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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALYCE M. CANNONIER,
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 2:13-cv-2382-KJN

ORDER

Plaintiff seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner”) denying plaintiff’s application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act (“Act”).¹ In her motion for summary judgment, plaintiff principally contends that the Commissioner erred by finding that plaintiff was not disabled from September 21, 2010, the date that plaintiff’s SSI application was filed, through the date of the ALJ’s decision. (ECF No. 16.) The Commissioner filed an opposition to plaintiff’s motion and a cross-motion for summary judgment. (ECF No. 17.) Thereafter, plaintiff filed a reply brief. (ECF No. 18.)

¹ This action was initially referred to the undersigned pursuant to E.D. Cal. L.R. 302(c)(15), and both parties voluntarily consented to proceed before a United States Magistrate Judge for all purposes. (ECF Nos. 9, 10.)

1 For the reasons discussed below, the court DENIES plaintiff's motion for summary
2 judgment, GRANTS the Commissioner's cross-motion for summary judgment, and enters
3 judgment for the Commissioner.

4 I. BACKGROUND

5 Plaintiff was born on September 10, 1989, has at least a high school education, is able to
6 communicate in English, and previously worked primarily as a cashier.² (Administrative
7 Transcript ("AT") 41-42, 54, 58, 73.) On September 21, 2010, at the age of 21, plaintiff applied
8 for SSI, alleging that her disability began on November 11, 2008, and that she was disabled
9 primarily due to bipolar disorder, manic depression, psychotic disorder, and suicidal tendencies.
10 (AT 17, 149, 173.)³ On January 20, 2011, the Commissioner determined that plaintiff was not
11 disabled. (AT 17, 76-80.) Upon plaintiff's request for reconsideration, that determination was
12 affirmed on June 27, 2011. (AT 17, 85-89.) Thereafter, plaintiff requested a hearing before an
13 administrative law judge ("ALJ"), which took place on July 12, 2012, and at which plaintiff,
14 represented by a non-attorney representative, and a vocational expert ("VE") testified. (AT 17,
15 35-57.)

16 In a decision dated August 31, 2012, the ALJ determined that plaintiff had not been under
17 a disability, as defined in the Act, from September 21, 2010, the date that plaintiff's SSI
18 application was filed, through the date of the ALJ's decision. (AT 17-26.) The ALJ's decision
19 became the final decision of the Commissioner when the Appeals Council denied plaintiff's
20 request for review on September 16, 2013. (AT 4-7.) Thereafter, plaintiff filed this action in
21 federal district court on November 15, 2013, to obtain judicial review of the Commissioner's final
22 decision. (ECF No. 1.)

24 ² Because the parties are familiar with the factual background of this case, including plaintiff's
25 mental health history, the court does not exhaustively relate those facts in this order. The facts
26 related to plaintiff's impairments and treatment will be addressed insofar as they are relevant to
the issues presented by the parties' respective motions.

27 ³ Regardless of the alleged disability onset date, SSI is not payable prior to the month following
28 the month in which the application was filed. 20 C.F.R. § 416.335.

1 II. ISSUES PRESENTED

2 Plaintiff has raised the following issues: (1) whether the ALJ improperly discounted the
3 opinion of a state agency psychologist; and (2) whether the ALJ erroneously determined at step
4 four that plaintiff was capable of performing past relevant work as a cashier.⁴

5 III. LEGAL STANDARD

6 The court reviews the Commissioner’s decision to determine whether (1) it is based on
7 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
8 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
9 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
10 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means “such relevant evidence as a reasonable
11 mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th
12 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is
13 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
14 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citation omitted). “The
15 court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one rational
16 interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

17 IV. DISCUSSION

18 A. Summary of the ALJ’s Findings

19 The ALJ evaluated plaintiff’s entitlement to SSI pursuant to the Commissioner’s standard
20 five-step analytical framework.⁵ At the first step, the ALJ concluded that plaintiff had not

21 ⁴ Plaintiff’s briefing raised these issues in reverse order.

22 ⁵ Disability Insurance Benefits are paid to disabled persons who have contributed to the Social
23 Security program. 42 U.S.C. §§ 401 et seq. Supplemental Security Income is paid to disabled
24 persons with low income. 42 U.S.C. §§ 1382 et seq. Both provisions define disability, in part, as
25 an “inability to engage in any substantial gainful activity” due to “a medically determinable
26 physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A). A parallel
27 five-step sequential evaluation governs eligibility for benefits under both programs. See 20
28 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-
42 (1987). The following summarizes the sequential evaluation:

Step one: Is the claimant engaging in substantial gainful activity? If so, the
claimant is found not disabled. If not, proceed to step two.

1 engaged in substantial gainful activity since September 21, 2010, the date that plaintiff's SSI
2 application was filed. (AT 19.) At step two, the ALJ found that plaintiff had the following severe
3 impairments: bipolar disorder, borderline personality disorder, and post-partum depression. (Id.)
4 However, at step three, the ALJ determined that plaintiff did not have an impairment or
5 combination of impairments that met or medically equaled the severity of an impairment listed in
6 20 C.F.R. Part 404, Subpart P, Appendix 1. (AT 20.)

7 Before proceeding to step four, the ALJ assessed plaintiff's residual functional capacity
8 ("RFC") as follows:

9 After careful consideration of the entire record, the undersigned
10 finds that the claimant has the residual functional capacity to
11 perform a full range of work at all exertional levels but with the
12 following non-exertional limitations: she has no limited [sic] in the
13 ability to accept, understand, remember, and carry out simple job
14 instructions; she could frequently accept, understand, remember,
and carry out detailed, but not complex, job instructions; she is able
to interact appropriately with the general public, co-workers, and
supervisors; she is able to make adjustments to workplace changes;
and she is able to make workplace decisions.

15 (AT 22.)

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18 Step two: Does the claimant have a "severe" impairment? If so, proceed to step
19 three. If not, then a finding of not disabled is appropriate.

20 Step three: Does the claimant's impairment or combination of impairments meet or
21 equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1? If so, the
claimant is automatically determined disabled. If not, proceed to step four.

22 Step four: Is the claimant capable of performing his past relevant work? If so, the
23 claimant is not disabled. If not, proceed to step five.

24 Step five: Does the claimant have the residual functional capacity to perform any
25 other work? If so, the claimant is not disabled. If not, the claimant is disabled.

26 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

27 The claimant bears the burden of proof in the first four steps of the sequential evaluation
28 process. Bowen, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential
evaluation process proceeds to step five. Id.

1 At step four, the ALJ found that plaintiff was capable of performing past relevant work as
2 a cashier, as she actually performed that work. (AT 25.) In the alternative, at step five, the ALJ
3 determined, based on the Grids, that, considering plaintiff's age, education, work experience, and
4 RFC, there were jobs that existed in significant numbers in the national economy that plaintiff
5 could perform. (AT 25-26.)

6 Accordingly, the ALJ concluded that plaintiff had not been under a disability, as defined
7 in the Act, from September 21, 2010, the date that plaintiff's SSI application was filed, through
8 the date of the ALJ's decision. (AT 26.)

9 B. Plaintiff's Substantive Challenges to the Commissioner's Determinations

10 1. Whether the ALJ improperly discounted the opinion of a state agency psychologist

11 Plaintiff contends that the ALJ improperly discounted the opinion of state agency
12 psychologist, Dr. Alan Goldberg. On January 19, 2011, Dr. Goldberg reviewed plaintiff's
13 records, assessed various moderate mental limitations, and opined that plaintiff:

14 appears to be capable of performing simple, structured, unskilled
15 work in settings with reduced social demands. She can understand,
16 remember, carry out simple instructions. She can make simple
17 work related decisions. She can get along with others well enough
to participate in the workplace. She will do best in settings with
minimal changes in work demands from day to day.

18 (AT 492-94.) Thus, Dr. Goldberg essentially limited plaintiff to simple, repetitive tasks with
19 reduced social demands.

20 The ALJ's RFC does not differ greatly from Dr. Goldberg's assessment. Nevertheless,
21 even assuming, without deciding, that the ALJ erred in not adopting Dr. Goldberg's opinion in
22 full, such error was harmless, because application of the Commissioner's Medical-Vocational
23 Guidelines, or "Grids," indicates that there were a significant number of jobs in the national
24 economy that plaintiff could perform despite such limitations. Molina v. Astrue, 674 F.3d 1104,
25 1111 (9th Cir. 2012) ("we may not reverse an ALJ's decision on account of an error that is
26 harmless").

27 The "Grids" take administrative notice of the numbers of unskilled jobs that exist
28 throughout the national economy at various functional levels. 20 C.F.R. Part 404, Subpart P,

1 Appendix 2, § 200.00(b). “The ALJ can use the grids without vocational expert testimony when a
2 non-exertional limitation is alleged because the grids provide for the evaluation of claimants
3 asserting both exertional and non-exertional limitations. But the grids are inapplicable when a
4 claimant’s non-exertional limitations are sufficiently severe so as to significantly limit the range
5 of work permitted by the claimant’s exertional limitations.” Hoopai v. Astrue, 499 F.3d 1071,
6 1075 (9th Cir. 2007).

7 In this case, the ALJ found that plaintiff had no exertional limitations and could perform
8 work across all exertional levels, a finding that plaintiff does not challenge here. Additionally,
9 the non-exertional limitations assessed by Dr. Goldberg—which amount to simple, repetitive
10 tasks with reduced social demands—are not sufficiently severe so as to significantly limit the
11 range of unskilled work plaintiff could perform across all exertional levels. See, e.g., Ramsey v.
12 Astrue, 2012 WL 5499900, at **1, 6 (E.D. Cal. Nov. 13, 2012) (ALJ properly relied on Grids
13 when claimant had no exertional limitations, but was limited to simple, repetitive tasks and no
14 more than occasional interaction with the public); Campos v. Astrue, 2012 WL 467985, at **2-3
15 (C.D. Cal. Feb. 14, 2012) (ALJ properly relied on Grids when claimant was limited to light work,
16 no balancing, no work at unprotected heights, no work around dangerous moving machinery,
17 simple repetitive tasks, and only limited contact with the general public); SSR 85-15, at *4
18 (noting that unskilled work ordinarily involves dealing primarily with objects, rather than people).
19 Furthermore, Dr. Goldberg’s assessment of moderate mental limitations does not preclude
20 reliance on the Grids, because the Ninth Circuit has already held that moderate mental limitations
21 do not require vocational expert testimony. Hoopai, 499 F.3d at 1077.

22 Therefore, any error in not fully adopting Dr. Goldberg’s opinion was harmless.

23 2. Whether the ALJ erroneously determined at step four that plaintiff was capable of
24 performing past relevant work as a cashier

25 Plaintiff contends that her prior work as a cashier was not performed at the substantial
26 gainful activity level, and thus could not constitute past relevant work for purposes of step four.
27 However, the court need not reach the merits of that argument, because the ALJ alternatively
28 found at step five that plaintiff was capable of performing other work that existed in significant

1 numbers in the national economy. As noted above, that finding was supported by the Grids, even
2 with the limitations assessed by Dr. Goldberg.

3 V. CONCLUSION

4 Accordingly, for the reasons outlined above, IT IS HEREBY ORDERED that:

- 5 1. Plaintiff's motion for summary judgment (ECF No. 16) is DENIED.
- 6 2. The Commissioner's cross-motion for summary judgment (ECF No. 17) is


7 GRANTED.

8 3. Judgment is entered for the Commissioner.

9 4. The Clerk of Court shall close this case.

10 IT IS SO ORDERED.

11 Dated: February 6, 2015

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14 KENDALL J. NEWMAN
15 UNITED STATES MAGISTRATE JUDGE
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