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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LISA DAWN GITCHEL,)	Case No. EDCV 13-1136-JPR
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
vs.)	AFFIRMING COMMISSIONER
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner’s final decision denying her application for supplemental security income (“SSI”). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). This matter is before the Court on the parties’ Joint Stipulation, filed May 12, 2014, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner’s decision is affirmed and this action is dismissed.

1 **II. BACKGROUND**

2 On August 11, 2009, Plaintiff filed an application for SSI,
3 alleging a disability onset date of February 2, 2002. (AR 48.)
4 The application was denied on January 13, 2010. (AR 20.)
5 Plaintiff requested reconsideration (AR 24), which also was
6 denied (AR 25). She then requested review by an ALJ (AR 32), and
7 a hearing was held on October 17, 2011 (AR 292). Plaintiff, who
8 was represented by counsel, testified at the hearing, as did a
9 vocational expert. (Id.) In a written decision issued November
10 17, 2011, the ALJ determined that Plaintiff had no severe
11 impairments and thus was not disabled. (AR 11-17.) On May 15,
12 2013, the Appeals Council denied her request for review. (AR 4-
13 6.) This action followed.

14 **III. STANDARD OF REVIEW**

15 Under 42 U.S.C. § 405(g), a district court may review the
16 Commissioner's decision to deny benefits. The ALJ's findings and
17 decision should be upheld if they are free of legal error and
18 supported by substantial evidence based on the record as a whole.
19 Id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v.
20 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence
21 means such evidence as a reasonable person might accept as
22 adequate to support a conclusion. Richardson, 402 U.S. at 401;
23 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It
24 is more than a scintilla but less than a preponderance.
25 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
26 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
27 substantial evidence supports a finding, the reviewing court
28 "must review the administrative record as a whole, weighing both

1 the evidence that supports and the evidence that detracts from
2 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
3 720 (9th Cir. 1996). "If the evidence can reasonably support
4 either affirming or reversing," the reviewing court "may not
5 substitute its judgment" for that of the Commissioner. Id. at
6 720-21.

7 **IV. THE EVALUATION OF DISABILITY**

8 People are "disabled" for purposes of receiving Social
9 Security benefits if they are unable to engage in any substantial
10 gainful activity owing to a physical or mental impairment that is
11 expected to result in death or which has lasted, or is expected
12 to last, for a continuous period of at least 12 months. 42
13 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257
14 (9th Cir. 1992).

15 A. The Five-Step Evaluation Process

16 An ALJ follows a five-step sequential evaluation process to
17 assess whether someone is disabled. 20 C.F.R. § 416.920(a)(4);
18 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995) (as
19 amended Apr. 9, 1996). In the first step, the Commissioner must
20 determine whether the claimant is currently engaged in
21 substantial gainful activity; if so, the claimant is not disabled
22 and the claim must be denied. § 416.920(a)(4)(i). If the
23 claimant is not engaged in substantial gainful activity, the
24 second step requires the Commissioner to determine whether the
25 claimant has a "severe" impairment or combination of impairments
26 significantly limiting her ability to do basic work activities;
27 if not, a finding of not disabled is made and the claim must be
28 denied. § 416.920(a)(4)(ii). If the claimant has a "severe"

1 impairment or combination of impairments, the third step requires
2 the Commissioner to determine whether the impairment or
3 combination of impairments meets or equals an impairment in the
4 Listing of Impairments ("Listing") set forth at 20 C.F.R., Part
5 404, Subpart P, Appendix 1; if so, disability is conclusively
6 presumed and benefits are awarded. § 416.920(a)(4)(iii).

7 If the claimant's impairment or combination of impairments
8 does not meet or equal one in the Listing, the fourth step
9 requires the Commissioner to determine whether the claimant has
10 sufficient residual functional capacity ("RFC")¹ to perform her
11 past work; if so, she is not disabled and the claim must be
12 denied. § 416.920(a)(4)(iv). The claimant has the burden of
13 proving she is unable to perform past relevant work. Drouin, 966
14 F.2d at 1257. If the claimant meets that burden, a prima facie
15 case of disability is established. Id. If that happens or if
16 the claimant has no past relevant work, the Commissioner bears
17 the burden of establishing that the claimant is not disabled
18 because she can perform other substantial gainful work available
19 in the national economy. § 416.920(a)(4)(v). That determination
20 comprises the fifth and final step in the sequential analysis.
21 § 416.920; Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

22 B. The ALJ's Application of the Five-Step Process

23 At step one, the ALJ found that Plaintiff had not engaged in
24 any substantial gainful activity since August 11, 2009. (AR 13.)
25 At step two, he concluded that Plaintiff had "medically

26
27 ¹RFC is what a claimant can do despite existing exertional
28 and nonexertional limitations. § 416.945; see Cooper v.
Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 determinable" impairments of "mood disorder, not otherwise
2 specified, and history of irritable bowel syndrome" but that
3 neither was severe. (Id.) He also concluded that they were not
4 severe in combination. (Id.) Because Plaintiff had no severe
5 impairment or combination of impairments, the ALJ determined at
6 step two of the analysis that she was not disabled and did not go
7 on to the other steps in the evaluation process. (AR 17.)

8 **V. DISCUSSION**

9 The ALJ Did Not Err in Finding Plaintiff's Mood
10 Disorder Not Severe

11 Plaintiff challenges only the ALJ's determination that she
12 failed to establish a severe impairment of mood disorder. (J.
13 Stip. at 3-6.)² She argues that he (1) applied the wrong law and
14 (2) erred in finding that nonseverity was "clearly established."
15 (Id. at 4-5.)

16 A. Applicable law

17 At step two of the sequential evaluation process, the
18 claimant has the burden to show that she has one or more "severe"
19 medically determinable impairments that can be expected to result
20 in death or last for a continuous period of at least 12 months.

21 _____
22 ²Although Plaintiff cites law for the proposition that the
23 ALJ must consider whether impairments are severe in combination
24 as well as separately (see J. Stip. at 3-4), she nowhere even
25 mentions her irritable bowel syndrome. Accordingly, the Court
26 examines only the ALJ's findings concerning her mental
27 impairment. In any event, nothing in the record other than
28 Plaintiff's own testimony showed any functional limitation during
the relevant time period stemming from Plaintiff's IBS, and the
ALJ expressly found Plaintiff not credible, a finding she has not
challenged on appeal. Thus, because she suffered no functional
limitations from the IBS, considering it in combination with the
mood disorder would not have resulted in a severity finding.

1 See Bowen v. Yuckert, 482 U.S. 137, 146 n.5 (1987) (claimant
2 bears burden at step two); Celaya v. Halter, 332 F.3d 1177, 1180
3 (9th Cir. 2003) (same); 20 C.F.R. § 416.908 (defining "physical
4 or mental impairment"); § 416.920(a)(4)(ii) (claimants not
5 disabled at step two if they "do not have a severe medically
6 determinable physical or mental impairment that meets the
7 duration requirement"). A medically determinable impairment must
8 be established by signs, symptoms, and laboratory findings; it
9 cannot be based solely on a claimant's own statement of her
10 symptoms. § 416.908; Ukolov v. Barnhart, 420 F.3d 1002, 1004-05
11 (9th Cir. 2005); SSR 96-4p, 1996 WL 374187, at *1 (July 2, 1996);
12 see also 42 U.S.C. § 423(d)(3) ("physical or mental impairment"
13 "results from anatomical, physiological, or psychological
14 abnormalities which are demonstrable by medically acceptable
15 clinical and laboratory diagnostic techniques"). A "medical
16 sign" is "an anatomical, physiological, or psychological
17 abnormality that can be shown by medically acceptable clinical
18 diagnostic techniques." Ukolov, 420 F.3d at 1005 (quoting SSR
19 96-4p, 1996 WL 374187, at *1 n.2 (internal quotation marks
20 omitted)); accord 20 C.F.R. § 416.928(b).

21 To establish that a medically determinable impairment is
22 "severe," moreover, the claimant must show that it "significantly
23 limits [her] physical or mental ability to do basic work
24 activities."³ § 416.920(c); accord § 416.921(a). "An impairment
25

26 ³"Basic work activities" include, among other things,
27 "[u]nderstanding, carrying out, and remembering simple
28 instructions"; using judgment; "[r]esponding appropriately to
supervision, co-workers and usual work situations"; and
"[d]ealing with changes in a routine work setting."

1 or combination of impairments may be found not severe only if the
2 evidence establishes a slight abnormality that has no more than a
3 minimal effect on an individual's ability to work." Webb v.
4 Barnhart, 433 F.3d 683, 686 (9th Cir. 2005) (emphasis in
5 original, internal quotation marks omitted); see also Smolen v.
6 Chater, 80 F.3d 1273, 1290 (9th Cir. 1996) ("[T]he step-two
7 inquiry is a de minimis screening device to dispose of groundless
8 claims."). Thus, a court must determine whether an ALJ had
9 substantial evidence to find that the record clearly established
10 the claimant did not have a medically severe impairment or
11 combination of impairments. Webb, 433 F.3d at 687.

12 B. Analysis

13 1. *The ALJ used the correct legal standard*

14 Plaintiff contends that the ALJ erred in rejecting her claim
15 of a severe mental impairment as not "significantly" limiting her
16 "function [so as] to be considered severe." (J. Stip. at 4.)
17 She argues that the actual test is whether the impairment "more
18 than minimally affects" the claimant's abilities. (Id.) In
19 fact, both are correct, and the ALJ recognized as much.

20 Section 416.921(a) provides that an impairment is not severe
21 "if it does not significantly limit your physical or mental
22 ability to do basic work activities." In 1985, because different
23 courts were interpreting "significant" in different ways, the
24 Social Security Administration issued a "policy clarification,"
25 stating that for an impairment to be nonsevere, it must have "no
26 more than a minimal effect" on the claimant's ability to do basic

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28 § 416.921(b); accord Yuckert, 482 U.S. at 141.

1 work activities. SSR 85-28, 1985 WL 56856, at *3 (Jan. 1, 1985);
2 see also Webb, 433 F.3d at 686. Thus, SSR 85-28 and its progeny
3 "clarify" the standard in § 416.921(a), which remains the law.

4 Although the ALJ most often cited the language from
5 § 416.921(a), he also recognized that "[a]n impairment or
6 combination of impairments is 'not severe' when medical and other
7 evidence establish only a slight abnormality or a combination of
8 slight abnormalities that would have no more than a minimal
9 effect on an individual's ability to work." (AR 12 (citing SSR
10 85-28).) Accordingly, the ALJ did not apply the wrong legal
11 standard.

12 2. *Nonseverity was clearly established*

13 The ALJ determined that Plaintiff's mood disorder was not
14 severe because it was well controlled with medication. (AR 15-
15 16.) He also noted that the record contained "essentially
16 nothing in terms of formal mental status examinations with formal
17 diagnoses and global assessment of functioning (GAF) scores"
18 demonstrating any mental impairment. (AR 15.)

19 As the ALJ noted, Plaintiff's treating doctor routinely
20 remarked that she was "doing well" on her prescribed medications.
21 (See AR 16; see, e.g., AR 191, 195, 197, 198, 202, 205, 208, 209,
22 243, 245-47; see also AR 235 (treating doctor's request for
23 reauthorization of services, noting that Plaintiff's mood was
24 "stable" when on medication).) Impairments that are effectively
25 controlled with medication or other medical treatment are not
26 severe. See Sample v. Schweiker, 694 F.2d 639, 642-43 (9th Cir.
27 1982) (mental impairment that was "amenable to control" and
28 "minimized" with medication not disabling); Kassebaum v. Comm'r

1 of Soc. Sec., 420 F. App'x 769, 772 (9th Cir. 2011) (ALJ did not
2 err in finding that carpal tunnel syndrome was not severe
3 impairment because wrist operation had been successful, "at least
4 as much as necessary to ensure that the ailment was not so severe
5 as to interfere significantly with [claimant's] ability to
6 work"). Indeed, as the ALJ found, Plaintiff's "medication
7 regimen has remained essentially unchanged for years." (AR 16.)
8 Although Plaintiff contends that in February 2010 Wellbutrin and
9 Ambien were "added" to her prescribed medicines (J. Stip. at 5
10 (citing AR 193)), in fact she was taking both of them in December
11 2009 (AR 195) and June 2009 (AR 198), the latter before the
12 relevant time period for which Plaintiff could be entitled to
13 benefits, and had been taking them off and on for years (see,
14 e.g., AR 201, 208, 286). Although Plaintiff is correct that the
15 dosages of her drugs were occasionally tinkered with (see J.
16 Stip. at 5 and cited AR pages), the medicines themselves rarely
17 changed - most likely because Plaintiff was almost always "doing
18 well." In any event, as Plaintiff acknowledged upon being
19 questioned by the examining psychiatrist, she sometimes did not
20 take all her medicine. (AR 172; see also AR 171 (referring to
21 "history of non-compliance with treatment").) Thus, any changes
22 in her dosages may have been the result of her failing to take
23 all her prescribed medicines.

24 The ALJ also did not err in noting that there existed in the
25 record virtually none of the test results or diagnostic findings
26 necessary to support a determination of impairment severity,
27 which cannot be based on subjective symptoms alone. See Ukolov,
28 420 F.3d at 1004-05. The ALJ noted that the one low GAF score in

1 the record - a 40 recorded in March 2008 (AR 239), before the
2 date as of which benefits could be awarded - "was inconsistent
3 with the history of unremarkable monthly sessions for medication
4 refills" and therefore rejected it (AR 15). He did not err in
5 doing so, because other than an occasional indication that
6 Plaintiff reported she was feeling "depressed" or was "not
7 sleeping" (see, e.g. AR 193, 194, 201, 203, 207, 212, 244), her
8 treating psychiatrist's notes routinely indicated that she was
9 "doing well," as noted above.⁴ No treating doctor ever ascribed
10 any specific functional limitations to Plaintiff as a result of
11 her alleged mental impairment. The examining consultant
12 psychiatrist, on the other hand, conducted diagnostic tests and
13 affirmatively found no limitations in any area of functioning (AR
14 176), a finding confirmed by the reviewing consultant (AR 187);
15 the ALJ gave their opinions "greater weight" (presumably than the
16 GAF score of 40) (AR 16), a finding Plaintiff has not challenged.
17 The ALJ did not err in concluding that the record clearly
18 established that Plaintiff's mood disorder was not severe.

19 When, as here, substantial evidence supported the ALJ's
20 finding that an impairment was not severe, this Court may not
21 substitute its judgment for that of the Commissioner. See
22 Reddick, 157 F.3d at 720-21.

24 ⁴At the same time he assessed a GAF of 40, which indicates
25 impaired functioning, Plaintiff's doctor noted that she was
26 "reasonably expected to benefit and improve." (AR 238.) In any
27 event, the most recent edition of the DSM "dropped" the GAF
28 scale, citing its lack of conceptual clarity and questionable
psychological measurements in practice. Am. Psychiatric Ass'n,
Diagnostic and Statistical Manual of Mental Disorders 16 (5th ed.
2013).

1 Remand is not warranted.⁵

2 **VI. CONCLUSION**

3 Consistent with the foregoing, and pursuant to sentence four
4 of 42 U.S.C. § 405(g),⁶ IT IS ORDERED that judgment be entered
5 AFFIRMING the decision of the Commissioner and dismissing this
6 action with prejudice. IT IS FURTHER ORDERED that the Clerk
7 serve copies of this Order and the Judgment on counsel for both
8 parties.

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11 DATED: June 11, 2014

12 _____
13 JEAN ROSENBLUTH
14 U.S. Magistrate Judge
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22 ⁵Even had the ALJ erred in finding Plaintiff's mood disorder
23 not severe, any error was likely harmless because the vocational
24 expert testified that someone with Plaintiff's characteristics
25 and who could perform only simple, repetitive tasks with
occasional public contact could still work at least three
identified jobs. (See AR 317.) Thus, even if the ALJ had
continued through the five-step sequential analysis, his finding
that Plaintiff was not disabled would not likely have changed.

26 ⁶This sentence provides: "The [district] court shall have
27 power to enter, upon the pleadings and transcript of the record,
28 a judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."