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

RUDY P. A.,  
  
Plaintiff,  
  
v.  
  
KILOLO KIJAKAZI,<sup>1</sup>  
Acting Commissioner of Social  
Security,  
  
Defendant.

Case No. CV 20-00986-RAO

**MEMORANDUM OPINION AND  
ORDER**

**I. INTRODUCTION**

Plaintiff Rudy P. A.<sup>2</sup> (“Plaintiff”) challenges the Commissioner’s denial of his applications for disability insurance benefits (“DIB”) and supplemental security income (“SSI”). For the reasons stated below, the decision of the Commissioner is **AFFIRMED**.

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<sup>1</sup> Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi, the Acting Commissioner of Social Security, is hereby substituted as the defendant.

<sup>2</sup> Plaintiff’s name is partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1     **II.     SUMMARY OF PROCEEDINGS**

2             On August 26, 2016 and May 15, 2017, respectively, Plaintiff applied for DIB  
3 and SSI alleging disability beginning August 6, 2016, due to schizophrenia, nausea,  
4 bipolar, anxiety, nerve damage (hands and elbows), and depression. (Administrative  
5 Record (“AR”) 20, 197-206, 212-15, 220.) His applications were denied on February  
6 14, 2017, and upon reconsideration on May 8, 2017. (AR 20, 94-114.) On June 11,  
7 2017, Plaintiff requested a hearing by an Administrative Law Judge (“ALJ”), and a  
8 hearing was held on March 4, 2019. (AR 33-54, 129-30.) Plaintiff, represented by  
9 counsel, appeared and testified, along with an impartial vocational expert. (AR 33-  
10 54.) On March 19, 2019, the ALJ found that Plaintiff had not been under a disability,  
11 pursuant to the Social Security Act,<sup>3</sup> from August 6, 2016 through the date of the  
12 decision. (AR 27.) The ALJ’s decision became the Commissioner’s final decision  
13 when the Appeals Council denied Plaintiff’s request for review. (AR 1-7.) Plaintiff  
14 filed this action on May 7, 2020. (Dkt. No. 1.)

15             The ALJ followed a five-step sequential evaluation process to assess whether  
16 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,  
17 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged  
18 in substantial gainful activity since August 6, 2016, the alleged onset date. (AR 22.)  
19 At **step two**, the ALJ found that Plaintiff has the medically determinable impairments  
20 of left foot bunion and schizoaffective disorder, bipolar type I, but he does not have  
21 a severe impairment or combination of impairments because his impairments do not  
22 significantly limit his ability to perform basic work-related activities for 12  
23 consecutive months. (AR 22.) Accordingly, the ALJ found that Plaintiff “has not  
24 been under a disability . . . from August 6, 2016, through the date of this decision.”  
25 (AR 27.)

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26             <sup>3</sup> Persons are “disabled” for purposes of receiving Social Security benefits if they are  
27 unable to engage in any substantial gainful activity owing to a physical or mental  
28 impairment expected to result in death, or which has lasted or is expected to last for  
a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

### 1 **III. STANDARD OF REVIEW**

2 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s  
3 decision to deny benefits. A court must affirm an ALJ’s findings of fact if they are  
4 supported by substantial evidence, and if the proper legal standards were applied.  
5 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “Substantial evidence .  
6 . . . is ‘more than a mere scintilla[,]’ . . . [which] means—and means only—‘such  
7 relevant evidence as a reasonable mind might accept as adequate to support a  
8 conclusion.’” *Biestek v. Berryhill*, —U.S. —, 139 S. Ct. 1148, 1154, 203 L. Ed. 2d  
9 504 (2019) (citations omitted); *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017).  
10 An ALJ can satisfy the substantial evidence requirement “by setting out a detailed  
11 and thorough summary of the facts and conflicting clinical evidence, stating his  
12 interpretation thereof, and making findings.” *Reddick v. Chater*, 157 F.3d 715, 725  
13 (9th Cir. 1998) (citation omitted).

14 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a  
15 specific quantum of supporting evidence. Rather, a court must consider the record  
16 as a whole, weighing both evidence that supports and evidence that detracts from the  
17 Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001)  
18 (citations and internal quotations omitted). “‘Where evidence is susceptible to more  
19 than one rational interpretation,’ the ALJ’s decision should be upheld.” *Ryan v.*  
20 *Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing *Burch v. Barnhart*,  
21 400 F.3d 676, 679 (9th Cir. 2005)); *see also Robbins v. Social Sec. Admin.*, 466 F.3d  
22 880, 882 (9th Cir. 2006) (“If the evidence can support either affirming or reversing  
23 the ALJ’s conclusion, we may not substitute our judgment for that of the ALJ.”). The  
24 Court may review only “the reasons provided by the ALJ in the disability  
25 determination and may not affirm the ALJ on a ground upon which he did not rely.”  
26 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340  
27 F.3d 871, 874 (9th Cir. 2003)).

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1 **IV. DISCUSSION**

2 Plaintiff's sole contention is that the ALJ's finding that his mental impairment  
3 was not severe at step two of the five-step sequential evaluation process is not  
4 supported by substantial evidence. (Joint Stipulation ("JS") at 3-9.) The  
5 Commissioner argues that the ALJ's finding that Plaintiff's mental impairment was  
6 not severe is supported by substantial evidence. (JS at 9-13.) For the reasons below,  
7 the Court affirms.

8 **A. Applicable Legal Standards**

9 The step two inquiry is meant to be a *de minimis* screening device. *Smolen v.*  
10 *Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (citing *Bowen v. Yuckert*, 482 U.S. 137,  
11 153-54, 107 S. Ct. 2287, 96 L. Ed. 2d 119 (1987)). At step two, the ALJ identifies a  
12 claimant's severe impairments, *i.e.*, impairments that significantly limit his or her  
13 ability to do basic work activities.<sup>4</sup> 20 C.F.R. §§ 404.1522(a), 416.922(a); *Smolen*,  
14 80 F.3d at 1290. A determination that an impairment is not severe requires evaluation  
15 of medical findings describing the impairment, and an informed judgment as to its  
16 limiting effects on a claimant's ability to do basic work activities. Social Security  
17 Ruling ("SSR") 85-28, 1985 WL 56856, at \*4 (Jan. 1, 1985).<sup>5</sup> If a claimant does not  
18 have a severe mental impairment, then he or she is not eligible for disability  
19 payments. 20 C.F.R. §§ 404.1520(c), 416.920(c).

20 The ALJ must take into account subjective symptoms in assessing severity,  
21 *Smolen*, 80 F.3d at 1290, but "medical evidence alone is evaluated . . . to assess the  
22 effects of the impairment(s) on ability to do basic work activities." SSR 85-28 at \*4.  
23 An impairment or combination thereof may properly be found not severe if the  
24 clearly established objective medical evidence shows only slight abnormalities that  
25 minimally affect a claimant's ability to do basic work activities. *Webb v. Barnhart*,

26 <sup>4</sup> Basic work activities are "the abilities and aptitudes necessary to do most jobs[.]"  
27 20 C.F.R. §§ 404.1522(b), 416.922(b).

28 <sup>5</sup> SSRs do not have the force of law, but a reviewing court generally accords them  
some deference. *Holohan v. Massanari*, 246 F.3d 1195, 1202 n.1 (9th Cir. 2001).

1 433 F.3d 683, 687 (9th Cir. 2005); *Smolen*, 80 F.3d at 1290.

2 A “special technique” is used to evaluate the severity of mental impairments.  
3 20 C.F.R. §§ 404.1520a(a), 416.920a(a). Generally, a mental impairment is not  
4 severe if the degree of limitation in the four functional areas of understanding,  
5 remembering or applying information; interacting with others; concentrating,  
6 persisting, or maintaining pace; and adapting or managing oneself is rated as “none”  
7 or “mild.” *See* 20 C.F.R. §§ 404.1520a(c)(3) & (d)(1), 416.920a(c)(3) & (d)(1).

8 **B. The ALJ’s Decision**

9 At step two, the ALJ found that Plaintiff’s medically determinable mental  
10 impairment of schizoaffective disorder, bipolar type I did not cause more than  
11 minimal limitation in Plaintiff’s ability to perform basic mental work activities for  
12 12 consecutive months, and was, therefore, nonsevere. (AR 22, 25.)

13 The ALJ considered the entire medical record and all of Plaintiff’s subjective  
14 complaints and testimony. (AR 23-27.) The ALJ noted that Plaintiff asserted that  
15 his mental impairment of schizoaffective disorder, bipolar type I caused anxiety;  
16 auditory hallucinations; depression; paranoia; difficulty in interacting with others and  
17 maintaining concentration, persistence, and pace; and lack of motivation. (AR 23.)  
18 First, the ALJ found that Plaintiff’s subjective statements were not entirely consistent  
19 with the medical evidence and other evidence in the record. (AR 24.) Specifically,  
20 the ALJ found that Plaintiff’s daily activities of going to the store with his wife and  
21 transporting his children to and from school were inconsistent with his allegation that  
22 auditory hallucinations, paranoia, anxiety, and impaired thought process and thought  
23 content impaired his ability to adapt and manage himself. (AR 24.)

24 Second, the ALJ found that Plaintiff’s subjective statements regarding  
25 hallucinations, paranoia and depression that reduced his ability to perform work were  
26 inconsistent with the “minimal and unremarkable” objective medical evidence. (AR  
27 24, 326-27.) For example, in August 2016, Plaintiff’s mental status examination  
28 indicated mostly normal findings, including orientation, although he did have

1 abnormal thought process, delusions, and tactile (but not auditory) hallucinations.  
2 (AR 25, 313-14.) Plaintiff was noted as “actively smok[ing] marijuana.” (AR 25,  
3 313.) In September 2016, Plaintiff’s mental status examination showed intact  
4 memory, judgment and insight, normal mood and affect, normal speech, and normal  
5 rate and tone. (AR 24-25, 326.) Plaintiff’s November 2016 medical records indicate  
6 that Plaintiff denied audio hallucinations, paranoia, and suicidal and homicidal  
7 ideation. (AR 24-25, 339.) Plaintiff reported in January 2017 that he felt stable and  
8 he quit his job as a tree climber because he had difficulty showing up on time, not  
9 because of any mental or physical impairment. (AR 25, 343.) In 2018, he reported  
10 doing “good” most of the time, with no medication side effects. (AR 25, 367, 376.)

11 Third, the ALJ found that Plaintiff’s subjective statements were inconsistent  
12 with the frequency and extent of treatment sought by Plaintiff. (AR 24.) Plaintiff  
13 saw a psychiatrist in 2016, but his visits were irregular and sporadic. (AR 24, 310-  
14 22.) Plaintiff’s medical records total 85 pages, which includes treatment for his  
15 physical impairments, with no psychiatric hospitalizations. (AR 24, 309-93.)

16 Fourth, the ALJ found Plaintiff’s subjective statements inconsistent with the  
17 ALJ’s personal observations of Plaintiff at the hearing. (AR 24.) The ALJ noted  
18 Plaintiff was shaking throughout the hearing, but found Plaintiff’s “evidence of  
19 record supports or explains [Plaintiff’s] shaking at the hearing.” (AR 24.)

20 The ALJ considered the four broad areas of mental functioning and found that  
21 Plaintiff had mild limitations in all four areas. (AR 25-26.) The ALJ noted the  
22 absence of significant positive findings or evidence sufficient to establish that  
23 Plaintiff’s abilities in the four functional areas were fairly limited. (AR 25-26, 313,  
24 326, 343, 367, 376.)

25 The ALJ gave great weight to the State Agency psychological consultants’  
26 assessments that Plaintiff did not have a severe mental impairment. (AR 27, 95-104,  
27 106-14.) The ALJ found that the assessments were consistent with the other evidence  
28 of record as a whole, including the medical evidence demonstrating Plaintiff’s

1 persistent symptoms remained generally stable at no worse than a mild level with  
2 appropriate conservative treatment and the absence of more significant positive  
3 objective clinical or diagnostic findings pertaining to a mental impairment. (AR 27,  
4 313-14, 326, 339.)

5 **C. Discussion**

6 The overall treatment record supports the ALJ's finding at step two. Plaintiff  
7 presents a different interpretation of the objective medical evidence, treatment, and  
8 diagnosis. (JS at 5-7.) Plaintiff argues that he complained of depression, anxiety,  
9 overwhelming stress and paranoia; a mental status examination revealed rambling  
10 speech, tactile hallucinations, loose and disorganized thought process, paranoid  
11 thought content, fair insight, and fair judgment; his medication was increased; he was  
12 diagnosed with unspecified mood disorder and schizoaffective disorder, bipolar type;  
13 and he had good days and bad days. (JS at 5-7.) He argues that he received consistent  
14 monthly treatment by a psychiatrist since 2016. (JS at 7.) He argues that the medical  
15 evidence belies the ALJ's findings, particularly with respect to bipolar disorder,  
16 "which a reasonable person understands has periods of stability versus periods of no  
17 stability." (JS at 5, 7.) While Plaintiff's interpretation of the evidence is not  
18 unreasonable, neither is the ALJ's interpretation. *See Burch*, 400 F.3d at 679  
19 ("Where evidence is susceptible to more than one rational interpretation, it is the  
20 ALJ's conclusion that must be upheld."). The ALJ gave specific examples of the  
21 "minimal and unremarkable" objective evidence, citing mental status examinations  
22 and treatment records. (AR 24-27.) The ALJ noted the irregular and sporadic  
23 psychiatric visits in 2016, which was a reasonable interpretation of the evidence  
24 showing a psychiatric assessment on August 9, 2016, and medication visits on  
25 August 23, 2016, October 6, 2016 and November 29, 2016, indicating a similar  
26 medication treatment regimen since 2012. (AR 24, 111, 310-22, 360.) Likewise,  
27 although Plaintiff sought monthly treatment in 2017 and 2018 from Inland  
28 Psychiatric Medical Group, the ALJ could reasonably find that the progress notes did

1 not support Plaintiff's subjective statements. (AR 24, 309-93.) Further, mere  
2 diagnosis of an impairment, or even treatment for it, is insufficient to establish  
3 severity at step two, especially when the objective medical evidence in the record  
4 fails to show any work-related limitations connected to the impairment. *See Harvey*  
5 *v. Colvin*, 2013 WL 3899282, at \*5 (C.D. Cal. July 29, 2013) (citing *Matthews v.*  
6 *Shalala*, 10 F.3d 678, 680 (9th Cir. 1993)); *see also Febach v. Colvin*, 580 F. App'x  
7 530, 531 (9th Cir. 2014) (“[D]iagnosis alone is insufficient for finding a ‘severe’  
8 impairment, as required by the social security regulations.”). Substantial evidence  
9 supports the ALJ's step two finding.

10 Plaintiff argues that the State Agency assessments were made without the  
11 benefit of the entire medical record and thus were not based on a complete medical  
12 assumption. (JS at 8.) To the extent Plaintiff contends that the ALJ erred in assigning  
13 great weight to the State Agency assessments because the State Agency consultants  
14 did not review “the entire medical record,” his contention is rejected. The ALJ  
15 reviewed the entire record, specifically discussed evidence that post-dated the State  
16 Agency assessments, and concluded that the later evidence was consistent with the  
17 medical evidence as a whole showing no objective evidence of a severe mental  
18 impairment. (AR 22, 25, 367, 376.) *See Sportsman v. Colvin*, 637 F. App'x 992,  
19 995 (9th Cir. 2016) (stating that it is not error for a state agency consultant to fail to  
20 review subsequent medical records, if the ALJ reviews the entire record and  
21 concludes that the later-dated medical records are consistent with the overall medical  
22 evidence); *see also Meadows v. Saul*, 807 F. App'x 643, 647 (9th Cir. 2020)  
23 (“[A]lthough the non-examining state agency physicians did not review any evidence  
24 beyond August 2014, the ALJ did not err in giving great weight to the physicians’  
25 opinions.”). Further, Plaintiff has not identified any later mental health evidence that  
26 would have likely changed the State Agency assessments or ALJ's decision. *See*  
27 *Morin v. Saul*, 840 F. App'x 77, 79 (9th Cir. 2020) (“While the state agency  
28 consultants did not review evidence that post-dated their reports, [plaintiff] has not



1 shown that this process resulted in any harmful error, especially as the ALJ had the  
2 opportunity to review the entire record.”) (citing *Brown-Hunter v. Colvin*, 806 F.3d  
3 487, 492 (9th Cir. 2015)).

4 To the extent Plaintiff argues that the ALJ failed to fully and fairly develop the  
5 record, his argument fails. “[T]he ALJ has a special duty to develop the record fully  
6 and fairly and to ensure that the claimant’s interests are considered, even when the  
7 claimant is represented by counsel.” *Mayes v. Massanari*, 276 F.3d 453, 459 (9th  
8 Cir. 2001); *Laura G. v. Berryhill*, 357 F. Supp. 3d 1023, 1029 (C.D. Cal. 2019). “The  
9 ALJ’s duty to develop the record further is triggered only when there is ambiguous  
10 evidence or when the record is inadequate to allow for proper evaluation.” *Mayes*,  
11 276 F.3d at 459. Here, there is no indication that there was any ambiguity or that the  
12 record was inadequate, and Plaintiff does not point to any ambiguity or inadequacy,  
13 but instead merely argues that the ALJ should have further developed the record “[i]f  
14 the ALJ had an issue with the inconsistencies or the periods of improvements.” (JS  
15 at 8-9.) Because the medical evidence regarding Plaintiff’s impairments is neither  
16 ambiguous nor inadequate, the ALJ had no duty to develop the record further.

17 For the foregoing reasons, remand is not warranted.

18 **V. CONCLUSION**

19 IT IS ORDERED that Judgment shall be entered AFFIRMING the decision of  
20 the Commissioner denying benefits.

21 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this  
22 Order and the Judgment on counsel for both parties.

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25 DATED: August 12, 2021

/s/

ROZELLA A. OLIVER  
UNITED STATES MAGISTRATE JUDGE

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**NOTICE**

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