ issued an unfavorable decision. (AR 19).  
24 Plaintiff sought review before the Appeals Council (AR 18), which  
25 the Council denied on June 7, 2013. (AR 11-13). The Council's  
26 determination made the ALJ's decision final. (AR 11). Plaintiff  
27 filed the instant action on July 9, 2013.

28 \\

1 II.

2 THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

3  
4 To qualify for disability benefits, a claimant must  
5 demonstrate a medically determinable physical or mental  
6 impairment that prevents her from engaging in substantial gainful  
7 activity and that is expected to result in death or to last for a  
8 continuous period of at least twelve months. Reddick v. Chater,  
9 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. §  
10 423(d)(1)(A)). The impairment must render the claimant incapable  
11 of performing the work she previously performed and incapable of  
12 performing any other substantial gainful employment that exists  
13 in the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098  
14 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

15  
16 To decide if a claimant is entitled to benefits, an ALJ  
17 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920.  
18 The steps are:

- 19
- 20 (1) Is the claimant presently engaged in substantial  
21 gainful activity? If so, the claimant is found  
22 not disabled. If not, proceed to step two.
  - 23 (2) Is the claimant's impairment severe? If not, the  
24 claimant is found not disabled. If so, proceed  
25 to step three.
  - 26 (3) Does the claimant's impairment meet or equal one  
27 of the specific impairments described in 20  
28 C.F.R. Part 404, Subpart P, Appendix 1? If so,

1 the claimant is found disabled. If not, proceed  
2 to step four.

3 (4) Is the claimant capable of performing his past  
4 work? If so, the claimant is found not disabled.  
5 If not, proceed to step five.

6 (5) Is the claimant able to do any other work? If  
7 not, the claimant is found disabled. If so, the  
8 claimant is found not disabled.

9  
10 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,  
11 262 F.3d 949, 953-54 (9th Cir. 2001) (citations omitted); 20  
12 C.F.R. §§ 404.1520(b)-(g)(1) & 416.920(b)-(g)(1).

13  
14 The claimant has the burden of proof at steps one through  
15 four, and the Commissioner has the burden of proof at step five.  
16 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an  
17 affirmative duty to assist the claimant in developing the record  
18 at every step of the inquiry. Id. at 954. If, at step four, the  
19 claimant meets her burden of establishing an inability to perform  
20 past work, the Commissioner must show that the claimant can  
21 perform some other work that exists in "significant numbers" in  
22 the national economy, taking into account the claimant's residual  
23 functional capacity ("RFC"), age, education, and work experience.  
24 Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721; 20  
25 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may do  
26 so by the testimony of a vocational expert or by reference to the  
27 Medical-Vocational Guidelines appearing in 20 C.F.R. Part 404,  
28 Subpart P, Appendix 2 (commonly known as "the Grids"). Osenbrock

1 v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant  
2 has both exertional (strength-related) and non-exertional  
3 limitations, the Grids are inapplicable and the ALJ must take the  
4 testimony of a vocational expert. Moore v. Apfel, 216 F.3d 864,  
5 869 (9th Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335,  
6 1340 (9th Cir. 1988)).

7  
8 **III.**

9 **THE ALJ'S DECISION**

10  
11 The ALJ employed the five-step sequential evaluation  
12 process. At step one, the ALJ found that Plaintiff had not  
13 engaged in substantial gainful employment since her alleged onset  
14 date of May 14, 2007. (AR 24). At step two, the ALJ found that  
15 Plaintiff had severe physical impairments, but opined that the  
16 evidence was insufficient to establish that Plaintiff had "any  
17 significantly limiting mental impairment(s)." <sup>1</sup> (AR 24). The ALJ  
18 made note of records from Plaintiff's treating physician showing  
19 "subjective complaints of depression," and of a "narrative  
20 report" from Plaintiff's treating psychiatrist, Dr. Susan  
21 Fukushima, detailing Plaintiff's treatment for depression and  
22 social anxiety over twenty-five years. (AR 24). However, the  
23 ALJ concluded that neither report showed "any limitation in the  
24 ability to perform basic mental work activities," and that  
25 Plaintiff had worked for years despite her history of depression

26  
27 <sup>1</sup> The ALJ found severe physical impairments related to  
28 Plaintiff's history of carpal tunnel syndrome, cervical  
degenerative disc disease, and right shoulder impingement. (AR  
24).

1 and anxiety. (AR 24-25). The ALJ also noted that Plaintiff did  
2 not mention mental health problems when she applied for  
3 disability benefits. (AR 25).

4  
5 At step three, the ALJ determined that Plaintiff's  
6 impairments, either singly or in combination, did not meet or  
7 equal the requirements of any impairment listed at 20 C.F.R. Part  
8 404, Subpart P, Appendix 1. (AR 27). At step four, the ALJ  
9 found that Plaintiff retained an RFC to perform light work,  
10 though with certain physical limitations. (AR 27). The ALJ also  
11 determined that Plaintiff could not perform any past relevant  
12 work. (AR 33). Finally, at step five, the ALJ found that based  
13 on Plaintiff's age, educational background, work experience, and  
14 RFC, she could perform a number of jobs available in significant  
15 numbers in the national economy. (AR 34). These included work  
16 as a receptionist or data entry secretary. (AR 34).  
17 Accordingly, the ALJ determined that Plaintiff was not disabled.  
18 (AR 34).

19  
20 **IV.**

21 **STANDARD OF REVIEW**

22  
23 Under 42 U.S.C. § 405(g), a district court may review the  
24 Commissioner's decision to deny benefits. The court may set the  
25 decision aside when the ALJ's findings are based on legal error  
26 or are not supported by substantial evidence in the record as a  
27 whole. Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001)  
28 (citing Tackett, 180 F.3d at 1097); Smolen v. Chater, 80 F.3d

1 1273, 1279 (9th Cir. 1996) (citing Fair v. Bowen, 885 F.2d 597,  
2 601 (9th Cir. 1989)).

3  
4 "Substantial evidence is more than a scintilla, but less  
5 than a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson  
6 v. Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant  
7 evidence which a reasonable person might accept as adequate to  
8 support a conclusion." Id. (citing Jamerson, 112 F.3d at 1066;  
9 Smolen, 80 F.3d at 1279). To determine whether substantial  
10 evidence supports a finding, the court must "'consider the record  
11 as a whole, weighing both evidence that supports and evidence  
12 that detracts from the [Commissioner's] conclusion.'" Aukland,  
13 257 F.3d at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th  
14 Cir. 1993)). If the evidence can reasonably support either  
15 affirming or reversing that conclusion, the court may not  
16 substitute its judgment for that of the Commissioner. Reddick,  
17 157 F.3d at 720-21 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457  
18 (9th Cir. 1995)).

19  
20 **V.**

21 **DISCUSSION**

22  
23 Plaintiff contends that the ALJ erred when she rejected the  
24 opinions of Plaintiff's treating psychiatrist and physician,  
25 finding no significant mental impairment, and when she rejected  
26 Plaintiff's testimony without providing legally adequate reasons.  
27 (Memorandum in Support of Plaintiff's Complaint ("Complaint") at  
28 2, 8, 11). Plaintiff also contends that the VE's testimony

1 "cannot support a denial of benefits" and that the Court should  
2 award benefits rather than remanding this case for further  
3 proceedings. (Complaint at 16, 18). The Court agrees with  
4 Plaintiff's contention that the ALJ failed to accord proper  
5 weight to the opinions of Plaintiff's treating psychiatrist and  
6 to provide legally adequate reasons, at step two of her analysis,  
7 for finding that Plaintiff did not suffer a severe mental  
8 impairment. Therefore, the ALJ's decision should be reversed and  
9 this action remanded for further proceedings.

10  
11 By its own terms, the evaluation at step two is a de minimis  
12 test intended to weed out the most minor of impairments. See  
13 Bowen v. Yuckert, 482 U.S. 137 (1987)(O'Connor, J., concurring);  
14 Webb v. Barnhart, 433 F.3d 683, 687 (9th Cir. 2005) (step two is  
15 "de minimis threshold"); Smolen, 80 F.3d at 1290 (internal  
16 quotations and citations omitted). Where there is evidence of a  
17 mental impairment that prevents a claimant from working, however,  
18 the Agency supplements the five-step sequential evaluation  
19 process with additional inquiries. Maier v. Comm'r, 154 F.3d  
20 913, 914-15 (9th Cir. 1998)(citing 20 C.F.R. § 416.920a)(per  
21 curiam).

22  
23 First, the ALJ must determine the presence or absence of  
24 certain medical findings relevant to the claimant's ability to  
25 work. 20 C.F.R. § 416.920a(b)(1). Second, when the claimant  
26 establishes these medical findings, the ALJ must rate the degree  
27 of functional loss resulting from the impairment by considering  
28 four areas of function: (a) activities of daily living; (b)



1 social functioning; (c) concentration, persistence, or pace; and  
2 (d) episodes of decompensation. 20 C.F.R. § 416.920a(c)(2)-(4).  
3 Third, after rating the degree of loss, the ALJ must determine  
4 whether the claimant has a severe mental impairment. 20 C.F.R. §  
5 416.920a(d). Fourth, when a mental impairment is found to be  
6 severe, the ALJ must determine if it meets or equals a listing in  
7 20 C.F.R. Part 404, Subpart P, Appendix 1. 20 C.F.R. §  
8 416.920a(d)(2). Finally, if a listing is not met, the ALJ must  
9 assess the claimant's RFC, and the ALJ's decision "must  
10 incorporate the pertinent findings and conclusions" regarding the  
11 claimant's mental impairment, including "a specific finding as to  
12 the degree of limitation in each of the functional areas  
13 described in [§ 416.920a(c)(3)]." 20 C.F.R. § 416.920a(d)(3),  
14 (e)(2).

15  
16 The regulations describe an impairment as follows:

17  
18 A physical or mental impairment must result from  
19 anatomical, physiological, or psychological  
20 abnormalities which can be shown by medically  
21 acceptable clinical and laboratory diagnostic  
22 techniques. A physical or mental impairment must be  
23 established by medical evidence consisting of signs,  
24 symptoms, and laboratory findings, not only by [a  
25 plaintiff's] statements of symptoms.

26  
27 20 C.F.R. § 416.908.  
28

1 Here, the ALJ rejected Dr. Fukushima's diagnosis of  
2 depression and anxiety on the basis that the psychiatrist  
3 uncritically accepted Plaintiff's subjective complaints,  
4 submitted her findings on an "attorney-generated form" completed  
5 a week before the hearing, and formed an opinion "at odds with  
6 her own treatment records." (AR 25-26). The ALJ gave "little  
7 probative weight" to Dr. Fukushima's report and instead credited  
8 assessments by an Agency consulting physician and a state agency  
9 non-examining psychiatric consultant, both of whom found no  
10 significant limiting mental impairment. (AR 25-26)).

11  
12 However, the ALJ's decision omits discussion of Dr.  
13 Fukushima's treatment notes, whose forty-seven pages document  
14 nearly five years of psychiatric examinations, from May 24, 2007  
15 through February 23, 2012.<sup>2</sup> (AR 681-727). The ALJ cited Dr.  
16 Fukushima's five-page "narrative report" dated March 7, 2011, and  
17 her notes on the "attorney-generated form," as the only evidence  
18 submitted by Dr. Fukushima. (AR 24, 26; see also AR 578-82  
19 ("Narrative Report"); AR 728-33 ("Mental Impairment  
20 Questionnaire")). The ALJ failed to fully consider "the presence  
21 or absence of certain medical findings relevant to the claimant's  
22 ability to work," as Agency regulations require, when she  
23 reviewed evidence of Plaintiff's mental health. 20 C.F.R. §  
24 416.920a(b)(1). As a result, the ALJ has not yet completed the

25  
26 <sup>2</sup> The ALJ failed to discuss Dr. Fukushima's treatment notes  
27 even though the Agency received them the same day it received the  
28 "attorney-generated form," which the ALJ did discuss in detail.  
(See Complaint, Ex. 1 (Agency's record of receiving treatment  
notes and attorney-generated "Mental Impairment Questionnaire")).

1 second through fifth steps of the Agency's supplementary process  
2 for assessing a mental impairment.

3  
4 In the Mental Impairment Questionnaire, Dr. Fukushima  
5 indicated that she had treated Plaintiff every two to three weeks  
6 since 1986. (AR 728). She noted that Plaintiff's signs and  
7 symptoms included social withdrawal or isolation, decreased  
8 energy, "reactive depression," sleep problems, and panic attacks  
9 that recurred "several times a week." (AR 728-29). She rated  
10 Plaintiff's ability to complete a full workday without  
11 interference of psychological symptoms as "fair." (AR 731).  
12 Similarly, in the 2011 "Narrative Report," Dr. Fukushima  
13 described Plaintiff's history of "chronic depression and social  
14 anxiety," and indicated that Plaintiff had been depressed and  
15 anxious since the onset of her physical symptoms in 2007. (AR  
16 578). She described Plaintiff's history of panic attacks and  
17 feelings of worthlessness. (AR 579). She noted that Plaintiff  
18 had "withdrawn from her family and friends" and was "overwhelmed  
19 by any kind of decision." (AR 580). She diagnosed a "major  
20 depressive disorder" of social phobia, as well as "avoidant  
21 personality traits." (AR 581). Dr. Fukushima gave Plaintiff a  
22 Global Assessment of Functioning ("GAF") test, score of fifty-  
23 five.<sup>3</sup> (Id.).

24 <sup>3</sup> A GAF score between fifty-one and sixty indicates "Moderate  
25 symptoms (e.g., flat affect and circumstantial speech, occasional  
26 panic attacks) OR moderate difficulty in social, occupational, or  
27 school functioning (e.g. few friends, conflicts with peers or co-  
28 workers). American Psychiatric Association, Diagnostic and  
Statistical Manual of Mental Disorders, Fourth Edition, Text  
Revision (DSM-IV-TR), 34 (2000). See also Chaudhry v. Astrue,  
688 F.3d 661, 664 (9th Cir. 2012) (GAF score of fifty-five

1 The treatment records support these observations and  
2 diagnoses. In a treatment note written ten days after  
3 Plaintiff's alleged onset date, for example, Dr. Fukushima  
4 diagnosed "Major Depressive Disorder, Recurrent, Moderate,  
5 chronic" and noted that Plaintiff had been taking prescription  
6 Klonopin and Celexa at least since August 15, 2006.<sup>4</sup> (AR 681).  
7 Dr. Fukushima's depression diagnosis did not vary in the nearly  
8 five years of treatment notes included in the AR. (Compare AR  
9 681 and AR 727). Plaintiff's prescriptions for depression and  
10 panic attacks also remained unchanged. (Id.). In the earliest  
11 entry, Dr. Fukushima noted that Plaintiff had not been going to  
12 work and felt tired and sleepy. (AR 681-82). Plaintiff's affect  
13 was "blunted" and her mood "moderately depressed." (Id.)  
14 Although Plaintiff's mood at times improved (see, e.g., AR 685),  
15 by February and March, 2008, she had "become more socially  
16 isolated," had panic attacks, and remained depressed. (AR 688).  
17 On May 15, 2008, Plaintiff's mood was "continuing depression,"  
18 but she told Dr. Fukushima she was hoping to "have examination  
19 soon to see whether she can return to work." (AR 691). By  
20 August 15, 2006, however, Plaintiff continued to report  
21 depression due to her physical pain, a diagnosis the psychiatrist  
22 confirmed. (AR 699).

23 \\

24  
25 indicates "moderately severe social and occupational  
functioning").

26 <sup>4</sup> Klonopin is used to control panic attacks and Celexa is an  
antidepressant. See MEDLINEPLUS, <http://www.nlm.nih.gov/medlineplus/druginfo/meds/> (locate "Browse by generic or brand name" and click drug name's first letter)(last visited Nov. 12, 2014)).



NOTICE

THIS DECISION IS NOT INTENDED FOR PUBLICATION IN LEXIS/NEXIS,  
WESTLAW OR ANY OTHER LEGAL DATABASE.

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