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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Case No. 5:14-CV-01911 (VEB)

JOSEPH L. SMITH,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

DECISION AND ORDER

I. INTRODUCTION

In May of 2011, Plaintiff Joseph L. Smith applied for Disability Insurance Benefits under the Social Security Act. The Commissioner of Social Security denied the application. Plaintiff, represented by Kenneth W. Drake, Esq., commenced this

1 action seeking judicial review of the Commissioner’s denial of benefits pursuant to
2 42 U.S.C. §§ 405 (g) and 1383 (c)(3).

3 The parties consented to the jurisdiction of a United States Magistrate Judge.
4 (Docket No. 8, 52). On July 6, 2016, this case was referred to the undersigned
5 pursuant to General Order 05-07. (Docket No. 54).

7 **II. BACKGROUND**

8 Plaintiff applied for benefits on May 31, 2011, alleging disability beginning
9 August 1, 2009, due to various impairments. (T at 19).¹ The application was denied
10 initially and on reconsideration. Plaintiff requested a hearing before an
11 Administrative Law Judge (“ALJ”). On December 6, 2012, a hearing was held
12 before ALJ Tamara Turner-Jones. (T at 31). Plaintiff appeared with his attorney and
13 testified. (T at 34-52). The ALJ also received testimony from Gloria Lasoff, a
14 vocational expert (T at 52-56).

15 On December 28, 2012, the ALJ issued a written decision denying the
16 application for benefits. (T at 16-30). The ALJ’s decision became the
17 Commissioner’s final decision on July 18, 2014, when the Appeals Council denied
18 Plaintiff’s request for review. (T at 1-6).

19 ¹ Citations to (“T”) refer to the administrative record at Docket No. 16

1 On September 14, 2014, Plaintiff, acting by and through his counsel, filed this
2 action seeking judicial review of the Commissioner’s decision. (Docket No. 1). The
3 Commissioner interposed an Answer on February 12, 2015. (Docket No. 15). The
4 parties filed a Joint Stipulation on May 23, 2016. (Docket No. 51). Pursuant to an
5 Order of this Court, the parties filed supplemental memoranda of law in October of
6 2016. (Docket Nos. 61, 62).

7 After reviewing the pleadings, Joint Stipulation, supplemental memoranda of
8 law, and administrative record, this Court finds that the Commissioner’s decision
9 should be affirmed and this case should be dismissed.

10 III. DISCUSSION

11 A. Sequential Evaluation Process

12 The Social Security Act (“the Act”) defines disability as the “inability to
13 engage in any substantial gainful activity by reason of any medically determinable
14 physical or mental impairment which can be expected to result in death or which has
15 lasted or can be expected to last for a continuous period of not less than twelve
16 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a
17 claimant shall be determined to be under a disability only if any impairments are of
18 such severity that he or she is not only unable to do previous work but cannot,
19 considering his or her age, education and work experiences, engage in any other

1 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),
2 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and
3 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

4 The Commissioner has established a five-step sequential evaluation process
5 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step
6 one determines if the person is engaged in substantial gainful activities. If so,
7 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the
8 decision maker proceeds to step two, which determines whether the claimant has a
9 medically severe impairment or combination of impairments. 20 C.F.R. §§
10 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

11 If the claimant does not have a severe impairment or combination of
12 impairments, the disability claim is denied. If the impairment is severe, the
13 evaluation proceeds to the third step, which compares the claimant's impairment(s)
14 with a number of listed impairments acknowledged by the Commissioner to be so
15 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),
16 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or
17 equals one of the listed impairments, the claimant is conclusively presumed to be
18 disabled. If the impairment is not one conclusively presumed to be disabling, the
19 evaluation proceeds to the fourth step, which determines whether the impairment

1 prevents the claimant from performing work which was performed in the past. If the
2 claimant is able to perform previous work, he or she is deemed not disabled. 20
3 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant’s residual
4 functional capacity (RFC) is considered. If the claimant cannot perform past relevant
5 work, the fifth and final step in the process determines whether he or she is able to
6 perform other work in the national economy in view of his or her residual functional
7 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
8 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

9 The initial burden of proof rests upon the claimant to establish a *prima facie*
10 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
11 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
12 is met once the claimant establishes that a mental or physical impairment prevents
13 the performance of previous work. The burden then shifts, at step five, to the
14 Commissioner to show that (1) plaintiff can perform other substantial gainful
15 activity and (2) a “significant number of jobs exist in the national economy” that the
16 claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

17 **B. Standard of Review**

18 Congress has provided a limited scope of judicial review of a Commissioner’s
19 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,
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1 made through an ALJ, when the determination is not based on legal error and is
2 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir.
3 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).

4 “The [Commissioner’s] determination that a plaintiff is not disabled will be
5 upheld if the findings of fact are supported by substantial evidence.” *Delgado v.*
6 *Heckler*, 722 F.2d 570, 572 (9th Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial
7 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119
8 n 10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d
9 599, 601-02 (9th Cir. 1989). Substantial evidence “means such evidence as a
10 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*
11 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch inferences and
12 conclusions as the [Commissioner] may reasonably draw from the evidence” will
13 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir. 1965). On review,
14 the Court considers the record as a whole, not just the evidence supporting the
15 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir.
16 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

17 It is the role of the Commissioner, not this Court, to resolve conflicts in
18 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
19 interpretation, the Court may not substitute its judgment for that of the

1 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th
2 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be
3 set aside if the proper legal standards were not applied in weighing the evidence and
4 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d
5 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the
6 administrative findings, or if there is conflicting evidence that will support a finding
7 of either disability or non-disability, the finding of the Commissioner is conclusive.
8 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

9 **C. Commissioner’s Decision**

10 The ALJ determined that Plaintiff met the insured status requirements of the
11 Social Security Act through March 31, 2010 (the “date last insured”) and did not
12 engage in substantial gainful activity between August 1, 2009 (the alleged onset
13 date) and, March 31, 2010, the date last insured. (T at 21). The ALJ found that
14 Plaintiff’s hypertension, hernias, and diverticulitis were “severe” impairments under
15 the Act. (Tr. 21).

16 However, the ALJ concluded that, as of the date last insured, Plaintiff did not
17 have an impairment or combination of impairments that met or medically equaled
18 one of the impairments set forth in the Listings. (T at 22).

1 The ALJ determined that, as of the date last insured, Plaintiff retained the
2 residual functional capacity (“RFC”) to perform a range of light work as defined in
3 20 CFR § 416.967 (b), as follows: he can lift/carry 20 pounds occasionally and 10
4 pounds frequently; stand/walk for 6 hours in an 8-hour workday with regular breaks;
5 sit for 6 hours in an 8-hour workday with regular breaks; unlimited pushing/pulling;
6 frequent kneeling, stooping, crouching, crawling; frequent climbing ramps and
7 stairs; occasional climbing ladders, ropes, or scaffolds; no restrictions on fine or
8 gross manipulation with hands; must avoid pulmonary irritants; can maintain
9 concentration, attention, persistence, pace in at least 2 hour blocks of time to
10 complete a normal workday; can interact and respond appropriately to co-workers,
11 supervisors, and the public; can perform detailed and complex tasks; must be
12 without 50 feet of a restroom and have it accessible to him. (T at 23).

13 The ALJ found that, as of the date last insured, Plaintiff could perform his past
14 relevant work as vice president of a film studio. (T at 25). As such, the ALJ
15 found that Plaintiff was not entitled to benefits under the Social Security Act from
16 August 1, 2009 (the alleged onset date) through March 31, 2010 (the date last
17 insured). (T at 26). As noted above, the ALJ’s decision became the Commissioner’s
18 final decision when the Appeals Council denied Plaintiff’s request for review. (T at
19 1-6).

1 **D. Disputed Issues**

2 The briefing in this case left much to be desired. The portion of the Joint
3 Stipulation drafted by Plaintiff’s counsel used very small font, narrow line spacing,
4 excessive bolding and block quotations, and very disjointed argumentation. The
5 sections prepared by the Commissioner’s counsel were conclusory and consisted of
6 significant “boilerplate” citations to general legal authority. The quality of the
7 briefing did not improve much, even after this Court issued an Order directing
8 supplemental memoranda of law. Nevertheless, this Court has endeavored to
9 carefully consider the record and discern the arguments of counsel, as amplified by
10 the supplemental briefing.

11 **IV. ANALYSIS**

12 An ALJ’s assessment of a claimant’s residual functional capacity (“RFC”)
13 must be upheld if the ALJ has applied the proper legal standard and substantial
14 evidence in the record supports the decision. *Bayliss v. Barnhart*, 427 F.3d 1211,
15 1217 (9th Cir. 2005). The ALJ must consider all the medical evidence in the record
16 and “explain in [her] decision the weight given to . . . [the] opinions from treating
17 sources, nontreating sources, and other nonexamining sources.” 20 C.F.R. §
18 404.1527(e)(2)(ii); see also § 404.1545(a)(1).

1 In determining a claimant’s RFC, an ALJ considers those limitations for
2 which there is support in the record and need not consider properly rejected
3 evidence. *See Bayliss*, 427 F.3d at 1217.

4 In the present case, the period at issue (the “relevant time period”) spans eight
5 months – August 1, 2009 (the alleged onset date) through March 31, 2010 (the date
6 last insured). The parties agree that Plaintiff is not entitled to benefits unless he
7 became disabled, as defined under the Social Security Act, prior to the date last
8 insured.

9 The ALJ concluded that Plaintiff retained the RFC to perform his past relevant
10 work through the date last insured. (T at 25). Plaintiff worked as vice president of
11 sales for a film company until 2009, when he was laid off. (T at 23). His primary
12 allegation of disability relates to diverticulitis. In particular, Plaintiff wears a
13 colostomy bag, which sometimes leaks fecal matter. (T at 23-24).

14 In September of 2009 (which is during the relevant time period), Plaintiff
15 sought treatment for painful urination and feces in his urine. (T at 45, 48). During
16 late 2009 and early 2010, he was treated several times for complaints of painful
17 urination. (T at 1037, 1039-40, 1041-42). Plaintiff was hospitalized on March 18,
18 2010, where he was diagnosed with sepsis, diverticulitis with contained perforations,
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1 and renal failure. (T at 783). Abdominal and pelvis CT scans were significant in
2 their finding of diverticulitis and issues with Plaintiff's colon. (T at 783).

3 On March 20, 2010, Dr. Brad Wolfson removed a portion of Plaintiff's
4 descending colon and found feces entering the bladder from an abnormal opening in
5 the colon. (T at 792). "[E]xtensive fibrosis" was noted along the sigmoid colon. (T
6 at 795). Post-surgical pathology noted evidence of "extensive diverticular disease
7 with diverticultis" and "severe acute and chronic inflammation and hemorrhage
8 consistent with fistula." (T at 80).

9 In November of 2010 (after the relevant time period), Plaintiff experienced
10 severe symptoms, including abdominal sepsis, necrotic bowel, respiratory distress,
11 and atrial fibrillation. (T at 572, 934, 941, 947-48). He was in a coma for an
12 extended period. (T at 572).

13 Plaintiff also alleges disabling mental health symptoms. Plaintiff had an
14 extensive history regarding mental illness prior to the alleged onset date, including
15 nine hospitalizations in 2008. (T at 222, 226, 230, 239, 241, 248, 251, 259, 260-61,
16 264, 266, 272, 275). He was assigned Global Assessment of Functioning ("GAF")
17 scores² of 15, 30, 40, and 50 (T at 222, 224, 228, 232, 237, 263).³

18 ² "A GAF score is a rough estimate of an individual's psychological, social, and occupational
19 functioning used to reflect the individual's need for treatment." *Vargas v. Lambert*, 159 F.3d 1161,
20 1164 n.2 (9th Cir. 1998).

1 A CT scan of the brain taken in March of 2011, after the date last insured,
2 showed moderate cerebral atrophy with findings consistent with more remote
3 ischemic change involving frontoparietal regions bilaterally left greater than right. (T
4 at 613).

5 The ALJ was faced with the task of determining whether Plaintiff was
6 disabled during the relevant 8-month period. The ALJ provided a detailed summary
7 and analysis of the evidence. She noted that Plaintiff continued participating in
8 bodybuilding activities after the date last insured and stated that he would have
9 worked during the relevant time period if work had been available. (T at 24). The
10 ALJ noted that a significant majority of the evidence of alleged disability related to
11 the period after the relevant time period. (T at 24).

12 The record shows severe symptoms prior to the alleged onset date (primarily
13 mental health symptoms) and significant symptoms after the date last insured
14 (primary related to diverticulitis and bowel issues), but almost no actual evidence of
15 disabling symptoms during the relevant time period.

16 ³ “A GAF of 15 means ‘[s]ome danger of hurting self or others (e.g., suicide attempts without
17 clear expectation of death; frequently violent; manic excitement) or occasionally fails to maintain
18 minimal personal hygiene (e.g., smears feces) or gross impairment in communication (e.g., largely
19 incoherent or mute).” *Springfield v. Singh*, No. CV 07-5059, 2012 U.S. Dist. LEXIS 88498, at
20 *64 n. 15 (C.D. Cal. Apr. 30, 2012)(citation omitted). “A GAF score of 31-40 indicates some
impairment in reality testing or communication (e.g., speech is at times illogical, obscure, or
irrelevant) or major impairment in several areas such as work or school, family relations,
judgment, thinking or mood.” *Tagin v. Astrue*, No. 11-cv-05120, 2011 U.S. Dist. LEXIS 136237 at
*8 n.1 (W.D.Wa. Nov. 28, 2011)(citations omitted).

1 This Court issued a specific Order directing Plaintiff to provide citations to
2 evidence showing disability during the relevant period or, in the alternative,
3 evidence that conditions or treatments that post-dated the relevant time period
4 nevertheless established disability during that period.

5 Plaintiff responded by essentially reiterating the extensive evidence that post-
6 dates and pre-dates the relevant time period. Although that evidence is troubling and
7 causes this Court to sympathize with Plaintiff's plight, it does not establish a basis to
8 disturb the ALJ's conclusion that there was insufficient evidence of disabling
9 limitations *during the relevant time period*. Indeed, there is evidence supporting the
10 ALJ's conclusion that Plaintiff was not disabled, as defined under the Social
11 Security Act, during this period. A December 2009 examination noted "no
12 significant objective findings" (T at 24, 1037-38). Although Plaintiff was
13 hospitalized and had surgery in March of 2010, shortly after his surgery, he
14 "reported no complaints, ... was alert and oriented" and an examination was
15 "unremarkable other than his blood pressure." (T at 25, 733, 736, 738-38, 744).

16 With regard to his mental health impairments, Plaintiff cites to extensive
17 evidence of serious issues that *pre*-dated the relevant time period, but no evidence
18 demonstrating disabling mental health limitations during the relevant time period.
19 The fact that Plaintiff resumed his employment after the 2008 period of significant

1 mental health symptoms indicates that those symptoms were not disabling after that
2 period.

3 Plaintiff notes, correctly, that the mere fact that evidence was generated before
4 or after the date last insured does not render such evidence *per se* irrelevant to
5 determining disability during the relevant time period. However, the ALJ offered a
6 detailed rationale, rooted in the evidence, as to why the evidence from before and
7 after the relevant time period did not establish disabling limitations during the
8 relevant time period.

9 Although provided with more than one opportunity, Plaintiff has not
10 articulated a cogent case, supported by citations to the record, to establish that the
11 ALJ erred in this regard. The fact that Plaintiff may interpret the evidence
12 differently is not enough. It is the role of the Commissioner, not this Court, to
13 resolve conflicts in evidence. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.
14 1989); *Richardson*, 402 U.S. at 400. If the evidence supports more than one rational
15 interpretation, this Court may not substitute its judgment for that of the
16 Commissioner. *Allen v. Heckler*, 749 F.2d 577, 579 (9th 1984). If there is substantial
17 evidence to support the administrative findings, or if there is conflicting evidence
18 that will support a finding of either disability or nondisability, the Commissioner's
19 finding is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

1 Here, the ALJ's decision was supported by substantial evidence and must therefore
2 be sustained. *See Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999)(holding that
3 if evidence reasonably supports the Commissioner's decision, the reviewing court
4 must uphold the decision and may not substitute its own judgment).

5 This Court expresses concern and sympathy for Plaintiff, who appears to have
6 experienced a serious mental health episode prior to the alleged onset date and who
7 definitely has significant health challenges after the date last insured. However, this
8 Court's review is constrained by the deferential standard of administrative review
9 and by the clear requirement of establishing disability during a time period defined
10 by the applicable law.

11 V. CONCLUSION

12 After carefully reviewing the administrative record, this Court finds
13 substantial evidence supports the Commissioner's decision, including the objective
14 medical evidence and supported medical opinions. It is clear that the ALJ thoroughly
15 examined the record, afforded appropriate weight to the medical evidence, including
16 the assessments of the examining medical providers and the non-examining
17 consultants, and afforded the subjective claims of symptoms and limitations an
18 appropriate weight when rendering a decision that Plaintiff is not disabled. This
19 Court finds no reversible error and because substantial evidence supports the

1 Commissioner's decision, the Commissioner is GRANTED summary judgment and
2 that Plaintiff's motion for judgment summary judgment is DENIED.

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4 **VI. ORDERS**

5 IT IS THEREFORE ORDERED that:

6 Judgment be entered AFFIRMING the Commissioner's decision and
7 DISMISSING this action, and it is further ORDERED that

8 The Clerk of the Court file this Decision and Order and serve copies upon
9 counsel for the parties.

10 DATED this 31st day of March, 2017,

11 /s/Victor E. Bianchini
12 VICTOR E. BIANCHINI
13 UNITED STATES MAGISTRATE JUDGE
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