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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

KEITH BAILEY,	)	Case No. EDCV 09-1437-RC
	)	
Plaintiff,	)	
	)	OPINION AND ORDER
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Keith Bailey filed a complaint on August 5, 2009, seeking review of the Commissioner’s decision denying his applications for disability benefits. On December 22, 2009, the Commissioner answered the complaint, and the parties filed a joint stipulation on February 8, 2010.

**BACKGROUND**

On May 4, 2006, plaintiff, who was born on March 26, 1979, applied for disability benefits under both Title II of the Social Security Act ("Act"), 42 U.S.C. § 423, and the Supplemental Security Income program ("SSI") of Title XVI of the Act, claiming an inability to work since April 1, 2002, due to testicular pain and mental

1 problems. A.R. 61-68, 88. The plaintiff's applications were  
2 initially denied on September 29, 2006, and were again denied on  
3 March 16, 2007, following reconsideration. A.R. 41-56. The plaintiff  
4 then requested an administrative hearing, which was held before  
5 Administrative Law Judge Thomas J. Gaye ("the ALJ") on January 16,  
6 2009. A.R. 18-40, 59. On February 10, 2009, the ALJ issued a  
7 decision finding plaintiff is not disabled. A.R. 6-17. The plaintiff  
8 appealed this decision to the Appeals Council, which denied review on  
9 June 9, 2009. A.R. 1-4.

## 10 11 DISCUSSION

### 12 I

13 The Court, pursuant to 42 U.S.C. § 405(g), has the authority to  
14 review the decision denying plaintiff disability benefits to determine  
15 if his findings are supported by substantial evidence and whether the  
16 Commissioner used the proper legal standards in reaching his decision.  
17 Vasquez v. Astrue, 572 F.3d 586, 591 (9th Cir. 2009); Vernoff v.  
18 Astrue, 568 F.3d 1102, 1105 (9th Cir. 2009). "In determining whether  
19 the Commissioner's findings are supported by substantial evidence,  
20 [this Court] must review the administrative record as a whole,  
21 weighing both the evidence that supports and the evidence that  
22 detracts from the Commissioner's conclusion." Reddick v. Chater, 157  
23 F.3d 715, 720 (9th Cir. 1998); Holohan v. Massanari, 246 F.3d 1195,  
24 1201 (9th Cir. 2001). "Where the evidence can reasonably support  
25 either affirming or reversing the decision, [this Court] may not  
26 substitute [its] judgment for that of the Commissioner." Parra v.  
27 Astrue, 481 F.3d 742, 746 (9th Cir. 2007), cert. denied, 552 U.S. 1141  
28 (2008); Vasquez, 572 F.3d at 591.

1           The claimant is "disabled" for the purpose of receiving benefits  
2 under the Act if he is unable to engage in any substantial gainful  
3 activity due to an impairment which has lasted, or is expected to  
4 last, for a continuous period of at least twelve months. 42 U.S.C.  
5 §§ 423(d)(1)(A), 1382c(a)(3)(A); 20 C.F.R. §§ 404.1505(a), 416.905(a).  
6 "The claimant bears the burden of establishing a prima facie case of  
7 disability." Roberts v. Shalala, 66 F.3d 179, 182 (9th Cir. 1995),  
8 cert. denied, 517 U.S. 1122 (1996); Smolen v. Chater, 80 F.3d 1273,  
9 1289 (9th Cir. 1996).

10  
11           The Commissioner has promulgated regulations establishing a five-  
12 step sequential evaluation process for the ALJ to follow in a  
13 disability case. 20 C.F.R. §§ 404.1520, 416.920. In the **First Step**,  
14 the ALJ must determine whether the claimant is currently engaged in  
15 substantial gainful activity. 20 C.F.R. §§ 404.1520(b), 416.920(b).  
16 If not, in the **Second Step**, the ALJ must determine whether the  
17 claimant has a severe impairment or combination of impairments  
18 significantly limiting him from performing basic work activities. 20  
19 C.F.R. §§ 404.1520(c), 416.920(c). If so, in the **Third Step**, the ALJ  
20 must determine whether the claimant has an impairment or combination  
21 of impairments that meets or equals the requirements of the Listing of  
22 Impairments ("Listing"), 20 C.F.R. § 404, Subpart P, App. 1. 20  
23 C.F.R. §§ 404.1520(d), 416.920(d). If not, in the **Fourth Step**, the  
24 ALJ must determine whether the claimant has sufficient residual  
25 functional capacity despite the impairment or various limitations to  
26 perform his past work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If not,  
27 in **Step Five**, the burden shifts to the Commissioner to show the  
28 claimant can perform other work that exists in significant numbers in

1 the national economy. 20 C.F.R. §§ 404.1520(g), 416.920(g).  
2 Moreover, where there is evidence of a mental impairment that may  
3 prevent a claimant from working, the Commissioner has supplemented the  
4 five-step sequential evaluation process with additional regulations  
5 addressing mental impairments.<sup>1</sup> Maier v. Comm'r of the Soc. Sec.  
6 Admin., 154 F.3d 913, 914-15 (9th Cir. 1998) (per curiam).

7  
8 Applying the five-step sequential evaluation process, the ALJ  
9 found plaintiff has not engaged in substantial gainful activity since  
10 his alleged onset date. (Step One). The ALJ then found plaintiff has  
11 the following severe impairments: "epididymitis, dysthymic disorder,  
12 depressive disorder not otherwise specified and substance abuse"<sup>2</sup>

13  
14 <sup>1</sup> First, the ALJ must determine the presence or absence of  
15 certain medical findings relevant to the ability to work. 20  
16 C.F.R. §§ 404.1520a(b)(1), 416.920a(b)(1). Second, when the  
17 claimant establishes these medical findings, the ALJ must rate  
18 the degree of functional loss resulting from the impairment by  
19 considering four areas of function: (a) activities of daily  
20 living; (b) social functioning; (c) concentration, persistence,  
21 or pace; and (d) episodes of decompensation. 20 C.F.R. §§  
22 404.1520a(c)(2-4), 416.920a(c)(2-4). Third, after rating the  
23 degree of loss, the ALJ must determine whether the claimant has a  
24 severe mental impairment. 20 C.F.R. §§ 404.1520a(d),  
25 416.920a(d). Fourth, when a mental impairment is found to be  
26 severe, the ALJ must determine if it meets or equals a Listing.  
27 20 C.F.R. §§ 404.1520a(d)(2), 416.920a(d)(2). Finally, if a  
28 Listing is not met, the ALJ must then perform a residual  
functional capacity assessment, and the ALJ's decision "must  
incorporate the pertinent findings and conclusions" regarding the  
claimant's mental impairment, including "a specific finding as to  
the degree of limitation in each of the functional areas  
described in [§§ 404.1520a(c)(3), 416.920a(c)(3)]." 20 C.F.R. §§  
404.1520a(d)(3), (e)(2), 416.920a(d)(3), (e)(2).

<sup>2</sup> In determining plaintiff has a dysthymic disorder, the  
ALJ found plaintiff has "mild restriction of activities of daily  
living; moderate difficulties in maintaining social functioning;  
moderate difficulties in maintaining concentration, persistence

1 (Step Two); however, he does not have an impairment or combination of  
2 impairments that meets or equals a listed impairment. (Step Three).  
3 The ALJ next determined plaintiff is capable of performing his past  
4 relevant work as a laborer and house cleaner; therefore, he is not  
5 disabled. (Step Four).

6  
7 **II**

8 A claimant's residual functional capacity ("RFC") is what he can  
9 still do despite his physical, mental, nonexertional, and other  
10 limitations. Mayes v. Massanari, 276 F.3d 453, 460 (9th Cir. 2001);  
11 Valentine v. Comm'r, Soc. Sec. Admin., 574 F.3d 685, 689 (9th Cir.  
12 2009). Here, the ALJ found plaintiff has the RFC to perform limited  
13 medium work,<sup>3</sup> as follows:

14  
15 he is able to perform postural activities on a frequent  
16 basis. [He] is able to perform moderately complex tasks  
17 involving up to 5-6 step instructions, he is able to have  
18 occasional, non-intense contact with co-workers, supervisors  
19 and the public and he is precluded from work involving  
20 hypervigilance.

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22 A.R. 12-13. However, plaintiff contends the ALJ's decision is not  
23 supported by substantial evidence because the ALJ failed to properly

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26 and pace; and no episodes of decompensation." A.R. 12.

27 <sup>3</sup> Under Social Security regulations, "[m]edium work  
28 involves lifting no more than 50 pounds at a time with frequent  
lifting or carrying of objects weighing up to 25 pounds." 20  
C.F.R. §§ 404.1567(c), 416.967(c).

1 consider the opinion of Dr. Allison, a nonexamining psychiatrist, and  
2 lay witness testimony.

3  
4 **A. Nonexamining Physician's Opinion:**

5 On April 21, 2005, plaintiff was seen at the Riverside County  
6 Department of Mental Health ("DMH") by a licensed clinical social  
7 worker, John Lane, LCSW, A.R. 251-54, and plaintiff contends the ALJ  
8 erred in not considering Mr. Lane's opinion. Jt. Stip. at 10:26-  
9 12:21, 16:25-17:5. However, since J. Allison, M.D., subsequently, on  
10 May 21, 2005, co-signed Mr. Lane's assessment, this Court considers  
11 the assessment to be Dr. Allison's,<sup>4</sup> rather than Mr. Lane's, who, as a  
12 social worker, "is not considered an 'acceptable medical source[]'  
13 under the regulations." Turner v. Comm'r, Soc. Sec., \_\_ F.3d \_\_, 2010  
14 WL 2991383, \*4 (9th Cir. (Or.)). Accordingly, the record shows that  
15 Dr. Allison, a nonexamining physician, diagnosed plaintiff as having  
16 an unspecified mood disorder and an unspecified psychotic disorder,  
17 rule out major depression with psychotic features, cannabis  
18 dependency, amphetamine abuse and antisocial personality disorder, and  
19 determined plaintiff's Global Assessment of Functioning ("GAF") was  
20 50.<sup>5</sup> A.R. 251-54. When Mr. Lane interviewed plaintiff, plaintiff  
21 complained of chronic pain in his groin, which caused him to be

22 \_\_\_\_\_  
23 <sup>4</sup> Since Dr. Allison never examined plaintiff, A.R. 250, Dr.  
24 Allison is a nonexamining physician.

25 <sup>5</sup> A GAF of 50 means the individual exhibits "[s]erious  
26 symptoms (e.g., suicidal ideation, severe obsessional rituals,  
27 frequent shoplifting) or any serious impairment in social,  
28 occupational, or school functioning (e.g. no friends, unable to  
keep a job)." American Psychiatric Ass'n, Diagnostic and  
Statistical Manual of Mental Disorders, 34 (4th ed. (Text  
Revision) 2000).

1 depressed and to have moderate suicidal ideations. A.R. 252.  
2 Plaintiff also reported that he "hear[d] voices on & off" since he was  
3 21 years old "telling him to hurt [him]self[,]" and he had paranoid  
4 ideations. Id. Plaintiff's appearance, orientation, attention/  
5 concentration, psychomotor skills, speech and thought content were  
6 intact, his memory was intact, his judgment and insight were fair, his  
7 mood was depressed, he was labile, his intelligence was below average,  
8 and he did not have a grave disability. A.R. 253.

9  
10 "The Commissioner may reject the opinions of a nonexamining  
11 physician by reference to specific evidence in the medical record."  
12 Sousa v. Callahan, 143 F.3d 1240, 1244 (9th Cir. 1998). Here,  
13 however, the ALJ did **not** reject Dr. Allison's opinions, but instead  
14 incorporated them into his assessment of plaintiff. A.R. 14-15.  
15 Nevertheless, plaintiff contends the ALJ's assessment is not supported  
16 by substantial evidence.<sup>6</sup> There is no merit to plaintiff's claim.  
17 Simply put, "[t]he mere diagnosis of an impairment . . . is not  
18 sufficient to sustain a finding of disability." Young v. Sullivan,  
19 911 F.2d 180, 183 (9th Cir. 1990); see also Matthews v. Shalala, 10  
20 F.3d 678, 680 (9th Cir. 1993) ("The mere existence of an impairment is  
21 insufficient proof of a disability."); Higgs v. Bowen, 880 F.2d 860,  
22 863 (6th Cir. 1988) (per curiam) ("The mere diagnosis of [an ailment]  
23 . . . says nothing about the severity of the condition.").

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24  
25 <sup>6</sup> To support this argument, plaintiff improperly points to:  
26 signs and symptoms not found by Dr. Allison or any other  
27 physician, see Jt. Stip. at 2-6; "possible" symptoms of the  
28 various diagnoses Dr. Allison made, see Jt. Stip. at 11:8-12:7;  
and findings unsupported by the medical record. See Jt. Stip. at  
12:2-7.

1 Further, to the extent plaintiff contends the ALJ erred in not  
2 properly considering plaintiff's GAF score, plaintiff is incorrect.  
3 An ALJ is not required to give controlling weight to a treating  
4 physician's GAF score -- let alone a nonexamining physician's GAF  
5 score. See, e.g., Howard v. Comm'r of Soc. Sec., 276 F.3d 235, 241  
6 (6th Cir. 2002) ("While a GAF score may be of considerable help to the  
7 ALJ in formulating the RFC, it is not essential to the RFC's accuracy.  
8 Thus, the ALJ's failure to reference the GAF score in the RFC,  
9 standing alone, does not make the RFC inaccurate."); Petree v. Astrue,  
10 260 Fed. Appx. 33, 42 (10th Cir. 2007) (Unpublished Disposition) ("[A]  
11 low GAF score does not alone determine disability, but is instead a  
12 piece of evidence to be considered with the rest of the record.").  
13 Moreover, since the ALJ did consider Dr. Allison's opinions, including  
14 the GAF score, as part of his overall assessment of plaintiff, A.R.  
15 14-15, there was no error. Valentine, 574 F.3d at 691; Chavez v.  
16 Astrue, 699 F. Supp. 2d 1125, 1135 (C.D. Cal. 2009). To the contrary,  
17 the ALJ's assessment of plaintiff's mental limitations was supported  
18 by substantial evidence, including the opinions of examining  
19 psychiatrist Romualdo R. Rodriguez, M.D., A.R. 362-68, medical expert  
20 David Glassmire, M.D., A.R. 22-25, and nonexamining psychiatrist K.D.  
21 Gregg, M.D. A.R. 370-80; see also Tonapetyan v. Halter, 242 F.3d  
22 1144, 1149 (9th Cir. 2001) (examining physician's medical report based  
23 on independent examination of claimant constitutes substantial  
24 evidence to support ALJ's disability determination).

25  
26 **B. Lay Witness Testimony:**

27 "Lay testimony as to a claimant's symptoms is competent evidence  
28 that an ALJ must take into account, unless he or she expressly



1 determines to disregard such testimony and gives reasons germane to  
2 each witness for doing so." Lewis v. Apfel, 236 F.3d 503, 511 (9th  
3 Cir. 2001); Valentine, 574 F.3d at 694. Thus, third party statements  
4 are competent evidence, and "an important source of information about  
5 a claimant's impairments[.]" Regennitter v. Comm'r of the Soc. Sec.  
6 Admin., 166 F.3d 1294, 1298 (9th Cir. 1999); Schneider v. Comm'r of  
7 the Soc. Sec. Admin., 223 F.3d 968, 975 (9th Cir. 2000); see also  
8 Smolen, 80 F.3d at 1289 ("[T]estimony from lay witnesses who see the  
9 claimant every day is of particular value. . . .").

10  
11 Plaintiff contends the ALJ erred in rejecting the third-party  
12 reports of his girlfriend, Tylena Ramirez, and another friend, Shanna  
13 Ramirez.<sup>7</sup> Jt. Stip. at 6:18-9:6, 10:13-22. On July 17, 2006, Tylena  
14 completed a report about plaintiff, indicating he is able to take care  
15 of himself, but he does not sleep very much because he has groin pain,  
16 he cannot stand long enough to cook or shop and he does not do chores  
17 because of his injury; rather, he watches television all day everyday  
18 and talks on the phone or visits with people about 3 times a week.  
19 A.R. 97-104. Tylena also noted plaintiff cannot lift any weight or  
20 play any sports, walking hurts him, he cannot walk more than a couple  
21 of steps before having to stop and rest, and he needs a cane. A.R.  
22 102-03. Furthermore, Tylena indicated plaintiff is able to pay  
23 attention all day, gets along well with authority figures, handles  
24 changes in routine very well, and has no unusual behavior or fear, but  
25 he does not understand written instructions and does not handle stress  
26 well. Id.

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27  
28 <sup>7</sup> Since both lay witnesses have the same last name, the  
Court refers to them by their first names.

1 On February 18, 2007, Shanna completed a report about plaintiff,  
2 stating she sees him about three times a week, and he is in pain and  
3 mostly just stays inside and watches television or plays video games.  
4 A.R. 131-38. Shanna also noted plaintiff cannot lift things because  
5 it causes him pain, he cannot stand, walk, talk or climb for long  
6 periods of time, he uses a cane, and his memory is bad; however, he  
7 can pay attention unless his pain is very bad. A.R. 133, 137. Shanna  
8 further indicated that because of his pain, it is hard for plaintiff  
9 to get dressed or use the bathroom, he does not cook or do household  
10 chores, and he experiences pain when the water hits his side while he  
11 is bathing, so plaintiff will not bathe for weeks. A.R. 134-36.  
12 Finally, Shanna also stated plaintiff gets along fine with authority  
13 figures, but does not handle stress well. A.R. 137.

14  
15 To the extent the statements of Tylena and Shanna conflict with  
16 the ALJ's RFC assessment, the ALJ rejected the statements as  
17 unsupported by the record. A.R. 15. The ALJ also found that although  
18 Tylena and Shanna "reported that [plaintiff's] activities were  
19 limited, Dr. Rodriguez noted that [plaintiff] stated that he was able  
20 to perform some household chores, do yard and gardening work, cook, go  
21 to the store, run errands, care for his personal hygiene, watch  
22 television, read and leave home alone." Id. Since the ALJ's findings  
23 are supported by substantial evidence in the record, see, e.g., A.R.  
24 353-58, 362-68, 382-86, the ALJ provided germane reasons for rejecting  
25 Tylena's and Shanna's opinions. Carmickle v. Comm'r, Soc. Sec.  
26 Admin., 533 F.3d 1155, 1164 (9th Cir. 2008); Bayliss v. Barnhart, 427  
27 F.3d 1211, 1218 (9th Cir. 2005).

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1 **III**

2 "At Step Four, claimants have the burden of showing that they can  
3 no longer perform their past relevant work." Pinto v. Massanari, 249  
4 F.3d 840, 845 (9th Cir. 2001); Webb v. Barnhart, 433 F.3d 683, 686  
5 (9th Cir. 2005). "To determine whether a claimant has the [RFC] to  
6 perform his past relevant work, the [ALJ] must ascertain the demands  
7 of the claimant's former work and then compare the demands with his  
8 present capacity." Villa v. Heckler, 797 F.2d 794, 797-98 (9th Cir.  
9 1986); Marcia v. Sullivan, 900 F.2d 172, 177 n.6 (9th Cir. 1990).  
10 "This requires specific findings as to the claimant's [RFC], the  
11 physical and mental demands of the past relevant work, and the  
12 relation of the residual functional capacity to the past work."  
13 Pinto, 249 F.3d at 845.

14  
15 Here, the ALJ found plaintiff can perform his past relevant work  
16 as a laborer and house cleaner. A.R. 16. However, plaintiff contends  
17 this finding is not supported by substantial evidence because the ALJ  
18 did not make specific findings regarding the mental and physical  
19 demands of plaintiff's past relevant work. Jt. Stip. at 2:28-5:9,  
20 6:12-17. The plaintiff is incorrect. Vocational expert Troy Scott  
21 testified at the administrative hearing that an individual of  
22 plaintiff's age, education, RFC, and past work experience could  
23 perform plaintiff's former work as a laborer and house cleaner. A.R.  
24 38-39. Plaintiff has not identified any errors in this testimony,  
25 which, as the ALJ found, is consistent with the Dictionary of  
26 Occupational Titles ("DOT"),<sup>8</sup> A.R. 16; see U.S. Dep't of Labor,

27  
28 <sup>8</sup> The DOT is the Commissioner's primary source of reliable  
vocational information. Johnson v. Shalala, 60 F.3d 1428, 1434

1 Dictionary of Occupational Titles, 248, 947 (4th ed. 1991), and the  
2 vocational expert's testimony constitutes substantial evidence to  
3 support the ALJ's Step Four determination that plaintiff can perform  
4 his past relevant work.<sup>9</sup> Roberts, 66 F.3d at 184; Tylitzki v.  
5 Shalala, 999 F.2d 1411, 1415 (9th Cir. 1993); see also Fleming v.  
6 Astrue, 274 Fed. Appx. 571, 573 (9th Cir. 2008) ("The ALJ  
7 appropriately relied on the Dictionary of Occupational Titles . . . to  
8 determine that [claimant] could perform [his] past relevant work as it  
9 is generally performed in the national economy."). Therefore,  
10 plaintiff has not met his burden of proving he is unable to perform  
11 his past relevant work. Sanchez v. Secretary of Health & Human  
12 Servs., 812 F.2d 509, 511 (9th Cir. 1987).

13  
14 **ORDER**

15 IT IS ORDERED that: (1) plaintiff's request for relief is denied;  
16 and (2) the Commissioner's decision is affirmed, and Judgment shall be  
17 entered in favor of defendant.

18  
19 DATE: August 24, 2010 /S/ ROSALYN M. CHAPMAN  
20 ROSALYN M. CHAPMAN

21 \_\_\_\_\_  
22 n.6 (9th Cir. 1995); Terry v. Sullivan, 903 F.2d 1273, 1276 (9th  
23 Cir. 1990).

24 <sup>9</sup> This case is distinguishable from *Pinto*, in which the ALJ  
25 relied on the testimony of a vocational expert to conclude a  
26 claimant could perform her past relevant work even though the  
27 evidence showed the claimant could not perform at her past  
28 relevant work as actually performed, the vocational expert's  
testimony contradicted the DOT, and the ALJ failed to considered  
the claimant's illiteracy in determining she could perform her  
past relevant work. Pinto, 249 F.3d at 845-47.

UNITED STATES MAGISTRATE JUDGE

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