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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JOSHUA M. MOTE,

12 Plaintiff,

13 v.

14 COMMISSIONER OF SOCIAL
15 SECURITY,

16 Defendant.
17

No. 2:13-cv-2640-KJN

ORDER

18 Plaintiff seeks judicial review of a final decision by the Commissioner of Social Security
19 (“Commissioner”) denying plaintiff’s application for Disability Insurance Benefits (“DIB”) and
20 Supplemental Security Income (“SSI”) under Titles II and XVI, respectively, of the Social
21 Security Act (“Act”).¹ In his motion for summary judgment, plaintiff principally contends that
22 the Commissioner erred by finding that plaintiff was not disabled from October 31, 2008,
23 plaintiff’s alleged disability onset date, through the date of the ALJ’s decision. (ECF No. 17.)
24 The Commissioner filed an opposition to plaintiff’s motion and a cross-motion for summary
25 judgment. (ECF No. 20.) No optional reply brief was filed.
26

27 ¹ This action was initially referred to the undersigned pursuant to E.D. Cal. L.R. 302(c)(15), and
28 both parties voluntarily consented to proceed before a United States Magistrate Judge for all
purposes. (ECF Nos. 7, 9.)

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 13, 1981, completed 2 years of college education, is able
6 to communicate in English, and previously worked as a construction laborer, mason's helper,
7 kitchen supervisor, pizza delivery driver, and custodial maintenance worker.² (Administrative
8 Transcript ("AT") 31, 85-86, 90-91, 206, 208, 212.) On February 27, 2009, and May 19, 2009, at
9 the age of 27, plaintiff applied for DIB and SSI, respectively, alleging that his disability began on
10 October 31, 2008, and that he was disabled primarily due to posttraumatic stress disorder and
11 degenerative disc disease. (AT 20, 31, 85-86, 90-91, 184, 188, 207.)³ On September 29, 2009,
12 the Commissioner determined that plaintiff was not disabled. (AT 20, 92-99.) Upon plaintiff's
13 request for reconsideration, that determination was affirmed on April 12, 2010. (AT 20, 106-11.)
14 Thereafter, plaintiff requested a hearing before an administrative law judge ("ALJ"), which took
15 place on January 27, 2011, and July 29, 2011, and at which plaintiff, represented by a non-
16 attorney representative, and a vocational expert ("VE") testified. (AT 20, 38-74, 75-84.)

17 In a decision dated August 25, 2011, the ALJ determined that plaintiff had not been under
18 a disability, as defined in the Act, from October 31, 2008, plaintiff's alleged disability onset date,
19 through the date of the ALJ's decision. (AT 20-33.) The ALJ's decision became the final
20 decision of the Commissioner when the Appeals Council denied plaintiff's request for review on
21 October 23, 2013. (AT 1-3.) Thereafter, plaintiff filed this action in federal district court on
22 December 22, 2013, to obtain judicial review of the Commissioner's final decision. (ECF No. 1.)
23

24 ² Because the parties are familiar with the factual background of this case, including plaintiff's
25 medical and mental health history, the court does not exhaustively relate those facts in this order.
26 The facts 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 sole issue of whether the ALJ improperly rejected the opinion of
3 the consultative examining psychiatrist concerning plaintiff's mental functional limitations.

4 III. LEGAL STANDARD

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

16 IV. DISCUSSION

17 A. Summary of the ALJ's Findings

18 The ALJ evaluated plaintiff's entitlement to DIB and SSI pursuant to the Commissioner's
19 standard five-step analytical framework.⁴ At the first step, the ALJ concluded that plaintiff had

20 ⁴ Disability Insurance Benefits are paid to disabled persons who have contributed to the Social
21 Security program. 42 U.S.C. §§ 401 et seq. Supplemental Security Income is paid to disabled
22 persons with low income. 42 U.S.C. §§ 1382 et seq. Both provisions define disability, in part, as
23 an "inability to engage in any substantial gainful activity" due to "a medically determinable
24 physical or mental impairment. . . ." 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A). A parallel
25 five-step sequential evaluation governs eligibility for benefits under both programs. See 20
26 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-
27 42 (1987). The following summarizes the sequential evaluation:

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

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

1 not engaged in substantial gainful activity since October 31, 2008, plaintiff's alleged disability
2 onset date. (AT 22.) At step two, the ALJ found that plaintiff had the following severe
3 impairments: degenerative disc disease, hepatitis C, depression, anxiety, and history of alcohol
4 and drug abuse. (Id.) However, at step three, the ALJ determined that plaintiff did not have an
5 impairment or combination of impairments that met or medically equaled the severity of an
6 impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. (AT 23.)

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 light work as defined in 20 CFR
12 404.1567(b) and 416.967(b). He can lift, carry, push and/or pull 20
13 pounds occasionally, and 10 pounds frequently. He can sit for 8
14 hours in an 8-hour workday, with normal breaks. He can stand and
15 walk for 6 hours with normal breaks in an 8-hour workday. He
16 cannot climb ladders, ropes, or scaffolds. He can occasionally
17 stoop, crouch, crawl and kneel. He cannot work around extreme
18 temperatures. Mentally, he can understand, remember, and carry
19 out simple job instructions. He is moderately (greater than mild,
20 and less than marked limitation; the individual is still able to
21 function satisfactorily) limited in understanding, remembering, and
22 carrying out detailed work instructions. He is not limited in making
23 judgments on simple work-related decisions. He is slightly limited
24 in making judgments on detailed work-related decisions. He is not
25 limited in interacting appropriately with co-workers, the public and
26 supervisors. He is moderately limited in his ability to respond
27 appropriately to work pressures in the usual work settings and to

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
22 claimant is automatically determined disabled. If not, proceed to step four.

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

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

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

28 The claimant bears the burden of proof in the first four steps of the sequential evaluation
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 changes in a routine work setting.

2 (AT 26.)

3 At step four, the ALJ found that plaintiff was unable to perform any past relevant work.
4 (AT 30.) However, at step five, the ALJ determined, based on the VE's testimony, that,
5 considering plaintiff's age, education, work experience, and RFC, there were jobs that existed in
6 significant numbers in the national economy that plaintiff could perform. (AT 31-32.)

7 Accordingly, the ALJ concluded that plaintiff had not been under a disability, as defined
8 in the Act, from October 31, 2008, plaintiff's alleged disability onset date, through the date of the
9 ALJ's decision. (AT 33.)

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

11 Plaintiff contends that the ALJ improperly rejected the opinion of the consultative
12 examining psychiatrist, Dr. Ana Maria Andia, concerning plaintiff's mental functional
13 limitations.

14 On August 5, 2009, Dr. Andia reviewed plaintiff's records, interviewed plaintiff, and
15 performed a comprehensive psychiatric evaluation. (AT 407-14.) Dr. Andia diagnosed plaintiff
16 with alcohol abuse, cannabis abuse, stimulant abuse (allegedly in full remission), dysthymic
17 disorder, panic disorder, and a GAF of 60.⁵ (AT 412.) She opined that plaintiff was able to
18 understand, remember, and carry out simple one- or two-step job instructions; able to do detailed
19 and complex instructions; able to relate and interact with coworkers and the public; mildly to
20 moderately limited in his ability to maintain concentration and attention, persistence, and pace
21 due to his depressive symptoms and anxiety attacks; able to associate with day-to-day work
22 activity, including attendance and safety; able to accept instructions from supervisors; mildly to
23 moderately limited in his ability to maintain regular attendance in the work place and perform
24 work activities on a consistent basis due to his depressive symptoms and anxiety attacks; and able
25 to perform work activities without special or additional supervision. (AT 413-14.)

26 ⁵ GAF is a scale reflecting "psychological, social, and occupational functioning on a hypothetical
27 continuum of mental health-illness." Diagnostic and Statistical Manual of Mental Disorders 34
28 (4th ed. 2000). A GAF score of 51-60 is indicative of moderate symptoms or moderate difficulty
in social, occupational, or school functioning. Id.

1 Plaintiff argues that the ALJ's RFC failed to account for the mild to moderate
2 concentration, attention, persistence, pace, and attendance limitations assessed by Dr. Andia.
3 That argument borders on the frivolous. Despite assessing such mild to moderate mental
4 limitations, Dr. Andia clearly opined that plaintiff was capable of performing even detailed and
5 complex work, and specifically noted that plaintiff was able to "associate with day-to-day work
6 activity, including attendance and safety." (AT 413.) Dr. Andia did not indicate that plaintiff's
7 mild to moderate mental limitations would result in plaintiff having excessive absences beyond a
8 number customarily tolerated in the workplace; nor that plaintiff would be unable to sustain
9 concentration, attention, persistence, and pace for purposes of performing day-to-day work
10 activity. To the extent that any ambiguity existed, the ALJ's resolution of such ambiguity was
11 reasonable.

12 Moreover, even assuming, without deciding, that the ALJ erred in not expressly listing
13 such mild to moderate mental limitations in the RFC, any such error was harmless. See Molina v.
14 Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012) ("we may not reverse an ALJ's decision on account
15 of an error that is harmless"). The Ninth Circuit has already held that moderate mental limitations
16 are not sufficiently severe so as to require vocational expert testimony. Hoopai v. Astrue, 499
17 F.3d 1071, 1077 (9th Cir. 2007) (involving an assessment that the claimant was moderately
18 limited in "his ability to maintain attention and concentration for extended periods; his ability to
19 perform activities within a schedule, maintain regular attendance, and be punctual with customary
20 tolerance; and his ability to complete a normal workday and workweek without interruption from
21 psychologically-based symptoms and to perform at a consistent pace without an unreasonable
22 number and length of rest periods.").

23 V. CONCLUSION

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

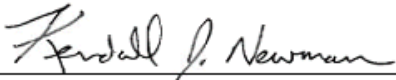
- 25 1. Plaintiff's motion for summary judgment (ECF No. 17) is DENIED.
- 26 2. The Commissioner's cross-motion for summary judgment (ECF No. 20) is
27 GRANTED.
- 28 3. Judgment is entered for the Commissioner.

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4. The Clerk of Court shall close this case.

IT IS SO ORDERED.

Dated: February 13, 2015


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE