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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

JUAN CARTAGENA,	}	Case No. ED CV 14-0884-DFM
Plaintiff,		MEMORANDUM OPINION AND ORDER
v.		
CAROLYN W. COLVIN, Acting Commissioner of Social Security,		
Defendant.		

Plaintiff Juan Jesus Cartagena (“Plaintiff”) appeals from the decision of the Administrative Law Judge (“ALJ”) denying his applications for Disability Insurance and Supplemental Security Income benefits. The Court concludes that the ALJ properly developed the record and then properly determined that Plaintiff was capable of performing other work in the regional and national economies. Therefore, the Commissioner’s decision is affirmed and the matter is dismissed with prejudice.

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1 I.

2 **FACTUAL AND PROCEDURAL BACKGROUND**

3 Plaintiff filed his applications for benefits on July 6, 2011, alleging
4 disability beginning June 7, 2008. Administrative Record (“AR”) 10. The ALJ
5 determined that Plaintiff had the severe impairments of diabetes mellitus, facet
6 arthropathy of the lumbar spine (back pain), and obesity. AR 12. At the
7 administrative hearing, the ALJ called a vocational expert (“VE”) to testify
8 about what work Plaintiff could perform given his impairments and functional
9 limitations. AR 51-52. The ALJ gave the VE a hypothetical based on what the
10 ALJ determined was Plaintiff’s residual functional capacity (“RFC”):

11 Q: Okay, Ms. Porter, assume a hypothetical individual of
12 claimant’s age, education, prior work experience. Assume this
13 person is restricted to lifting 20 pounds occasionally, 10 pounds
14 frequently; walking or standing 4 hours out of an 8-hour day in
15 one-half hour intervals. Sitting 6 hours out of an 8-hour day with
16 normal breaks. No unprotected heights; occasional stairs and
17 ramps; occasional stooping and bending. No ladders. No
18 temperature extremes. No forceful gripping or grasping with the
19 right upper extremity. Could such a hypothetical individual
20 perform either of claimant’s past jobs?

21 A: No, past work is not performable per the [Dictionary of
22 Occupational Titles (“DOT”)] or as performed.

23 Q: Is there other work such a person could perform?

24 AR 51. In response to the ALJ’s question, the VE identified the jobs of
25 production solderer, sewing-machine operator, and garment sorter. AR 51-52.
26 The ALJ relied on the VE’s testimony in concluding that Plaintiff was not
27 disabled because he could perform other work available in significant numbers
28 in the national and regional economies. AR 18-19.

1 **II.**

2 **ISSUES PRESENTED**

3 The parties dispute whether the ALJ erred in (1) relying upon the VE’s
4 testimony in concluding that Plaintiff was capable of performing other work at
5 step five of the sequential evaluation process; and (2) failing to fully develop
6 the record. See Joint Stipulation (“JS”) at 2-3.

7 **III.**

8 **STANDARD OF REVIEW**

9 Under 42 U.S.C. § 405(g), a district court may review the
10 Commissioner’s decision to deny benefits. The ALJ’s findings and decision
11 should be upheld if they are free from legal error and are supported by
12 substantial evidence based on the record as a whole. 42 U.S.C. § 405(g);
13 Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v. Astrue, 481 F.3d
14 742, 746 (9th Cir. 2007). Substantial evidence means such relevant evidence as
15 a reasonable person might accept as adequate to support a conclusion.
16 Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th
17 Cir. 2007). It is more than a scintilla, but less than a preponderance.
18 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d
19 880, 882 (9th Cir. 2006)). To determine whether substantial evidence supports
20 a finding, the reviewing court “must review the administrative record as a
21 whole, weighing both the evidence that supports and the evidence that detracts
22 from the Commissioner’s conclusion.” Reddick v. Chater, 157 F.3d 715, 720
23 (9th Cir. 1996). “If the evidence can reasonably support either affirming or
24 reversing,” the reviewing court “may not substitute its judgment” for that of
25 the Commissioner. Id. at 720-21.

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IV.
DISCUSSION

A. The ALJ's Step-Five Determination Was Supported by Substantial Evidence

Plaintiff contends that the ALJ erred in determining that he was capable of performing the jobs of production solderer, sewing-machine operator, and garment sorter because those jobs, as described in the DOT, are incompatible with the ALJ's RFC assessment. JS at 3-9. More specifically, Plaintiff contends that the VE only identified jobs that require standing and/or walking for six hours of an eight-hour workday, which conflicts with the ALJ's RFC assessment limiting Plaintiff to standing and/or walking for only four out of eight hours. *Id.* Plaintiff also argues that the jobs identified by the VE require frequent "handling," which conflicts with the ALJ's precluding Plaintiff from "forceful gripping or grasping" with his right upper extremity. *Id.*

Contrary to Plaintiff's contention, the ALJ's determination at step five of the sequential evaluation was not inconsistent with the requirements of light work. Plaintiff has provided no authority for the proposition that his inability to stand and/or walk for more than four hours per day categorically excludes him from performing all light work. In fact, the Social Security Regulations specifically provide that a job may be categorized as light work even if it does not require a great deal of standing. *See* 20 C.F.R. §§ 404.1567(b), 416.967(b) ("Even though the weight lifted may be very little, a job is in this category [light work] when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.") (emphasis added); *see also* *Migliore v. Colvin*, No. 12-00251, 2013 WL 3935879, at *2 (C.D. Cal. July 29, 2013) (rejecting Plaintiff's argument that limitation to four hours of walking in and of itself eliminated the ability to perform any light category job). The VE identified specific "light" jobs that a

1 hypothetical person with Plaintiff's limitations could perform. See AR 51-52.
2 Moreover, the Court has reviewed the requirements listed for the DOT for
3 each of those jobs and nothing in those requirements tells the Court that these
4 jobs require standing and/or walking for more than four hours per day.¹

5 Similarly, Plaintiff has not shown that the preclusion from "forceful
6 gripping or grasping" in the RFC assessment prevents him from performing the
7 jobs identified by the VE. Although the Social Security Regulations include
8 seizing, holding, and grasping as types of handling, see SSR 85-15, 1985 WL
9 56857 at *6 (1985), the DOT lists no requirements for forceful gripping,
10 grasping, or twisting of the hands for any of the three jobs cited by the VE.²
11 Thus, although Plaintiff uses the terms "handling" and "forceful gripping or
12 grasping," interchangeably, see JS at 4-7, there is no indication that any of
13 them require forceful gripping or grasping. See, e.g., Bauslaugh v. Astrue, No.
14 09-1853, 2010 WL 1875800, at *5 (C.D. Cal. May 11, 2010) (concluding that
15 claimant who was precluded from forceful gripping or grasping failed to show
16 any DOT conflict where the jobs identified by the VE did not specifically
17 require these abilities). "The act of grasping requires a firm hold or grip.
18 Handling can mean simply touching or using the hands. It is improper to
19 conflate the two terms." Czajka v. Astrue, No. 09-0194, 2010 WL 3293350, at
20 *4, (C.D. Cal. Aug. 18, 2010) (emphasis and footnotes omitted); see also
21 Suarez v. Astrue, No. 11-1940, 2012 WL 4848732, at *4 (C.D. Cal. Oct. 11,
22 2012) ("[N]either handling nor fingering require forceful gripping or
23

24 ¹ See DICOT 813.684-022, 1991 WL 681592 (production solderer);
25 DICOT 786.682-026, 1991 WL 681012 (sewing-machine operator); DICOT
26 222.687-014, 1991 WL 672131 (garment sorter).

27 ² See supra note 1.
28

1 grasping.”).³ Moreover, “[f]requent handling is not the same as ‘forceful’
2 handling.” Equihua v. Astrue, No. 10-1022, 2011 WL 321993, at *6 (C.D. Cal.
3 Jan. 28, 2011).

4 Here, the ALJ provided the VE with all of the limitations substantially
5 supported by the medical evidence. Based on these limitations, the VE found
6 that Plaintiff could perform any of three jobs, each of which captures Plaintiff’s
7 primary exertional limitations. The VE’s testimony provides substantial
8 evidence supporting the ALJ’s step-five determination because the VE
9 “identif[ied] a specific job or jobs in the national economy having requirements
10 that the claimant’s physical and mental abilities and vocational qualifications
11 would satisfy.” Osenbrock v. Apfel, 240 F.3d 1157, 1162-1163 (9th Cir. 2001);
12 see also Bayliss v. Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005) (holding that
13 ALJ properly relied on VE’s response to hypothetical that included all of
14 claimant’s limitations). Accordingly, the ALJ did not err in finding Plaintiff
15 capable of performing other work in the national economy at step five of the
16 sequential evaluation.

17 **B. The ALJ Properly Developed the Record**

18 Plaintiff argues that the ALJ did not fully and fairly develop the record.
19 JS at 11-14. There are various treatment notes in the record from Plaintiff’s
20 treating provider, Clinica Medica. See, e.g., AR 268-71, 321-22, 349-51. The
21 ALJ stated that these medical records were not entitled to any weight in part
22 because “it is unclear whether these opinions are from a medically acceptable
23

24 ³ But see Petersen-Keisler v. Colvin, No. 12-1050, 2013 WL 5424843, at
25 *8 (E.D. Cal. Sept. 27, 2013) (“The ALJ’s finding that Plaintiff could work in
26 an occupation requiring frequent to constant handling and fingering conflicts
27 with his finding that Plaintiff could not forcefully grip or grasp with her left
28 hand.”). The Court finds the cases cited in the text more persuasive on this
point.

1 source as the signatures are illegible and they are not followed by the staff
2 member's title." AR 17. Plaintiff contends that, if the ALJ could not determine
3 whether the disability statements were from a medically acceptable source
4 because the signatures were illegible, the ALJ had a duty to contact Clinica
5 Medica to determine who completed the forms. JS at 12.

6 An ALJ has an affirmative duty to assist the claimant in developing the
7 record at every step of the sequential evaluation process. Bustamante v.
8 Massanari, 262 F.3d 949, 954 (9th Cir. 2001); see also Webb v. Barnhart, 433
9 F.3d 683, 687 (9th Cir. 2005). The ALJ's duty to develop the record is
10 triggered, however, only "when there is ambiguous evidence or when the
11 record is inadequate to allow for proper evaluation of the evidence." Mayes v.
12 Massanari, 276 F.3d 453, 459-60 (9th Cir. 2001).

13 Here, the ALJ's duty to further develop the record was not triggered
14 because the medical evidence at issue was neither ambiguous nor inadequate.
15 The ALJ rejected the medical records from Clinica Medica not merely because
16 the signature was illegible but primarily because also because those records
17 were "brief, conclusory, and inadequately supported by clinical findings." AR
18 17. This was a wholly proper basis on which to reject the opinions contained in
19 the Clinica Medica reports. "The ALJ need not accept the opinion of any
20 physician, including a treating physician, if that opinion is brief, conclusory,
21 and inadequately supported by clinical findings." Thomas v. Barnhart, 278
22 F.3d 947, 957 (9th Cir. 2002); accord Tonapetyan v. Halter, 242 F.3d 1144,
23 1149 (9th Cir. 2001).⁴

24
25 ⁴ It is apparent from the ALJ's decision that the ALJ's concern about
26 these records was heightened by the extreme functional limitations they
27 described. For example, in a Physical Capacities questionnaire, it was opined
28 that Plaintiff could not walk, stand, or sit for more than two hours per day and
could never lift any amount of weight. AR 350-51. Without the support of

1 Additionally, the opinions at issue here are contained in mostly “check-
2 the-box” forms without any supporting clinical or laboratory findings.
3 Whoever filled out these forms checked off preprinted choices and provided
4 little if any elaboration or explanation for these opinions. Thus, even if the
5 records from Clinica Medica had legible signatures from an acceptable medical
6 source, the ALJ would nevertheless have been justified in refusing to give
7 controlling weight to these records. See Crane v. Shalala, 76 F.3d 251, 253 (9th
8 Cir. 1996) (noting that ALJ permissibly rejected “check-off reports that did not
9 contain any explanation of the bases of their conclusions”); Johnson v.
10 Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995) (concluding that ALJ permissible
11 rejected treating physician’s opinion that was conclusory and unsupported by
12 medical evidence).

13 Thus, even if the Court assumes that the ALJ erred in rejecting the
14 records from Clinica Medica because of an illegible signature, any error was
15 harmless because the other reasons given by the ALJ were supported by
16 substantial evidence in the record. See Molina v. Astrue, 674 F.3d 1104, 1115
17 (9th Cir. 2012) (“We have long recognized that harmless error principles apply
18 in the Social Security Act context.” (citing Stout v. Comm’r, Soc. Sec. Admin.,
19 454 F.3d 1050, 1054 (9th Cir. 2006))).

20 In sum, it is clear that the ALJ did not have a duty to further develop the
21 record. The records at issue here were neither ambiguous nor inadequate.
22 Accordingly, Plaintiff is not entitled to relief on this claim of error.

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24 clinical findings, it was proper for the ALJ to reject these opinions. See Rollins
25 v. Massanari, 261 F.3d 853, 856 (9th Cir. 2001) (holding that ALJ properly
26 rejected treating physician’s opinion where some of physician’s
27 “recommendations were so extreme as to be implausible and were not
28 supported by any findings made by any doctor”).

V.

CONCLUSION

For the reasons stated above, the decision of the Social Security Commissioner is affirmed and the matter is dismissed with prejudice.

Dated: October 6, 2014



DOUGLAS F. McCORMICK
United States Magistrate Judge

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