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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHAHEAN J.,¹

Plaintiff

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

Case No. 5:21-cv-01800-GJS

**MEMORANDUM OPINION AND
ORDER**

I. PROCEDURAL HISTORY

Plaintiff Shahean J. (“Plaintiff”) filed a complaint seeking review of the decision of the Commissioner of Social Security denying her applications for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”). The parties filed consents to proceed before the undersigned United States Magistrate Judge [Dkts. 11 and 12] and briefs [Dkts. 16 (“Pl. Br.”) & 17 (“Def. Br.”)] addressing disputed issues in the case. The matter is now ready for decision. For the reasons set forth below, the Court finds that this matter should be affirmed.

¹ In the interest of privacy, this Order uses only the first name and the initial of the last name of the non-governmental party in this case.

II. ADMINISTRATIVE DECISION UNDER REVIEW

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2 Plaintiff filed applications for DIB and SSI in January 2019, alleging
3 disability beginning August 15, 2003. [Dkt. 15, Administrative Record (“AR”) 15,
4 218-29, 232-37.] Plaintiff’s applications were denied at the initial level of review
5 and on reconsideration. [AR 15, 144-48, 150-54, 156-60.] A telephone hearing was
6 held before Administrative Law Judge Elizabeth Stevens Bentley (“the ALJ”) on
7 December 15, 2020. [AR 15, 32-49.]

8 On January 20, 2021, the ALJ issued an unfavorable decision applying the
9 five-step sequential evaluation process for assessing disability. [AR 15-26.] *See* 20
10 C.F.R. §§ 404.1520(b)-(g)(1), 416.920(b)-(g)(1). At step one, the ALJ determined
11 that Plaintiff engaged in substantial gainful activity from January 2005 through
12 December 2005 but had not engaged in substantial gainful activity from the alleged
13 onset date of August 15, 2003 through December 31, 2004, and from January 1,
14 2006 through the date of the decision, January 20, 2021. [AR 17-18.] At step two,
15 the ALJ determined that Plaintiff has the following severe impairments: epilepsy
16 and bipolar disorder. [AR 18.] At step three, the ALJ determined that Plaintiff does
17 not have an impairment or combination of impairments that meets or medically
18 equals the severity of one of the impairments listed in Appendix I of the
19 Regulations. [AR 19.] *See* 20 C.F.R. Pt. 404, Subpt. P, App. 1. The ALJ found that
20 Plaintiff has the residual functional capacity (“RFC”) to perform a full range of
21 work at all exertional levels and is able to perform simple and routine tasks, but
22 Plaintiff is not able to climb ladders, ropes, or scaffolds, must avoid concentrated
23 exposure to hazards, is limited to occasional coworker contact, and must have no
24 public contact. [AR 21.] At step four, the ALJ determined that Plaintiff has no past
25 relevant work. [AR 25.] At step five, based on the testimony of the vocational
26 expert (“VE”), the ALJ found that Plaintiff could perform other work that exists in
27 significant numbers in the national economy, including representative occupations
28 such as Hand Packager and Machine Feeder. [AR 25-26.] Therefore, the ALJ

1 concluded that Plaintiff has not been disabled from August 15, 2003, through the
2 date of the decision. [AR 26.]

3 The Appeals Council denied review of the ALJ's decision on August 27,
4 2021. [AR 1-6.] This action followed.

5 Plaintiff contends that the ALJ's step five determination that Plaintiff can
6 perform the representative occupations of Hand Packager and Machine Feeder is
7 inconsistent with Plaintiff's RFC. [Pl. Br. at 1-8.]

8 The Commissioner asserts that the ALJ's decision is supported by substantial
9 evidence and should be affirmed. [Def. Br. at 1-7.]

11 III. GOVERNING STANDARD

12 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner's decision to
13 determine if: (1) the Commissioner's findings are supported by substantial
14 evidence; and (2) the Commissioner used correct legal standards. *See Carmickle v.*
15 *Comm'r Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Brewes v. Comm'r*
16 *Soc. Sec. Admin.*, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial evidence ... is
17 'more than a mere scintilla' ... [i]t means – and only means – 'such relevant
18 evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (citations omitted); *Gutierrez v.*
19 *Comm'r of Soc. Sec.*, 740 F.3d 519, 522 (9th Cir. 2014) ("[s]ubstantial evidence is
20 more than a mere scintilla but less than a preponderance") (internal quotation marks
21 and citation omitted).

22
23 The Court will uphold the Commissioner's decision when "the evidence is
24 susceptible to more than one rational interpretation." *Burch v. Barnhart*, 400 F.3d
25 676, 681 (9th Cir. 2005) (quoting *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir.
26 1989)). However, the Court may review only the reasons stated by the ALJ in the
27 decision "and may not affirm the ALJ on a ground upon which he did not rely."
28 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). The Court will not reverse the

1 Commissioner’s decision if it is based on harmless error, which exists if the error is
2 “inconsequential to the ultimate nondisability determination, or that, despite the
3 error, the agency’s path may reasonably be discerned.” *Brown-Hunter v. Colvin*,
4 806 F.3d 487, 492 (9th Cir. 2015) (internal quotation marks and citations omitted).

6 IV. DISCUSSION

7 Plaintiff contends there is an inconsistency between Plaintiff’s RFC limitation
8 that she should “avoid concentrated exposure to hazards” and the ALJ’s finding that
9 Plaintiff can perform the jobs described in the Dictionary of Occupational Titles
10 (“DOT”) as Hand Packager² and Machine Feeder,³ because both jobs involve

11 _____
12 ² The DOT description for the job of Hand Packager states:

13 Packages materials and products manually, performing
14 any combination of [the] following duties: Cleans
15 packaging containers. Lines and pads crates and
16 assembles cartons. Obtains and sorts product. Wraps
17 protective material around product. Starts, stops, and
18 regulates speed of *conveyor*. Inserts or pours product into
19 containers or fills containers from spout or chute. Weighs
20 containers and adjusts quantity. Nails, glues, or closes and
21 seals containers. Labels containers, container tags, or
products. Sorts bundles or filled containers. Packs special
arrangements or selections of product. Inspects materials,
products, and containers at each step of packaging process.
Records information, such as weight, time, and date
packaged.

22 DOT No. 920.587-018 (emphasis added).

23 ³ The DOT description for the job of Machine Feeder states:

24 Feeds or removes metal, plastic, or other stock and
25 material from *automatic fabricating machines*: Places
26 stock into hoppers, onto *conveyors* of self-centering
27 machine bed, or lifts coils of sheet metal or wire onto
28 feedrack. Removes stock from *conveyor* and piles it into
boxes, truck, or on feed *conveyor* for next operation. May
push dual control buttons to activate machine. May work
in pairs to feed or remove pieces from *machine*. May

1 “exposure to hazards such as dangerous/moving machinery.” [Pl. Br. at 3-5.]
2 Specifically, Plaintiff contends her need to avoid concentrated exposure to hazards
3 precludes her from performing work as a Hand Packager, because the DOT lists that
4 position as involving use of a “conveyor belt,” which is “a type of dangerous
5 moving machine.” [Pl. Br. at 4.] Similarly, Plaintiff contends that the Machine
6 Feeder job is precluded because it involves “feed[ing] or remov[ing] items/material
7 from automatic fabricating machines as well as working with a conveyor belt.” [Pl.
8 Br. at 5.] A reversal or remand is not warranted on these bases.

9 “In making disability determinations, the Social Security Administration
10 relies primarily on the [DOT] for information about the requirements of work in the
11 national economy.” *Massachi v. Astrue*, 486 F.3d 1149, 1153 (9th Cir. 2007)
12 (internal quotation marks omitted); *Pinto v. Massanari*, 249 F.3d 840, 845 (9th Cir.
13 2001) (“[T]he best source for how a job is generally performed is usually the
14 [DOT].”). When a VE’s testimony regarding the requirements of a particular job
15 contradicts the DOT, the record must contain “persuasive evidence to support the
16 deviation.” *Massachi*, 486 F.3d at 1153 (internal quotation marks and citation
17 omitted); *see also* Social Security Ruling (“SSR”)⁴ 00-4P, 2000 WL 1898704, at *4
18 (2000)) (“When vocational evidence provided by a VE [] is not consistent with
19 information in the DOT, the [ALJ] must resolve [the] conflict before relying on the
20 VE [] evidence to support a determination or decision that the individual is or is not

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23 thread sheet metal or wire through *machine*.

24 DOT No. 699-686-010 (emphasis added).

25 ⁴ The Commissioner issues SSRs “to clarify the [Social Security] Act’s
26 implementing regulations and the agency’s policies. SSRs are binding on all
27 components of the [Social Security Administration]. SSRs do not have the force of
28 law. However, because they represent the Commissioner’s interpretation of the
agency’s regulations, we give them some 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) (internal citations omitted).

1 disabled.”).

2 Here, no apparent conflict exists between the VE’s testimony and the DOT
3 job descriptions for the Hand Packager and Machine Feeder jobs, as they relate to
4 Plaintiff’s need to avoid concentrated exposure to hazards. Social Security Ruling
5 96-9p defines “hazards,” for purposes of the DOT, to include “*moving mechanical*
6 *parts of equipment, tools, or machinery*; electrical shock; working in high, exposed
7 places; exposure to radiation; working with explosives; and exposure to toxic,
8 caustic chemicals.” SSR 96-9P, 1996 WL 374185, at *9 (Jul. 2, 1996) (emphasis
9 added); *see also French v. Berryhill*, No. EDCV 17-0566-KS, 2018 WL 1322106, at
10 *8 (C.D. Cal. Mar. 13, 2018) (referring to SSR 96-9P as “the [Social Security]
11 Commissioner’s own relevant definition of ‘hazards’”); *Novoa v. Colvin*, No. CV
12 13-00219-MAN, 2014 WL 3854369, at *7-8 (C.D. Cal. Aug. 6, 2014) (relying on
13 the SSR 96-9p definition of “hazards,” as the “ALJ did not expand upon his
14 definition of ‘hazard’ either in the RFC or in the hypothetical to the VE”).
15 Plaintiff’s contention that the Hand Packager and Machine Feeder jobs involve
16 exposure to hazardous machinery is belied by the DOT job descriptions, which
17 indicate that work in the proximity of moving mechanical parts is not required. *See*
18 DOT Nos. 699-686-010, 920.587-018; *see also* SSR 96-9P, 1996 WL 374185, at *9.
19 Specifically, the job descriptions for Hand Packager and Machine Feeder state that
20 moving mechanical parts are “Not Present,” meaning the “[a]ctivity or condition
21 does not exist.” DOT Nos. 699-686-010, 920.587-018. Because these jobs do not
22 involve exposure to the hazards of working with “moving mechanical parts of ...
23 machinery,” they do not involve exposure to hazardous machinery and are not in
24 excess of Plaintiff’s RFC. SSR 96-9P, 1996 WL 374185, at *9; *see also Hernandez*
25 *v. Colvin*, 2016 WL 805252, at *8 (C.D. Cal. Feb. 29, 2016) (rejecting argument that
26 the occupation of hand packager was inconsistent with claimant’s RFC precluding
27 work with dangerous machinery because the DOT provides that the hazard of
28 “[m]oving [m]echanical [p]arts” is not present and does not exist); *Anderson v.*

1 *Colvin*, 2015 WL 1005407, at *5 (C.D. Cal. Mar. 6, 2015) (agreeing that based on
2 the DOT description, the hand packager occupation does not involve work around
3 hazardous machinery); *Ramos v. Kijakazi*, No. 20-23478-CIV, 2021 WL 5746358,
4 at *4-6 (S.D. Fla. Nov. 9, 2021), *report and recommendation adopted sub nom.*
5 *Ramos v. Kijakazi*, No. 20-CV-23478, 2021 WL 5743332 (S.D. Fla. Dec. 2, 2021)
6 (finding that RFC precluding work with “hazards” did not conflict with VE’s
7 testimony that claimant could perform work as a machine feeder). Moreover, none
8 of the other hazards described in SSR 96-9p (*i.e.*, electric shock, high exposed
9 places, radiation, explosives, and toxic caustic chemicals), are included in the job
10 descriptions for Hand Packager or Machine Feeder. *See* DOT Nos. 699-686-010,
11 920.587-018. Thus, the ALJ did not err in crediting the VE’s testimony, as it did not
12 present an actual or apparent conflict with the DOT.

13 Accordingly, the ALJ’s step five determination is supported by substantial
14 evidence.

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V. CONCLUSION

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For all of the foregoing reasons, **IT IS ORDERED** that the decision of the
Commissioner finding Plaintiff not disabled is **AFFIRMED**

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IT IS SO ORDERED.

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DATED: February 3, 2023

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GAIL J. STANDISH
UNITED STATES MAGISTRATE JUDGE

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