

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

NOELLE K. HENSON,
Plaintiff,
v.
MICHAEL ASTREW, COMMISSIONER
OF SOCIAL SECURITY,
Defendant.

Case No. 15-cv-03205-NJV
**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**
Re: Dkt. Nos. 19, 22

Plaintiff Noelle K. Henson seeks judicial review of an administrative law judge (“ALJ”) decision denying her application for Supplemental Security Income under Title XVI of the Social Security Act. Plaintiff’s request for review of the ALJ’s unfavorable decision was denied by the Appeals Council. (AR 1-7.) The ALJ’s decision is the “final decision” of the Commissioner of Social Security, which this court may review. *See* 42 U.S.C. §§ 405(g), 1383(c)(3). Both parties have consented to the jurisdiction of a magistrate judge. (Docs. 6, 11.) The court therefore may decide Defendant’s Motion for Summary Judgment. For the reasons stated below, the court will grant Defendant’s Motion.

LEGAL STANDARDS

The Commissioner’s findings “as to any fact, if supported by substantial evidence, shall be conclusive.” 42 U.S.C. § 405(g). A district court has a limited scope of review and can only set aside a denial of benefits if it is not supported by substantial evidence or if it is based on legal error. *Flaten v. Sec’y of Health & Human Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995). Substantial evidence is “more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Sandgathe v. Chater*, 108

1 F.3d 978, 979 (9th Cir. 1997). “In determining whether the Commissioner’s findings are
2 supported by substantial evidence,” a district court must review the administrative record as a
3 whole, considering “both the evidence that supports and the evidence that detracts from the
4 Commissioner’s conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998). The
5 Commissioner’s conclusion is upheld where evidence is susceptible to more than one rational
6 interpretation. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005).

7 **PROCEDURAL HISTORY**

8 Plaintiff applied for supplemental security income under Title XVI of the Social Security
9 Act on October 3, 2011, alleging an onset date of disability of May 1, 2009. (AR 188-197, 212.)
10 The agency denied Plaintiff’s application initially on April 17, 2012, and on reconsideration on
11 October 29, 2012. (AR 110-114, 121-126.) Plaintiff filed a request for hearing on December 4,
12 2012, (AR 127-29) and a hearing was held before an ALJ on July 26, 2013. On August 19, 2013,
13 the ALJ issued a hearing decision denying Plaintiff’s claims. (AR 30-37.) The Appeals Council
14 denied review on May 12, 2015. (AR 1-7.)

15 Plaintiff filed this action on July 10, 2015, proceeding pro se. Defendant filed his Answer
16 on November 23, 2015 and the Administrative Transcript was filed November 30, 2015. (Docs.
17 13, 14.) Pursuant to the Procedural Order in this case, Plaintiff was to serve and file a motion for
18 summary judgment or for remand within 30 days of service of the answer. (Doc. 3.) Plaintiff did
19 not file a motion. On January 12, 2016, Plaintiff filed a Notice of Change of Address. (Doc. 16.)
20 In response, Defendant sent a copy of the Administrative Transcript and Answer to Plaintiff’s new
21 address. (Docs. 17, 18.) Plaintiff still failed to file a motion. On March 1, 2016, Defendant filed
22 a Motion for Summary Judgment and a Motion to Dismiss for Lack of Prosecution. (Doc. 19.)
23 Plaintiff failed to timely respond to either of these Motions.

24 On March 31, 2016, the court entered an order directing Plaintiff to respond to Defendant's
25 Motion for Summary Judgment on or before April 15, 2016. (Doc. 21.) Plaintiff filed a one-page
26 document on April 14, 2016. (Doc. 22.) Defendant filed a Reply on May 18, 2016. (Doc. 23.)

27 **THE FIVE STEP SEQUENTIAL ANALYSIS FOR DETERMINING DISABILITY**

28 A person filing a claim for social security disability benefits (“the claimant”) must show

1 that she has the “inability to do any substantial gainful activity by reason of any medically
2 determinable physical or mental impairment” which has lasted or is expected to last for twelve or
3 more months. 20 C.F.R. §§ 416.920(a)(4)(ii), 416.909. The ALJ must consider all evidence in the
4 claimant's case record to determine disability (*id.* § 416.920(a)(3)), and must use a five-step
5 sequential evaluation to determine whether the claimant is disabled (*id.* § 416.920). “[T]he ALJ
6 has a special duty to fully and fairly develop the record and to assure that the claimant's interests
7 are considered.” *Brown v. Heckler*, 713 F.2d 441, 443 (9th Cir. 1983). Here, the ALJ evaluated
8 Plaintiff's application for benefits under the required five-step sequential evaluation. (AR 30-37.)

9 At Step One, the claimant bears the burden of showing she has not been engaged in
10 “substantial gainful activity” since the alleged date the claimant became disabled. 20 C.F.R.
11 § 416.920(b). If the claimant has worked and the work is found to be substantial gainful activity,
12 the claimant will be found not disabled. *Id.* The ALJ found that Plaintiff had not engaged in
13 substantial gainful activity since her alleged onset date. (AR 32.)

14 At Step Two, the claimant bears the burden of showing that she has a medically severe
15 impairment or combination of impairments. 20 C.F.R. § 416.920(a)(4)(ii), (c). “An impairment is
16 not severe if it is merely ‘a slight abnormality (or combination of slight abnormalities) that has no
17 more than a minimal effect on the ability to do basic work activities.’” *Webb v. Barnhart*, 433
18 F.3d 683, 686 (9th Cir. 2005) (quoting S.S.R. No. 96–3(p) (1996)). The ALJ found that Plaintiff
19 suffered the following severe impairments: lumbar spine degenerative disc disease, cervical spine
20 degenerative disc disease, bipolar disorder, anxiety disorder, substance abuse, and right shoulder
21 impingement. (AR 32.)

22 At Step Three, the ALJ compares the claimant's impairments to the impairments listed in
23 appendix 1 to subpart P of part 404. *See* 20 C.F.R. § 416.920(a)(4)(iii), (d). The claimant bears
24 the burden of showing her impairments meet or equal an impairment in the listing. *Id.* If the
25 claimant is successful, a disability is presumed and benefits are awarded. *Id.* If the claimant is
26 unsuccessful, the ALJ assesses the claimant's residual functional capacity (“RFC”) and proceeds to
27 Step Four. *Id.* § 416.920(a)(4)(iv),(e). Here, the ALJ found that Plaintiff did not have an
28 impairment or combination of impairments that met or medically equaled one of the listed

1 impairments. (AR 32.)

2 Next, the ALJ found that Plaintiff had the residual functional capacity to perform light
3 work as defined in 20 CFR 416.967(b) except that she can lift and/or carry 20 pounds occasionally
4 and 10 pounds frequently; sit and stand and/or walk for six hours in an eight-hour workday; can
5 frequently climb ladders, ropes, and scaffolds; can frequently stoop; can occasionally reach
6 overhead with her right upper extremity; and is limited to simple, repetitive tasks with occasional
7 contact with the public and coworkers. (AR 33.)

8 At Step Four, the ALJ found that Plaintiff is unable to perform any past relevant work.
9 (AR 35.)

10 At Step Five, the ALJ found that Plaintiff is a younger individual, she had at least a high
11 school education, and was able to communicate in English. (AR 36.) The ALJ found that
12 transferability of jobs skills is not material to the determination of disability because using the
13 Medical-Vocational Rules as a framework supports a finding that Plaintiff is "not disabled,"
14 whether or not the claimant has transferable job skills was not at issue. (AR. 36.) Using the
15 Medical-Vocational Guidelines as a framework, the ALJ found that there were jobs that exist in
16 significant numbers in the national economy that Plaintiff could perform. (AR 36.) Accordingly,
17 the ALJ found that Plaintiff had "not been under a disability, as defined in the Social Security
18 Act," through the relevant time period. (AR 37.)

19 **DISCUSSION**

20 The entirety of Plaintiff's legal argument is as follows:

21 I am also contesting what was stated in the documents that I have received prior:

22 It states that I can:

- 23 1) Climb scaffolding, ladders, ropes, lift 20 lbs. sometimes and 10 pounds frequently.
24 a. This is absolutely untrue, my back injury states very clearly in my medical
25 documents that I am disabled and cannot lift more than 5 lbs infrequently, that I
cannot bend, left, stoop, or do any repetitive [sic] of any of the above mentioned.

26 (Doc. 22.)

27 The court finds that Plaintiff is alleging that the RFC the ALJ found is inaccurate.
28 Determination of a claimant's RFC is a legal decision which is expressly reserved to the

1 Commissioner through her delegate, the ALJ. *See* 20 C.F.R. §§ 404.1527(e)(2) (“Although we
2 consider opinions from medical sources on issues such as ...your residual functional capacity...,
3 the final responsibility for deciding these issues is reserved to the Commissioner”); 404.1546(c)
4 (identifying the ALJ as responsible for determining RFC). In making the RFC determination, the
5 ALJ takes into account those limitations for which there is record support that does not depend on
6 properly rejected evidence and the claimant’s subjective complaints. *See Bayliss v. Barnhart*, 427
7 F.3d 1211, 1217 (9th Cir. 2005) (upholding ALJ’s residual functional capacity determination
8 because “ALJ took into account those limitations for which there was record support that did not
9 depend on [the claimant]’s subjective complaints”); *Batson v. Commissioner*, 359 F.3d 1190, (9th
10 Cir. 2004) 1197-98 (“ALJ was not required to incorporate evidence from the opinions of [the
11 claimant]’s treating physicians, which were permissibly discounted”).

12 In this case, the ALJ found that Plaintiff had the RFC to perform light work with the ability
13 to lift and carry 20 pounds occasionally and 10 pounds frequently, sit, stand, or walk 6 hours in an
14 8-hour day, frequently stoop or climb ladders, ropes, and scaffolds, occasionally overhead
15 reaching with the right arm, limited to simple, repetitive tasks with occasional contact with the
16 public and co-workers. (AR. 33). The ALJ based this RFC on the overall record.

17 The State agency physicians found that Plaintiff’s only severe impairments were a spine
18 disorder, an affective disorder and a substance abuse disorder and that she could perform medium
19 work (AR. 90-91, 103, 105.) Medium work involves lifting up to 50 pounds occasionally and 25
20 pounds frequently, sitting, walking, or standing 6 hours out of an 8-hour day, with frequent
21 stooping or climbing ladders, ropes, and scaffolds, frequently stoop or climb ladders, ropes, and
22 scaffolds, with moderate limitations in the ability to maintain attention and concentration, and
23 carry out detailed instructions. (AR. 91-93, 105-106.)

24 The ALJ, however, found that light work was more reasonable in light of the medical
25 evidence. (AR 34.) The ALJ noted that x-rays and MRIs showed a severe back impairment. (AR
26 34, 313, 374.) Examiners found normal to moderately reduced range of motion in the cervical and
27 lumbar spine, 5/5 strength, some tenderness, and normal gait. (AR 297, 325.) The ALJ further
28 found, however, that due to Plaintiff’s lack of candor with her treating physicians and drug-
seeking behavior, her allegations of pain were not credible to the degree alleged. (AR 34.) As to

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mental limitations, examining psychologist Marion-Isabel Zipperle, PhD., found that Plaintiff could pace herself to complete a normal workday, learn new things, work without special or additional instructions, and could accept instructions from supervisors, with a Global Assessment of Functioning of 75 indicating only transient symptoms. (AR 320-321.) Even here, the ALJ gave Plaintiff the benefit of the doubt by finding that she was limited to simple, repetitive tasks with occasional contact with the public and co-workers. (AR 35.)

The court finds that substantial evidence supports the ALJ's assessment of Plaintiff's RFC. The decision, therefore, must be affirmed. 42 U.S.C. § 405(g); *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012.)

Based on the foregoing, Defendant's Motion for Summary Judgment is GRANTED.

A separate judgment will issue.

IT IS SO ORDERED.

Dated: September 15, 2016



NANDOR J. VADAS
United States Magistrate Judge