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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY JULIAN DEMELLO,  
Plaintiff,  
v.  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security  
Defendant.

No. 2:16-cv-1275-EFB

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying his application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act. The parties have filed cross-motions for summary judgment. For the reasons discussed below, plaintiff’s motion is denied and the Commissioner’s motion is granted.

I. BACKGROUND

Plaintiff filed an application for SSI, alleging that she had been disabled since December 31, 2011. Administrative Record (“AR”) at 142-147. His application was denied initially and upon reconsideration. *Id.* at 84-88, 92-96. On May 13, 2014, a hearing was held before Administrative Law Judge (“ALJ”) Trevor Skarda. *Id.* at 29-61. Plaintiff was represented by counsel at the hearing, at which he and a vocational expert (“VE”) testified. *Id.*

1 On October 22, 2014, the ALJ issued a decision finding that plaintiff was not disabled  
2 under section 1614(a)(3)(A) of the Act.<sup>1</sup> *Id.* at 10-22. The ALJ made the following specific  
3 findings:

4 1. The claimant has not engaged in substantial gainful activity since October 1, 2012, the  
5 application date (20 CFR 416.971 *et seq.*).

6 \* \* \*

7 2. The claimant has the following severe impairments: degenerative disc disease of the  
8 lumbar spine, reverse lordosis of the cervical spine, thoracic curvature with mild  
9 degenerative changes, pain disorder associated with psychological factors, and personality  
10 disorder (20 CFR 416.920(c)).

11 <sup>1</sup> Disability Insurance Benefits are paid to disabled persons who have contributed to the  
12 Social Security program, 42 U.S.C. §§ 401 *et seq.* Supplemental Security Income (“SSI”) is paid  
13 to disabled persons with low income. 42 U.S.C. §§ 1382 *et seq.* Under both provisions,  
14 disability is defined, in part, as an “inability to engage in any substantial gainful activity” due to  
15 “a medically determinable physical or mental impairment.” 42 U.S.C. §§ 423(d)(1)(a) &  
16 1382c(a)(3)(A). A five-step sequential evaluation governs eligibility for benefits. *See* 20 C.F.R.  
17 §§ 423(d)(1)(a), 416.920 & 416.971-76; *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). The  
18 following summarizes the sequential evaluation:

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

22 Step two: Does the claimant have a “severe” impairment?  
23 If so, proceed to step three. If not, then a finding of not disabled is  
24 appropriate.

25 Step three: Does the claimant’s impairment or combination  
26 of impairments meet or equal an impairment listed in 20 C.F.R., Pt.  
27 404, Subpt. P, App.1? If so, the claimant is automatically  
28 determined disabled. If not, proceed to step four.

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

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

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

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

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\* \* \*

3. The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.920(d), 416.925, and 416.926).

\* \* \*

4. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform sedentary work as defined in 20 CFR 416.967(a) except the claimant is additionally limited to occasional climbing of ramps or stairs, precluded from climbing ladders ropes or scaffolds, and may occasionally stoop, kneel, crouch, and crawl. The claimant must avoid concentrated exposure to extreme cold, concentrated exposure to excessive vibration, and concentrated exposure to operational control of dangerous moving machinery as well as unprotected heights. He is limited to simple routine and repetitive tasks. He is limited to low stress work defined as no more than occasional decision-making required or occasional changes in the work setting, with occasional public and coworker interaction.

\* \* \*

5. The claimant is unable to perform any past relevant work (20 CFR 416.965).

\* \* \*

6. The claimant was born [in] 1990 and was 22 years old, which is defined as a younger individual age 18-44, on the date the application was filed (20 CFR 416.963)

7. The claimant has at least a high school education and is able to communicate in English (20 CFR 416.964).

8. Transferability of job skills is not material to the determination of disability because using the Medical-Vocational Rules as a framework supports a finding that the claimant is “not disabled,” whether or not the claimant has transferable job skills (See SSR 82-41 and 20 CFR Part 404, Subpart P, Appendix 2).

9. Considering the claimant’s age, education, work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 416.969 and 416.969(a)).

\* \* \*

10. The claimant has not been under a disability, as defined by the Social Security Act, since October 1, 2012, the date the application was filed (20 CFR 416.920(g)).

*Id.* at 12-22.

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1 Plaintiff's request for Appeals Council review was denied on April 12, 2016, leaving the  
2 ALJ's decision as the final decision of the Commissioner. *Id.* at 1-4.

### 3 II. LEGAL STANDARDS

4 The Commissioner's decision that a claimant is not disabled will be upheld if the findings  
5 of fact are supported by substantial evidence in the record and the proper legal standards were  
6 applied. *Schneider v. Comm'r of the Soc. Sec. Admin.*, 223 F.3d 968, 973 (9th Cir. 2000);  
7 *Morgan v. Comm'r of the Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Tackett v. Apfel*,  
8 180 F.3d 1094, 1097 (9th Cir. 1999).

9 The findings of the Commissioner as to any fact, if supported by substantial evidence, are  
10 conclusive. *See Miller v. Heckler*, 770 F.2d 845, 847 (9th Cir. 1985). Substantial evidence is  
11 more than a mere scintilla, but less than a preponderance. *Saelee v. Chater*, 94 F.3d 520, 521 (9th  
12 Cir. 1996). "It means such evidence as a reasonable mind might accept as adequate to support a  
13 conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consol. Edison Co. v.*  
14 *N.L.R.B.*, 305 U.S. 197, 229 (1938)).

15 "The ALJ is responsible for determining credibility, resolving conflicts in medical  
16 testimony, and resolving ambiguities." *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir.  
17 2001) (citations omitted). "Where the evidence is susceptible to more than one rational  
18 interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be upheld."  
19 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

### 20 III. ANALYSIS

21 Plaintiff argues that the ALJ erred at step-five of the sequential evaluation process by  
22 relying on evidence from a vocational expert that conflicted with the Dictionary of Occupational  
23 Titles ("DOT"). ECF No. 15 at 8-11.

24 At the fifth step, the ALJ is required to "identify specific jobs existing in substantial  
25 numbers in the national economy that [the] claimant can perform despite her identified  
26 limitations." *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir. 1995). The ALJ must first assess  
27 the claimant's residual functional capacity ("RFC"), which is the most the claimant can do despite  
28 his physical and mental limitations. 20 C.F.R. § 416.945(a)(1). The ALJ then must consider

1 what potential jobs the claimant can perform given his RFC, age, education, and prior work  
2 experience. 20 C.F.R. § 416.966; *see Terry v. Sullivan*, 903 F.2d 1273, 1275 (9th Cir. 1990). “In  
3 making this determination, the ALJ relies on the DOT, which is the SSA’s primary source of  
4 reliable job information regarding jobs that exist in the national economy.” *Zavalin v. Colvin*,  
5 778 F.3d 842, 845-46 (9th Cir. 2015) (quotation marks omitted).

6 In additional to the DOT, an ALJ may rely on testimony from a vocational expert who  
7 testifies about the jobs the claimant can perform in light of his limitations. 20 C.F.R.  
8 § 416.966(e); *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir. 2009).  
9 Generally, occupational evidence provided by a vocational expert should be consistent with the  
10 occupational information supplied by the DOT. *Massachi v. Astrue*, 486 F.3d 1149, 1153 (9th  
11 Cir. 2007) (citing SSR 00-4p, at \*4). However, “an ALJ may rely on expert testimony which  
12 contradicts the DOT, but only insofar as the record contains persuasive evidence to support the  
13 deviation.” *Johnson*, 60 F.3d at 1435. Accordingly, where “the expert’s opinion that the  
14 [claimant] is able to work conflicts with, or seems to conflict with, the requirements listed in the  
15 Dictionary, . . . the ALJ must ask the expert to reconcile the conflict before relying on the expert  
16 to decide if the claimant is disabled.” *Gutierrez v. Colvin*, 844 F.3d 804, 807 (9th Cir. 2016).

17 The ALJ served vocational interrogatories on the vocational expert.<sup>2</sup> AR 234-238. In  
18 response, the vocational expert stated that an individual with plaintiff’s RFC, education, age, and  
19 work experience maintained the ability to work as a touch-up screener, printed circuit board  
20 assembly (“assembly”), DOT 726.684-110; film touch-up inspector (“inspector”), DOT 726.684-  
21 050; and loader, semiconductor dies (“loader”), DOT 726.685-066. AR 242. The vocational  
22 expert further indicated that there was no conflict between his findings and the information  
23 provided in the DOT. *Id.* at 243.

24 Plaintiff contends, however, that there were conflicts between the vocational expert’s  
25 findings and the DOT. First, plaintiff contends that his limitation to occasional decision making  
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27 <sup>2</sup> After the hearing, plaintiff was examined by psychologist Patricia Spivey, Psy.D. AR  
28 526-532. Because Dr. Spivey’s opinion influenced the ALJ’s RFC determination, additional  
vocational evidence was needed.

1 conflicts with the ability to perform the demands of the assembly and inspector jobs. According  
2 to plaintiff, these positions require continuous decision making. ECF No. 15 at 10.

3 The DOT provides that an inspector:

4 Inspects and repairs circuitry image on photoresist film (separate  
5 film or film laminated to fiberglass boards) used in manufacture of  
6 printed circuit boards (PCB's): Inspects film under magnifying  
7 glass for holes, breaks, and bridges (connections) in photoresist  
8 circuit image. Removes excess photoresist, using knife. Touches up  
9 holes and breaks in photoresist circuitry image, using photoresist  
ink pen. Removes and stacks finished boards for transfer to next  
work station. Maintains production reports. May place lint free  
paper between dry film sheets to avoid scratching circuit images on  
film.

10 Film Touch-up Inspector, DOT 726.684-050, 1991 WL 679601.

11 For the assembly position, the DOT provides that the worker:

12 Inspects printed circuit board (PCB) assemblies for defects, such as  
13 missing or damaged components, loose connections, or defective  
14 solder: Examines PCB's under magnification lamp and compares  
15 boards to sample board to detect defects. Labels defects requiring  
16 extensive repairs, such as missing or misaligned parts, damaged  
17 components, and loose connections, and routes boards to repairer.  
18 Performs minor repairs, such as cleaning boards with freon to  
19 remove solder flux; trimming long leads, using wire cutter;  
removing excess solder from solder points (connections), using  
suction bulb or solder wick and soldering iron; or resoldering  
connections on PCB's where solder is insufficient. Maintains record  
of defects and repairs to indicate recurring production problems.  
May reposition and solder misaligned components. May measure  
clearances between board and connectors, using gauges.

20 Touch-Up Screener, Printed Circuit Board Assembly, DOT 726.684-110, 1991 WL 679616.

21 Based on these descriptions, plaintiff argues that the inspector positions "concerns  
22 inspection in making decisions on whether the product meets standards or whether the product  
23 requires repair," while the assembly position "involves inspection and making decisions about  
24 defects, extent of repair, missing or aligned parts, and performing minor repairs." ECF No. 15 at  
25 9. Plaintiff contends that performing such tasks involves continuous decision making, which  
26 conflicts with his limitation to only occasional decision making. *Id.*

27 "For a difference between an expert's testimony and the Dictionary's listing to be fairly  
28 characterized as a conflict, it must be obvious or apparent." *Gutierrez v. Colvin*, 844 F.3d 804,

1 808 (9th Cir. 2016). A conflict is obvious where the vocational expert’s testimony is “at odds  
2 with the Dictionary’s listing of job requirements that are essential, integral, or expected.”

3 Here, the DOT descriptions for the assembly and inspector positions indicate that the jobs  
4 require some amount of decision making. The individual performing these jobs will have to  
5 decide whether a product is defective and determine what repair is needed. However, the  
6 descriptions do not indicate the frequency at which such decisions must be made during a typical  
7 day. For instance, once a defect is identified and an appropriate repair is selected, it may be the  
8 case that the worker spends a substantial amount of time making the required repair, which would  
9 not necessarily involve further decision making. Simply put, the job descriptions do not detail the  
10 frequency at which decisions must be made by the worker. Accordingly, it is not obvious or  
11 apparent that plaintiff’s limitation to occasional decision making, which is defined as “occurring  
12 from very little up to one-third of the time,” SSR 83-10, conflicts with the demands of the  
13 assembly and inspector positions.

14 Plaintiff next argues that the vocational expert’s finding that he could work as a loader is  
15 inconsistent with his limitation to no more than occasional interactions with coworkers. ECF No.  
16 15 at 11. The argument rests on unsound assumptions. Plaintiff correctly notes that the loader  
17 position requires working under specific instruction. *Id.*; *see* Loader, Semiconductor Dies, DOT  
18 726.687-030, 1991 WL 679637. He then observes that instructions must “come from  
19 someplace.” ECF No. 15 at 11. He then argues that “working under specific instructions  
20 precludes the worker from making the decision him or herself,” which leads to his conclusion that  
21 “[w]orking under specific instructions requires more than occasional interaction with coworkers.”  
22 *Id.*

23 The argument ignores that job instructions are likely to come from supervisors, not  
24 coworkers, and that plaintiff’s RFC does not include any limitations regarding his ability to  
25 interact or accept instructions from supervisors. Even if receiving instructions requires  
26 interaction with coworkers, an individual could still work independently once the instructions are  
27 provided, thereby requiring no more than minimal interactions with others. Furthermore,

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1 instructions can also be provided in writing, which would require no more than a brief interaction  
2 with another person for the limited purpose of receiving the instructions.

3 More fundamentally, however, the argument is unsupported by the DOT description for  
4 the loader position, which provides that the job involves “Taking Instructions-Helping,” but  
5 further states that the activity is “Not Significant.” *See* loader, semiconductor dies, DOT  
6 726.687-030, 1991 WL 679637. The description also indicates that the job involves working  
7 independently without significant communication with others. *Id.* (“Talking: Not Present -  
8 Activity or condition does not exist.”). Thus, DOT description for the loader job does not suggest  
9 that the position involves more than occasional interaction with coworkers.

10 Accordingly, there was no apparent conflict between the vocational expert’s testimony  
11 and the DOT.

12 IV. CONCLUSION

13 Accordingly, it is hereby ORDERED that:

- 14 1. Plaintiff’s motion for summary judgment is denied;
- 15 2. The Commissioner’s cross-motion for summary judgment is granted; and
- 16 3. The Clerk is directed to enter judgment in the Commissioner’s plaintiff’s favor.

17 DATED: September 25, 2017.

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19 EDMUND F. BRENNAN  
20 UNITED STATES MAGISTRATE JUDGE  
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