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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

APRIL PARKER,

Plaintiff,

v.

ANDREW SAUL, Commissioner of Social
Security,

Defendant.

No. 2:18-cv-01912 CKD

ORDER &
FINDINGS AND RECOMMENDATIONS

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying an application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act (“Act”). For the reasons discussed below, the undersigned Magistrate Judge will recommend that plaintiff’s motion for summary judgment be denied and the Commissioner’s cross-motion for summary judgment be granted.

BACKGROUND

Plaintiff, born in 1961, applied on August 17, 2015 for SSI, disability insurance benefits, and disabled widow’s benefits, alleging disability for all three beginning on January 30, 2015. Administrative Transcript (“AT”) 35. Plaintiff alleged she was unable to work due to lower back problems and a pinched nerve in her right leg. AT 69. In a decision dated January 17, 2018, the

1 ALJ determined that plaintiff was not disabled.¹ AT 15-22. The ALJ made the following
2 findings (citations to 20 C.F.R. omitted):

- 3 1. The claimant meets the insured status requirements of the Social
4 Security Act through September 30, 2019.
- 5 2. It was previously found that the claimant is the unmarried widow
6 of the deceased insured worker and has attained the age of 50. The
7 claimant met the non-disability requirements for disabled widow's
8 benefits set forth in section 202(e) of the Social Security Act.
- 9 3. The prescribed period ends on August 31, 2019.
- 10 4. The claimant has not engaged in substantial gainful activity since
11 January 30, 2015, the alleged onset date.
- 12 5. The claimant has the following medically severe impairments:

13 ¹ Disability Insurance Benefits are paid to disabled persons who have contributed to the
14 Social Security program, 42 U.S.C. § 401 et seq. Supplemental Security Income is paid to
15 disabled persons with low income. 42 U.S.C. § 1382 et seq. Both provisions define disability, in
16 part, as an “inability to engage in any substantial gainful activity” due to “a medically
17 determinable physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A).
18 A parallel five-step sequential evaluation governs eligibility for benefits under both programs.
19 See 20 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S.
20 137, 140-142, 107 S. Ct. 2287 (1987). The following summarizes the sequential evaluation:

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

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

27 Step three: Does the claimant’s impairment or combination
28 of impairments meet or 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.

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. Bowen, 482 U.S. at 146 n.5, 107 S. Ct. at 2294 n.5. The Commissioner bears the
burden if the sequential evaluation process proceeds to step five. Id.

1 depression, degenerative disc disease of the lumbar spine with
2 radiculopathy of the bilateral lower extremities, mild sigmoid
diverticulitis, moderate internal hemorrhoids, and sciatica.

3 6. The claimant does not have an impairment or combination of
4 impairments that meets or medically equals one of the listed
impairments in 20 CFR Part 404, Subpart P, Appendix 1.

5 7. After careful consideration of the entire record, the undersigned
6 finds that the claimant has the residual functional capacity to perform
7 a wide range of light work: the claimant can lift and carry 20 pounds
8 occasionally and 10 pounds frequently, the claimant can stand and
9 walk six hours and sit six hours in an eight-hour workday with
normal breaks. The claimant can perform occasional climbing of
ladders, ropes, scaffolding, ramps and stairs, balancing, stooping,
kneeling, crouching, and crawling.

10 8. The claimant is capable of performing past relevant work as a
11 deli-sales clerk. This work does not require the performance of
work-related activities precluded by the claimant's residual
functional capacity.

12 9. The claimant has not been under a disability, as defined in the
13 Social Security Act, from January 30, 2015, through the date of this
decision.

14 AT 18-22.

15 ISSUES PRESENTED

16 Plaintiff argues that the ALJ committed the following error in finding plaintiff not
17 disabled: The ALJ failed to account for mild mental limitations at step four of the sequential
18 evaluation.

19 LEGAL STANDARDS

20 The court reviews the Commissioner's decision to determine whether (1) it is based on
21 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
22 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
23 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
24 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means "such relevant evidence as a reasonable
25 mind might accept as adequate to support a conclusion." Orn v. Astrue, 495 F.3d 625, 630 (9th
26 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). "The ALJ is
27 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
28 ambiguities." Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citations omitted).

1 “The court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one
2 rational interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

3 The record as a whole must be considered, Howard v. Heckler, 782 F.2d 1484, 1487 (9th
4 Cir. 1986), and both the evidence that supports and the evidence that detracts from the ALJ’s
5 conclusion weighed. See Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not
6 affirm the ALJ’s decision simply by isolating a specific quantum of supporting evidence. Id.; see
7 also Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the
8 administrative findings, or if there is conflicting evidence supporting a finding of either disability
9 or nondisability, the finding of the ALJ is conclusive, see Sprague v. Bowen, 812 F.2d 1226,
10 1229-30 (9th Cir. 1987), and may be set aside only if an improper legal standard was applied in
11 weighing the evidence. See Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

12 ANALYSIS

13 Plaintiff asserts that the ALJ committed reversible error by failing to account for the
14 impact her mild mental limitations would have on her ability to perform past relevant work as a
15 food sales clerk. She argues that her “severe impairment” of depression at step two is
16 incompatible with an ability to do this job.

17 The ALJ found plaintiff’s medically severe impairments to include depression. AT 18.
18 On this issue, the ALJ’s decision stated:

19 The record also indicates a diagnosis of depression, but it appears to
20 be controlled with fluoxetine, which she has been taking for many
21 years.² The undersigned finds that this condition causes no more
22 than a mild restriction in understanding, remembering, or applying
23 information, interacting with others, concentrating, persisting, or
24 maintaining pace, or adapting and managing oneself. The claimant
25 testified that she has had trouble with her memory, but otherwise, she
26 reported physical restrictions on her activities.³ The claimant has not
27 sought treatment beyond medication she has used for years.

28 AT 18.

26 ² See AT 488 (2012 medical note that plaintiff had taken Fluoxetine for depression for three
27 years), 569 (2014 medical note that plaintiff was taking Fluoxetine).

28 ³ See AT 59 (plaintiff testified to having difficulty with her memory and her ability to focus or
stay on task).

1 Defendant points out that plaintiff did not list depression on her application for disability
2 benefits. AT 265-281. Though she was diagnosed with depression and prescribed medication for
3 it, there is no evidence that she received specialized psychiatric care or was hospitalized for
4 psychiatric treatment. Moreover, plaintiff's work history indicates that she worked as a deli clerk
5 at a grocery store from 2011 to 2014, a period in which she was taking fluoxetine for depression.
6 AT 319.

7 The ALJ gave some weight to the opinion of State agency medical consultant Dr. H.M.
8 Estrin, who opined on plaintiff's physical limitations, though the RFC was more restrictive than
9 Dr. Estrin's evaluation "based on subjective complaints of pain and limitation." AT 21; see AT
10 81-84. "No treating providers have opined that the claimant is more limited than the undersigned
11 finds in this decision," the ALJ stated. AT 21. Plaintiff's RFC did not include any mental
12 limitations.

13 As to available jobs, the ALJ stated:

14 The record indicates the claimant earned over substantial gainful
15 activity levels performing work as a deli clerk at a grocery store. The
16 vocational expert testified that this work was classified as sales clerk,
17 food (DOT #290.477-018), and was light SVP 3 as generally
18 performed⁴, but the claimant performed the work at the medium
19 exertional level. The vocational expert also testified that a person
with the claimant's residual functional capacity would be able to
perform this occupation as it is generally performed. In comparing
the claimant's residual functional capacity with the physical and
mental demands of the work, the undersigned finds that the claimant
is able to perform it as it is generally performed.

20 AT 21-22; see AT 62-64 (hearing testimony).

21 Plaintiff argues that her mild difficulties with regard to understanding, remembering, or
22 applying information; concentrating, persisting, or maintaining pace; and adapting or managing
23 herself "may have an adverse impact on [her] ability to perform the duties of her past semi-skilled
24 work as a food sales clerk." (ECF No. 12 at 2.) However, plaintiff has not shown that the RFC
25 was not supported by substantial evidence; nor does she contest the ALJ's finding that her

26 _____
27 ⁴ The Dictionary of Occupational Titles lists this job as requiring Reasoning Level 3: "Apply
28 commonsense understanding to carry out instructions furnished in written, oral, or diagrammatic
form. Deal with problems involving several concrete variables in or from standardized
situations." It also lists dealing with people as a significant part of the job's duties.

1 subjective complaints were less than fully credible. See AT 20. In fact, as noted above, plaintiff
2 performed this same job while on antidepressant medication to control her symptoms. Plaintiff
3 has not shown harmful error on this basis.

4 CONCLUSION

5 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall assign a district
6 judge to this action.

7 IT IS HEREBY RECOMMENDED that:

- 8 1. Plaintiff's motion for summary judgment (ECF No. 9) be denied;
9 2. The Commissioner's cross-motion for summary judgment (ECF No. 11) be granted;

10 and

- 11 3. Judgment be entered for the Commissioner.

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
14 after being served with these findings and recommendations, any party may file written
15 objections with the court and serve a copy on all parties. Such a document should be captioned
16 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
17 within the specified time may waive the right to appeal the District Court's order. Martinez v.
18 Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 Dated: November 27, 2019



20 CAROLYN K. DELANEY
21 UNITED STATES MAGISTRATE JUDGE

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