

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

GIGI MARIE PERRY,)	Case No. CV 18-01441-AS
)	
Plaintiff,)	MEMORANDUM OPINION
)	
v.)	
)	
NANCY A. BERRYHILL,)	
Acting Commissioner of the)	
Social Security Administration,)	
)	
Defendant.)	
_____)	

PROCEEDINGS

On February 21, 2018, Plaintiff filed a Complaint seeking review of the denial of her application for Supplemental Security Income. (Docket Entry No. 1). The parties have consented to proceed before the undersigned United States Magistrate Judge. (Docket Entry Nos. 11-12). On July 18, 2018, Defendant filed an Answer along with the Administrative Record ("AR"). (Docket Entry Nos. 15-16). On October 2, 2018, the parties filed a Joint Stipulation ("Joint Stip.") setting

1 forth their respective positions regarding Plaintiff's claims. (Docket
2 Entry No. 19).

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 June 12, 2014, Plaintiff, formerly employed as a data entry
10 clerk, an in-home support services provider, and in the student support
11 services department at Santa Monica College (see AR 40-44, 177), filed
12 an application for Supplemental Security Income alleging a disability
13 since January 1, 2011. (See AR 20, 146-54). On September 16, 2016, the
14 Administrative Law Judge ("ALJ"), Robin Rosenbluth, heard testimony from
15 Plaintiff (represented by counsel) and vocational expert Carmen Roman.
16 (See AR 38-71). On November 30, 2016, the ALJ issued a decision denying
17 Plaintiff's application. (See AR 20-32). After determining that
18 Plaintiff had severe impairments -- "bilateral carpal tunnel syndrome,
19 left shoulder strain and bursitis, tendonitis, and chronic obstructive
20 pulmonary disease" (AR 22)¹ --, but did not have an impairment or
21 combination of impairments that met or medically equaled the severity of
22 one of the listed impairments (AR 24-25), the ALJ found that Plaintiff
23 had the residual functional capacity ("RFC")² to perform light work³ with
24

25 ¹ The ALJ found that Plaintiff's other impairments --
hypertension and affective disorder - were non-severe. (AR 22-24).

26 ² A Residual Functional Capacity is what a claimant can still do
27 despite existing exertional and nonexertional limitations. See 20
C.F.R. § 416.945(a)(1).

28 ³ "Light work involves lifting no more than 20 pounds at a time
with frequent lifting or carrying of objects weighing up to 10 pounds."
(continued...)

1 the following limitations: cannot reach overhead with non-dominant left
2 upper extremity, and can occasionally reach in all other directions with
3 left upper extremity; can frequently handle, finger and feel with
4 bilateral upper extremities; can frequently climb ramps and stairs, but
5 cannot climb, ladders, ropes or scaffolds; can frequently balance, can
6 occasionally stoop, kneel, crouch, and crawl; can occasionally push and
7 pull with left upper extremity; cannot have concentrated exposure to
8 dust, fumes or other pulmonary irritants. (AR 25-30). Relying on the
9 vocational expert's testimony at Step Five, the ALJ found that Plaintiff
10 could perform the following jobs existing in significant numbers in the
11 national economy -- parking lot cashier (Dictionary of Occupational
12 Titles ["DOT"] 211.462-010); labeler (DOT 920.687-126); and information
13 clerk (DOT 237.367-018) (AR 30-31) -- and therefore found that Plaintiff
14 was not disabled within the meaning of the Social Security Act. (AR
15 31).

16 Plaintiff requested that the Appeals Council review the ALJ's
17 Decision. (See AR 142). The request was denied on December 18, 2017.
18 (See AR 1-5). The ALJ's Decision then became the final decision of the
19 Commissioner, allowing this Court to review the decision. See 42 U.S.C.
20 §§ 405(g), 1383(c).

21 22 STANDARD OF REVIEW

23
24 This Court reviews the Administration's decision to determine if
25 it is free of legal error and supported by substantial evidence. See
26

27
28 _____
³ (...continued)
20 C.F.R. § 416.967(b).

1 Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial
2 evidence" is more than a mere scintilla, but less than a preponderance.
3 Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). To determine
4 whether substantial evidence supports a finding, "a court must consider
5 the record as a whole, weighing both evidence that supports and evidence
6 that detracts from the [Commissioner's] conclusion." Aukland v.
7 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (internal quotation
8 omitted). As a result, "[i]f the evidence can support either affirming
9 or reversing the ALJ's conclusion, [a court] may not substitute [its]
10 judgment for that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d
11 880, 882 (9th Cir. 2006).⁴

12
13 **PLAINTIFF'S CONTENTION**

14
15 Plaintiff solely alleges that the ALJ erred in relying on the
16 vocational expert's testimony to determine that Plaintiff could perform
17 certain jobs in significant numbers in the national economy. (See Joint
18 Stip. at 4-8, 12-13).

19 //

20 //

21 //

22
23
24
25
26
27 ⁴ 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISCUSSION

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

A. The ALJ Properly Relied on the Vocational Expert's Testimony

Plaintiff asserts that the ALJ erred in relying on the vocational expert's testimony to find that Plaintiff could perform the parking lot cashier, labeler and information clerk jobs based on the ALJ's RFC assessment, specifically, the ALJ's findings that Plaintiff "cannot reach overhead with her non-dominant left extremity and can only occasionally reach in all other directions with her left upper extremity" (AR 25). Plaintiff claims that the vocational expert's testimony that Plaintiff could perform those jobs conflicts with the description of those jobs in the DOT regarding the reaching requirements, and that the ALJ was required, but failed, to elicit from the vocational expert a reasonable explanation for the deviation from the DOT. (See Joint Stip. at 4-8, 12-13). Defendant asserts that the ALJ properly relied on the vocational expert's testimony because the testimony did not conflict with the DOT with respect to the reaching requirements. (See Joint Stip. at 8-12).

At the administrative hearing, the ALJ asked the vocational expert whether there are any representative light jobs in the national economy that a hypothetical person with Plaintiff's age, education and work experience -- who, with the same limitations as those found in

1 Plaintiff's RFC, including not reaching overhead with her non-dominant
2 left arm and occasionally reaching in all other directions with her left
3 arm -- can perform. The vocational expert identified the following
4 jobs: parking lot cashier (DOT 211.462-010, light, SVP-2, 300,000
5 nationally), labeler (DOT 920.687-126, light SVP-2, 25,000 nationally),
6 and information clerk (DOT 237.367-018, light SVP-2, 14,000 nationally).
7 (See AR 66-67). The vocational expert testified that her testimony was
8 consistent with the DOT. (AR 68).

9
10 After citing the vocational expert's testimony (except for a
11 misstatement about the number of parking lot cashier jobs), and after
12 finding that the "vocational expert's testimony is consistent with the
13 information contained in the Dictionary of Occupational Titles," the ALJ
14 concluded that, "considering the claimant's age, education, work
15 experience, and residual functional capacity, the claimant is capable
16 of making a successful adjustment to other work that exists in
17 significant numbers in the national economy." (See AR 31).

18
19 An ALJ may rely on the DOT and a vocational expert's testimony to
20 determine whether a claimant, given his or her age, education, work
21 experience and residual functional capacity, "actually can find some
22 work in the national economy." Zavalin v. Colvin, 778 F.3d 842, 846
23 (9th Cir. 2015); Valentine v. Comm'r Soc. Sec. Admin., 574 F.3d 685, 689
24 (9th Cir. 2009); 20 C.F.R. § 416.966(e); 20 C.F.R. § 416.920(g).
25 However, an ALJ may not rely on a vocational expert's testimony
26 regarding the requirements of a particular job without first inquiring
27 whether the testimony conflicts with the DOT. Massachi v. Astrue, 486
28 F.3d 1149, 1152-53 (9th Cir. 2007)(citing SSR 00-4p). If there is a

1 conflict between the vocational expert's testimony and the DOT, an ALJ
2 must determine whether there is a reasonable explanation for the
3 deviation. Id.; Zavalin, 778 F.3d at 846 ("When there is an apparent
4 conflict between the vocational expert's testimony and the DOT -- for
5 example, expert testimony that a claimant can perform an occupation
6 involving DOT requirements that appear to be more than the claimant can
7 handle -- the ALJ is required to reconcile the inconsistency."; citing
8 Massachi, 486 F.3d at 1153-54); see also Johnson v. Shalala, 60 F.3d
9 1428, 1435 (9th Cir. 1995)("[A]n ALJ may rely on expert testimony which
10 contradicts the DOT, but only insofar as the record contains persuasive
11 evidence to support the deviation."). The conflict between the
12 vocational expert's testimony and the DOT must be "obvious or apparent"
13 -- meaning, "the testimony must be at odds with the [DOT's] listing of
14 job requirements that are essential, integral, or expected" -- in order
15 to trigger the ALJ's obligation to inquire further. Gutierrez v.
16 Colvin, 844 F.3d 804, 808)(9th Cir. 2016); Lamear v. Berryhill, 865 F.3d
17 1201, 1205 (9th Cir. 2017);

18
19 The occupations of parking lot cashier and information clerk
20 require frequent reaching, see DOT 211.462-010, 1991 WL 671840; DOT
21 237.367-018, 1991 WL 672187, and the occupation of labeler requires
22 constant reaching, see DOT 920.687-126, 1991 WL 687992. Reaching is
23 defined as "extending the hands and arms in any direction." SSR 85-15.

24
25 Contrary to Plaintiff's assertion (see Joint Stip. at 6), there was
26 no obvious conflict between the vocational expert's testimony and the
27 DOT. The DOT descriptions for each of the three occupations did not
28 include a requirement for using both arms to reach, and "the use of two

1 arms is not necessarily required for jobs that require reaching and
2 handling." Salcido v. Astrue, 2012 WL 2160346, *4 (C.D. Cal. June 13,
3 2012)(citations omitted). Since there was no obvious or apparent
4 conflict between the vocational expert's testimony and the DOT, the ALJ
5 did not err in relying on the vocational expert's testimony. See
6 Gutierrez, 844 F.3d at 808 ("Here, the ALJ didn't err because there was
7 no apparent or obvious conflict between the expert's testimony that Ms.
8 Gutierrez could perform as a cashier, despite her weight bearing and
9 overhead reaching limitations with her right arm and the [DOT's] general
10 statement that cashiering requires frequent reaching."); Butt v.
11 Berryhill, 727 Fed.Appx. 913, 914 (9th Cir. 2018)("Even if Butt was
12 unable to perform any reaching with her right arm, there is no evidence
13 that her left arm has any limitations with above-shoulder reaching. The
14 vocational expert's testimony regarding Butt's ability to perform her
15 past work as a preschool teacher is thus consistent with the DOT."); but
16 see Lamear, 865 F.3d at 1205 ("[W]e cannot say that, based on common
17 experience, it is likely and foreseeable that an office helper, mail
18 clerk, or parking lot cashier with limitations on his ability to
19 'handle, finger and fee with the left hand' could perform his duties.
20 The DOT's lengthy descriptions for these jobs strongly suggest that it
21 is likely and foreseeable that using both hands would be necessary to
22 perform 'essential, integral, or expected' tasks in an acceptable and
23 official manner.").

24 //

25 //

26 //

27

28

ORDER

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

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: November 28, 2018

/s/
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE