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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

BRENDA MARCUS,)	No. EDCV 09-1289 CW
)	
Plaintiff,)	DECISION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner, Social Security)	
Administration,)	
)	
Defendant.)	
_____)	

The parties have consented, under 28 U.S.C. § 636(c), to the jurisdiction of the undersigned Magistrate Judge. Plaintiff seeks review of the Commissioner’s denial of disability benefits. As discussed below, the court finds that judgment should be entered in favor of Defendant, affirming the Commissioner’s decision.

I. BACKGROUND

Plaintiff Brenda Marcus was born on October 7, 1960, and was forty-eight years old at the time of her latest administrative hearing. [Administrative Record (“AR”) 256, 326.] She has a high

1 school education and past relevant work experience as an office
2 manager, paper salesperson and purchasing manager. [AR 57, 257.]
3 Plaintiff alleges disability on the basis of a seizure disorder,
4 depression, anxiety, and pain in her neck, back, hip and leg. [AR 258,
5 262.]

6 **II. PRIOR PROCEEDINGS**

7 Plaintiff applied for supplemental security income ("SSI") on
8 July 6, 2004, alleging disability since June 11, 2003. [AR 11.] After
9 the application was denied initially and upon reconsideration,
10 Plaintiff requested an administrative hearing, which was held on
11 November 15, 2006, before Administrative Law Judge ("ALJ") F. Keith
12 Varni. [AR 253.] Plaintiff appeared with counsel and testified. [AR
13 254.] The ALJ denied benefits in a decision filed on December 18,
14 2006. [AR 8.] When the Appeals Council denied review on March 24,
15 2007, the ALJ's decision became the Commissioner's final decision. [AR
16 3.]

17 Plaintiff filed a complaint in the district court on June 6, 2007
18 (Case No. EDCV 07-597 CW). On March 10, 2008, the court issued a
19 decision and order remanding the matter for further administrative
20 proceedings.

21 A second administrative hearing was held on January 6, 2009,
22 before the same ALJ. [AR 324.] Plaintiff's counsel appeared without
23 Plaintiff, and testimony was taken from vocational expert Joseph
24 Mooney. [AR 326.] The ALJ denied benefits in a decision dated March
25 4, 2009. [AR 275.]

26 The present complaint was lodged on July 7, 2009, and filed on
27 July 15, 2009. On January 13, 2010, Defendant filed an Answer and
28 Plaintiff's Administrative Record ("AR"). On March 15, 2010, the

1 parties filed their Joint Stipulation ("JS") identifying matters not
2 in dispute, issues in dispute, the positions of the parties, and the
3 relief sought by each party. This matter has been taken under
4 submission without oral argument.

5 **III. STANDARD OF REVIEW**

6 Under 42 U.S.C. § 405(g), a district court may review the
7 Commissioner's decision to deny benefits. The Commissioner's (or
8 ALJ's) findings and decision should be upheld if they are free of
9 legal error and supported by substantial evidence. However, if the
10 court determines that a finding is based on legal error or is not
11 supported by substantial evidence in the record, the court may reject
12 the finding and set aside the decision to deny benefits. See Aukland
13 v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Tonapetyan v.
14 Halter, 242 F.3d 1144, 1147 (9th Cir. 2001); Osenbrock v. Apfel, 240
15 F.3d 1157, 1162 (9th Cir. 2001); Tackett v. Apfel, 180 F.3d 1094,
16 1097 (9th Cir. 1999); Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
17 1998); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); Moncada
18 v. Chater, 60 F.3d 521, 523 (9th Cir. 1995)(per curiam).

19 "Substantial evidence is more than a scintilla, but less than a
20 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence
21 which a reasonable person might accept as adequate to support a
22 conclusion." Id. To determine whether substantial evidence supports
23 a finding, a court must review the administrative record as a whole,
24 "weighing both the evidence that supports and the evidence that
25 detracts from the Commissioner's conclusion." Id. "If the evidence
26 can reasonably support either affirming or reversing," the reviewing
27 court "may not substitute its judgment" for that of the Commissioner.
28 Reddick, 157 F.3d at 720-721; see also Osenbrock, 240 F.3d at 1162.

1 IV. DISCUSSION

2 A. THE FIVE-STEP EVALUATION

3 To be eligible for disability benefits a claimant must
4 demonstrate a medically determinable impairment which prevents the
5 claimant from engaging in substantial gainful activity and which is
6 expected to result in death or to last for a continuous period of at
7 least twelve months. Tackett, 180 F.3d at 1098; Reddick, 157 F.3d at
8 721; 42 U.S.C. § 423(d)(1)(A).

9 Disability claims are evaluated using a five-step test:

10 Step one: Is the claimant engaging in substantial
11 gainful activity? If so, the claimant is found not
12 disabled. If not, proceed to step two.

13 Step two: Does the claimant have a "severe" impairment?
14 If so, proceed to step three. If not, then a finding of not
15 disabled is appropriate.

16 Step three: Does the claimant's impairment or
17 combination of impairments meet or equal an impairment
18 listed in 20 C.F.R., Part 404, Subpart P, Appendix 1? If
19 so, the claimant is automatically determined disabled. If
20 not, proceed to step four.

21 Step four: Is the claimant capable of performing his
22 past work? If so, the claimant is not disabled. If not,
23 proceed to step five.

24 Step five: Does the claimant have the residual
25 functional capacity to perform any other work? If so, the
26 claimant is not disabled. If not, the claimant is disabled.

27 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995, as amended
28 April 9, 1996); see also Bowen v. Yuckert, 482 U.S. 137, 140-142, 107
S. Ct. 2287, 96 L. Ed. 2d 119 (1987); Tackett, 180 F.3d at 1098-99; 20
C.F.R. § 404.1520, § 416.920. If a claimant is found "disabled" or
"not disabled" at any step, there is no need to complete further
steps. Tackett, 180 F.3d 1098; 20 C.F.R. § 404.1520.

Claimants have the burden of proof at steps one through four,
subject to the presumption that Social Security hearings are non-
adversarial, and to the Commissioner's affirmative duty to assist

1 claimants in fully developing the record even if they are represented
2 by counsel. Tackett, 180 F.3d at 1098 and n.3; Smolen, 80 F.3d at
3 1288. If this burden is met, a prima facie case of disability is
4 made, and the burden shifts to the Commissioner (at step five) to
5 prove that, considering residual functional capacity ("RFC")¹, age,
6 education, and work experience, a claimant can perform other work
7 which is available in significant numbers. Tackett, 180 F.3d at 1098,
8 1100; Reddick, 157 F.3d at 721; 20 C.F.R. § 404.1520, § 416.920.

9 **B. THE ALJ'S EVALUATION IN PLAINTIFF'S CASE**

10 Here, the ALJ found that Plaintiff had not engaged in substantial
11 gainful activity since her disability application date (step one);
12 that Plaintiff had "severe" impairments, namely a history of seizure
13 disorder, history of migraine, history of fibromyalgia, and history of
14 depression, anxiety, and panic disorder(step two); and that Plaintiff
15 did not have an impairment or combination of impairments that met or
16 equaled a "listing" (step three). [AR 280.] The ALJ found Plaintiff
17 had an RFC for light work, except the work should consist of simple,
18 repetitive, and non-public tasks. [AR 281.] The vocational expert
19 testified that a person with Plaintiff's RFC could not perform
20 Plaintiff's past relevant work (step four). [AR 283.] The vocational
21 expert also testified that a person with Plaintiff's RFC could make a
22 vocational adjustment to other work existing in significant numbers,

23
24 ¹ Residual functional capacity measures what a claimant can
25 still do despite existing "exertional" (strength-related) and
26 "nonexertional" limitations. Cooper v. Sullivan, 880 F.2d 1152, 1155
27 n.s. 5-6 (9th Cir. 1989). Nonexertional limitations limit ability to
28 work without directly limiting strength, and include mental, sensory,
postural, manipulative, and environmental limitations. Penny v.
Sullivan, 2 F.3d 953, 958 (9th Cir. 1993); Cooper, 800 F.2d at 1155
n.7; 20 C.F.R. § 404.1569a(c). Pain may be either an exertional or a
nonexertional limitation. Penny, 2 F.3d at 959; Perminter v. Heckler,
765 F.2d 870, 872 (9th Cir. 1985); 20 C.F.R. § 404.1569a(c).

1 including housekeeper, cleaner, and hand packager (step five). [AR
2 284.] Accordingly, the ALJ found that Plaintiff was not "disabled" as
3 defined by the Social Security Act. [Id.]

4 **C. ISSUES IN DISPUTE**

5 The parties' Joint Stipulation identifies the following disputed
6 issues:

- 7 1. Whether the ALJ complied with the district court's remand
8 order;
- 9 2. Whether the ALJ properly considered the state agency
10 psychiatrist's findings;
- 11 3. Whether the ALJ properly considered the state agency
12 physician's opinion;
- 13 4. Whether the ALJ properly considered the consultative
14 examiner's opinion;
- 15 5. Whether the ALJ properly considered the Plaintiff's residual
16 functional capacity; and
- 17 6. Whether the ALJ posed a complete hypothetical question to
18 the vocational expert.

19 [JS 3.]

20 **D. ISSUE ONE: CONSIDERATION OF DR. BELEN'S OPINION ON REMAND**

21 In Issue One, Plaintiff contends that the ALJ failed to comply
22 with the court's decision and order issued on March 10, 2008,
23 directing remand for consideration of the opinion of Dr. Nenita Belen,
24 Plaintiff's treating psychiatrist. [JS 3-4.]

25 According to the record, Plaintiff received psychiatric treatment
26 from Dr. Belen, from July 2003 to July 2004. [AR 143, 156.] Upon a
27 mental status examination, Dr. Belen diagnosed Plaintiff with a
28 depressive order not otherwise specified, and ruled out major

1 depression recurrent. [AR 174.] Plaintiff was prescribed Effexor with
2 refills. [AR 156, 174.]

3 With regards to mental functioning, Plaintiff's treating
4 physicians did not assess any functional limitations specific to
5 Plaintiff's condition, except diagnosing a Global Assessment of
6 Functioning ("GAF") score of 65.² [AR 178.] No further description
7 was provided.

8 In the latest administrative decision, the ALJ considered the
9 opinion of Dr. Belen, and found that Plaintiff's depression, anxiety,
10 and panic disorder were "severe" impairments at step two of the five-
11 step evaluation. [AR 280.] Accordingly, the ALJ continued with the
12 evaluation, and found that Plaintiff could perform light work
13 consisting of simple, repetitive, non-public tasks. [AR 281.]

14 Plaintiff argues that the ALJ's evaluation of Dr. Belen's opinion
15 failed to comply with the court's order, because the ALJ failed to
16 specifically reference Dr. Belen's opinion in his decision. [JS 4.]
17 In his initial decision, the ALJ found that Plaintiff's mental health
18 problems were not severe. [AR 13.] The court determined that this
19 decision was in error due to the ALJ not having adequately considered
20 Dr. Belen's opinion. [AR 299.] In the latest decision, the ALJ
21 concluded that Plaintiff's depression, anxiety, and panic disorder
22 were severe impairments, but did not extensively reference Dr. Belen's
23 opinion. [AR 280.]

24
25 ² A GAF score represents a clinical evaluation of an
26 individual's overall level of functioning. Scores in the range of 61
27 through 70 denote some mild symptoms, such as depressed mood or mild
28 insomnia, or some difficulty in social, occupational, or school
functioning, such as occasional truancy or theft within the household,
but indicate that the subject is generally functioning pretty well and
has some meaningful interpersonal relationships.

1 However, the ALJ's new finding of severity is accounted for and
2 paralleled by Dr. Belen's diagnosis. [AR 174, 178.] As such, the
3 court may reasonably infer that the ALJ complied with the remand order
4 by accounting for and relying on Dr. Belen's opinion. Although
5 Plaintiff seems to contend otherwise, the ALJ does not have to recite
6 the words, "I considered Dr. Belen's opinion for the following
7 reasons. . . ." Such an incantation is not required where, as here,
8 the court can draw a reasonable inference from the ALJ's opinion. See
9 Magallanes v. Bowen, 881 F.2d 747, 755 (9th Cir. 1989). Moreover,
10 Plaintiff fails to identify any aspect of Dr. Belen's opinion that the
11 ALJ failed to consider. As such, Plaintiff's claim is without merit.

12 **E. ISSUE FOUR: CONSIDERATION OF EXAMINER DR. MAZE'S OPINION**

13 On November 4, 2004, Dr. Sarah L. Maze completed a neurological
14 evaluation of Plaintiff, who complained of head injury and seizures.
15 [AR 195-198.] Dr. Maze noted that Plaintiff was involved in a motor
16 vehicle accident twenty years ago, and that her current medications
17 consisted of Depakote, Effexor, Tylenol with codeine, and Fiorinal. [AR
18 195-196.] Dr. Maze concluded that Plaintiff's seizures were well
19 controlled on medication, and that she is able to lift, carry, stand,
20 sit, and walk without limitation, but is precluded from working at
21 heights, around dangerous machinery, and operating a motor vehicle.
22 [AR 198.] Plaintiff argues that the ALJ failed to consider and
23 discuss Dr. Maze's opinion, particularly since the ALJ did not specify
24 Plaintiff's environmental limitations. [JS 13.]

25 The ALJ did not fail to consider Dr. Maze's opinion. The ALJ
26 found that Plaintiff could perform light work consisting of simple,
27 repetitive, non-public tasks [AR 281.] This residual functional
28 capacity ("RFC") is consistent with and encompasses the environmental

1 restrictions noted by Mr. Maze. Moreover, none of the jobs cited by
2 the ALJ as indicative of Plaintiff's ability to perform work in the
3 national economy - housekeeper, cleaner, and hand packager - requires
4 Plaintiff to work at heights, around dangerous machinery, or operate a
5 motor vehicle. See Dictionary of Occupational Titles ("DOT") Sections
6 301.137-010 (housekeeper), 323.687-014 (cleaner), and 559.687-074
7 (hand packager). Accordingly, it is reasonable to infer that the ALJ
8 considered Dr. Maze's opinion in determining Plaintiff's RFC, and
9 Plaintiff has stated no cause for remand on this ground.

10 **F. ISSUES TWO AND THREE: STATE AGENCY PHYSICIAN AND**
11 **PSYCHIATRIST'S FINDINGS**

12 In Issue Two, Plaintiff contends that the ALJ improperly failed
13 to consider the evaluation completed by a state agency psychiatrist.
14 [JS 10-12.] In Issue Three, Plaintiff contends that the ALJ erred in
15 failing to consider the evaluation completed by a state agency
16 physician. [JS 12-14.]

17 On November 29, 2004, Dr. May, the state agency physician,
18 completed a Physical Residual Functional Capacity Assessment ("PRFCA")
19 based on review of the record. [AR 203-210.] Dr. May indicated that
20 Plaintiff should never engage in climbing or crawling, and can
21 occasionally perform activities that require balancing, stooping,
22 kneeling, and crouching. [AR 205.] In addition, Dr. May found that
23 Plaintiff should avoid unprotected heights, machinery, and driving
24 automotive equipment. [AR 207.]

25 On December 9, 2004, Dr. Mallare, the state agency psychiatrist,
26 completed a Psychiatric Review Technique Form ("PRTF") and a Mental
27 Residual Functional Capacity Assessment ("MRFC") based on review of
28 the record. [AR 213-227, 228-231.] Dr. Mallare concluded that

1 Plaintiff was "moderately limited" in the following areas: the ability
2 to understand and remember very detailed instructions; the ability to
3 carry out detailed instruction; the ability to maintain attention and
4 concentration for extended periods; the ability to perform activities
5 within a schedule, maintain regular attendance, and be punctual; and
6 the ability to complete a normal workday and workweek without
7 interruptions while performing at a consistent pace. [AR 228-229.]
8 The evaluation indicated that Plaintiff was "not significantly
9 limited" in other listed areas of mental functioning. [Id.] The
10 evaluation concluded that Plaintiff had adequate memory,
11 concentration, and understanding to do "simple, repetitive tasks" in
12 an environment with others. [AR 230.]

13 Plaintiff argues that the ALJ committed reversible error by
14 failing "to discuss or even mention" the state agency doctors'
15 findings that Plaintiff has postural and environmental limitations,
16 and is moderately limited in her ability to understand and remember
17 detailed instructions and in her ability to sustain concentration and
18 persistence. [JS 6-7, 10; AR 228.] Petitioner's claims are without
19 merit.

20 As to Issue Two, Dr. Mallare stated that Plaintiff is able to do
21 "simple, repetitive tasks," the very words the ALJ uses in his
22 decision. [AR 230, 281.] As to Issue Three, the postural and
23 environmental limitations Dr. May indicated fit into the scope of
24 light work that the ALJ found within Plaintiff's capacity. [AR 281.]
25 Similar to Issues One and Four, the court may reasonably infer that
26 the ALJ took into consideration the state agency doctors' opinions.
27 Accordingly, Issues Two and Three do not warrant reversal of the
28 Commissioner's decision.

1 **G. ISSUES FIVE AND SIX: RESIDUAL FUNCTIONAL CAPACITY ASSESSMENT**
2 **AND COMPLETE HYPOTHETICAL QUESTION**

3 Finally, Plaintiff asserts in Issue Five that the ALJ did not
4 properly consider Plaintiff's RFC in light of the doctors' opinions.
5 [JS 15-16.] Likewise, Plaintiff contends in Issue Six that the ALJ
6 failed to pose a complete hypothetical question to the vocational
7 expert based on Plaintiff's RFC, taking into account these opinions.
8 [JS 17-19.] Plaintiff's claims are without merit.

9 Upon remand, the ALJ found that Plaintiff's depression, anxiety,
10 and panic disorder were "severe" impairments. [AR 280.] Accordingly,
11 the ALJ continued with the five-step evaluation, and found that
12 Plaintiff had the residual functional capacity to perform light work,
13 except the work should consist of simple, repetitive, non-public
14 tasks. [AR 281.]

15 The ALJ held an administrative hearing on January 6, 2009, in
16 which he asked the vocational expert about an individual with
17 Plaintiff's vocational background, age, education, and work
18 experience, who was capable of performing light work. [AR 327.] In
19 addition, the ALJ asked the vocational expert to consider mental
20 limits, namely that the work should consist of only simple, routine,
21 repetitive, non-public tasks. [Id.]

22 Plaintiff argues that the ALJ erred in the RFC finding and
23 hypothetical question since he did not take into consideration the
24 opinions of Drs. Maze, May, and Mallare. [JS 16.] However, as
25 discussed in Issues Two, Three, and Four, the ALJ did consider the
26 records of the three doctors, and issued a decision consistent with
27 their opinions. Hence, the ALJ did not err in finding an RFC of light
28 work that should consist of only simple, routine, repetitive, non-

1 public tasks. Moreover, since the RFC is not in error, all of
2 Plaintiff's limitations were accounted for in the question the ALJ
3 posed to the vocational expert. Accordingly, Issues Five and Six do
4 not warrant reversal of the Commissioner's decision.

5 **V. ORDERS**


6 Accordingly, **IT IS ORDERED** that:

7 1. The decision of the Commissioner is **AFFIRMED**.

8 2. This action is **DISMISSED WITH PREJUDICE**.

9 3. The Clerk of the Court shall serve this Decision and Order
10 and the Judgment herein on all parties or counsel.

11
12 DATED: October 26, 2010

13 
14 CARLA M. WOHRLE
United States Magistrate Judge