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

KATHLEEN DALLI,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social
Security,

Defendant.

CASE NO. EDCV 17-2437 SS

MEMORANDUM DECISION AND ORDER

**I.
INTRODUCTION**

Kathleen Dalli ("Plaintiff") brings this action seeking to overturn the decision of the Acting Commissioner of Social Security (the "Commissioner" or "Agency") denying her application for Supplemental Security Income ("SSI"). The parties consented pursuant to 28 U.S.C. § 636(c) to the jurisdiction of the undersigned United States Magistrate Judge. (Dkt. Nos. 11-13). For the reasons stated below, the decision of the Commissioner is

1 REVERSED, and this case is REMANDED for further administrative
2 proceedings consistent with this decision.

3
4 **II.**

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

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

18
19 To decide if a claimant is entitled to benefits, an
20 Administrative Law Judge ("ALJ") conducts a five-step inquiry. 20
21 C.F.R. §§ 404.1520, 416.920. The steps are:

- 22
23 (1) Is the claimant presently engaged in substantial gainful
24 activity? If so, the claimant is found not disabled. If
25 not, proceed to step two.
- 26 (2) Is the claimant's impairment severe? If not, the
27 claimant is found not disabled. If so, proceed to step
28 three.

1 (3) Does the claimant's impairment meet or equal one of the
2 specific impairments described in 20 C.F.R. Part 404,
3 Subpart P, Appendix 1? If so, the claimant is found
4 disabled. If not, proceed to step four.

5 (4) Is the claimant capable of performing his past work? If
6 so, the claimant is found not disabled. If not, proceed
7 to step five.

8 (5) Is the claimant able to do any other work? If not, the
9 claimant is found disabled. If so, the claimant is found
10 not disabled.

11
12 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,
13 262 F.3d 949, 953-54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b)-
14 (g)(1), 416.920(b)-(g)(1).

15
16 The claimant has the burden of proof at steps one through four
17 and the Commissioner has the burden of proof at step five.
18 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an
19 affirmative duty to assist the claimant in developing the record
20 at every step of the inquiry. Id. at 954. If, at step four, the
21 claimant meets his or her burden of establishing an inability to
22 perform past work, the Commissioner must show that the claimant
23 can perform some other work that exists in "significant numbers"
24 in the national economy, taking into account the claimant's
25 residual functional capacity ("RFC"), age, education, and work
26 experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at
27 721; 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner
28 may do so by the testimony of a vocational expert ("VE") or by

1 reference to the Medical-Vocational Guidelines appearing in 20
2 C.F.R. Part 404, Subpart P, Appendix 2 (commonly known as "the
3 grids"). Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001).
4 When a claimant has both exertional (strength-related) and non-
5 exertional limitations, the Grids are inapplicable and the ALJ must
6 take the testimony of a VE. Moore v. Apfel, 216 F.3d 864, 869 (9th
7 Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335, 1340 (9th Cir.
8 1988)).

9 10 **III.**

11 **THE ALJ'S DECISION**

12
13 The ALJ employed the five-step sequential evaluation process
14 and concluded that Plaintiff was not disabled within the meaning
15 of the Act. (AR 18-25). At step one, the ALJ found that Plaintiff
16 has not engaged in substantial gainful activity since November 9,
17 2013, the application date. (AR 20). At step two, the ALJ found
18 that Plaintiff's obesity, hypertension, and remote history of
19 bilateral carpal tunnel release in 2003 are medically determinable
20 impairments. (AR 20). Nevertheless, the ALJ found that Plaintiff
21 "does not have an impairment or combination of impairments that
22 has significantly limited (or is expected to significantly limit)
23 the ability to perform basic work-related activities for 12
24 consecutive months; therefore [Plaintiff] does not have a severe
25 impairment or combination of impairments." (AR 20-24).
26 Accordingly, the ALJ did not conduct any of the additional analysis
27 of the five-step evaluation. Furthermore, the ALJ concluded that
28

1 Plaintiff has not been under a disability, as defined by the Act,
2 since November 9, 2013, the application date. (AR 24-25).

3
4 **IV.**

5 **STANDARD OF REVIEW**

6
7 Under 42 U.S.C. § 405(g), a district court may review the
8 Commissioner's decision to deny benefits. "[The] court may set
9 aside the Commissioner's denial of benefits when the ALJ's findings
10 are based on legal error or are not supported by substantial
11 evidence in the record as a whole." Aukland v. Massanari, 257 F.3d
12 1033, 1035 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097); see
13 also Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing
14 Fair v. Bowen, 885 F.2d 597, 601 (9th Cir. 1989)).

15
16 "Substantial evidence is more than a scintilla, but less than
17 a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v.
18 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant
19 evidence which a reasonable person might accept as adequate to
20 support a conclusion." (Id.). To determine whether substantial
21 evidence supports a finding, the court must "'consider the record
22 as a whole, weighing both evidence that supports and evidence that
23 detracts from the [Commissioner's] conclusion.'" Aukland, 257 F.3d
24 at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.
25 1993)). If the evidence can reasonably support either affirming
26 or reversing that conclusion, the court may not substitute its
27 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-

1 21 (citing Flaten v. Sec'y of Health & Human Servs., 44 F.3d 1453,
2 1457 (9th Cir. 1995)).

3
4 **V.**

5 **DISCUSSION**

6
7 Plaintiff contends that the ALJ erred at step two by finding
8 that her carpal tunnel syndrome was a non-severe impairment. (Dkt.
9 No. 19 at 4-8). The Court agrees.

10
11 By its own terms, the evaluation at step two is a de minimis
12 test intended to weed out the most minor of impairments. See Bowen
13 v. Yuckert, 482 U.S. 137, 153-54 (1987) (O'Connor, J., concurring);
14 Edlund v. Massanari, 253 F.3d 1152, 1158 (9th Cir. 2001) ("We have
15 defined the step-two inquiry as a de minimis screening device to
16 dispose of groundless claims."). Further, at step two, "the ALJ
17 must consider the combined effect of all of the claimant's
18 impairments on her ability to function, without regard to whether
19 each alone was sufficiently severe." Smolen, 80 F.3d at 1290
20 (citation omitted); see SSR 85-28. An impairment is not severe
21 "only if the evidence establishes a slight abnormality that has
22 not more than a minimal effect on an individual's ability to work."
23 Smolen, 80 F.3d at 1290 (citation omitted). "Thus, applying [the
24 Court's] normal standard of review to the requirements of step two,
25 [the Court] must determine whether the ALJ had substantial evidence
26 to find that the medical evidence clearly established that
27 [Plaintiff] did not have a medically severe impairment or
28

1 combination of impairments." Webb v. Barnhart, 433 F.3d 683, 687
2 (9th Cir. 2005).

3
4 According to the Commissioner's regulations, "[a]n impairment
5 or combination of impairments is not severe if it does not
6 significantly limit your physical or mental ability to do basic
7 work activities." 20 C.F.R. §§ 404.1522(a), 416.922(a). "Basic
8 work activities are abilities and aptitudes necessary to do most
9 jobs, including, for example, walking, standing, sitting, lifting,
10 pushing, pulling, reaching, carrying or handling." Smolen, 80 F.3d
11 at 1290 (citation omitted); see 20 C.F.R. §§ 404.1522(b),
12 416.922(b); SSR 85-28. Nevertheless, the Commissioner has
13 emphasized that "[g]reat care should be exercised in applying the
14 not severe impairment concept." SSR 85-28, at *4. Accordingly,
15 if the ALJ is "unable to determine clearly the effect of an
16 impairment or combination of impairments on the individual's
17 ability to do basic work activities, the sequential evaluation
18 process should not end with the not severe evaluation step." Id.
19 (emphasis added). Instead, the sequential evaluation process
20 should continue through steps three, four, and five to "evaluate
21 the individual's ability to do past work, or to do other work based
22 on the consideration of age, education, and prior work experience."
23 Id.

24
25 Here, the ALJ applied more than a de minimis test at step two
26 when she determined that Plaintiff's carpal tunnel syndrome is non-
27 severe. To reach this non-severity finding, the ALJ overlooked
28 medical evidence regarding the effects of Plaintiff's carpal tunnel

1 syndrome. Despite undergoing bilateral carpal tunnel release in
2 2003, Plaintiff consistently complained during the relevant time
3 frame of continuing pain, numbness, and tingling in her hands. (AR
4 297-98, 307-08, 314-19, 320-22, 329). Her physicians have not
5 suggested that Plaintiff is malingering. On February 10, 2014,
6 the psychiatric consultative examiner assessed carpal tunnel
7 syndrome and pain, but deferred to the appropriate specialist for
8 further analysis. (AR 301). On February 14, 2014, the orthopedic
9 consultative examiner observed positive Phalen's and Tinel's signs
10 bilaterally.¹ (AR 309). The CE diagnosed bilateral carpal tunnel
11 syndrome status post bilateral carpal tunnel releases and opined
12 that Plaintiff is limited to performing postural activities and
13 manipulative activities with her upper extremities on only a
14 frequent basis. (AR 311). In April and June 2014, Plaintiff's
15 treating physician noted bilateral hand numbness and weakness. (AR
16 314, 316). In June 2014, Plaintiff presented with positive
17 Phalen's and Tinel's signs. (AR 315). Her physician assessed
18 bilateral carpal tunnel syndrome with chronic, uncontrolled pain.
19 (AR 315). In February 2016, Plaintiff's treating physician noted
20 pain in Plaintiff's wrists, bilaterally, assessed carpal tunnel
21 syndrome, and referred her to orthopedics. (AR 320-22). In April

23
24 ¹ "Phalen's maneuver is a diagnostic test for carpal tunnel
25 syndrome." <https://en.wikipedia.org/wiki/Phalen_maneuver> (last
26 visited Aug. 22, 2018). "Tinel's sign is a way to detect irritated
27 nerves. . . . [I]n carpal tunnel syndrome where the median nerve
28 is compressed at the wrist, Tinel's sign is often 'positive'
causing tingling in the thumb, index, middle finger and the radial
half of the fourth digit." <[https://en.wikipedia.org/wiki/
Tinel%27s_sign](https://en.wikipedia.org/wiki/Tinel%27s_sign)> (last visited Aug. 22, 2018).

1 2016, Plaintiff presented with paresthesia.² (AR 329). Her
2 physician assessed limb pain and paresthesia. (AR 330). An
3 electromyogram (EMG) and nerve conduction study was performed,
4 which revealed mild bilateral median motor and sensory neuropathies
5 at the wrists and evidence of mild chronic denervation. (AR 332-
6 34).

7
8 The Commissioner contends that the ALJ properly relied on the
9 State agency physicians' assessments, who found that Plaintiff has
10 no severe impairments. (Dkt. No. 20 at 2-3); (see AR 24, 53-61,
11 64-72). However, the State agency consultants made their
12 evaluations in February and April 2014, prior to the medical
13 evidence from Plaintiff's treating physicians, as discussed above,
14 being added to the medical record. Therefore, the ALJ's decision
15 to give "great weight" to the State agency consultants' opinions
16 was error because their opinions were based on an incomplete
17 record. See Celaya v. Halter, 332 F.3d 1177, 1183 (9th Cir. 2003)
18 ("The ALJ always has a special duty to fully and fairly develop
19 the record and to assure that the claimant's interests are
20 considered even when the claimant is represented by counsel.")
21 (citation and ellipses omitted).

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25 ² "Paresthesia refers to a burning or prickling sensation that
26 is usually felt in the hands, arms, legs, or feet, but can also
27 occur in other parts of the body. . . . Chronic paresthesia is
28 often a symptom of an underlying neurological disease or traumatic
nerve damage." <<https://www.ninds.nih.gov/Disorders/All-Disorders/Paresthesia-Information-Page>> (last visited Aug. 22,
2108).

1 Because a step-two evaluation is to dispose of “groundless
2 claims,” and the evidence here established that Plaintiff suffered
3 from significant nerve damage in her hands, the ALJ erred by finding
4 Plaintiff’s carpal tunnel syndrome to be “non-severe.” This is
5 not the “total absence of objective evidence of severe medical
6 impairment” that would permit us to affirm “a finding of no
7 disability at step two.” Webb, 433 F.3d at 688 (reversing a step-
8 two determination “because there was not substantial evidence to
9 show that Webb’s claim was ‘groundless’ ”). The evidence in the
10 record was sufficient for the ALJ to conclude that Plaintiff’s
11 carpal tunnel syndrome was a severe impairment at step two under
12 the de minimis test.

13
14 For the foregoing reasons, the matter is remanded for further
15 proceedings.³ On remand, the ALJ must evaluate Plaintiff’s carpal
16 tunnel syndrome as a severe impairment at step-two and include
17 limitations imposed by Plaintiff’s carpal tunnel syndrome in the
18 ALJ’s overall evaluation of Plaintiff. The ALJ must consider the
19 impact of Plaintiff’s carpal tunnel syndrome on her RFC.

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25 _____
26 ³ Plaintiff also argues that ALJ improperly rejected her
27 subjective symptom testimony. (Dkt. No. 19 at 8-11). However, it
28 is unnecessary to reach Plaintiff’s arguments on this ground, as
the matter is remanded for the alternative reasons discussed at
length in this Order.

