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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE FRANCISCO C.,
Plaintiff,
v.
ANDREW M. SAUL, Commissioner
of Social Security,¹
Defendant.

Case No. 2:18-cv-09387-KES

MEMORANDUM OPINION AND
ORDER

I.

BACKGROUND

Plaintiff Jose Francisco C. (“Plaintiff”) applied for Supplemental Security Income (“SSI”) benefits in September 2015 within days of his eighteenth birthday, alleging disability based on mental impairments that he has had since childhood. Administrative Record (“AR”) 49, 489, 832. On September 12, 2017, an Administrative Law Judge (“ALJ”) conducted a hearing at which Plaintiff, who was represented by an attorney, appeared and testified, as did a vocational expert

¹ Andrew Saul is now the Commissioner of Social Security and is automatically substituted as a party pursuant to Fed. R. Civ. P. 25(d).

1 (“VE”). AR 373-400. On October 25, 2017, the ALJ issued an unfavorable
2 decision. AR 40-54. The ALJ found that Plaintiff suffered from the severe
3 impairments of “autism, paranoid personality disorder, generalized anxiety
4 disorder, and borderline intellectual functioning.” AR 42. The ALJ concluded that
5 despite his impairments, Plaintiff had a residual functional capacity (“RFC”) to
6 perform work at all exertional levels with the following non-exertional limitations:

7 [H]e can understand, remember, and carry out simple job
8 instructions; he can maintain attention and concentration to perform
9 simple, routine, and repetitive tasks in a work environment free of
10 fast paced production requirements; he can have occasional
11 interaction with coworkers, supervisors, and the general public; he
12 can work in an environment with occasional changes to the work
13 setting and occasional work-related decision-making.

14 AR 45.

15 Based on this RFC and the VE’s testimony, the ALJ found that Plaintiff
16 could work as a cleaner II (Dictionary of Occupational Titles [“DOT”] 919.687-
17 014), laundry laborer (DOT 361.687-018), and industrial cleaner (DOT 381.687-
18 018) (collectively, the “Suitable Jobs”). AR 50 (citing AR 396). The ALJ
19 concluded that Plaintiff was not disabled. Id.

20 II.

21 ISSUES PRESENTED

22 Issue One: Whether the ALJ erred by rejecting without legally sufficient
23 reasons two opinions of State agency psychologist, Dr. Khaleeli: that Plaintiff was
24 limited to (1) “simple and low-level detailed work activities” and (2) “superficial”
25 interaction with coworkers.

26 Issue Two: Whether the ALJ gave legally sufficient reasons for discounting
27 the psychological evaluation prepared by treating sources Jessica Acosta, M.A.,
28 and psychologist Krystel Edmonds-Biglow, Psy.D. (see AR 839-45).

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IV.
DISCUSSION

A. ISSUE ONE: Dr. Khaleeli's Opinions.

1. Limitation to Simple Work.

a. The DOT's Definition of Simple Work.

A job's level of simplicity is addressed by its DOT general educational development ("GED") rating for reasoning development. The GED reasoning scale ranges from Level 1 (lowest) to Level 6 (highest). The DOT defines the reasoning abilities corresponding with the first two levels, as follows:

Level 1: Apply commonsense understanding to carry out simple one- or two-step instructions. Deal with standardized situations with occasional or no variables in or from these situations encountered on the job.

Level 2: Apply commonsense understanding to carry out detailed but uninvolved written or oral instructions. Deal with problems involving a few concrete variables in or from standardized situations.

See DOT, App. C, 1991 WL 688702.

In Zavalin v. Colvin, 778 F.3d 842 (9th Cir. 2015), the Ninth Circuit held that a claimant limited to "simple, routine, or repetitive tasks" could presumptively not do work rated by the DOT as requiring reasoning Level 3 or higher. Id. at 847. The Ninth Circuit ruled, "In sum, because the ALJ failed to recognize an inconsistency [between simple work and Level 3], she did not ask the expert to explain why a person with Zavalin's limitation could nevertheless meet the demands of Level 3 Reasoning. We conclude that the ALJ erred in failing to reconcile this apparent conflict." Id. Following this same reasoning, in Rounds v. Comm'r of Soc. Sec. Admin., 807 F.3d 996 (9th Cir. 2015), the Ninth Circuit held that a claimant limited to "one or two-step tasks" could presumptively not do work rated by the DOT as requiring Level 2 reasoning. Id. at 1002-03.

1 b. Relevant Administrative Proceedings.

2 In February 2016, Dr. Jenaan Khaleeli considered Plaintiff's medical records
3 and found that his impairments would not preclude all work. AR 409. She found,
4 however, that Plaintiff's "concentration, persistence and pace, and adaptation are
5 somewhat impacted and would cause moderate limitations in basic work-like
6 duties." *Id.* She found Plaintiff "not significantly limited" at understanding "very
7 short and simple" instructions but "moderately" limited in understanding
8 "detailed" instructions. AR 411. She concluded that he was "capable of
9 understanding and remembering simple and low level detailed instructions." *Id.*
10 He was also capable of making "simple work-related decisions" and asking
11 "simple" questions. AR 411-12. She concluded, "Claimant can adapt to low
12 demand work setting consistent with simple work." AR 412.

13 The ALJ gave Dr. Khaleeli's assessment "significant" weight. AR 48. The
14 ALJ limited Plaintiff to jobs with "simple job instructions" and "simple, routine,
15 and repetitive tasks" AR 45. Of the three Suitable Jobs, two require Level 2
16 reasoning while one (the laundry laborer job) requires Level 1 reasoning. AR 50.

17 c. Analysis of Claimed Error.

18 Plaintiff contends that (1) Dr. Khaleeli's opinion that he was limited to
19 "simple and low level detailed instructions" constitutes a limitation to Level 1
20 reasoning (i.e., one- or two-step tasks), such that (2) the ALJ was required to give
21 reasons for rejecting this opinion or limit Plaintiff to jobs requiring Level 1
22 reasoning. (JS at 6-7.) Plaintiff argues that Level 2 reasoning requires carrying
23 out "detailed but uninvolved" instructions, and such instructions are more complex
24 than "low level detailed instructions." (JS at 7.)

25 The premise of Plaintiff's argument fails. The ALJ reasonably interpreted
26 Dr. Khaleeli's opinion as finding Plaintiff capable of simple work; Dr. Khaleeli
27 said as much. AR 412. Indeed, by opining that Plaintiff could understand simple
28 *and* detailed instructions (albeit only low-level detailed instructions), Dr. Khaleeli

1 was expressing that Plaintiff could do slightly more than simple work. Plaintiff
2 has not shown legal error.

3 **2. Limitation to Superficial Contact with Others.**

4 a. Relevant Administrative Proceedings.

5 Dr. Khaleeli opined that Plaintiff had “mild” difficulties maintaining social
6 functioning. AR 409. She noted his history of attending special education classes,
7 obtaining job training at Payless Shoes, and displaying a cooperative attitude
8 during mental status exams.² Id. She found that he had “no” limitations on social
9 interactions. AR 412. She opined that Plaintiff was capable of responding
10 “appropriately to supervisors, and of superficial interaction with coworkers.” Id.

11 The ALJ limited Plaintiff to jobs that require only “occasional” interaction
12 with coworkers, supervisors, and the general public. AR 45. In Social Security
13 terminology, “occasional” means up to one-third of the workday. Social Security
14 Ruling (“SSR”) 83-10, 1983 SSR LEXIS 30, 1983 WL 31251 at *5.

15 b. Analysis of Claimed Error.

16 Plaintiff contends that Dr. Khaleeli’s limitation to “superficial” interaction
17 with coworkers was a qualitative opinion, not a quantitative opinion, that the ALJ
18 failed to address adequately by limiting Plaintiff to “occasional” interaction with
19 coworkers. (JS at 12.) Plaintiff argues that the ALJ erred by neither accepting Dr.
20 Khaleeli’s limitation nor giving a reason for rejecting it. (JS at 8.)

21 The ALJ reasonably translated Dr. Khaleeli’s opinions about Plaintiff’s
22 social skills into an RFC by limiting Plaintiff to “occasional” interaction with
23 coworkers. Human interactions that are infrequent are generally understood to be
24 superficial, particularly at work. See, e.g., Shaibi v. Berryhill, 883 F.3d 1102,
25 1106-07 (9th Cir. 2017) (finding “no obvious inconsistency” where the plaintiff

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27 ² Plaintiff completed a two-month job-training program at Payless Shoes
28 through his school. AR 833.

1 argued that the ALJ mistakenly gleaned from the doctor’s “qualitative”
2 limitation—that he could “relate to others on a superficial work basis”—a
3 “quantitative” limitation that he was capable of “occasional” interaction with
4 coworkers); Adams v. Colvin, 2013 U.S. Dist. LEXIS 183655, at *21 (N.D. Ohio
5 Nov. 25, 2013) (finding no error where ALJ relied on VE’s testimony equating
6 limitation to “superficial” contact with “occasional” interaction).

7 **B. ISSUE TWO: The Acosta Evaluation.**

8 **1. Summary of Relevant Administrative Proceedings.**

9 In September 2016, psychological assistant Jessica Acosta, a staff member at
10 the South Central Los Angeles Regional Center, prepared a psychological
11 evaluation of Plaintiff signed by psychologist Dr. Krystal Edmonds-Biglow. AR
12 839-45 (the “Acosta Evaluation”). The Acosta Evaluation was prepared in
13 response to a referral from Plaintiff’s treating therapist. AR 839.

14 The Acosta Evaluation discusses Plaintiff’s living situation, developmental
15 history, education, and physical health. AR 840. It includes observations by
16 Plaintiff’s mother (AR 839) and of Plaintiff’s behavior during visits to the regional
17 center (AR 841-42). Ms. Acosta administered several tests to assess Plaintiff’s
18 cognitive functioning and explained the results. AR 842-44. The Acosta
19 Evaluation concluded by listing diagnostic impressions and making
20 recommendations for treatment. AR 844-45. For example, Ms. Acosta
21 recommended that Plaintiff receive supportive services, opportunities to socialize
22 with others his same age, and referrals to programs to assist him with job and
23 independent living skills. AR 845.

24 The ALJ discussed this evaluation in a lengthy paragraph. AR 47. The ALJ
25 did not assign it a particular weight or give reasons for “rejecting” any of its
26 content. Id.

27 **2. Analysis of Claimed Error.**

28 Plaintiff contends that the ALJ erred by failing to “summarize the extremely

1 low findings of functioning” the Acosta Evaluation. (JS at 15.) Plaintiff argues
2 that the Acosta Evaluation contains opinions about Plaintiff’s functional
3 limitations, citing the treatment recommendations on its last page, such as that
4 Plaintiff would benefit from supportive services in Spanish. (JS at 20, citing AR
5 845.) Plaintiff contends that the ALJ was required to state clear and convincing
6 reasons for rejecting these opinions. (JS at 16, 20.)

7 The ALJ was not required to state clear and convincing reasons for
8 “rejecting” the Acosta Evaluation, because (1) the ALJ did not reject this
9 evaluation, but instead thoroughly discussed it and reached conclusions consistent
10 with it; and (2) it does not appear to be a “medical opinion” requiring assignment
11 of weight under 20 C.F.R. § 416.927(c), because it generally discusses clinical
12 findings and Plaintiff’s medical history for purposes of treatment. See 20 C.F.R.
13 § 416.913(a)(2)-(3). Put differently, it does not set forth any medical opinions
14 about Plaintiff’s work-related functional limitations. In determining Plaintiff’s
15 RFC, the ALJ was not required, for example, to include or reject the opinion that
16 Plaintiff would benefit from supportive services in Spanish.

17 Even in the ALJ erred in failing to specify the weight given to the Acosta
18 Evaluation, however, this error was harmless. See Molina v. Astrue, 674 F.3d
19 1104, 1115 (9th Cir. 2012) (“[I]n each case we look at the record as a whole to
20 determine whether the error alters the outcome of the case.”). The ALJ’s RFC
21 determination is generally consistent with the Acosta Evaluation.

22 The Acosta Evaluation found, for example, based on the reporting of
23 Plaintiff’s mother, that Plaintiff’s communication abilities, ability to make
24 independent choices, and ability to exhibit self-control are in the “Extremely Low
25 Range.” AR 843. It also determined that Plaintiff is “able to maintain brief
26 reciprocal conversations, but due to fixations and being tangential, interactions
27 were awkward.” AR 842. It found that Plaintiff’s “ability to solve problems and
28 apply complex reasoning strategies” is better than 21% of his same-aged peers.

1 AR 843. Plaintiff has not shown how these findings are inconsistent with the
2 ALJ’s determination that Plaintiff can understand, remember, and carry out simple
3 job instructions; can maintain attention and concentration to perform simple,
4 routine tasks in a work environment; can have occasional interaction with
5 coworkers; and can work in an environment with occasional changes to the work
6 setting and occasional work-related decision-making. AR 45.

7 **C. ISSUE THREE: New Evidence.**

8 **1. Rules Governing Remand to Consider New Evidence.**

9 This Court bases its review on the evidence that was presented to the ALJ or
10 accepted by the Appeals Council, which constitutes the “record as a whole.”

11 Brewes v. Comm’r of Soc. Sec. Admin., 682 F.3d 1157, 1162 (9th Cir. 2012).

12 While a claimant may present new evidence to the Appeals Council, the Council
13 will consider it only if it meets certain criteria and the claimant shows “good
14 cause” for not submitting it earlier. Id. As examples of “good cause” for failing to
15 timely submit evidence that existed earlier, the regulations list illness, death of a
16 family member, destruction of records in a disaster, or a treating source’s refusal to
17 provide records despite diligent efforts to obtain them. 20 C.F.R.

18 §§ 404.970(b)(1)-(3), 404.935.

19 “[W]hen the Appeals Council considers new evidence in deciding whether
20 to review a decision of the ALJ, that evidence becomes part of the administrative
21 record, which the district court must consider when reviewing the Commissioner’s
22 final decision for substantial evidence.” Brewes, 682 F.3d at 1163. In contrast,
23 “where the Appeals Council was required to consider additional evidence, but
24 failed to do so, remand to the ALJ is appropriate so that the ALJ can reconsider its
25 decision in light of the additional evidence.” Taylor v. Comm’r of Soc. Sec.
26 Admin., 659 F.3d 1228, 1233 (9th Cir. 2011) (citing 20 C.F.R. § 404.970(b)).

27 Regardless of whether evidence was submitted to the Appeals Council, a
28 district court “may at any time order additional evidence to be taken before the

1 Commissioner of Social Security, but only upon a showing that there is new
2 evidence which is material and that there is good cause for the failure to
3 incorporate such evidence into the record in a prior proceeding.” 42 U.S.C.
4 § 405(g). To demonstrate good cause, a claimant must show that the new evidence
5 was unavailable earlier. Mayes v. Massanari, 276 F.3d 453, 463 (9th Cir. 2001)
6 (quoting Key v. Heckler, 754 F.2d 1545, 1551 (9th Cir. 1985) (“If new information
7 surfaces after the Secretary’s final decision and the claimant could not have
8 obtained that evidence at the time of the administrative proceeding, the good cause
9 requirement is satisfied.”)). Evidence is material only if there is a “reasonable
10 possibility that the new evidence would have changed the outcome” if it had been
11 before the ALJ. Id. at 462.

12 **2. Summary of Relevant Administrative Proceedings.**

13 At the hearing on September 12, 2017, the VE testified that a person with
14 Plaintiff’s RFC could do the Suitable Jobs. AR 396. On October 25, 2017, the
15 ALJ published his decision relying on this vocational testimony. AR 50. In
16 December 2017, Plaintiff sought review by the Appeals Council. AR 484-88.
17 Plaintiff’s counsel requested access to the electronic exhibit file and offered to
18 submit a statement of issues and contentions within twenty-eight days of receipt of
19 access. AR 484. On March 21, 2018, Plaintiff’s counsel wrote a letter to the
20 Appeals Council indicating that he had not yet received access to the electronic
21 exhibit file. AR 481.

22 On May 23, 2018, Plaintiff’s counsel faxed a letter brief to the Appeals
23 Council with printouts of vocational information from the O*Net OnLine database
24 about the Suitable Jobs. (Dkt. 21-1 [brief and printouts dated May 23, 2018]; Dkt.
25 21-2 [fax transmission report indicating nineteen pages sent on May 23, 2018, at
26 6:12 p.m.].) The printouts discuss what percentage of availing positions within the
27 Suitable Jobs require different degrees of contact with others or working with a
28 team. (JS at 21-22; Dkt. 21-1.)

1 In October 2018, the Appeals Council denied review. AR 1, 6. The Appeals
2 Council made Plaintiff's request for review and related correspondence part of the
3 record. AR 1, 5 (identifying those materials as Exhibit 13B, found at AR 481-88
4 per the AR Index). The Appeals Council also exhibited two pages of the May 23,
5 2018 fax (pages 17 and 18). AR 8-9. The Appeals Council decision does not
6 discuss these two pages. AR 1-2. Consistent with the regulations, the Appeals
7 Council advised that it only considers new, material evidence if the claimant shows
8 "good cause" for not "informing us about or submitting it earlier." AR 2.

9 **3. Analysis of Claimed Error.**

10 Plaintiff argues that the Appeals Council was required to consider, but never
11 considered, all nineteen pages of the May 23, 2018 fax. (JS at 23 ["The court
12 should remand so that the Appeals Council can entertain the arguments made and
13 consider the evidence presented."].) Plaintiff apparently reasons that the Appeals
14 Council's inclusion of only two pages in the record indicates that it never
15 considered the other seventeen pages.

16 The Commissioner responds that the Appeals Council had no duty to
17 consider the fax, because Plaintiff failed to show good cause for submitting it so
18 long after the hearing at which the VE identified the Suitable Jobs. (JS at 24-25.)
19 Even if Plaintiff could show good cause, the Commissioner argues that the O*Net
20 information is immaterial, because the ALJ was entitled to rely on the VE's
21 testimony. (JS at 25.)

22 a. Lack of Good Cause.

23 Accepting that the O*Net information was faxed to the Appeals Council in
24 May 2018, Plaintiff has failed to show good cause for submitting it so late. The
25 hearing took place in September 2017, during which Plaintiff's counsel could have
26 looked up the Suitable Jobs on O*Net using a laptop and asked the VE about the
27 degree of social interaction required to perform those jobs. Since this information
28 was always available online, Plaintiff's counsel has failed to show why it was not

1 provided at least before the ALJ's final decision in October 2017. Plaintiff's
2 counsel did not need access to the electronic exhibit file to produce this rebuttal
3 vocational evidence. Because Plaintiff has failed to show good cause for the delay,
4 the Court need not address the evidence's materiality.

5 b. Substantial Evidence.

6 Even considering AR 8-9, the ALJ's finding that Plaintiff can do the
7 Suitable Jobs is supported by substantial evidence, and/or any error in the finding
8 is harmless. Those pages concern the occupation of industrial cleaner, DOT
9 381.687-018. (JS at 22.) Per O*Net, 22% of jobs require only "occasional" or
10 "no" contact with others. AR 8. The ALJ found that 216,000 industrial cleaner
11 jobs are available nationally. Even reducing that number by 78%, 47,520 jobs
12 would still be a significant number of jobs. See Gutierrez v. Comm'r of Soc. Sec.,
13 740 F.3d 519, 527-29 (9th Cir. 2014) (finding 25,000 jobs nationally satisfies legal
14 standard).

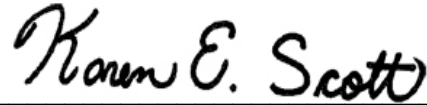
15 Plaintiff also argues that this evidence undermines the VE's testimony that
16 working as an industrial cleaner requires only "occasional" contact with
17 coworkers, supervisors, and the general public, because according to O*Net,
18 working "with others in a group or team" has some degree of importance in 94% of
19 jobs. (JS at 22, citing AR 8.) It is unclear, however, that a job in which teamwork
20 is "fairly important" would require more than "occasional" interaction with others.
21 Plaintiff provides no explanation as to why the O*Net data should be treated as
22 more authoritative than the DOT, which indicates that "talking" is not required to
23 work as an industrial cleaner. See DOT 381.687-018 (talking "not present"). The
24 kinds of tasks included in the DOT's job description (e.g., transporting supplies,
25 arranging boxes, cleaning equipment, scrubbing floors, and disposing of waste) are
26 tasks that common experience suggests can be done without more than
27 "occasional" social interaction.
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V.

CONCLUSION

For the reasons stated above, IT IS ORDERED that judgment shall be entered AFFIRMING the decision of the Commissioner.

DATED: August 16, 2019



KAREN E. SCOTT

United States Magistrate Judge

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