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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 TANYA G.,

12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

15 Defendant.
16

Case No. SACV 18-898-AGR

MEMORANDUM OPINION AND ORDER

17 Plaintiff¹ filed this action on May 23, 2018. Pursuant to 28 U.S.C. § 636(c), the
18 parties consented to proceed before the magistrate judge. (Dkt. Nos. 12, 13.) On
19 January 2, 2019, the parties filed a Joint Stipulation that addressed the disputed issues.
20 The court has taken the matter under submission without oral argument.

21 Having reviewed the entire file, the court reverses the decision of the
22 Commissioner and remands for further proceedings at step five of the sequential
23 analysis.
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27 ¹ Plaintiff's name has been partially redacted in compliance with Fed. R. Civ. P.
28 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.

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I.

PROCEDURAL BACKGROUND

On July 25, 2014, Plaintiff filed an application for disability insurance benefits and alleged an onset date of October 18, 2013. Administrative Record (“AR”) 10. The application was denied initially and on reconsideration. AR 10, 84, 98. Plaintiff requested a hearing before an Administrative Law Judge (“ALJ”). On July 16, 2016, the ALJ continued the hearing and ordered consultative examinations after hearing Plaintiff’s testimony. AR 58-67. On April 12, 2017, the ALJ conducted a hearing at which Plaintiff and a vocational expert testified. AR 43-57. On May 2, 2017, the ALJ issued a decision denying benefits. AR 7-22. On March 30, 2016, the Appeals Council denied the request for review. AR 1-5. This action followed.

II.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this court has authority to review the Commissioner’s decision to deny benefits. The decision will be disturbed only if it is not supported by substantial evidence, or if it is based upon the application of improper legal standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995) (per curiam); *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

“Substantial evidence” means “more than a mere scintilla but less than a preponderance – it is such relevant evidence that a reasonable mind might accept as adequate to support the conclusion.” *Moncada*, 60 F.3d at 523. In determining whether substantial evidence exists to support the Commissioner’s decision, the court examines the administrative record as a whole, considering adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the evidence is susceptible to more than one rational interpretation, the court must defer to the Commissioner’s decision. *Moncada*, 60 F.3d at 523.

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III.

DISCUSSION

A. Disability

A person qualifies as disabled, and thereby eligible for such benefits, “only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” *Barnhart v. Thomas*, 540 U.S. 20, 21-22 (2003) (citation omitted).

B. The ALJ’s Findings

The ALJ found that Plaintiff met the insured requirements through December 31, 2018. AR 12. Following the five-step sequential analysis applicable to disability determinations, *Lounsbury v. Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006),² the ALJ found that, through the date last insured, Plaintiff had the severe impairments of lumbar degenerative disc disease and affective disorder. AR 12. Plaintiff had the residual functional capacity (“RFC”) to perform light work except that she could lift/carry 20 pounds occasionally and 10 pounds frequently; sit, stand and/or walk six hours in an eight-hour workday with alternating sitting and standing every hour for 1-3 minutes at the work station; use ramps, stairs, ladders, ropes and scaffolding occasionally; and balance, stoop, kneel, crouch and crawl occasionally. Plaintiff was limited to simple repetitive tasks and moderately complex tasks up to three steps; a low stress environment; occasional interaction with supervisors and coworkers; and minimal public contact. AR 14-15.

² The five-step sequential analysis examines whether the claimant engaged in substantial gainful activity, whether the claimant’s impairment is severe, whether the impairment meets or equals a listed impairment, whether the claimant is able to do his or her past relevant work, and whether the claimant is able to do any other work. *Lounsbury*, 468 F.3d at 1114.

1 Plaintiff could not perform past relevant work. AR 20. However, there were jobs
2 that existed in significant numbers in the national economy. AR 21-22.

3 **C. Step Five Determination**

4 At step five of the sequential analysis, the burden shifts to the ALJ to identify jobs
5 that existed in significant numbers in the national economy that the claimant could
6 perform. *Tackett v. Apfel*, 180 F.3d 1094, 1100 (9th Cir. 1999); *Reddick v. Chater*, 157
7 F.3d 715, 721 (9th Cir. 1998); 20 C.F.R. § 416.920. In meeting this burden, the ALJ
8 relies primarily on the DOT for information about the requirements of work in the
9 national economy. Social Security Ruling (“SSR”) 00-4p, 2000 WL 1898704 (Dec. 4,
10 2000); see also *Pinto v. Massanari*, 249 F.3d 840, 845-46 (9th Cir. 2001).

11 “There are two ways for the Commissioner to meet the burden of showing that
12 there is other work in ‘significant numbers’ in the national economy that claimant can
13 do: (1) by the testimony of a vocational expert, or (2) by reference to the
14 Medical-Vocational Guidelines at 20 C.F.R. pt. 404, subpt. P, app. 2” (the “grids”).
15 *Lounsbury*, 468 F.3d at 1114. “Where a claimant suffers only exertional limitations, the
16 ALJ must consult the grids. Where a claimant suffers only non-exertional limitations,
17 the grids are inappropriate, and the ALJ must rely on other evidence. Where a claimant
18 suffers from both exertional and non-exertional limitations, the ALJ must consult the
19 grids first.” *Id.* at 1115. The grids are inapplicable when “a claimant’s non-exertional
20 limitations are sufficiently severe so as to significantly limit the range of work permitted
21 by the claimant’s exertional limitations.”³ *Hoopai v. Astrue*, 499 F.3d 1071, 1075 (9th
22 Cir. 2007) (citation and quotation marks omitted). The testimony of a vocational expert
23 is required when nonexertional limitations significantly limit the range of work a claimant
24 can perform. *Tackett*, 180 F.3d at 1102.

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27 ³ Nonexertional limitations include “postural and manipulative limitations such as
28 difficulty reaching, handling, stooping, climbing, crawling, or crouching.” *Lounsbury*,
468 F.3d at 1115.

1 The ALJ may rely on the testimony of a vocational expert, who can assess the
2 claimant's limitations and identify any existing jobs that the claimant can perform.
3 *Tackett*, 180 F.3d at 1100-01.

4 The ALJ failed to make the necessary findings in this case. The vocational
5 expert testified that Plaintiff could not perform her past relevant work in response to the
6 ALJ's hypotheticals. AR 54-55. The following colloquy then occurred. "ALJ: I assume
7 that there are thousands of unskilled jobs available? VE: Yes, Your Honor." AR 55.
8 The ALJ did not ask the VE to identify any representative jobs or the numbers of those
9 jobs, or to testify whether the VE's testimony was consistent with the Dictionary of
10 Occupational Titles ("DOT"). The ALJ erred. Contrary to Defendant's argument, the
11 ALJ must identify "specific jobs existing in substantial numbers in the national economy
12 that [a] claimant can perform despite identified limitations." *Zavalin v. Colvin*, 778 F.3d
13 842, 845 (9th Cir. 2015) (citation omitted); see also *Lennon v. Berryhill*, 2018 U.S. Dist.
14 LEXIS 126313, *5 (N.D. Cal. July 26, 2018) (quoting Appeal Council's direction to ALJ
15 to ask vocational expert to "identify examples of appropriate jobs"); 20 C.F.R. §
16 416.966(b) ("Work exists in the national economy when there is a significant number of
17 jobs (in one or more occupations) having requirements which you are able to meet with
18 your physical or mental abilities and vocational qualifications.").

19 Nor is the ALJ's error harmless. The failure of the ALJ to make any findings as to
20 representative jobs or the numbers of those jobs renders the ALJ's step five
21 determination unreviewable. The court is unable to determine, for example, whether
22 the representative job(s) are consistent with a claimant's RFC and with the DOT. See
23 *Gutierrez v. Colvin*, 844 F.3d 804, 808 (9th Cir. 2016); *Massachi v. Astrue*, 486 F.3d
24 1149, 1152-54 (9th Cir. 2007). Remand is appropriate. See *Barnes v. Berryhill*, 895
25 F.3d 702, 708 (9th Cir. 2018) (remanding for further proceedings when ALJ's failure to
26 make necessary written findings prevented court from determining whether substantial
27 evidence supported step five determination); see also 20 C.F.R. § 416.966(b).

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