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

THOMAS CLIFTON DEASE,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social
Security,

Defendant.

CASE NO. EDCV 17-1932 SS

MEMORANDUM DECISION AND ORDER

I.

INTRODUCTION

Plaintiff ("Plaintiff") brings this action seeking to reverse or, in the alternative, to remand the decision of the Commissioner of the Social Security Administration (the "Commissioner" or the "Agency") denying his application for social security benefits. The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate Judge. (Dkt. Nos. 12-14). For the reasons stated below, the decision of

1 the Agency is REVERSED and REMANDED for further administrative
2 proceedings.

3
4 **III.**

5
6 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

7
8 To qualify for disability benefits, a claimant must
9 demonstrate a medically determinable physical or mental impairment
10 that prevents her from engaging in substantial gainful activity¹
11 and that is expected to result in death or to last for a continuous
12 period of at least twelve months. Reddick v. Chater, 157 F.3d 715,
13 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)). The
14 impairment must render the claimant incapable of performing the
15 work she previously performed and any other substantial gainful
16 employment that exists in the national economy. Tackett v. Apfel,
17 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.
18 § 423(d)(2)(A)).

19
20 To decide if a claimant is entitled to benefits, an ALJ
21 conducts a five-step inquiry. 20 C.F.R. § 416.920. The steps are:

- 22
23 (1) Is the claimant presently engaged in substantial
24 gainful activity? If so, the claimant is found not
25 disabled. If not, proceed to step-two.

26
27 ¹ Substantial gainful activity means work that involves doing
28 significant and productive physical or mental duties and is done
for pay or profit. 20 C.F.R. § 416.910.

1 (2) Is the claimant's impairment severe? If not, the
2 claimant is found not disabled. If so, proceed to
3 step-three.

4 (3) Does the claimant's impairment meet or equal the
5 requirements of any impairments listed in 20 C.F.R.
6 Part 404, Subpart P, Appendix 1? If so, the
7 claimant is found disabled. If not, proceed to
8 step-four.

9 (4) Is the claimant capable of performing his past
10 work? If so, the claimant is found not disabled.
11 If not, proceed to step-five.

12 (5) Is the claimant able to do any other work? If not,
13 the claimant is found disabled. If so, the claimant
14 is found not disabled.

15

16

17 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,
18 262 F.3d 949, 953-54 (9th Cir. 2001) (citation omitted); 20 C.F.R.
19 § 416.920(b)-(g)(1).

20

21 The claimant has the burden of proof at steps-one through -
22 four and the Commissioner has the burden of proof at step-five.
23 Bustamante, 262 F.3d at 953-54. If, at step-four, the claimant
24 meets her burden of establishing an inability to perform the past
25 work, the Commissioner must show that the claimant can perform some
26 other work that exists in "significant numbers" in the national
27 economy, taking into account the claimant's residual functional
28

1 capacity ("RFC"),² age, education, and work experience. Tackett,
2 180 F.3d at 1100; 20 C.F.R. § 416.920(g)(1). The Commissioner may
3 do so by the testimony of a vocational expert or by reference to
4 the Medical-Vocational Guidelines appearing in 20 C.F.R. Part 404,
5 Subpart P, Appendix 2 (commonly known as "the Grids"). Osenbrock
6 v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant
7 has both exertional (strength-related) and nonexertional
8 limitations, the Grids are inapplicable and the ALJ must take the
9 testimony of a vocational expert. Moore v. Apfel, 216 F.3d 864,
10 869 (9th Cir. 2000).

11
12 **V.**

13
14 **STANDARD OF REVIEW**

15
16 Under 42 U.S.C. § 405(g), a district court may review the
17 Commissioner's decision to deny benefits. "[The] court may set
18 aside the Commissioner's denial of benefits when the ALJ's findings
19 are based on legal error or are not supported by substantial
20 evidence in the record as a whole." Aukland v. Massanari, 257 F.3d
21 1033, 1035 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097); see
22 also Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing
23 Fair v. Bowen, 885 F.2d 597, 601 (9th Cir. 1989)).

24
25
26 _____
27 ² Residual functional capacity is "the most [one] can still do
28 despite [her] limitations" and represents an assessment "based on
all the relevant evidence." 20 C.F.R. § 416.945(a).

1 "Substantial evidence is more than a scintilla, but less than
 2 a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v.
 3 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant
 4 evidence which a reasonable person might accept as adequate to
 5 support a conclusion." (Id.). To determine whether substantial
 6 evidence supports a finding, the court must "'consider the record
 7 as a whole, weighing both evidence that supports and evidence that
 8 detracts from the [Commissioner's] conclusion.'" Aukland, 257 F.3d
 9 at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.
 10 1993)). If the evidence can reasonably support either affirming
 11 or reversing that conclusion, the court may not substitute its
 12 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-
 13 21 (citing Flaten v. Sec'y of Health & Human Servs., 44 F.3d 1453,
 14 1457 (9th Cir. 1995)).

15
 16 **VI.**

17
 18 **DISCUSSION**

19
 20 **A. Introduction**

21
 22 The ALJ found that Plaintiff's mental impairment was
 23 nonsevere, at step-two of the five-step evaluation. Plaintiff
 24 asserts that this finding was error. This Court agrees.
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1 **B. The Step-Two Evaluation**

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4 By its own terms, the evaluation at step-two is a de minimis
5 test intended to weed out the most minor of impairments. See Bowen
6 v. Yuckert, 482 U.S. 137, 153-154 (1987); Edlund v. Massanari, 253
7 F.3d 1152, 1158 (9th Cir. 2005) (stating that the step-two inquiry
8 is a de minimis screening device to dispose of groundless claims)
9 (quoting Smolen, 80 F.3d at 1290); Webb v. Barnhart, 433 F.3d 683,
10 687 (9th Cir. 2005) (step-two is a "de minimis threshold"). An
11 impairment is not severe only if the evidence establishes a slight
12 abnormality that has only a minimal effect on an individual's
13 ability to work. Smolen, 80 F.3d at 1290 (internal quotations and
14 citations omitted) (emphasis added).

15
16 At step-two of the evaluation, the ALJ is bound by 20 C.F.R.
17 §404.1520a. That regulation requires the ALJ to follow a special
18 psychiatric review technique. The ALJ must determine whether the
19 claimant has a medically determinable mental impairment, rate the
20 degree of functional limitation for four functional areas,
21 determine the severity of the mental impairment and then, if
22 severe, proceed to step-three of the five-step evaluation. Keyser
23 v. Commissioner Social Sec. Admin., 648 F.3d 721 (9th Cir. 2011).

24
25 The evidence regarding Plaintiff's mental impairment was
26 sufficient to meet a de minimis standard. Plaintiff testified that
27 after he lost his home to foreclosure, he had an emotional
28 breakdown. (AR 39-40). He described feeling deeply depressed and

1 being socially isolated. (AR 40-42). Plaintiff testified that he
2 sees his treating doctor for psychological counseling once a month.
3 (AR 46). He also receives prescription medication for his mental
4 health issues. (AR 46-47).

5
6 The medical records support Plaintiff's testimony. On
7 February 3, 2015, Plaintiff visited Dr. Daniel Fitzgerald,
8 complaining of memory issues, poor concentration, lack of energy,
9 anhedonia, spontaneous crying and poor sleep. (AR 372). Dr.
10 Fitzgerald diagnosed a major depressive episode, recurrent,
11 moderate. (AR 372). He prescribed Cymbalta to Plaintiff.
12 Plaintiff continued to see Dr. Fitzgerald for treatment for his
13 mental health conditions in 2015. Plaintiff also received
14 counseling from Dr. Watson during this time. Dr. Watson observed
15 that Plaintiff's prognosis was poor. (AR 374). Plaintiff
16 continued to see Dr. Watson through 2017. (AR 413-422). Dr.
17 Watson completed a Mental Residual Functional Capacity Assessment
18 and found Plaintiff had moderate to marked to extreme limitations
19 in various functions.

20
21 Plaintiff also was treated at the Island Psychiatric Group.
22 (AR 387-398). He was assessed with a major depressive disorder
23 and a GAF of 45. (AR 398).

1 The testimony and medical evidence establishes a mental
2 impairment that has more than a minimal impact on the ability to
3 work. Given the quantity and quality of evidence, it was error to
4 consider Plaintiff's mental impairment as a "groundless claim." As
5 such, remand is required.

6
7 **VII.**

8
9 **CONCLUSION**

10
11 Accordingly, IT IS ORDERED that Judgment be entered REVERSING
12 the decision of the Commissioner and REMANDING this matter for
13 further proceedings consistent with this decision. IT IS FURTHER
14 ORDERED that the Clerk of the Court serve copies of this Order and
15 the Judgment on counsel for both parties.

16
17 DATED: July 13, 2018

18
19 /S/
20 _____
 SUZANNE H. SEGAL
 UNITED STATES MAGISTRATE JUDGE

21 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,**
22 **LEXIS/NEXIS OR ANY OTHER LEGAL DATABASE.**