

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JENNIFER GONZALES,

Plaintiff,

v.

NANCY A. BERRYHILL,<sup>1</sup> Acting  
Commissioner of Social Security,

Defendant.

Case No. EDCV 16-2397-KK

MEMORANDUM AND ORDER

Plaintiff Jennifer Gonzales (“Plaintiff”) seeks review of the final decision of the Commissioner of the Social Security Administration (“Commissioner” or “Agency”) denying her application for Title II Disability Insurance Benefits (“DIB”) and Title XVI Supplemental Security Income Benefits (“SSI”). The parties have consented to the jurisdiction of the undersigned United States Magistrate Judge, pursuant to 28 U.S.C. § 636(c). For the reasons stated below, the Commissioner’s decision is AFFIRMED.

///

///

---

<sup>1</sup> Nancy A. Berryhill is now the Acting Commissioner of the Social Security Administration. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, the Court substitutes Nancy A. Berryhill as Defendant in the instant case at the parties’ request.

1 I.

2 **PROCEDURAL HISTORY**

3 On March 20, 2013, Plaintiff filed applications for DIB and SSI alleging a  
4 disability onset date of December 15, 2010 for both. Administrative Record  
5 (“AR”) at 163-77. Plaintiff’s applications were denied initially on July 23, 2013,  
6 and upon reconsideration on March 6, 2014. Id. at 102-06, 108-15.

7 On May 1, 2014, Plaintiff requested a hearing before an Administrative Law  
8 Judge (“ALJ”). Id. at 120. On July 16, 2015, Plaintiff appeared with counsel and  
9 testified at a hearing before the assigned ALJ. Id. at 25-41. A vocational expert  
10 (“VE”) also testified at the hearing. Id. at 39-41. On August 27, 2015, the ALJ  
11 issued a decision denying Plaintiff’s applications for DIB and SSI. Id. at 8-24.

12 On October 10, 2015, Plaintiff filed a request to the Agency’s Appeals  
13 Council to review the ALJ’s decision. Id. at 7. On October 7, 2016, the Appeals  
14 Council denied Plaintiff’s request for review. Id. at 1-6.

15 On November 21, 2016, Plaintiff filed the instant action. ECF Docket No.  
16 (“Dkt.”) 1, Compl. This matter is before the Court on the parties’ Joint  
17 Stipulation (“JS”), filed on July 5, 2017, which the Court has taken under  
18 submission. Dkt. 19, JS.

19 II.

20 **PLAINTIFF’S BACKGROUND**

21 Plaintiff was born on January 20, 1966 and her alleged disability onset date is  
22 December 15, 2010. AR at 163-77. She was forty-four years old on the alleged  
23 disability onset date and forty-nine at the time of the hearing before the ALJ. Id. at  
24 11, 19. Plaintiff has obtained her GED and has prior work experience as a  
25 cashier/sales associate, and nurse’s assistant. Id. at 212. Plaintiff alleges disability  
26 based on “congestive heart failure, panic disorder, anemia, hypertension, pre-  
27 diabetic.” Id. at 211.

28 ///

1 III.

2 **STANDARD FOR EVALUATING DISABILITY**

3 To qualify for DIB and SSI, a claimant must demonstrate a medically  
4 determinable physical or mental impairment that prevents her from engaging in  
5 substantial gainful activity, and that is expected to result in death or to last for a  
6 continuous period of at least twelve months. Reddick v. Chater, 157 F.3d 715, 721  
7 (9th Cir. 1998). The impairment must render the claimant incapable of performing  
8 the work she previously performed and incapable of performing any other  
9 substantial gainful employment that exists in the national economy. Tackett v.  
10 Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999).

11 To decide if a claimant is disabled, and therefore entitled to benefits, an ALJ  
12 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are:

- 13 1. Is the claimant presently engaged in substantial gainful activity? If so, the  
14 claimant is found not disabled. If not, proceed to step two.
- 15 2. Is the claimant's impairment severe? If not, the claimant is found not  
16 disabled. If so, proceed to step three.
- 17 3. Does the claimant's impairment meet or equal one of the specific  
18 impairments described in 20 C.F.R. Part 404, Subpart P, Appendix 1? If so,  
19 the claimant is found disabled. If not, proceed to step four.<sup>2</sup>
- 20 4. Is the claimant capable of performing work she has done in the past? If so,  
21 the claimant is found not disabled. If not, proceed to step five.
- 22 5. Is the claimant able to do any other work? If not, the claimant is found  
23 disabled. If so, the claimant is found not disabled.

24  
25  
26 <sup>2</sup> "Between steps three and four, the ALJ must, as an intermediate step, assess the  
27 claimant's [residual functional capacity]," or ability to work after accounting for  
28 her verifiable impairments. Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219,  
1222-23 (9th Cir. 2009) (citing 20 C.F.R. § 416.920(e)). In determining a  
claimant's residual functional capacity, an ALJ must consider all relevant evidence  
in the record. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006).

1 See Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d 949,  
2 953-54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b)-(g)(1), 416.920(b)-(g)(1).

3 The claimant has the burden of proof at steps one through four, and the  
4 Commissioner has the burden of proof at step five. Bustamante, 262 F.3d at 953-  
5 54. Additionally, the ALJ has an affirmative duty to assist the claimant in  
6 developing the record at every step of the inquiry. Id. at 954. If, at step four, the  
7 claimant meets her burden of establishing an inability to perform past work, the  
8 Commissioner must show that the claimant can perform some other work that  
9 exists in “significant numbers” in the national economy, taking into account the  
10 claimant’s residual functional capacity (“RFC”), age, education, and work  
11 experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721; 20 C.F.R.  
12 §§ 404.1520(g)(1), 416.920(g)(1).

#### 13 IV.

#### 14 THE ALJ’S DECISION

##### 15 A. STEP ONE

16 At step one, the ALJ found Plaintiff “has not engage in substantial gainful  
17 activity (SGA) since December 15, 2010, the alleged onset date (AOD) (20 CFR  
18 404.1571 et seq., and 416.971 et seq..” AR at 14.

##### 19 B. STEP TWO

20 At step two, the ALJ found Plaintiff “ha[d] the following severe  
21 impairments: obesity and diabetes mellitus (20 CFR 404.1520(c) and 416.920(c)).”  
22 Id.

##### 23 C. STEP THREE

24 At step three, the ALJ found Plaintiff “does not have an impairment or  
25 combination of impairments that meets or medically equals the severity of one of  
26 the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.” Id. at 16.

27 ///

28 ///

1 **D. RFC DETERMINATION**

2 The ALJ found Plaintiff had the following RFC:  
3 to perform light work<sup>3</sup> as defined in 20 CFR 404.1567(b) and  
4 416.967(b) except the [Plaintiff] can sit indefinitely, but will have to  
5 stand and stretch for a minute every thirty minutes. She can be on her  
6 feet for only two hours total in an eight-hour day, and she can only be  
7 on her feet for ten to fifteen minutes at a time. She can lift up to 20  
8 pounds occasionally and up to 10 pounds frequently. She cannot  
9 climb ladders, ropes, or scaffolds or crawl. She cannot operate foot  
10 controls more than occasionally, and she can occasionally bend and  
11 stoop.

12 Id.

13 **E. STEP FOUR**

14 At step four, the ALJ found Plaintiff “is unable to perform any past relevant  
15 work (20 C.F.R. 404.1565 and 416.965).” Id. at 19.

16 **F. STEP FIVE**

17 At step five, the ALJ found “considering [Plaintiff’s] age, education, work  
18 experience, and residual functional capacity, there are jobs that exist in significant  
19 numbers in the national economy that [Plaintiff] can perform.” Id. at 19. Thus,  
20 the ALJ concluded Plaintiff “has not been under a disability, as defined in the  
21

---

22 <sup>3</sup> Plaintiff argues she is limited to sedentary work and cannot perform the  
23 requirements of jobs classified at the light work exertional level. See JS at 5-7. To  
24 support her argument, Plaintiff references the following remark from the ALJ’s  
25 opinion: “[Plaintiff’s obesity], along with her diabetes mellitus, reasonably reduces  
26 her functional capacity to the sedentary level, as her ability to move about is  
27 significantly impacted by her experience leg swelling, a burning sensation in her  
28 feet, and shortness of breath.” AR at 17. Despite the ALJ’s reference to a  
sedentary functional capacity, the ALJ conducted a thorough evaluation of  
Plaintiff’s medical history, and ultimately determined that, despite her obesity and  
diabetes, “the combined effects of [Plaintiff’s] impairments will not prevent her  
from sitting for most of the day and from standing/walking for a total of two hours  
in an eight-hour day.” Id. Thus, the ALJ concluded, and his RFC determination  
clearly reflects, Plaintiff’s capacity to perform light work with additional specified  
limitations.

1 Social Security Act, from December 15, 2010, through the date of this decision (20  
2 C.F.R. 404.1520(g) and 416.920(g)).” Id. at 20.

3 **V.**

4 **PLAINTIFF’S CLAIM**

5 Plaintiff presents one disputed issue: “whether there is a DOT inconsistency  
6 in the ALJ’s holding that the Plaintiff can perform the jobs such as electronics  
7 worker and small products assembler.” JS at 2.

8 **VI.**

9 **STANDARD OF REVIEW**

10 Pursuant to 42 U.S.C. § 405(g), a district court may review the  
11 Commissioner’s decision to deny benefits. The ALJ’s findings and decision should  
12 be upheld if they are free of legal error and supported by substantial evidence based  
13 on the record as a whole. Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420,  
14 28 L. Ed. 2d 842 (1971); Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007).

15 “Substantial evidence” is evidence that a reasonable person might accept as  
16 adequate to support a conclusion. Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th  
17 Cir. 2007). It is more than a scintilla but less than a preponderance. Id. To  
18 determine whether substantial evidence supports a finding, the reviewing court  
19 “must review the administrative record as a whole, weighing both the evidence that  
20 supports and the evidence that detracts from the Commissioner’s conclusion.”  
21 Reddick, 157 F.3d at 720 (citation omitted); see also Hill v. Astrue, 698 F.3d 1153,  
22 1159 (9th Cir. 2012) (stating that a reviewing court “may not affirm simply by  
23 isolating a ‘specific quantum of supporting evidence’”) (citation omitted). “If the  
24 evidence can reasonably support either affirming or reversing,” the reviewing court  
25 “may not substitute its judgment” for that of the Commissioner. Reddick, 157  
26 F.3d at 720-21; see also Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012)  
27 (“Even when the evidence is susceptible to more than one rational interpretation,  
28

1 we must uphold the ALJ’s findings if they are supported by inferences reasonably  
2 drawn from the record.”).

3 The Court may review only the reasons stated by the ALJ in his decision  
4 “and may not affirm the ALJ on a ground upon which he did not rely.” Orn v.  
5 Astrue, 495 F.3d 625, 630 (9th Cir. 2007). If the ALJ erred, the error may only be  
6 considered harmless if it is “clear from the record” that the error was  
7 “inconsequential to the ultimate nondisability determination.” Robbins, 466 F.3d  
8 at 885 (citation omitted).

## 9 VII.

### 10 DISCUSSION

#### 11 **THE ALJ PROPERLY DETERMINED THERE ARE JOBS AVAILABLE IN** 12 **THE NATIONAL ECONOMY THAT PLAINTIFF CAN PERFORM**

##### 13 **A. ADDITIONAL FACTS**

14 During the hearing, the ALJ consulted a VE to determine if there were any  
15 available unskilled jobs within the national economy that Plaintiff could perform,  
16 accounting for her limitations. AR at 39-40. The ALJ presented the following  
17 hypothetical to the VE:

18 [A person who] can sit indefinitely but would have to stand and  
19 stretch for a minute every 30 minutes. Be on her feet two hours out of  
20 eight, 10 to 15 minutes at a time. . . . No ladders, stairs and scaffolds.  
21 And no use of foot pedals more than occasionally. And only  
22 occasional bending or stooping, and no crawling.

##### 23 Id.

24 Based on this hypothetical, the VE determined there were unskilled jobs  
25 available in the national economy that Plaintiff could perform. Id. at 40. The VE  
26 specifically identified two jobs pursuant to the Dictionary of Occupational Titles  
27 (“DOT”): (1) electronics worker, DOT 726.687-010; and (2) small products  
28 assembler, DOT 706.684-022. Id. at 40. The VE further testified that other jobs

1 existed for Plaintiff in addition to the two he identified. Id. The ALJ concluded his  
2 questioning by asking the VE if his testimony was consistent with the DOT—to  
3 which the VE responded that it was. Id.

#### 4 **B. APPLICABLE LAW**

5 At step four of the sequential evaluation process, claimants bear the burden  
6 of showing that they can no longer perform their past relevant work. Pinto v.  
7 Massanari, 249 F.3d 840, 844 (9th Cir. 2001). However, “[a]lthough the burden of  
8 proof lies with the claimant at step four, the ALJ still has a duty to make the  
9 requisite factual findings to support his conclusion.” Id. In particular, an ALJ’s  
10 step four determination must contain the following specific findings: (1) a finding of  
11 fact as to the individual’s RFC; (2) a finding of fact as to the physical and mental  
12 demands of the past job/occupation; and (3) a finding of fact that the individual’s  
13 RFC would permit a return to her past job or occupation. Social Security Ruling  
14 (“SSR”)<sup>4</sup> 82-62 available at 1982 WL 31386, at \*4. While the claimant is the  
15 primary source for vocational documentation, id. at \*3, the ALJ may use a VE to  
16 assist in the step four determination as to whether a claimant is able to perform her  
17 past relevant work. 20 C.F.R. § 404.1560(b)(2) (noting a VE’s testimony  
18 “concerning the physical and mental demands of a claimant’s past relevant work,  
19 either as the claimant actually performed it or as generally performed in the  
20 national economy[,]. . . may be helpful in supplementing or evaluating the accuracy  
21 of the claimant’s description of h[er] past work”).

#### 22 **C. ANALYSIS**

23 Here, the ALJ properly relied upon the VE’s conclusion that jobs existed in  
24 the national economy which Plaintiff could perform, despite her exertional  
25

---

26 <sup>4</sup> “SSRs do not have the force of law. However, because they represent the  
27 Commissioner’s interpretation of the agency’s regulations, we give them some  
28 deference. We will not defer to SSRs if they are inconsistent with the statute or  
regulations.” Holohan v. Massanari, 246 F.3d 1195, 1202 n.1 (9th Cir. 2001)  
(citations omitted).



1 limitations. Gutierrez v. Colvin, 844 F.3d 804, 806–07 (9th Cir. 2016) (“[T]he  
2 ALJ may rely on an impartial vocational expert to provide testimony about jobs the  
3 applicant can perform despite his or her limitations.”); Bayliss v. Barnhart, 427  
4 F.3d 1211, 1218 (9th Cir. 2005) (“A VE’s recognized expertise provides the  
5 necessary foundation for his or her testimony.”).

6 First, in posing a hypothetical to the VE, the ALJ properly included all of  
7 Plaintiff’s limitations that were supported by substantial evidence and included in  
8 Plaintiff’s ultimate RFC. See AR at 16. Plaintiff does not contest the ALJ’s  
9 hypothetical or RFC determination. Thus, the ALJ’s reliance on the VE’s  
10 conclusions in response to the ALJ’s hypothetical was proper. See Bayliss, 427  
11 F.3d at 1217–18 (holding it is proper for an ALJ to rely on testimony presented by  
12 the VE which is based on a hypothetical that contains all of the limitations  
13 supported by substantial evidence); Magallanes v. Bowen, 881 F.2d 747, 756–57  
14 (9th Cir. 1989) (holding it is proper for an ALJ to limit a hypothetical to restrictions  
15 supported by substantial evidence in the record).

16 Second, the ALJ properly determined the VE’s testimony was consistent  
17 with the DOT. Massachi v. Astrue, 486 F.3d 1149, 1152 (9th Cir. 2007) (“SSR 00–  
18 4p unambiguously provides that ‘[w]hen a [vocational expert] . . . provides  
19 evidence about the requirements of a job or occupation, the adjudicator has *an*  
20 *affirmative responsibility* to ask about any possible conflict between that [vocational  
21 expert] . . . evidence and information provided in the [DOT].’” (emphasis in  
22 original)). Following the VE’s determination that Plaintiff had the capacity to  
23 perform the tasks of an electronics worker, DOT 726.687-010, and a small products  
24 assembler, DOT 706.684-022, the ALJ specifically asked the VE if his “testimony  
25 [was] consistent with the DOT” – to which the VE responded that it was. AR at  
26 40. Thus, the ALJ fulfilled his “affirmative responsibility to ask about any  
27 conflict” between the VE’s conclusion and the DOT. See SSR 00-4p.  
28

1 Third, Plaintiff argues the ALJ erred because the jobs identified by the VE  
2 are inconsistent with Plaintiff's limitations. See JS at 3. However, the Court finds  
3 the ALJ properly relied on the VE's findings because there was no apparent or  
4 obvious conflict between the VE's conclusions and the DOT. Gutierrez, 844 F.3d  
5 at 807-08 (holding an ALJ only needs to "follow up on those" conflicts between an  
6 expert's job suitability recommendation and the DOT that are apparent or  
7 obvious). An apparent or obvious conflict is one where the VE's testimony is "at  
8 odds with the [DOT's] listing of job requirements that are essential, integral, or  
9 expected." Id. at 808.

10 As a preliminary matter, there was no apparent or obvious conflict because  
11 neither of the two jobs - electronics worker, DOT 726.687-010<sup>5</sup>, and small products  
12 assembler, DOT 706.684-022<sup>6</sup> - state that standing or walking is a required part of

13  
14 <sup>5</sup> 726.687-010 ELECTRONICS WORKER, DICOT 726.687-010: Performs any  
15 combination of following tasks to clean, trim, or prepare components or parts for  
16 assembly by other workers: Receives verbal or written instructions from supervisor  
17 regarding work assignment. Cleans and deglosses parts, using cleaning devices,  
18 solutions, and abrasives. Trims flash from molded or cast parts, using cutting tool  
19 or file. Applies primers, plastics, adhesives, and other coatings to designated  
20 surfaces, using applicators, such as spray guns, brushes, or rollers. Fills shells, caps,  
21 cases, and other cavities with plastic encapsulating fluid or dips parts in fluid to  
22 protect, coat, and seal parts. Prepares wires for assembly by measuring, cutting,  
23 stripping, twisting, tinning, and attaching contacts, lugs, and other terminal  
24 devices, using handtools, and power tools and equipment. Positions and fastens  
25 together parts, such as laminates, electron tube mounts and cages, variable  
26 capacitor rotors and stators, paper loudspeaker cones, faceplates, and shells and  
27 cases for various electronic components, using handtools and power tools. Prints  
28 identifying information on components and parts, using silk screen, transfer press,  
or electro-etch printing devices, or ink pad and stamp. Moves parts and finished  
components to designated areas of plant, such as assembly, shipping and receiving,  
or storage. Loads and unloads parts from ovens, baskets, pallets, and racks.  
Disassembles and reclaims parts, using heating equipment and handtools.

24 <sup>6</sup> 706.684-022 ASSEMBLER, SMALL PRODUCTS I, DICOT 706.684-022:  
25 Performs any combination of following repetitive tasks on assembly line to mass  
26 produce small products, such as ball bearings, automobile door locking units,  
27 speedometers, condensers, distributors, ignition coils, drafting table subassemblies,  
28 or carburetors: Positions parts in specified relationship to each other, using hands,  
tweezers, or tongs. Bolts, screws, clips, cements, or otherwise fastens parts  
together by hand or using handtools or portable powered tools. Frequently works at  
bench as member of assembly group assembling one or two specific parts and  
passing unit to another worker. Loads and unloads previously setup machines, such  
as arbor presses, drill presses, taps, spot-welding machines, riveting machines,  
milling machines, or broaches, to perform fastening, force fitting, or light metal-

1 the job. McDaniel v. Colvin, No. 5:16-CV-00869 (VEB), 2017 WL 1399629, at \*5  
2 (C.D. Cal. Apr. 18, 2017), judgment entered, 2017 WL 1405998 (“[T]here can be  
3 no conflict between the vocational expert’s testimony and the DOT where, as here,  
4 the DOT is silent on the subject in question.” (citing Dewey v. Colvin, 650 F.  
5 App’x 512, 514 (9th Cir. 2016)<sup>7</sup>).

6         Additionally, there was no apparent or obvious conflict because none of  
7 Plaintiff’s relevant limitations - specifically standing, walking, or operating foot  
8 controls - are an “essential, integral, or expected task” of either job recommended  
9 by the VE. Gutierrez, 844 F.3d at 808. For example, as to a small products  
10 assembler, the main tasks involve: working on an “assembly line to mass produce  
11 small products”, “position[ing] parts,” “fasten[ing] parts together by hand,” and  
12 “frequently work[ing] at a bench.” DOT 706.684-022. Moreover, the DOT finds  
13 “manipulating things” to be a “significant” part of the job, and “reaching,”  
14 “handling,” and “fingering” to be a “frequent[]” part of the job. Id. While a  
15 portion of the job responsibilities may involve “load[ing] and unload[ing]  
16 machines,” which may involve standing and walking, this does not appear to be an  
17 “essential, integral, or expected task” of someone responsible for assembling  
18 products by frequently using their hands. Gutierrez, 844 F.3d at 808 (holding that  
19 while an ALJ “must ask follow up questions of a vocational expert when the  
20 expert’s testimony is either obviously or apparently contrary to the [DOT], . . . the  
21 obligation doesn’t extend to unlikely situations or circumstances . . . . where the  
22 frequency or necessity of a task is unlikely and unforeseeable”).

23

24

25 \_\_\_\_\_  
26 cutting operation on assembly line. May be assigned to different work stations as  
27 production needs require or shift from one station to another to reduce fatigue  
28 factor. May be known according to product assembled.

27 <sup>7</sup> The Court may cite to unpublished Ninth Circuit opinions issued on or after  
28 January 1, 2007. U.S. Ct. App. 9th Cir. R. 36-3(b); Fed. R. App. P. 32.1(a).

1 As to electronics worker, the main tasks involve: “clean[ing], trim[ming], or  
2 prepar[ing] components or parts for assembly by other workers”; “fill[ing] shells,  
3 caps, and other cavities”; “position[ing] and fasten[ing] together parts”;  
4 “print[ing] identifying information on component parts”; and “disassembl[ing]  
5 and reclaim[ing] parts.” DOT 726.687-010. Additionally, the DOT finds  
6 “handling things” to be a “significant” part of the job and “reaching,”  
7 “handling,” and “fingering” to be a “frequent[.]” part of the job. *Id.* While a  
8 portion of the job responsibilities may involve “mov[ing] parts and finished  
9 components to designated areas” and “load[ing] and unload[ing] parts,” which  
10 appear to potentially require some standing and walking, these tasks do not appear  
11 to be “essential, integral, or [an] expected task” of someone responsible for  
12 preparing parts for assembly. *Gutierrez*, 844 F.3d at 808. Thus, there was no  
13 apparent or obvious conflicts between Plaintiff’s limitations and the VE’s findings.

14 Accordingly, the ALJ properly relied on the VE’s findings to determine  
15 there are jobs that exist in significant numbers in the national economy which  
16 Plaintiff can perform.

17 **VIII.**

18 **CONCLUSION**

19 For the foregoing reasons, IT IS ORDERED that judgment be entered  
20 AFFIRMING the decision of the Commissioner.

21 Dated: July 17, 2017



22  
23 **HONORABLE KENLY KIYA KATO**  
24 **United States Magistrate Judge**

25  
26  
27  
28