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

FERNANDO G. NAVARRO,)	NO. SA CV 16-1272-KS
Plaintiff,)	
v.)	MEMORANDUM OPINION AND ORDER
)	
NANCY A. BERRYHILL, Acting)	
Commissioner of Social Security,)	
Defendant.)	
_____)	

INTRODUCTION

Fernando G. Navarro (“Plaintiff”) filed a Complaint on July 10, 2016, seeking review of the denial of his application for a period of disability and disability insurance benefits (“DIB”). (Dkt. No. 1.) On August 22, 2016, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. (Dkt. Nos. 11-13.) On October 3, 2017, the parties filed a Joint Stipulation (“Joint Stip.”). (Dkt. No. 32.) Plaintiff seeks an order reversing the Commissioner’s decision and remanding for further proceedings. (See Joint Stip. at 9-10.) The Commissioner requests that the ALJ’s decision be affirmed or, in the alternative, remanded for further proceedings. (See *id.* at 10.) The Court has taken the matter under submission without oral argument.

1 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**
2

3 On September 7, 2012, Plaintiff, who was born on October 27, 1977, protectively filed
4 an application for a period of disability and DIB.¹ (See Administrative Record (“AR”) 183-
5 89.) Plaintiff alleged disability commencing January 13, 2011 due to dislocated disks,
6 insomnia, numbness in feet/toes, degenerative disc disease, dislocated disks in his lower
7 back, dislocated disks in his neck, headaches, insomnia, numbness in his feet/toes, numbness
8 in his left hand, and numbness in his knees. (AR 60.) Plaintiff previously worked as a driver
9 (DOT 913.663-018), a cashier II (DOT 211.462-010), a courier (230.663-010), and a light
10 truck driver (DOT 906.683-022). (AR 53.) After the Commissioner denied Plaintiff’s
11 applications initially (AR 60) and on reconsideration (*id.* 70), Plaintiff requested a hearing
12 (*see id.* 14). Administrative Law Judge Kyle Andeer (“ALJ”) held a hearing on October 23,
13 2014 (*id.* 38). Plaintiff, who was represented by counsel, testified before the ALJ as did
14 vocational expert (“VE”) Allen Eye. (See AR 53-58.) On December 18, 2014, the ALJ
15 issued an unfavorable decision, denying Plaintiff’s application for a period of disability and
16 DIB. (*Id.* 18-37.) On May 11, 2016, the Appeals Council denied Plaintiff’s request for
17 review. (*Id.* 1-6.)

18
19 **SUMMARY OF ADMINISTRATIVE DECISION**
20

21 The ALJ found that Plaintiff had not engaged in substantial gainful activity from the
22 alleged onset date of January 13, 2011 through the date last insured of September 30, 2013.
23 (AR 23.) The ALJ further found that Plaintiff had the following severe
24 impairments: cervical disc disease and lumbar disk disease. (*Id.*) The ALJ concluded that
25 Plaintiff did not have an impairment or combination of impairments that met or medically
26 equaled the severity of any impairments listed in 20 C.F.R. part 404, subpart P, appendix 1

27
28 _____ ¹ Plaintiff was thirty-four years old on the application date and thus met the agency’s definition of a younger
individual. See 20 C.F.R. § 416.963(c).

1 (20 C.F.R. §§ 416.920(d), 416.925, 416.926). (*Id.* 24.) The ALJ determined that Plaintiff
2 had the residual functional capacity (“RFC”) “to perform sedentary work as defined in 20
3 CFR 404.1567(a) except [Plaintiff] cannot operate foot controls with the left lower
4 extremity, he can do so occasionally with the right lower extremity; and [Plaintiff] requires
5 that ability to stand up occasionally outside of normal break period to relieve symptoms.”²
6 (AR 24.)

7
8 The ALJ concluded that “[Plaintiff]’s medically determinable impairments could
9 reasonably be expected to cause the alleged symptoms; however, the claimant’s statements
10 concerning the intensity, persistence and limiting effects of these symptoms are not entirely
11 credible for the reasons explained in this decision.” (AR 26.) The ALJ found that Plaintiff
12 received generally conservative care for his musculoskeletal condition. He also concluded
13 that Plaintiff’s symptoms had stabilized with treatment to an extent that “enables him to work
14 within the RFC assessed herein.” (*Id.*)

15
16 The ALJ found that Plaintiff was unable to perform his past relevant work as a driver,
17 cashier, courier, or light truck driver. (AR 30.) However, the ALJ determined that Plaintiff
18 was capable of performing jobs that exist in significant numbers in the national economy,
19 including the representative occupations of final assembler (DOT 713.687-018) and order
20 clerk, food and beverage (DOT 209.567-014). (*Id.* 31.)

21 22 STANDARD OF REVIEW

23
24 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to
25 determine whether it is free from legal error and supported by substantial evidence in the

26
27 ² 20 CFR 404.1567(a) provides that “sedentary work involves lifting no more than 10 pounds at a time and
28 occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as
one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs
are sedentary if walking and standing are required occasionally and other sedentary criteria are met.”

1 record as a whole. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). “Substantial evidence
2 is ‘more than a mere scintilla but less than a preponderance; it is such relevant evidence as a
3 reasonable mind might accept as adequate to support a conclusion.’” *Gutierrez v. Comm’r of*
4 *Soc. Sec.*, 740 F.3d 519, 522-23 (9th Cir. 2014) (internal citations omitted). “Even when the
5 evidence is susceptible to more than one rational interpretation, we must uphold the ALJ’s
6 findings if they are supported by inferences reasonably drawn from the record.” *Molina v.*
7 *Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012).

8
9 Although this Court cannot substitute its discretion for the Commissioner’s, the Court
10 nonetheless must review the record as a whole, “weighing both the evidence that supports
11 and the evidence that detracts from the [Commissioner’s] conclusion.” *Lingenfelter v.*
12 *Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (internal quotation marks and citation omitted);
13 *Desrosiers v. Sec’y of Health and Hum. Servs.*, 846 F.2d 573, 576 (9th Cir. 1988). “The ALJ
14 is responsible for determining credibility, resolving conflicts in medical testimony, and for
15 resolving ambiguities.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

16
17 The Court will uphold the Commissioner’s decision when the evidence is susceptible
18 to more than one rational interpretation. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir.
19 2005). However, the Court may review only the reasons stated by the ALJ in his decision
20 “and may not affirm the ALJ on a ground upon which he did not rely.” *Orn*, 495 F.3d at
21 630; *see also Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). The Court will not
22 reverse the Commissioner’s decision if it is based on harmless error, which exists if the error
23 is “‘inconsequential to the ultimate nondisability determination,’ or if despite the legal error,
24 ‘the agency’s path may reasonably be discerned.’” *Brown-Hunter v. Colvin*, 806 F.3d 487,
25 492 (9th Cir. 2015) (internal citations omitted).

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1 **B. The ALJ's Hypotheticals**

2
3 During the VE's hearing testimony, the ALJ posed the following hypotheticals to the
4 VE:

5
6 Q. Okay, so, we'll start with that premise, with a stand or walk approximately two
7 hours out of eight, sit approximately six out of eight. Also would be limited and the
8 operation of foot controls would be never with the left and occasional with the right.
9 No ladders, ropes or scaffolds, occasional ramps and stairs, balancing, stopping,
10 crouching, kneeling and crawling. With those limitations would our hypothetical
11 person be able to perform any of this claimant's past work?

12 A. No.

13

14 Q. So would there be other jobs that would be available within the parameters of that
15 hypothetical?

16 A. There would be, Your Honor. . . .

17 Q. So for purposes of hypothetical two if we had precisely the same hypothetical one
18 butt we wanted to, I said sit six out of eight but I wanted to add in that our hypothetical
19 person would be able to alternate between sitting and standing which maybe you were
20 assuming but to be more specific say every 45 minutes of sitting they'd be able to
21 stand for two to five minutes before resuming sitting and for that matter even, they
22 might have to stand longer then rest. Would that impact the availability of the jobs
23 you identified in the first hypothetical?

24 A. No. I think the response would be the same as hypothetical one.

25 Q. If our hypothetical person, let's assume is limited to sedentary work which would
26 limit the lifting required so it's possible operations would probably not be necessary
27 but would still have foot control issue and also offer the opportunity to alternate
28 between sitting and standing as time, just recently here. Did I say 30 minutes?

1 A. I think you said 45, Your Honor.

2 Q. After 45 minutes of sitting they would be able to stand for three to five minutes.
3 Would there be work at the sedentary exertional level, jobs would be available for this
4 hypothetical person?

5 A. Well sedentary work generally wouldn't lend itself to a sit, stand option but the
6 opportunity to take a short break to stand and stretch would be possible. It would vary
7 depending upon the occupation.

8

9 Q. All right, so, what if our hypothetical person, we didn't say sit, stand option but like
10 we said considering morning, afternoon and lunch breaks he needed to stand up once
11 in a while to relieve symptoms and are there sedentary jobs?

12 A. There would be sedentary jobs, Your Honor.

13
14 (AR 55-57.) Thus, the record indicates that when posing hypotheticals to the VE, the ALJ
15 did in fact "set out all the limitations and restrictions," (*Embrey*, 849 F.2d at 422) that he used
16 to assess Plaintiff's RFC.

17
18 Plaintiff claims that the hypotheticals should have included questioning on whether
19 Plaintiff could "only handle occasional changes in work and must work in a structured
20 environment." (Joint Stip. 6.) However, as a factual matter, the RFC assessment never
21 included this language. In fact, the ALJ never referred to the necessity of a "structured
22 environment" in his assessment. Consequently, the ALJ was not required to explore a
23 "structured environment" limitation in his hypotheticals to the VE.

24
25 The ALJ's RFC assessment also never stated that Plaintiff could "only handle
26 occasional changes in work." (Joint Stip. 6.) Nevertheless, the RFC does mention that
27 "[Plaintiff] requires the ability to stand up occasionally outside of normal break periods to
28

1 relieve symptoms.” (AR 26.) These specific parameters were, contrary to Plaintiff’s
2 assertions, set out in the hypotheticals posed to the VE.
3

4 During the ALJ’s colloquy with Plaintiff, the ALJ described a hypothetical person
5 who is “a younger individual” that “has limited education and [Plaintiff’s work history], is
6 able to sit for two hours a day, no [sic] stand or walk for two hours a day, . . . sit for
7 approximately six hours a day, but is able to lift up to 20 pounds occasionally and lift or
8 carry 10 pounds frequently.” (AR 54.) The VE stated that “an eroded range of lights jobs . .
9 . would fit into that” description. (AR 54.) As noted above, the ALJ continued to adapt the
10 hypothetical by adding the conditions that the individual could stand or walk approximately
11 two out of eight hours, sit approximately six out of eight hours, be limited in the operation of
12 foot controls, and could not use ladders, ropes, or scaffolds, but occasionally balance, stoop,
13 crouch, kneel, and crawl. The VE concluded that said individual could not perform
14 Plaintiff’s past work. However, the individual could perform other work, including as a
15 cashier II (211.462-010) or an assembler of small products (706.684-022). (AR 54-55.)
16

17 The ALJ then posed a second hypothetical, which took into account the limitation that
18 Plaintiff must “stand up occasionally outside of normal break periods to relieve symptoms.”
19 (AR 26.) In particular, the ALJ added the limitations that the hypothetical individual must
20 be able to alternate between sitting and standing, “say after every forty-five minutes of
21 sitting they’d be able to stand for two to five minutes before resuming sitting and for that
22 matter even, they may have to stand longer then rest.” (AR 56.) The VE concluded that
23 those factors would not impact the availability of the jobs identified in the first hypothetical.
24 (*Id.*)
25

26 The ALJ further adapted the hypothetical to address the RFC limitation. The ALJ
27 asked about the potential for sedentary work, where, after forty-five minutes of sitting, the
28 individual could stand for three to five minutes. (AR 56.) The VE responded, “[T]he option

1 to take a short break to stand and stretch would be possible,” but that work would be
2 classified as light instead of sedentary, because it may require occasional standing. (AR 57.)
3 Nevertheless, the hypothetical person could work a sedentary job, where, “considering
4 morning, afternoon, and lunch breaks, he needed to stand up once in a while to relieve
5 symptoms.” (AR 57.)

6
7 The ALJ then asked about the job base if the same hypothetical person is “distracted
8 by pain to the point that they could stay on task for a maximum of 75 percent of the work
9 day,” might miss one day of the work week, or might not be able to focus for more than
10 eight percent of the day. (AR 58.) The VE responded, “It would completely erode the job
11 base.” (*Id.*)

12
13 The record evidence indicates that the hypotheticals posed by the ALJ fully addressed
14 the requirement that Plaintiff stand occasionally outside of normal break periods to relieve
15 symptoms. The hypotheticals accurately tracked the RFC assessment that the ALJ used to
16 determine what employment Plaintiff could pursue. In sum, the ALJ’s hypotheticals were
17 “accurate, detailed, and supported by the medical record.” *Osenbrock v. Apfel*, 240 F.3d
18 1157, 1164 (9th Cir. 2001). Accordingly, the ALJ’s decision is without legal error and the
19 Commissioner’s decision is affirmed.

20
21 **CONCLUSION**

22
23 For the reasons stated above, the Court finds that the Commissioner’s decision is
24 supported by substantial evidence and free from material legal error. Neither reversal of the
25 ALJ’s decision nor remand is warranted.

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Accordingly, IT IS ORDERED that Judgment shall be entered affirming the decision of the Commissioner of the Social Security Administration.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of this Memorandum Opinion and Order and the Judgment on counsel for plaintiff and for defendant.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATE: October 30, 2017



KAREN L. STEVENSON
UNITED STATES MAGISTRATE JUDGE