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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHANNON C. S.,)	Case No. ED CV 19-874-PJW
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
v.)	
)	
ANDREW M. SAUL,)	
COMMISSIONER OF THE)	
SOCIAL SECURITY ADMINISTRATION,)	
)	
Defendant.)	

I.

INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying her application for Supplemental Security Income ("SSI"). She contends that the Administrative Law Judge ("ALJ") erred when he determined that she could perform the jobs of marker and cleaner. For the reasons explained below, the Court concludes that the ALJ's finding that Plaintiff could perform the job of marker is supported by substantial evidence and, therefore, the ALJ's decision is affirmed.¹

¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Andrew M. Saul, Commissioner of the Social Security
(continued...)

1 II.

2 SUMMARY OF PROCEEDINGS

3 In July 2013, Plaintiff was found to be disabled due to affective
4 and anxiety disorders. (Administrative Record ("AR") 112-121.) In
5 February 2017, the Agency conducted a continuing disability review and
6 determined that Plaintiff was no longer disabled. (AR 141-148, 177-
7 180.) Plaintiff requested and was granted a hearing before an ALJ.
8 (AR 181-197.) In May 2018, Plaintiff appeared with counsel and
9 testified at the hearing. (AR 46-47, 67-78.) That same month, the
10 ALJ found that Plaintiff was no longer disabled. (AR 10-24.)
11 Plaintiff appealed to the Appeals Council, which denied review. (AR
12 1-3.) She then filed the instant action.

13 III.

14 ANALYSIS

15 The ALJ determined that Plaintiff could not perform fast-paced
16 work. (AR at 19.) Despite this limitation, he found that she could
17 perform the job of marker (i.e., someone who attaches price tags to
18 products in a store). (AR 24, 78-82.) Plaintiff argues that the ALJ
19 erred in doing so because the marker job requires frequent handling
20 and reaching as well as "repetitive or short-cycle work," both of
21 which Plaintiff equates with fast-paced work. (Joint Stip. at 8;
22 Dictionary of Occupational Titles ("DOT") No. 209.587-034.) This
23 argument is rejected. There is nothing in the DOT that defines
24 frequent handling and reaching or "repetitive or short-cycle work" as
25 fast-paced. See DOT No. 209.587-034. Nor has Plaintiff cited to any
26

27 ¹ (...continued)

28 Administration, is substituted in as the defendant.

1 case law to support her argument that the requirements are
2 interchangeable with fast-paced work.

3 Plaintiff looks for support in the Social Security
4 Administration's Program Operations Manual System ("POMS"). As she
5 points out, POMS specifies that unskilled work, like the job of
6 marker, is to be performed "at a consistent pace without an
7 unreasonable number and length of rest periods." (Joint Stip. at
8 8-9.) In Plaintiff's view, this description translates into fast-
9 paced work. Here, again, the Court disagrees. To begin with, POMS is
10 not binding on the ALJ or the Court. *Shaibi v. Berryhill*, 870 F.3d
11 874, 880 (9th Cir. 2017) (citing *Lockwood v. Comm'r Soc. Sec. Admin.*,
12 616 F.3d 1068, 1073 (9th Cir. 2010)). The DOT is the presumptive
13 authority and it does not describe the job of marker as fast-paced.
14 See *Johnson v. Shalala*, 60 F.3d 1428, 1435 (9th Cir. 1995) (finding
15 DOT is the rebuttable presumptive authority on job classifications).
16 Second, even assuming that POMS was controlling, it would not mandate
17 reversal here because the POMS section cited by Plaintiff describes
18 the mental abilities needed for the job, not the physical abilities,
19 which is Plaintiff's focus in the case at bar. POMS DI
20 25020.010(B)(3)(I).

21 Plaintiff argues that the Court should rely on its common
22 experience to conclude that most people would consider the marker job
23 fast-paced. (Joint Stip. at 9.) The Court does not find this
24 argument persuasive. The Court has had limited experience with
25 markers and has no idea what most people would think about the pace of
26 the work. In the absence of such contradictory experience, the Court
27 will uphold the ALJ's reliance on the DOT and the vocational expert to
28 conclude that Plaintiff could perform the work of a marker. Further,

1 because there are 300,000 marker jobs in the national economy, the ALJ
2 was warranted in concluding that Plaintiff could find work. *Gutierrez*
3 *v. Comm'r of Soc. Sec.*, 740 F.3d 519, 528-29 (9th Cir. 2014) (holding
4 25,000 jobs across several regions is enough to uphold ALJ's decision
5 that there were significant number of jobs in national economy).

6 Plaintiff contends that the ALJ also erred in concluding that she
7 could work as a cleaner because that job is fast-paced and requires
8 contact with the public. (Joint Stip. at 7-9; AR at 19, 24.) Though
9 the Court is inclined to agree with Plaintiff that the cleaner job
10 requires public contact, it need not decide whether the ALJ erred in
11 concluding that Plaintiff could perform this job because, even
12 assuming that he did, there are enough marker jobs in the national
13 economy to support his conclusion that Plaintiff was not disabled.
14 *See Gray v. Comm'r of Soc. Sec.*, 365 Fed. App'x 60, 63 (9th Cir. 2010)
15 (affirming ALJ's decision where claimant could perform only one of
16 three jobs identified by the ALJ but significant number of jobs in
17 national economy for that one job supported ALJ's decision that
18 claimant was not disabled). As such, the ALJ's decision is affirmed.

19 IV.

20 CONCLUSION

21 For these reasons, the Agency's decision is affirmed and the case
22 is dismissed with prejudice.

23 IT IS SO ORDERED.

24 DATED: April 13, 2020.

25 

26 _____
27 PATRICK J. WALSH
28 UNITED STATES MAGISTRATE JUDGE