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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES D.A. SMITH
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 2:16-cv-1561-KJN

ORDER

Plaintiff James Smith seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner”) denying plaintiff’s application for Disability Insurance Benefits (“DIB”) under Title II of the Social Security Act (“Act”).¹ In his motion for summary judgment, plaintiff principally contends that the Commissioner erred by finding that plaintiff was not disabled from October 2, 2009, the date on which plaintiff’s disability was determined to have ceased, through September 30, 2011, plaintiff’s date last insured. (ECF No. 20.) The Commissioner opposed plaintiff’s motion and filed a cross-motion for summary judgment. (ECF No. 27.) No optional reply brief was filed.

¹ This action was referred to the undersigned pursuant to Local Rule 302(c)(15), and both parties voluntarily consented to proceed before a United States Magistrate Judge for all purposes. (ECF Nos. 7, 8.)

1 After carefully considering the record and the parties' briefing, the court DENIES
2 plaintiff's motion for summary judgment, GRANTS the Commissioner's cross-motion for
3 summary judgment, and AFFIRMS the Commissioner's final decision.

4 I. BACKGROUND

5 Plaintiff was born on May 16, 1969; has at least a high school education; can
6 communicate in English; and previously worked as a meter inspector, house repairer, electrician,
7 diesel mechanic, and appliance installer. (Administrative Transcript ("AT") 472.)² On April 27,
8 2010, plaintiff applied for DIB, alleging that his disability began on April 24, 2008. (AT 463.)
9 Plaintiff claimed that he was disabled due to a back injury and pain, inability to concentrate,
10 stomach problems, bowel problems, and elbow problems. (AT 118.) After plaintiff's application
11 was denied initially and on reconsideration, an ALJ conducted a hearing on November 2, 2011.
12 (AT 26-56.) The ALJ subsequently issued a decision dated January 24, 2012, determining that
13 plaintiff had been disabled from April 24, 2008, plaintiff's alleged disability onset date, through
14 October 1, 2009, but that plaintiff's disability ended on October 2, 2009, after medical
15 improvement had occurred. (AT 11-22.) The Appeals Council denied review of the ALJ's
16 decision on January 30, 2013 (AT 1-3), but on September 30, 2014, this court remanded
17 plaintiff's case for further administrative proceedings. (AT 572-84.)

18 On remand, the ALJ conducted a supplemental hearing on September 10, 2015, at which
19 plaintiff (represented by counsel), a medical expert, and a vocational expert testified. (AT 479-
20 529.) Thereafter, on October 13, 2015, the ALJ issued a decision again finding that plaintiff was
21 not disabled, for purposes of the Act, from October 2, 2009, through September 30, 2011,
22 plaintiff's date last insured. (AT 463-73.) The ALJ's October 13, 2015 decision became the final
23 decision of the Commissioner when the Appeals Council denied plaintiff's request for review on
24 May 9, 2016. (AT 448-50.) Plaintiff then filed this second district court action on July 8, 2016,

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

1 to obtain judicial review of the Commissioner’s final decision. (ECF No. 1.)

2 **II. ISSUES PRESENTED**

3 On appeal, plaintiff raises the following issues: (1) whether the ALJ erred by exceeding
4 the scope of this court’s prior remand order; and (2) whether the ALJ improperly rejected the
5 opinions of examining physicians Dr. Johnson and Dr. Hsia.

6 **III. LEGAL STANDARD**

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

18 **IV. DISCUSSION**

19 Summary of the ALJ’s Findings

20 The ALJ evaluated plaintiff’s entitlement to DIB pursuant to the Commissioner’s standard
21 five-step analytical framework.³ As an initial matter, the ALJ determined that plaintiff met the

22 ³ 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 insured status requirements of the Act for purposes of DIB through September 30, 2011. (AT
2 465.) At the first step, the ALJ concluded that plaintiff had not engaged in substantial gainful
3 activity since April 24, 2008, his alleged disability onset date. (Id.) At step two, the ALJ found
4 that plaintiff had the following severe impairments through the date last insured: degenerative
5 disc disease of the lumbar and cervical spine status post lumbar laminectomy, a hip disorder
6 manifested by pain, and a left shoulder disorder manifested by chronic pain. (AT 465-66.)
7 However, at step three, the ALJ determined that, through the date last insured, plaintiff did not
8 have an impairment or combination of impairments that met or medically equaled the severity of
9 an impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. (AT 466.)

10 Before proceeding to step four, the ALJ assessed plaintiff's RFC as follows:

11 After careful consideration of the entire record, the undersigned
12 finds that, through the date last insured, the claimant had the
13 residual functional capacity to perform light work as defined in 20
14 CFR 404.1567(b), except the claimant is able to lift and/or carry 25
15 pounds occasionally and 15 pounds frequently; to stand for 6 hours
16 in an 8-hour workday; to walk for 4 hours in an 8-hour workday;
and to sit without limitations. The claimant is able to push and pull,
except he is unable to reach overhead with the left upper extremity.
In addition, the claimant is able to crawl, bend and stoop
occasionally, but he is unable to kneel. The claimant is also able to
climb ramps and stairs frequently, climb ladders occasionally, and

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18 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.

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

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

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25 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.

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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 is unable to climb ropes or scaffolds. The claimant can have
2 occasional exposure to vibration.

3 (AT 466.) At step four, the ALJ determined that plaintiff was unable to perform any past relevant
4 work through the date last insured. (AT 472.) However, at step five the ALJ found that, in light
5 of plaintiff's age, education, work experience, RFC, and the vocational expert's ("VE")
6 testimony, there were jobs that existed in significant numbers in the national economy that
7 plaintiff could have performed through the date last insured. (AT 472-73.)

8 Thus, the ALJ concluded that plaintiff had not been under a disability, as defined in the
9 Act, from October 2, 2009, through September 30, 2011, plaintiff's date last insured. (AT 473.)

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

11 *Whether the ALJ erred by exceeding the scope of this court's prior remand*
12 *order?*

13 Plaintiff contends that the ALJ exceeded the scope of this court's prior remand by actually
14 assessing a less favorable RFC compared to the original ALJ decision. Plaintiff notes that the
15 new decision omits several previously-assessed functional limitations that were not at issue in the
16 prior federal court appeal. That argument is unavailing.

17 In the original ALJ decision, the ALJ purported to give significant weight to the opinions
18 of examining physicians Dr. Johnson and Dr. Hsia, but failed to include several of their assessed
19 limitations without explanation. Consequently, this court remanded for proper consideration of
20 their opinions, as well as "further development of the record and/or further findings addressing
21 the deficiencies" noted in the court's order. (See AT 577-84.) Importantly, this court did not
22 order the ALJ to credit any particular medical opinion on remand, nor did this court actually
23 decide any factual or evidentiary issue with respect to plaintiff's RFC. Therefore, the mere fact
24 that the ALJ's RFC assessment on remand is less favorable to plaintiff than the original decision's
25 RFC assessment does not in itself signify any error, provided that the new RFC assessment is
26 based on the proper legal analysis and supported by substantial evidence in the record as a whole.

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1 In this case, it is undisputed that the opinions of examining physicians Dr. Johnson and
2 Dr. Hsia were significantly more restrictive than the ALJ's RFC. Dr. Johnson, a consultative
3 examiner for the Commissioner, opined, *inter alia*, that plaintiff could never lift more than 10
4 pounds and was unable to complete an eight-hour workday. (AT 399.) Dr. Hsia, the qualified
5 medical evaluator in plaintiff's workers compensation case, assessed, among other restrictions,
6 that plaintiff was unable to sit for more than 60 minutes or stand for more than 15 minutes. (AT
7 445.) However, contrary to plaintiff's contention, the ALJ provided specific and legitimate
8 reasons for discounting their opinions.

9 The ALJ reasonably relied on the opinion of plaintiff's treating neurosurgeon, Dr. John
10 Yen, who on July 20, 2009, after plaintiff's second surgery, noted that plaintiff was doing very
11 well with much improved sciatica, and assessed restrictions that plaintiff should never lift more
12 than 25-30 pounds and try to avoid repetitive bending. (AT 323.) Thereafter, on March 4, 2011,
13 Dr. Yen observed that plaintiff "still has residual discomfort in his back and discomfort in his left
14 leg as more of a numbness and tingling. He states that the severe pain he had before his surgery
15 has basically been resolved. However, he has to be careful how much bending and lifting he
16 does." (AT 435.) Dr. Yen stated that plaintiff's last January 2011 MRI showed postoperative
17 changes and some degenerative changes, but no evidence of significant disc herniation, recurrent
18 discs, or significant spinal stenosis. (Id.) Dr. Yen opined that plaintiff:

19 has residual back and leg pain but overall no significant nerve root
20 compression or neurological changes. I do not think he requires
21 further surgery at this time. He might occasionally require therapy,
anti-inflammatory medication or even an epidural steroid injection
but no further surgery.

22 (AT 436.) The ALJ permissibly gave great weight to Dr. Yen's opinion, because he was
23 plaintiff's treating physician, and the ALJ's RFC assessment fully incorporated Dr. Yen's
24 assessed restrictions (no lifting more than 25-30 pounds and avoiding repetitive bending). (AT
25 468-69.)

26 The ALJ also rationally relied on the opinion of the orthopedic surgeon and medical
27 expert who reviewed plaintiff's records and testified at the supplemental administrative hearing,
28 Dr. Eric Schmitter. (AT 468-71.) Dr. Schmitter opined that plaintiff's back surgery had been

1 “very successful” and that plaintiff, after October 2009, could lift and carry 50 pounds
2 occasionally and 25 pounds frequently; had limited overhead reaching ability with his left arm;
3 could stand and walk for 6 hours; had no sitting limitations; had no problems with climbing stairs
4 and ramps; could never climb ropes and scaffolds; could occasionally climb ladders; could
5 occasionally crawl, bend, and stoop; could never kneel; and could only occasionally be exposed
6 to vibration. (AT 470, 492-95.) The ALJ substantial adopted Dr. Schmitter’s functional
7 assessment, which was generally consistent with the opinion of Dr. Yen. See Tonapetyan v.
8 Halter, 242 F.3d 1144, 1149 (9th Cir. 2001) (“Although the contrary opinion of a non-examining
9 medical expert does not alone constitute a specific, legitimate reason for rejecting a treating or
10 examining physician’s opinion, it may constitute substantial evidence when it is consistent with
11 other independent evidence in the record.”). To the extent that Dr. Yen’s opinion was slightly
12 more restrictive in certain aspects, such as lifting limitations, the ALJ adopted Dr. Yen’s more
13 restrictive assessment.

14 In sum, the medical opinion evidence in this case was clearly inconsistent, and the ALJ
15 appropriately discounted the opinions of examining physicians Dr. Johnson⁵ and Dr. Hsia by
16 relying on the treating opinion of Dr. Yen and the consistent non-examining opinion of Dr.
17 Schmitter. Even assuming, without deciding, that this court would have decided the case
18 differently upon *de novo* review, the court defers, as it must, to the ALJ’s rational resolution of
19 inconsistencies and ambiguities in the medical evidence.

20 V. CONCLUSION

21 For the foregoing reasons, the court concludes that the ALJ’s decision was free from
22 prejudicial error and supported by substantial evidence in the record as a whole. Accordingly, IT
23 IS HEREBY ORDERED that:

- 24 1. Plaintiff’s motion for summary judgment (ECF No. 20) is DENIED.

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26 ⁵ In this court’s prior remand order, the ALJ was also instructed to further develop the record by
27 clarifying certain climbing limitations assessed by Dr. Johnson. However, because the ALJ
28 permissibly discounted Dr. Johnson’s opinion, treating physician Dr. Yen assessed no climbing
limitations, and medical expert Dr. Schmitter provided very specific climbing restrictions adopted
by the ALJ, the issue is moot.

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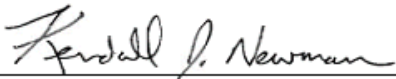
2. The Commissioner's cross-motion for summary judgment (ECF No. 27) is GRANTED.

3. The final decision of the Commissioner is AFFIRMED, and judgment is entered for the Commissioner.

4. The Clerk of Court shall close this case.

IT IS SO ORDERED.

Dated: December 1, 2017


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE