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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-EASTERN DIVISION

TONY CHANDLER,)	ED CV 14-00418-SH
)	MEMORANDUM DECISION
Plaintiff,)	AND ORDER
v.)	
CAROLYN W. COLVIN, Commissioner,)	
Social Security Administration,)	
Defendant.)	

PROCEEDINGS

This matter is before the court for review of the Decision of the Commissioner of Social Security denying Plaintiff's application for disability insurance benefits. Pursuant to 28 U.S.C. § 636(c), the parties have consented that the case may be handled by the undersigned. The action arises under 42 U.S.C. § 405(g), which authorizes the Court to enter Judgment upon the pleadings and transcript of the record before the Commissioner. Plaintiff and Defendant have filed their pleadings, Defendant has filed the certified transcript

1 of record, and each party has filed its supporting brief. After reviewing the
2 matter, the Court concludes the Decision of the Commissioner should be
3 affirmed.

4 **I. BACKGROUND**

5 Plaintiff, Tony Chandler, applied for Disability Insurance Benefits on
6 April 29, 2010. (AR 160-68). Plaintiff alleges disability commencing March 15,
7 2009. (AR 161). The Commissioner denied the Application initially. (AR 14-
8 25). A hearing on the claim was conducted on March 22, 2012. (AR 37-74). On
9 September 11, 2012, the Administrative Law Judge (“ALJ”) issued an
10 unfavorable decision. (AR 16-31). The Appeals Council denied the request of
11 review. (AR 1-3). Plaintiff commenced this civil action seeking judicial review.
12

13 **II. DISCUSSION**

14 Plaintiff makes two challenges to the ALJ Decision dated September 11,
15 2012. Plaintiff alleges the ALJ erred in (1) failing to properly consider the lay
16 witness testimony of Plaintiff’s wife, Kim Chandler, and (2) finding that all of
17 the jobs identified by the Vocational Expert are consistent with the ALJ’s
18 determination of residual functional capacity. For the reasons discussed below,
19 the Court finds no reversible error by the ALJ.
20

21 **A. The ALJ Properly Consider the Lay Witness Testimony of Plaintiff’s** 22 **Wife**

23 Plaintiff asserts the ALJ failed to properly consider the testimony of
24 Plaintiff’s wife, Kim Chandler. In response, Defendant argues the ALJ provided
25 germane reasons for rejecting the Plaintiff’s wife’s testimony.

26 At the administrative hearing, Plaintiff claimed disability due to medically
27 determinable impairments related to brain aneurysms and pain in his right
28 shoulder. Mrs. Chandler testified that Plaintiff suffers from short-term memory

1 loss as a permanent effect from brain surgeries, and diminished strength and
2 range of motion in his right arm. (AR 64). Mrs. Chandler further testified that
3 Plaintiff requires assistance in dressing and has difficulty performing household
4 tasks. (AR 65). Lastly, Mrs. Chandler opined she “see[s] [Plaintiff’s functional
5 limitations] as a disability, definitely.” (AR 64).

6 The ALJ properly discredited Mrs. Chandler’s personal opinion that
7 “[Plaintiff] had been unable to function since the surgeries.” (AR 24). The ALJ
8 held that “[Plaintiff’s] wife is not a medical professional...[and] is not competent
9 to make a diagnosis or argue the severity of the claimant’s symptoms in
10 relationship to his [*sic*] ability to work.” (AR 25). An ALJ need not discuss
11 “medical diagnoses” made by lay witnesses because they are beyond the
12 competence of lay witnesses and therefore do not constitute competent evidence.
13 Nguyen v. Chater, 100 F.3d 1462, 1467 (9th Cir. 1996) (citing 20 C.F.R. §
14 404.1513(a)).

15 However, to properly reject lay testimony regarding Plaintiff’s observable
16 symptoms the ALJ must give reasons germane for doing so. Carmickle v.
17 Commissioner, 533 F.3d 1155, 1164 (9th Cir. 2008); Bayliss v. Barnhart, 427
18 F.3d 1211, 128 (9th Cir. 2005) (“An ALJ need only give germane reasons for
19 discrediting the testimony of lay witness”). The ALJ provided the following
20 reasons for finding Mrs. Chandler’s statements not credible to the extent her
21 statements were inconsistent with the RFC: (1) her opinion was not an unbiased
22 one; and (2) the clinical and diagnostic medical evidence did not support her
23 statements. (AR 25).

24 In discrediting Mrs. Chandler’s testimony, the ALJ determined
25 “[Plaintiff’s] wife has a financial and familial interest in seeing the [Plaintiff]
26 receive benefits and her opinion is not an unbiased one.” (AR 25).

27 Regardless of whether Mrs. Chandler is an interested party, “friends and
28 family members in a position to observe a claimant's symptoms and daily

1 activities are competent to testify as to [his or] her condition.” Valentine v.
2 Commissioner Social Security Admin., 574 F.3d 685, 694-95 (9th Cir. 2009).
3 Thus, the ALJ’s determination to reject Mrs. Chandler’s testimony because she
4 was an interested party was improper. For the ALJ to make such a basic error is
5 troubling.

6 However, although the ALJ cited to Mrs. Chandler’s familial and
7 financial interests, the ALJ ultimately determined that “[m]ore importantly, the
8 clinical or diagnostic medical evidence... does not support her statements.” (AR
9 25) (emphasis added). While lay testimony cannot be rejected merely because it
10 is irrelevant to medical conclusions or not supported by medical evidence,
11 inconsistency with the medical evidence is a germane reason to discredit lay
12 testimony. Bayliss v. Barnhart, 427 F.3d 1211, 1218 (9th Cir. 2005). Here, the
13 ALJ provided a complete review of Plaintiff’s complete medical history and held
14 found that the objective medical evidence did not support the alleged severity of
15 his symptoms. (AR 25-28).

16 In regard to Plaintiff’s brain aneurysms, the ALJ identified specific
17 medical evidence to support discrediting the wife’s testimony. In 2009, Plaintiff
18 underwent two brain surgical procedures after a finding of artery aneurysms and
19 subarachnoid hemorrhage. (AR 576). On January 8, 2010 and October 25,
20 2011, Plaintiff’s cerebral arteriogram indicted a stable coil occlusion and no
21 residual aneurysm. (AR 562, 668, 694). On July 4, 2010, consultative examiner,
22 Dr. Adam Cash, Psy.D., conducted a complete psychological evaluation of
23 Plaintiff. (AR 319-323). Despite Plaintiff’s low score on the Wechsler Memory
24 Scale-III test for immediate memory in auditory tasks, Plaintiff’s performance on
25 the Bender Gestalt II did not indicate significant visual motor problems of gross
26 brain dysfunction. (AR 321, 323). Dr. Cash determined from a psychological
27 standpoint,

1 [Plaintiff] does have cognitive deficits in processing speed and an
2 overall reduction in level of functioning. Ultimately, his ability to
3 understand, remember and carry out simple instructions was mildly
4 impaired. His level of concentration, persistence, and pace were
5 moderately impaired. His ability to function socially in the
6 workplace is not impaired. His tolerance for stress is mildly
7 impaired at this time and he runs no risk for emotional deterioration
8 in the workplace. (AR 323).

9 Based on the findings and opinions of Dr. Cash, along with other objective
10 medical evidence, the ALJ determined that Plaintiff is capable of understanding,
11 remembering and carrying out simple one and two step tasks. (AR 23). The ALJ
12 found Plaintiff has the RFC to maintain concentration, persistence, and pace
13 throughout a normal workday as related to simple tasks. (AR 23). In addition,
14 Plaintiff is also able to interact adequately and able to make adjustments and
15 avoid hazards in the workplace. (AR 23). Therefore, the ALJ provided germane
16 reasons to properly rejected Plaintiff's wife's testimony regarding mental
17 impairments when determining Plaintiff's RFC.

18 Plaintiff's second allegedly disabling symptom is pain in the right
19 shoulder. The record indicates Plaintiff suffers from right shoulder impairment,
20 and underwent surgeries on December 17, 2009 and June 24, 2010 (AR 410,
21 515). The ALJ gave great weight to the finding of Sandra Eriks, M.D, who
22 examined Plaintiff on July 20, 2010. Although Dr. Eriks diagnosed Plaintiff
23 with a right shoulder injury and functional limitations to sedentary work, Dr.
24 Eriks opined that after two months of recovery Plaintiff would have the residual
25 capacity to lift and carry fifty pounds occasional and twenty pounds frequently.
26 (AR 329). Furthermore on October 20, 2011, Plaintiff's therapist discharged
27 Plaintiff from physical therapy as at this time, as "all goals have been met and
28 [Plaintiff] never called to schedule more appointments after returning from his
vacation." (AR 511).

In assessing Plaintiff's RFC, the ALJ gave Dr. Eriks' findings the
"greatest weight" but found an even more restricted RFC. (AR 22, 27).

1 Specifically, the ALJ determined that Plaintiff “can lift only twenty pounds
2 occasionally and ten pounds frequently... [and] has the [RFC] to perform less
3 than a full range of light work.” (AR 22, 27). Therefore, based on the objective
4 medical evidence, the ALJ provided proper reasons to reject the Mrs. Chandler’s
5 inconsistent statements of disabling shoulder pain when determining Plaintiff’s
6 RFC.

7
8 **B. The Positions Identified by the Vocational Expert, as defined in the**
9 **Dictionary of Occupation Titles, are Consistent with the ALJ’s**
10 **Determination of Residual Functional Capacity**

11 Plaintiff contends that the jobs recommended by the Vocational Expert
12 (“VE”) are inconsistent with the ALJ’s residual functional capacity. At the
13 hearing the ALJ asked the VE what kind of other work could a hypothetical
14 individual with Plaintiff’s various functional limitations perform. (AR 68-70).
15 The hypothetical included the limitation “[Plaintiff] should avoid concentrated
16 exposure to... *dangerous machinery...*” (AR 69) (emphasis added). The VE
17 identified three jobs: Photo Copy Machine Operator; Assembler of Small Parts;
18 and Assembler of Electrical Accessories. (AR 69-70). Plaintiff alleges the
19 definitions of all three jobs in the Dictionary Occupational Titles (“DOT”)
20 involve some degree of exposure to dangerous machinery and are inconsistent
21 with Plaintiff’s RFC.

22 For example, Plaintiff argues that under the DOT, a Photo Copy Machine
23 Operator “may be required to clean or repair photocopy machine.” DOT
24 207.684-014. Plaintiff argues “this could expose the worker to hazards such as
25 moving machine parts or power tools used in the course of maintaining the
26 machine. As such, this job violates Plaintiff’s RFC, which explicitly precludes
27 concentrated exposure to dangerous machinery.” Pl. Br. 8.

1 Plaintiff's argument is without merit. At the hearing, the ALJ asked, and
2 the VE confirmed, that other than the addition of "scanning technician" duties to
3 the DOT definition of photocopy machine operator, his testimony was consistent
4 with the DOT. (AR 70). Because the hypothetical the ALJ posed to the VE
5 contained all of the limitations that the ALJ found credible and were supported
6 by substantial evidence in the record, the ALJ's reliance on the testimony the VE
7 gave in response to the hypothetical therefore was proper. Bayliss v. Barnhart,
8 427 F.3d 1211, 1217 (9th Cir. 2005).

9 In addition, Plaintiff fails to present any challenges to the VE's
10 qualifications or any other valid reason to doubt that the recommended jobs
11 exists within the framework of the ALJ's hypothetical question. Rather, Plaintiff
12 merely goes through each of the three generalized DOT descriptions and assumes
13 the use of any type of machinery constitutes "concentrated exposure to
14 dangerous machinery." However, it is not for the Plaintiff or the ALJ to play the
15 role of vocational expert. See Burkhart v. Bowen, 856 F.2d 1335, 1341 (9th Cir.
16 1988). The VE was called upon for his expertise in this area, and since the
17 vocational expert's "recognized expertise provided the necessary foundation" for
18 his testimony, no additional foundation is required. Bayliss, 427 F.3d 1218.
19 Therefore, the jobs identified by the Vocational Expert, as defined in the
20 Dictionary of Occupational Title, are consistent with the ALJ's determination of
21 residual functional capacity. The VE specifically found that all three jobs were
22 within plaintiff's residual functional capacity. The ALJ found only that plaintiff
23 should "avoid concentrated exposure to...dangerous machinery." (Emphasis
24 added). One or more or of the identified jobs fell within this limitation.

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28 **ORDER**

1 The Court finds the ALJ properly evaluated the lay witness' testimony,
2 and the positions identified by the Vocational Expert, as defined in the
3 Dictionary of Occupational Titles, are consistent with the ALJ's determination of
4 Plaintiff's residual functional capacity.

5 For the foregoing reasons, the decision of the Commissioner is affirmed
6 and the Complaint is dismissed.

7 Dated: November 17, 2014

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11 STEPHEN J. HILLMAN
12 UNITED STATES MAGISTRATE JUDGE
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