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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

RICHARD PAUL WAGNER,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting  
Commissioner Of Social  
Security,

Defendant.

Case No. CV 17-5698-AS

**MEMORANDUM OPINION**

**PROCEEDINGS**

On August 1, 2017, Plaintiff filed a Complaint seeking review of the denial of his application for Disability Insurance Benefits ("DIB"). (Dkt. No. 1). The parties have consented to proceed before the undersigned United States Magistrate Judge. (Dkt. Nos. 11, 12). On December 28, 2017, Defendant filed an Answer along with the Administrative Record ("AR"). (Dkt. Nos. 15, 16). On July 18, 2018, the parties filed a Joint Stipulation ("Joint Stip."), setting forth their respective positions regarding Plaintiff's claims. (Dkt. No. 23).

1 The Court has taken this matter under submission without  
2 oral argument. See C.D. Cal. L.R. 7-15.

3  
4 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

5  
6 On November 4, 2014, Plaintiff, formerly employed as a  
7 framer, a cook, and a painter, (see AR 186), filed his DIB  
8 application alleging an inability to work because of a disability  
9 since October 9, 2013. (AR 172-73). Plaintiff's application was  
10 denied initially on February 17, 2015, (AR 113-16), and upon  
11 reconsideration on May 28, 2015. (AR 119-23). On December 22,  
12 2015, an Administrative Law Judge, Lesley Troope ("ALJ"), heard  
13 testimony from Plaintiff and a vocational expert, Carmen Roman  
14 ("VE"). (AR 41-82). Plaintiff, who appeared without a  
15 representative, was advised of his right to representation, and  
16 expressly waived that right both verbally and in writing. (AR  
17 44-46, 151-53). Plaintiff also submitted a substantial amount of  
18 additional documents, which were added to the record. (AR 46-  
19 48). At the end of the hearing, the ALJ noted that she was going  
20 to further develop the evidence in Plaintiff's case and "possibly  
21 send [Plaintiff's] entire medical record to a psychologist for an  
22 opinion." (AR 79).

23  
24 The ALJ issued a decision in Plaintiff's case on March 3,  
25 2016. (AR 17-33). At the beginning of the decision, the ALJ  
26 summarized the developments since the hearing:

1 [O]n January 13,2016, I sent medical interrogatories to  
2 Dr. Ashok I. Khushalani, an impartial medical  
3 expert. . . . Dr. Khushalani's response to the medical  
4 interrogatories was received and was added into the  
5 record. On January 28, 2016, I proffered the  
6 additional evidence to [Plaintiff] and allowed ten days  
7 for comments. On January 29, 2016, [Plaintiff] came to  
8 the hearing office at which time he was given a compact  
9 disc (CD) that contained his entire electronic file  
10 including the additional records he submitted at the  
11 hearing. [Plaintiff's] proffer response was received  
12 on February 8, 2016. Given that [Plaintiff] did not  
13 request a supplemental hearing, I consider the record  
14 fully developed and closed the record.

15  
16 (AR 17). The ALJ then proceeded to apply the five-step  
17 sequential process to evaluate Plaintiff's case and deny his  
18 disability claim. (AR 19-33).

19  
20 At step one, the ALJ determined that Plaintiff has not  
21 engaged in substantial gainful activity since October 9, 2013,  
22 the alleged onset date. (AR 19). At step two, the ALJ found  
23 that Plaintiff has the following severe impairments:  
24 chondromalacia of the right knee; degenerative disc disease of  
25 the cervical and lumbar spine; obesity; history of umbilical  
26 hernia, status-post hernia surgery; major depressive disorder  
27 with psychotic features; schizophrenia; and post-traumatic stress  
28

1 disorder (PTSD).<sup>1</sup> (Id.). At step three, the ALJ found that  
2 Plaintiff's impairments do not meet or equal a listing found in  
3 20 C.F.R. Part 404, Subpart P, Appendix 1. (AR 20). Before  
4 proceeding to step four, the ALJ found that Plaintiff has the  
5 Residual Functional Capacity ("RFC")<sup>2</sup> to perform light work<sup>3</sup> with  
6 the following limitations:

7  
8 [Plaintiff] can lift and/or carry 20 pounds  
9 occasionally and 10 pounds frequently; he can stand  
10 and/or walk for six hours in an eight-hour workday with  
11 regular breaks; he can sit for six hours in an eight-  
12 hour workday with regular breaks; he can perform all  
13 postural activities occasionally; he can understand,  
14 remember and carryout simple, routine and repetitive  
15 work instructions; he should work with things rather  
16 than with people; he can make simple work-related  
17 judgements typical of unskilled work; he can perform  
18 work involving occasional and predictable work changes  
19 gradually introduced; he can maintain attention,  
20 concentration and/or pace, generally, for two hours

21 \_\_\_\_\_  
22 <sup>1</sup> The ALJ found Plaintiff's history of shingles and remote  
23 history of seizure disorder and headaches to be non-severe. (AR  
24 20).

25 <sup>2</sup> A Residual Functional Capacity is what a claimant can  
26 still do despite existing exertional and non-exertional  
27 limitations. See 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

28 <sup>3</sup> "Light work involves lifting no more than 20 pounds at a  
time with frequent lifting or carrying of objects weighing up to  
10 pounds." 20 C.F.R. § 404.1567(b).

1 increments in the performance of simple, routine and  
2 repetitive work instructions; he should have no  
3 interaction with general public due to distractibility;  
4 he is limited to occasional, brief, superficial and  
5 task oriented interactions with no more than 1-3  
6 coworkers at any one time; and he is limited to  
7 occasional, brief, superficial and task oriented  
8 interactions with supervisors.

9  
10 (AR 23). At step four, the ALJ noted that Plaintiff is unable to  
11 perform any past relevant work. (AR 30). Relying on the VE's  
12 testimony at step five, the ALJ found that Plaintiff, with his  
13 age (forty-four on the alleged disability onset date), "limited  
14 education," work experience, and RFC, can perform the following  
15 representative jobs existing in significant numbers in the  
16 national economy: laundry worker (Dictionary of Occupational  
17 Titles ("DOT") 302.685-010), ticket marker (DOT 209.587-034), and  
18 garment sorter (DOT 222.687-014). (AR 30-32). Accordingly, the  
19 ALJ concluded that Plaintiff had not been under a disability, as  
20 defined in the Social Security Act, from October 9, 2013, through  
21 the date of the decision. (AR 32).

22  
23 Plaintiff requested that the Appeals Council review the  
24 ALJ's decision on March 18, 2016. (AR 13). He appointed his  
25 uncle, Bert Wagner, as his non-attorney representative, who  
26 submitted a brief on Plaintiff's behalf. (AR 160-64). On May  
27 30, 2017, the Appeals Council denied Plaintiff's request for  
28 review. (AR 1). Plaintiff now seeks judicial review of the

1 ALJ's decision, which stands as the final decision of the  
2 Commissioner. See 42 U.S.C. § 405(g).

3  
4 **STANDARD OF REVIEW**

5  
6 This Court reviews the Administration's decision to  
7 determine if it is free of legal error and supported by  
8 substantial evidence. See Brewes v. Comm'r, 682 F.3d 1157, 1161  
9 (9th Cir. 2012). "Substantial evidence" is more than a mere  
10 scintilla, but less than a preponderance. Garrison v. Colvin,  
11 759 F.3d 995, 1009 (9th Cir. 2014). To determine whether  
12 substantial evidence supports a finding, "a court must consider  
13 the record as a whole, weighing both evidence that supports and  
14 evidence that detracts from the [Commissioner's] conclusion."  
15 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001)  
16 (internal quotation omitted). As a result, "[i]f the evidence  
17 can support either affirming or reversing the ALJ's conclusion,  
18 [a court] may not substitute [its] judgment for that of the ALJ."  
19 Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).

20  
21 **PLAINTIFF'S CONTENTIONS**

22  
23 Plaintiff asserts two claims on appeal to this Court. (See  
24 Joint Stip. at 5-26). First, he contends that the ALJ erred in  
25 relying on the VE's testimony that he can perform jobs existing  
26 in substantial numbers in the national economy because those jobs  
27 conflict with the RFC finding limiting him to "occasional, brief  
28 superficial and task-oriented interactions with supervisors."

1 (Id. at 5-8, 11-13). Second, he argues that the ALJ failed to  
2 properly develop the record with respect to the education and  
3 social/adaptive abilities required to perform these jobs. (Id.  
4 at 13-19, 24-26).

## 6 DISCUSSION

7  
8 After considering the record as a whole, the Court finds  
9 that the Commissioner's findings are supported by substantial  
10 evidence and are free from material legal error.<sup>4</sup>

### 11 12 **A. The ALJ Did Not Err in Relying on the VE's Testimony**

13  
14 Plaintiff contends that the ALJ erred in relying on the VE's  
15 testimony at step five to find that Plaintiff can work as a  
16 laundry worker, a ticket marker, or a garment sorter. (Joint  
17 Stip. at 5-8). Plaintiff asserts that this finding conflicts  
18 with the ALJ's RFC finding limiting him "to occasional, brief,  
19 superficial and task oriented interactions with supervisors."  
20 (Id.). Plaintiff contends that this limitation actually  
21 precludes any basic work activity. He points to the agency's  
22 regulations, which provide that basic work activities include the  
23 ability to respond appropriately to supervision, coworkers, and

24  
25 <sup>4</sup> The harmless error rule applies to the review of  
26 administrative decisions regarding disability. See McLeod v.  
27 Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart,  
28 400 F.3d 676, 679 (9th Cir. 2005) (an ALJ's decision will not be  
reversed for errors that are harmless).

1 usual work situations, and impairments that limit this ability  
2 "may reduce [a claimant's] ability to do past work and other  
3 work." (Id. at 6 (citing and quoting 20 C.F.R. §§ 416.922(b)(5),  
4 416.945(e))). Plaintiff also points to provisions of the  
5 agency's Program Operations Manual System ("POMS") stating that  
6 the ability to "accept instructions and respond appropriately to  
7 criticism from supervisors" is critical for performing unskilled  
8 work. (Id. at 6-7 (quoting POMS DI 25020.010 ¶ B.3.k)).

9  
10 Plaintiff argues that the ALJ failed to discuss or  
11 explicitly find whether Plaintiff is able to respond  
12 appropriately to supervisors other than in brief exchanges of  
13 information or handing off products. (Id. at 7). Plaintiff  
14 contends, moreover, that even under a "general understanding" of  
15 occupations, it is apparent that the ability to engage in more  
16 than superficial contact with supervisors is essential to  
17 performing substantial gainful activity. (Id. at 7-8).  
18 Plaintiff suggests, finally, that remand is warranted here  
19 particularly because his lack of representation, limited  
20 education, and emotional state at the hearing rendered him unable  
21 to address the conflict. (Id. at 13).

22  
23 The ALJ bears the burden at step five to establish that work  
24 exists in significant numbers in the national economy that  
25 Plaintiff can perform. Beltran v. Astrue, 700 F.3d 386, 389 (9th  
26 Cir. 2012). "In making disability determinations, [the Agency  
27 relies] primarily on the DOT (including its companion  
28 publication, the SCO) for information about the requirements of



1 work in the national economy." SSR 00-4p, at \*2. The Agency  
2 also relies on VEs at step five "to resolve complex vocational  
3 issues." Id. When soliciting the VE's opinion regarding whether  
4 a claimant's ability to work, the ALJ poses a hypothetical to the  
5 VE that must include "all of the claimant's functional  
6 limitations, both physical and mental" supported by substantial  
7 evidence in the record. Thomas v. Barnhart, 278 F.3d 947, 956  
8 (9th Cir. 2002) (quoting Flores v. Shalala, 49 F.3d 562, 570-71  
9 (9th Cir. 1995)). If the VE's testimony conflicts with the DOT,  
10 the ALJ must obtain a reasonable explanation for the conflict.  
11 SSR 00-4p, at \*2; Massachi v. Astrue, 486 F.3d 1149, 1152 (9th  
12 Cir. 2007). Otherwise, "[a] VE's recognized expertise provides  
13 the necessary foundation for his or her testimony. Thus, no  
14 additional foundation is required." Buck v. Berryhill, 869 F.3d  
15 1040, 1051 (9th Cir. 2017) (quoting Bayliss v. Barnhart, 427 F.3d  
16 1211, 1218 (9th Cir. 2005)).

17  
18 Here, the ALJ appropriately relied on the VE's hearing  
19 testimony to find that Plaintiff was capable of performing jobs  
20 that exist in substantial numbers in the national economy. The  
21 ALJ did so after posing a hypothetical to the VE that contained  
22 all of Plaintiff's limitations, supported by substantial evidence  
23 in the record. See Bayliss, 427 F.3d at 1218) (citing Magallanes  
24 v. Bowen, 881 F.2d 747, 756-57 (9th Cir. 1989) (ALJ's reliance on  
25 VE testimony was proper where hypothetical contained all  
26 Plaintiff's limitations that were found credible and supported in  
27 record). This included the limitation to "occasional brief,  
28 superficial, and task-oriented interactions with supervisors."

1 (AR 76). The VE opined that a person with these limitations can  
2 perform the representative jobs of a laundry worker, a ticket  
3 marker, and a garment sorter, which exist in substantial numbers  
4 in the national economy. (AR 77-78).

5  
6 Plaintiff has failed to identify any conflict between the  
7 VE's testimony and the DOT. Absent such a conflict, the VE's  
8 opinion constituted substantial evidence, which the ALJ properly  
9 relied upon in the decision to find Plaintiff not disabled. (AR  
10 31-32); see Massachi, 486 F.3d at 1152-54. The ALJ had no  
11 obligation to resolve conflicts with other vocational  
12 publications or information. See SSR 00-4p, at \*2; Shaibi v.  
13 Berryhill, 883 F.3d 1102, 1109 (9th Cir. 2017). POMS, in  
14 particular, may be "entitled to respect" under Skidmore v. Swift  
15 & Co., 323 U.S. 134 (1944), to the extent it provides a  
16 persuasive interpretation of an ambiguous regulation, see  
17 Christensen v. Harris Cnty., 529 U.S. 576, 587-88 (2000), but it  
18 "is not binding either on the ALJ or on a reviewing court."  
19 Shaibi, 883 F.3d 1102, 1107 (9th Cir. 2017) (citing Lockwood v.  
20 Comm'r Soc. Sec. Admin., 616 F.3d 1068, 1073 (9th Cir. 2010));  
21 see also Moore v. Apfel, 216 F.3d 864, 868-69 (9th Cir. 2000)  
22 (declining to review allegations of noncompliance with internal  
23 agency manual because such a manual "does not carry the force and  
24 effect of law.").

25  
26 Regardless, Plaintiff has also failed to identify any  
27 conflict with POMS or other non-DOT sources. Contrary to  
28 Plaintiff's argument, the ALJ's RFC finding limiting Plaintiff to

1 only "occasional, brief, superficial, and task-oriented  
2 interactions with supervisors," (AR 23, 76), is not inconsistent  
3 with an ability to perform unskilled work. See, e.g., Remer v.  
4 Berryhill, 2018 WL 3126104, at \*6 (S.D. Cal. June 26, 2018)  
5 (rejecting the argument that the RFC limitation to occasional  
6 superficial interactions with co-workers and supervisors was  
7 inconsistent with an ability to perform unskilled work);  
8 Burtenshaw v. Berryhill, 2018 WL 550590, at \*7 (C.D. Cal. Jan.  
9 23, 2018) (same); Markell v. Berryhill, 2017 WL 6316825, at \*9  
10 (N.D. Cal. Dec. 11, 2017) (same). Furthermore, the ALJ did not  
11 find Plaintiff unable to accept instructions and respond  
12 appropriately to criticism from supervisors, nor did the record  
13 compel such a finding. To the contrary, for example, the ALJ  
14 gave great weight to the medical expert, Ashok I. Khushalani,  
15 M.D., who reviewed Plaintiff's records and found him capable of  
16 performing "simple tasks with occasional public contact," and  
17 only mildly limited in his ability to "[i]nteract appropriately  
18 with supervisor(s)." (AR 29, 1246, 1250).

19  
20 Accordingly, the ALJ properly relied on the VE's testimony  
21 because the hypotheticals presented to the VE considered all of  
22 Plaintiff's limitations that were supported by the record. See  
23 Thomas, 278 F.3d at 956 (considering VE testimony reliable if the  
24 hypothetical posed includes all of claimant's functional  
25 limitations, both physical and mental supported by the record);  
26 Bayliss, 427 F.3d 1211, 1218 (9th Cir. 2005) ("A VE's recognized  
27 expertise provides the necessary foundation for his or her  
28 testimony").

1 **B. The ALJ Did Not Fail to Properly Develop the Record**

2  
3 In Social Security cases, the ALJ has a special, independent  
4 duty to develop the record fully and fairly, and to assure that  
5 the claimant's interests are considered. Tonapetyan v. Halter,  
6 242 F.3d 1144, 1150 (9th Cir. 2001); Smolen v. Chater, 80 F.3d  
7 1273, 1288 (9th Cir. 1996); Brown v. Heckler, 713 F.2d 441, 443  
8 (9th Cir. 1983). The ALJ has a basic duty to inform herself  
9 about facts relevant to her decision. Heckler v. Campbell, 461  
10 U.S. 458, 471 n.1 (1983) (Brennan, Jr., concurring). Where a  
11 claimant is not represented by counsel before the ALJ, it is  
12 "incumbent upon the ALJ to scrupulously and conscientiously probe  
13 into, inquire of, and explore for all the relevant facts."  
14 Celaya v. Halter, 332 F.3d 1177, 1183 (9th Cir. 2003). "The  
15 ALJ's duty to develop the record fully is also heightened where  
16 the claimant may be mentally ill and thus unable to protect her  
17 own interests." Tonapetyan, 242 F.3d at 1150 (citing Higbee v.  
18 Sullivan, 975 F.2d 558, 562 (9th Cir. 1992)). In such cases,  
19 "[a]mbiguous evidence, or the ALJ's own finding that the record  
20 is inadequate to allow for proper evaluation of the evidence,  
21 triggers the ALJ's duty to 'conduct an appropriate inquiry.'" Id.  
22 (quoting Smolen, 80 F.3d at 1288). Remand is warranted only  
23 if the plaintiff can demonstrate prejudice or unfairness in the  
24 administrative proceeding as a result of not having counsel  
25 present. Vidal v. Harris, 637 F.2d 710, 713 (9th Cir. 1981).

26  
27 Plaintiff contends that the VE's testimony that he can  
28 perform the jobs of laundry worker, garment sorter, and ticket

1 marker is "inconsistent with adaptive abilities required to  
2 perform those occupations." (Joint Stip. at 13). To demonstrate  
3 the alleged inconsistencies, Plaintiff cites the O\*NET database  
4 and the Occupational Outlook Handbook ("OOH"). (Id. at 14-16).  
5 For example, Plaintiff points out that laundry workers are  
6 categorized in O\*NET under the occupational group of maids and  
7 housekeeping, and O\*NET indicates that these workers usually need  
8 a high school education; work directly for the public 70% of the  
9 time; establish and maintain interpersonal relationships 69% of  
10 the time; and communicate with supervisors, peers, or  
11 subordinates 68% of the time. (Id. at 14 (citing O\*NET Online,  
12 Reports for 37-2012.00 - Maids and Housekeeping Cleaners,  
13 <https://www.onetonline.org/link/summary/37-2012.00>)). Plaintiff  
14 points to similar requirements for the O\*NET category that  
15 includes ticket takers. (Id. at 15-16 (citing O\*NET Online,  
16 Reports for 43-5081.02 - Marking Clerks [https://](https://www.onetonline.org/link/summary/43-5081.02)  
17 [www.onetonline.org/link/summary/43-5081.02](https://www.onetonline.org/link/summary/43-5081.02))). For the garment  
18 sorter job, included in the miscellaneous group of "production  
19 workers, all other," Plaintiff cites the OOH, which indicates  
20 that production worker jobs typically require a high school  
21 education and moderate-term on-the-job training, meaning more  
22 than one month and up to twelve months of combined on-the-job  
23 experience and informal training. (Id. at 14-15 (citing Bureau  
24 of Labor Statistics, U.S. Department of Labor, Occupational  
25 Outlook Handbook, Data for Occupations Not Covered in Detail,  
26 [https://www.bls.gov/ooh/about/data-for-occupations-not-covered-](https://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm)  
27 [in-detail.htm](https://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm))).

28

1 Plaintiff contends that these requirements listed in O\*NET  
2 and the OOH conflict with his own limitations, and thus the ALJ  
3 had a duty to conduct further inquiry and develop the record.  
4 (Id. at 17-19). Plaintiff contends that this duty was heightened  
5 here due to his mental impairment in addition to his lack of  
6 representation. (Id. at 17-18). Plaintiff additionally asserts  
7 that he was prejudiced because the ALJ left it unclear whether  
8 Plaintiff is actually illiterate, and an inability to read would  
9 further preclude the occupations at issue. (Id. at 17, 24-26).

10  
11 Notwithstanding Plaintiff's contentions, the ALJ satisfied  
12 her duty develop the record regarding the education or  
13 social/adaptive abilities required to perform the jobs at issue  
14 because the VE's testimony did not conflict with the DOT.  
15 Plaintiff concedes that the allegedly conflicting requirements  
16 are not stated in the DOT. (Id. at 14, 24). The DOT's silence  
17 does not create a conflict, nor does it trigger any  
18 responsibility to inquire about other vocational sources.  
19 Instead, "[a] conflict must exist between the VE's testimony and  
20 the DOT in order to trigger the ALJ's responsibility to resolve  
21 the conflict." Dewey v. Colvin, 650 F. App'x 512, 514 (9th Cir.  
22 2016) (finding that because the DOT was silent on whether the  
23 jobs at issue allowed for a sit/stand option, there is no  
24 conflict (citing Quechan Indian Tribe v. U.S. Dep't of Labor, 723  
25 F.2d 733, 735 (9th Cir. 1984))).

26  
27 The ALJ had no obligation to address the VE's deviation from  
28 other sources such as O\*NET or OOH. See Shaibi, 883 F.3d at 1109

1 ("[W]e can find no case, regulation, or statute suggesting that  
2 an ALJ must sua sponte take administrative notice of economic  
3 data in the CBP or the OOH. It is true that an ALJ is required  
4 to investigate and resolve any apparent conflict between the VE's  
5 testimony and the DOT . . . [b]ut Shaibi cites to no authority  
6 suggesting that the same is true for the CBP and OOH."); Gonzalez  
7 v. Berryhill, No. CV 17-5402, 2018 WL 456130, at \*3 (C.D. Cal.  
8 Jan. 17, 2018) ("an ALJ is under no obligation to consult the OOH  
9 or to attempt to reconcile conflicts between the OOH and  
10 vocational expert testimony") (citing cases). The Ninth Circuit  
11 reasoned, in Shaibi, that "unlike the DOT, which is comprised of  
12 self-contained descriptions of the requirements for performance  
13 of various jobs, using the job distribution information in the  
14 CBP and OOH requires information and inferences not contained in  
15 the documents themselves and so not amenable to an ALJ's sua  
16 sponte consideration." Shaibi, 883 F.3d at 1110 n.6. The  
17 Commissioner of Social Security has reached a similar conclusion  
18 about O\*NET. See Occupational Information Development Advisory  
19 Panel ("OIDAP"), Finding Report: A Review of the National Academy  
20 of Sciences Report, A Database for a Changing Economy: Review of  
21 the Occupational Information Network (O\*NET) (June 28, 2010),  
22 available at <http://ssa.gov/oidap/Documents/>; see also Dimmett v.  
23 Colvin, 816 F.3d 486, 489 (7th Cir. 2016) (noting that the Agency  
24 "hasn't endorsed the O\*NET and in fact is developing its own  
25 parallel classification system," which is still pending);  
26 Beamesderfer v. Berryhill, 2018 WL 2315956, at \*7 (C.D. Cal. May  
27 18, 2018) (discussing the OIDAP report).

28

1           Because the VE's testimony did not conflict with the DOT,  
2 the ALJ appropriately relied on the VE's testimony that  
3 Plaintiff, with his limitations, could perform certain  
4 representative jobs. see Massachi, 486 F.3d at 1152-54.  
5 Plaintiff has not sufficiently shown that the record was  
6 inadequate or ambiguous regarding whether Plaintiff had the  
7 adaptive abilities needed to perform those jobs. The ALJ  
8 therefore satisfied her duty to develop the record. Tonapetyan,  
9 242 F.3d at 1150. Indeed, the ALJ further accounted for  
10 Plaintiff's lack of representation and mental impairments by  
11 obtaining additional information after the hearing. As noted,  
12 she sent interrogatories to a medical expert, and then obtained  
13 Plaintiff's response to the medical expert's opinion. (AR 17).

14  
15           The ALJ also did not err with respect to Plaintiff's ability  
16 to read and write. The ALJ noted Plaintiff's allegation that he  
17 is illiterate. (AR 31). The ALJ observed, however, that  
18 Plaintiff "was apparently able to write letters to the hearing  
19 office and complete multiple forms such as the Adult Disability  
20 Report, Disability Appeal Reports and Function Reports." (Id.  
21 (citing AR 184-95, 223-31, 274, 331, 590-93, 666-72)). The ALJ  
22 found "no indication that someone else completed that form."  
23 (Id.). In addition, the ALJ noted that Plaintiff "was apparently  
24 working for many years in skilled occupations," including as a  
25 "taper/drywall finisher" and a painter. (AR 30, 31, 73).  
26 Plaintiff contends that the ALJ "never asked if [he] actually  
27 wrote the letters" that are in the record. (Joint Stip. at 17).  
28 Regardless, even to the extent that the record may be ambiguous



1 as to whether Plaintiff actually wrote the letters himself, the  
2 ALJ reasonably resolved the matter, and substantial evidence  
3 supports the ALJ's finding "that while [Plaintiff] may possibly  
4 be limited in reading and writing, he is not limited to the  
5 degree he alleges and is certainly not illiterate." (AR 31).  
6 The ALJ provided this limitation to the VE, stating that  
7 Plaintiff has "very, very limited ability to read and write," and  
8 "while not completely illiterate, is very close to that." (AR  
9 74). As noted, the VE testified that Plaintiff could perform  
10 certain representative jobs with the provided limitations, (AR  
11 77-78), and Plaintiff has not identified any conflict between  
12 this testimony and the DOT. The ALJ thus appropriately relied on  
13 the VE's testimony to find that Plaintiff was not disabled.

14  
15 Accordingly, Plaintiff has failed to establish that the ALJ  
16 did not adequately develop the record, or otherwise erred in  
17 relying on the VE's testimony to conclude that Plaintiff was not  
18 disabled. Moreover, Plaintiff has failed to demonstrate any  
19 prejudice or unfairness resulting from his lack of representation  
20 or mental impairment to warrant remand.

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**ORDER**

For the foregoing reasons, the decision of the Commissioner  
is AFFIRMED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 14, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
ALKA SAGAR  
UNITED STATES MAGISTRATE JUDGE