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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

MATTHEW EASTLAND,

No. 2:17-CV-1261-TLN-CMK

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

_____ /

Plaintiff, who is proceeding with retained counsel, brings this action under 42 U.S.C. § 405(g) for judicial review of a final decision of the Commissioner of Social Security. Pending before the court are plaintiff’s motion for summary judgment (Doc. 16) and defendant’s cross-motion for summary judgment (Doc. 17).

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1 **I. PROCEDURAL HISTORY**

2 Plaintiff applied for social security benefits on January 23, 2014. See CAR 19.¹
3 In the application, plaintiff claims that disability began on August 1, 2013. See Id. Plaintiff's
4 claim was initially denied. Following denial of reconsideration, plaintiff requested an
5 administrative hearing, which was held on February 16, 2016, before Administrative Law Judge
6 ("ALJ") Daniel Myers. See id. In a May 5, 2016, decision, the ALJ concluded that plaintiff is
7 not disabled based on the following relevant findings:

- 8 1. The claimant has the following severe impairment(s): major depressive
9 disorder with a history of psychotic features, anxiety disorder, personality
10 disorder, polysubstance abuse, Hepatitis C with a history if cirrhosis,
11 splenomegaly, and a history of gallstones;
- 12 2. The claimant does not have an impairment or combination of impairments
13 that meets or medically equals an impairment listed in the regulations;
- 14 3. The claimant has the following residual functional capacity: the claimant
15 can perform light work with occasional changes to the routine work
16 setting, routine repetitive work in a stable environment, a consistent work
17 schedule, occasional interaction with co-workers and supervisors, and no
18 interaction with the public; and
- 19 4. Considering the claimant's age, education, work experience, residual
20 functional capacity, and vocational expert testimony, there are jobs that
21 exist in significant numbers in the national economy that the claimant can
22 perform.

23 See id. at 22-34.

24 After the Appeals Council declined review on April 21, 2017, this appeal followed.

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26 ¹ Citations are to the Certified Administrative Record lodged on October 26, 2017 (Doc. 10).

1 **II. STANDARD OF REVIEW**

2 The court reviews the Commissioner’s final decision to determine whether it is:
3 (1) based on proper legal standards; and (2) supported by substantial evidence in the record as a
4 whole. See Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). “Substantial evidence” is
5 more than a mere scintilla, but less than a preponderance. See Saelee v. Chater, 94 F.3d 520, 521
6 (9th Cir. 1996). It is “. . . such evidence as a reasonable mind might accept as adequate to
7 support a conclusion.” Richardson v. Perales, 402 U.S. 389, 402 (1971). The record as a whole,
8 including both the evidence that supports and detracts from the Commissioner’s conclusion, must
9 be considered and weighed. See Howard v. Heckler, 782 F.2d 1484, 1487 (9th Cir. 1986); Jones
10 v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not affirm the Commissioner’s
11 decision simply by isolating a specific quantum of supporting evidence. See Hammock v.
12 Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the administrative
13 findings, or if there is conflicting evidence supporting a particular finding, the finding of the
14 Commissioner is conclusive. See Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987).
15 Therefore, where the evidence is susceptible to more than one rational interpretation, one of
16 which supports the Commissioner’s decision, the decision must be affirmed, see Thomas v.
17 Barnhart, 278 F.3d 947, 954 (9th Cir. 2002), and may be set aside only if an improper legal
18 standard was applied, see Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

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20 **III. DISCUSSION**

21 In his motion for summary judgment, plaintiff argues that this matter should be
22 remanded for consideration of new evidence.²

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24 ² While plaintiff also references a “two-point argument” supporting remand
25 “regardless of the attached evidence,” the court is unable to discern any additional claim of error.
26 The only citation to authority in this portion of plaintiff’s brief is a cite to Lester v. Chater, 81
F.3d 821 (9th Cir. 1996), for the proposition that the “opinion of nonexaminer, by itself, not even
substantial evidence,” which is an incorrect reading of Lester. See e.g. Pitzer v. Sullivan, 908
F.2d 502, 506 (9th Cir. 1990) (discussing weight of evidence from non-examining sources).

1 A case may be remanded to the agency for the consideration of new evidence if
2 the evidence is material and good cause exists for the absence of the evidence from the prior
3 record. See Sanchez v. Secretary of Health and Human Services, 812 F.2d 509, 511-12 (9th Cir.
4 1987) (citing 42 U.S.C. § 405(g)). In order for new evidence to be “material,” the court must
5 find that, had the agency considered this evidence, the decision might have been different. See
6 Clem v. Sullivan, 894 F.2d 328, 332 (9th Cir. 1990). The court need only find a reasonable
7 possibility that the new evidence would have changed the outcome of the case. See Booz v.
8 Secretary of Health and Human Services, 734 F.2d 1378, 1380-81 (9th Cir. 1984). The new
9 evidence, however, must be probative of the claimant’s condition as it existed at or before the
10 time of the disability hearing. See Sanchez 812 F.2d at 511 (citing 42 U.S.C. § 416(i)(2)(G)). In
11 Sanchez, the court concluded that the new evidence in question was not material because it
12 indicated “at most, mental deterioration after the hearing, which would be material to a new
13 application, but not probative of his condition at the hearing.” Id. at 512 (citing Ward v.
14 Schweiker, 686 F.2d 762, 765-66 (9th Cir. 1982)).

15 According to plaintiff:

16 The documents attached to the complaint and this motion show
17 that within 10 1/2 months of the May 5, 2016, ALJ decision, by March 22,
18 2017, a medical doctor expressed the opinions that Matthew Eastland had
19 “end stage liver disease with cirrhosis, portal hypertension, massive
20 ascites, and spontaneous bacterial peritonitis,” that on March 12, 2017, he
21 had been hospitalized with, among other things, “massive ascites . . .
22 encephalopathy and thrombocytopenia,” that he needed a walker within his
house and assistance with activities of daily living, that his liver failure
was with “*recurrent* spontaneous bacterial peritonitis, massive ascites”
(emphasis added), and that “his prognosis is 6 months or less given the
usual course of his disease.” They reflect Mr. Eastland’s admission to
hospice care.

23 The attached records consist of a March 22, 2017, “Certification of Terminal Illness” from Green
24 Valley Hospice signed by Nancy Kemp, M.D., listed as a Hospice Physician. Also attached is an
25 “In-Home Supportive Services (IHSS) Program Health Care Certification Form” dated March 15,
26 2017, also signed by Dr. Kemp.

