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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

PAUL TREVOR CORNELIUS,	)	Case No. CV 17-08990-AS
	)	
Plaintiff,	)	<b>MEMORANDUM OPINION</b>
	)	
v.	)	
	)	
NANCY A. BERRYHILL,	)	
Acting Commissioner of the	)	
Social Security Administration,	)	
	)	
Defendant.	)	
_____	)	

PROCEEDINGS

On December 14, 2017, Plaintiff filed a Complaint seeking review of the denial of his applications for Supplemental Security Income and Disability Insurance Benefits. (Docket Entry No. 1). The parties have consented to proceed before the undersigned United States Magistrate Judge. (Docket Entry Nos. 11-12). On May 10, 2018, Defendant filed an Answer along with the Administrative Record ("AR"). (Docket Entry Nos. 15-16). On October 31, 2018, the parties filed a Joint Stipulation

1 ("Joint Stip.") setting forth their respective positions regarding  
2 Plaintiff's claim. (Docket Entry No. 21).

3  
4 The Court has taken this matter under submission without oral  
5 argument. See C.D. Cal. L.R. 7-15.

6  
7 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

8  
9 On September 8, 2014, Plaintiff, formerly employed as a cashier,  
10 short order cook, construction cleaner and painter (see AR 39-44, 209,  
11 214-15), filed applications for Supplemental Security Income and  
12 Disability Insurance Benefits, alleging an inability to work because of  
13 a disabling condition since February 1, 2014. (See AR 14, 159-73). On  
14 January 22, 2016, the Administrative Law Judge ("ALJ"), Robin  
15 Rosenbluth, heard testimony from Plaintiff (represented by counsel) and  
16 vocational expert Aida Worthington. (See AR 36-76). On July 18, 2016,  
17 the ALJ issued a decision denying Plaintiff's application. (See AR 14-  
18 22). After determining that Plaintiff had severe impairments --  
19 neuropathy and alcohol abuse (AR 16)<sup>1</sup> --, but did not have an impairment  
20 or combination of impairments that met or medically equaled the severity  
21 of one of the listed impairments (AR 17), the ALJ found that Plaintiff  
22 had the residual functional capacity ("RFC")<sup>2</sup> to perform sedentary work<sup>3</sup>

23  
24 <sup>1</sup> The ALJ found that Plaintiff's mental impairment of mood  
disorder was non-severe. (AR 16-17).

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

27 <sup>3</sup> "Sedentary work involves lifting no more than 10 pounds at a  
28 time and occasionally lifting or carrying articles like docket files,  
ledgers, and small tools. Although a sedentary job is defined as one  
which involves sitting, a certain amount of walking and standing is  
(continued...)

1 with the following limitations: can carry and lift 10 pounds  
2 occasionally; can sit 6 hours; can stand/walk 2 hours in an 8-hour  
3 workday; needs a cane for balance; cannot operate foot controls  
4 occasionally; cannot be around unprotected heights; can climb ladders,  
5 ropes, scaffolds, stairs and ramps occasionally. (AR 18-20). The ALJ  
6 then determined that Plaintiff was not able to perform any past relevant  
7 work (AR 20-21), but that Plaintiff could perform the jobs existing in  
8 significant numbers in the national economy and was therefore not  
9 disabled within the meaning of the Social Security Act. (AR 21-22).

10  
11 Plaintiff requested that the Appeals Council review the ALJ's  
12 Decision. (See AR 157). The request was denied on November 7, 2017.  
13 (See AR 1-6). Plaintiff now seeks judicial review of the ALJ's Decision  
14 which stands as the final decision of the Commissioner. See 42 U.S.C.  
15 §§ 405(g), 1383(c).

#### 16 17 **STANDARD OF REVIEW**

18  
19 This Court reviews the Administration's decision to determine if  
20 it is free of legal error and supported by substantial evidence. See  
21 Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial  
22 evidence" is more than a mere scintilla, but less than a preponderance.  
23 Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). To determine  
24 whether substantial evidence supports a finding, "a court must consider  
25 the record as a whole, weighing both evidence that supports and evidence

26 \_\_\_\_\_  
27 <sup>3</sup> (...continued)  
28 often necessary in carrying out job duties. Jobs are sedentary if  
walking and standing are required occasionally and other sedentary  
criteria are met." 20 C.F.R. §§ 404.1567(a), 416.967(a).

1 that detracts from the [Commissioner's] conclusion." Aukland v.  
2 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (internal quotation  
3 omitted). As a result, "[i]f the evidence can support either affirming  
4 or reversing the ALJ's conclusion, [a court] may not substitute [its]  
5 judgment for that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d  
6 880, 882 (9th Cir. 2006).<sup>4</sup>

7  
8 **PLAINTIFF'S CONTENTION**

9  
10 Plaintiff alleges that the ALJ erred in finding that Plaintiff's  
11 neuropathy impairment did not meet Listing 11.14A. (See Joint Stip. at  
12 4-8, 21-22).

13  
14 **DISCUSSION**

15  
16 After consideration of the record as a whole, the Court finds that  
17 the Commissioner's findings are supported by substantial evidence and  
18 are free from legal error.

19  
20 //

21 //

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

1 DISCUSSION

2  
3 **A. The ALJ Did Not Err in Finding that Plaintiff's Impairment Did Not**  
4 **Meet Or Equal Listing 11.14A**

5  
6 Plaintiff asserts that the ALJ erred in finding that Plaintiff's  
7 impairment did not meet Listing 11.14A. Plaintiff claims that the ALJ  
8 "fail[ed] to adequately consider the deterioration of [Plaintiff's]  
9 neuropathy and inability to effectively ambulate without a walker  
10 beginning in August 2015." (See Joint Stip. at 4-8, 21-22). Defendant  
11 asserts that the ALJ properly found that Plaintiff's impairment did not  
12 meet Listing 11.14A and further asserts that the ALJ could not find  
13 Plaintiff disabled because Plaintiff's alcohol abuse is the primary  
14 cause of his neuropathy and other limitations. (See Joint Stip. at 9-  
15 20).<sup>5</sup>

16  
17 If a claimant suffers a severe impairment, the ALJ is required to  
18 decide whether the impairment meets or equals one of the listed  
19 impairments. See 20 C.F.R. §§ 404.1520(d), 416.920(d); Young v.  
20 Sullivan, 911 F.2d 180, 181 (9th Cir. 1990); Marcia v. Sullivan, 900  
21 F.2d 172, 174-75 (9th Cir. 1990). Disability is presumed if a  
22 claimant's impairment or combination of impairments meets or is  
23 medically equivalent to one of the listed impairments. Id.; 20 C.F.R.

24 \_\_\_\_\_  
25 <sup>5</sup> The Court need not address Defendant's argument that  
26 Plaintiff's alcohol abuse precluded a finding of disability (see Joint  
27 Stip. at 9-16). As Plaintiff points out (see Joint Stip. at 21), a  
28 finding of disability would be precluded only if the ALJ had conducted  
a drug abuse and alcoholism analysis to determine which of Plaintiff's  
limitations would remain if Plaintiff stopped using drugs or alcohol.  
See Parra v. Astrue, 481 F.3d 742, 747 (9th Cir. 2007); 20 C.F.R. §§  
404.1535, 416.935.

1 §§ 404.1520(d), 416.920(d); Bowen v. Yuckert, 482 U.S. 137, 141-42  
2 (1987). An impairment meets a listed impairment if a claimant has "a  
3 medically determinable impairment(s) that satisfies all of the criteria  
4 of the listing." 20 C.F.R. §§ 404.1525(d), 416.925(d); see also  
5 Sullivan v. Zebley, 493 U.S. 521, 530 (1990). "An impairment that  
6 manifests only some of those criteria, no matter how severely, does not  
7 qualify." Id. The criteria of a listed impairment cannot be met  
8 solely based on a diagnosis. 20 C.F.R. §§ 404.1525(d), 416.925(d); see  
9 also Key v. Heckler, 754 F.2d 1545, 1549-50 (9th Cir. 1985). An  
10 impairment is "medically equivalent to a listed impairment . . . if it  
11 is at least equal in severity and duration to the criteria of any listed  
12 impairment." 20 C.F.R. §§ 404.1526(a), 416.926(a). If an impairment  
13 is not described in the listed impairments, or if the combination of  
14 impairments does not meet one of the listed impairments, the  
15 determination of medical equivalence is based on a comparison of  
16 findings (concerning a claimant) "with those for closely analogous  
17 listed impairments." 20 C.F.R. §§ 404.1526(b)(2), (3), 416.926(b)(2),  
18 (3). The decision is based on "all evidence in [a claimant's] record  
19 about [his or her] impairment(s) and its effect on [a claimant] that is  
20 relevant to this finding" and on designated medical or psychological  
21 consultants. 20 C.F.R. §§ 404.1526(c), 416.926(c).

22  
23 A claimant can meet Listing 11.14 if he has peripheral neuropathy,  
24 characterized by "A. Disorganization of motor function in two  
25 extremities (see 11.00D1), resulting in an extreme limitation (see  
26 11.00D2) in the ability to stand up from a seated position, balance  
27  
28

1 while standing or walking, or use the upper extremities[.]” 20 C.F.R.  
2 Pt. 404, Subpt. P, App. 1, § 11.14.<sup>6</sup>

3  
4 Listing 1100D1 describes “disorganization of motor function” as:  
5  
6 interference, due to your neurological disorder, with  
7 movement of two extremes; *i.e.*, the lower extremities, or  
8 upper extremities (including fingers, wrists, hands, arms and  
9 shoulders)). By two extremities we mean both lower  
10 extremities, or both upper extremities, or one upper  
11 extremity and one lower extremity. All listings in this body  
12 system, except for 11.02 (Epilepsy), 11.10 (Amyotrophic  
13 lateral sclerosis), and 11.20 (Coma and persistent vegetative  
14 state), include criteria for disorganization or motor  
15 function that results in an extreme limitation in your  
16 ability to:

- 17 a. Stand up from a seated position; or  
18 b. Balance while standing or walking; or  
19 c. Use the upper extremities (including fingers, hands,  
20 arms, and shoulders).

21  
22 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 11.00D1.

23  
24 <sup>6</sup> As Defendant points out (see Joint Stip. at 18 n.1), the  
25 version of Listing 11.14 in effect at the time of the ALJ’s decision  
26 required peripheral neuropathies and “disorganization of motor function  
27 as described in 11.04(B), in spite of prescribed treatment.” See 20  
28 C.F.R. Pt. 404, Subpt. P, App. 1, § 11.14 (2016); McCloskey v. Colvin,  
2016 WL 5745077, \*7 (C.D. Cal. Sept. 29, 2016). However, since the  
newer version of Listing 11.14 went into effect on September 29, 2016,  
see 81 Fed. Reg. 43048-01, 2016 WL 3551949, which was prior to the  
Appeals Council’s denial of Plaintiff’s Request for Review, the Court  
will examine the newer version of Listing 11.14.

1 Listing 11.00D2 describes "extreme limitation," in pertinent part,  
2 as:

3  
4 the inability to stand up from a seated position, maintain  
5 balance in a standing position and while walking, or use your  
6 upper extremities to independently initiate, sustain, and  
7 complete work-related activities. The assessment of motor  
8 function depends on the degree of interference with standing  
9 up; balancing while standing or walking; or using the upper  
10 extremities (including fingers, hands, arms, and shoulders).

11 a. Inability to stand up from a seated position means  
12 that once seated you are unable to stand and maintain an  
13 upright position without the assistance of another person or  
14 the use of an assistive device, such as a walker, two  
15 crutches, or two canes.

16 b. Inability to maintain balance in a standing position  
17 means that you are unable to maintain an upright position  
18 while standing or walking without the assistance of another  
19 person or an assistive device, such as a walker, two crutches,  
20 or two canes.

21  
22 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 11.00D2.

23  
24 In finding that Plaintiff's impairment or combination of  
25 impairments did not meet or equal a listing, the ALJ stated, "With  
26 regards to listing 11.14 for peripheral neuropathies, the record fails  
27 to demonstrate any significant and persistent disorganization of motor  
28



1 function in two extremities that have resulted in sustained disturbance  
2 of gross and dexterous movements or gait and station." (AR 17).

3  
4 Although Plaintiff has cited to evidence of possible neuropathy of  
5 both his feet prior to August 2015 (see Joint Stip. at 7, citing AR 312,  
6 449, 590, 737), the evidence (see Joint Stip. at 7-8, citing AR 595-97,  
7 624-35, 800-03) fails to show that beginning in August 2015 Plaintiff  
8 had a "[d]isorganization of motor function in two extremities . . .  
9 resulting in an extreme limitation . . . in the ability to stand up from  
10 a seated position, [or] balance while standing or walking[.]" See 20  
11 C.F.R. Pt. 404, Subpt. P, App. 1, § 11.14.

12  
13 While on August 24, 2015, a doctor ordered Plaintiff a walker with  
14 a seat apparently based on an unsteady gate (see AR 596), there is no  
15 indication that the walker was ordered because of problems of motor  
16 function in Plaintiff's two lower extremities which were caused by foot  
17 neuropathy. (See AR 596 ["Neuropathy of both feet (HCC)-likely alcohol  
18 related neuropathy."]; AR 597 ["Neurology referral for consultation and  
19 EMG/NCS of bilateral lower extremities."]). Moreover, neither the  
20 December 9, 2015 report of the internal medicine consultative  
21 examination nor the January 14, 2016 Progress Note demonstrates problems  
22 of motor function in Plaintiff's two lower extremities which were caused  
23 by foot neuropathy or an extreme limitation in Plaintiff's ability to  
24 stand up from a seated position or to balance while standing or walking.  
25 (See AR 628 [Consultative examination: "The claimant uses a walker to  
26 ambulate. He has stiff gate. He was able to walk approximately 5 feet.  
27 He was complaining of pain and therefore refused to walk further.";  
28 "Based on the examination, I do not find evidence of neuropathy."]; and

1 AR 800-03 [Progress Note: "Neuropathy and foot pain - He describes  
2 symptoms of numbness, burning, lancinating pain, tingling and  
3 hypersensitivity. . . Symptoms are worse in the lower extremities.";  
4 "Neurological: positive for paresthesia."; "[N]ormal gait and balance.";  
5 TORADOL injection given for pain in both feet.].

6  
7 Plaintiff has failed to meet his burden of showing that he has met  
8 each criteria for Listing 11.14A. See Sullivan, supra, 493 U.S. at 530-  
9 31; Burch, supra, 400 F.3d at 682-83; Tacket v. Apfel, 180 F.3d 1094,  
10 1098 (9th Cir. 1999)("The burden of proof is on the claimant as to  
11 steps one to four."). Contrary to Plaintiff's contention, the ALJ  
12 properly found that Plaintiff's impairments did not meet Listing 11.14A.

13  
14 **ORDER**

15  
16 For the foregoing reasons, the decision of the Commissioner is  
17 AFFIRMED.

18  
19 LET JUDGMENT BE ENTERED ACCORDINGLY.

20  
21 DATED: November 29, 2018

22  
23  
24 \_\_\_\_\_ /s/  
25 ALKA SAGAR  
26 UNITED STATES MAGISTRATE JUDGE  
27  
28