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IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

LAILA AZIMI,

No. C 11-01456 WHA

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of  
Social Security,

Defendant.

**ORDER DENYING PLAINTIFF'S  
 MOTION FOR SUMMARY  
 JUDGMENT AND GRANTING  
 DEFENDANT'S MOTION FOR  
 SUMMARY JUDGMENT**

**INTRODUCTION**

In this social security action, plaintiff appeals the denial of supplemental security income benefits. For the reasons set forth below, plaintiff's motion for summary judgment is **DENIED** and defendant's motion for summary judgment is **GRANTED**.

**STATEMENT**

Plaintiff filed an application for supplemental security income benefits in December 2007, alleging a disability onset date of July 1, 2001 (AR 95). The application was denied initially and on reconsideration (AR 61–70). Plaintiff requested a hearing before an Administrative Law Judge, and one was held in October 2009. At the hearing, plaintiff was represented by counsel. Plaintiff testified on her own behalf, and a vocational expert also testified (AR 27–58). In a January 2010 decision, the ALJ denied the claim for supplemental security income (AR 10–19). Plaintiff's request for review of the ALJ's decision by the Appeals Council was denied, making

1 the ALJ’s decision the final decision of the Commissioner (AR 1–4). Plaintiff then filed this  
2 action for judicial review of the ALJ’s decision.

3 The ALJ found that plaintiff had “the following severe impairments: carpal tunnel  
4 syndrome, right greater than left, and cervical degenerative disc disease with radiculopathy.”  
5 Those severe impairments, however, did not meet or exceed any medically listed disability  
6 (AR 12–13). The ALJ then assessed plaintiff’s residual functioning capacity in light of her severe  
7 impairments. Based on plaintiff’s residual functional capacity, the ALJ found that she was unable  
8 to perform past relevant work but that “there are jobs that exist in significant numbers in the  
9 national economy that [she] can perform” (AR 13–18). The ALJ therefore concluded that  
10 plaintiff was not “under a disability, as defined in the Social Security Act” and was not entitled to  
11 supplemental security income (AR. 18–19).

12 Plaintiff disagrees with the ALJ’s finding that there were jobs in significant numbers in  
13 the national economy that she could perform. Specifically, plaintiff argues that this finding was  
14 based on vocational expert testimony “in response to a hypothetical question which did not  
15 contain all [plaintiff’s] limitations” (Pl. Br. 5). Plaintiff moves for summary judgment reversing  
16 the ALJ’s decision and remanding the action for payment of benefits or, alternatively, further  
17 administrative proceedings (*id.* at 6). Defendant opposes plaintiff’s motion and moves for  
18 summary judgment affirming the ALJ’s decision (Def. Br. 8). Plaintiff’s combined opposition to  
19 defendant’s motion and reply in support of her own motion was due on September 12, 2011.  
20 None was filed. Plaintiff was ordered to show cause by October 7, 2011, why the matter should  
21 not be deemed submitted for decision (Dkt. No. 13). The deadline passed, and no filing was  
22 made. Accordingly, the matter is deemed submitted.

23 **ANALYSIS**

24 A decision denying supplemental security income shall be upheld on appeal if it is  
25 supported by substantial evidence and free of legal error. Substantial evidence is “more than a  
26 scintilla” but “less than a preponderance” and is “such relevant evidence as a reasonable mind  
27 might accept as adequate to support a conclusion.” *Smolen v. Chater*, 80 F.3d 1273, 1279  
28 (9th Cir. 1996). The court must consider the entire administrative record, including evidence that

1 does not lend support to the ALJ's conclusion. Where evidence in the record is susceptible to  
2 more than one rational interpretation, the decision of the ALJ must be upheld. *Andrews v.*  
3 *Shalala*, 53 F.3d. 1035, 1039 (9th Cir. 1995).

4 Plaintiff challenges the ALJ's decision in only one respect. Plaintiff argues that the ALJ's  
5 finding that jobs existed for her was based on the vocational expert's response to a hypothetical  
6 question that did not include all of plaintiff's limitations. Plaintiff recounts that two hypothetical  
7 questions were posed to the vocational expert at the hearing. This is true. Plaintiff further  
8 recounts that the expert testified that the first set of hypothetical limitations matched no jobs,  
9 whereas the second set of hypothetical limitations matched a significant number of jobs. This is  
10 also true. Plaintiff then asserts that the first hypothetical described her actual limitations whereas  
11 the second hypothetical did not, and that the ALJ's conclusion was based on the vocational  
12 expert's response to the second hypothetical (Pl. Br. 5–6). Here, plaintiff misconstrues  
13 the record.

14 In his written order, the ALJ described plaintiff's residual functional capacity as follows  
15 (AR 13) (emphasis added):

16 [T]he claimant has the residual functional capacity to perform *a*  
17 *range of light work* as defined in 20 CFR 416.967(b), *except that*  
18 *the dominant right upper extremity is limited to: lifting/carrying a*  
19 *maximum of 10 pounds, rare overhead reaching and rare full*  
*extension, no repetitive or forceful pushing/pulling, and no*  
*forceful gripping/handling; additionally the claimant's English*  
*ability is limited.*

20 Thus, the ALJ found that plaintiff was able "to perform a range of light work as defined in  
21 20 CFR 416.967(b)," with additional limitations that applied only to her right arm. Light work  
22 was defined in 20 C.F.R. 416.967(b) as follows:

23 Light work involves lifting no more than 20 pounds at a time with  
24 frequent lifting or carrying of objects weighing up to 10 pounds.  
25 Even though the weight lifted may be very little, a job is in this  
26 category when it requires a good deal of walking or standing, or  
27 when it involves sitting most of the time with some pushing and  
28 pulling of arm or leg controls.

The ALJ therefore found that plaintiff's *left arm* was capable of lifting twenty pounds  
occasionally and ten pounds frequently, while her *right arm* could lift or carry a maximum of  
only ten pounds, within other range and repetition restrictions.

1           The first hypothetical question the ALJ posed to the vocational expert assumed “someone  
2 of claimant’s age, education, and experience, including limited English ability, with a dominant  
3 right upper extremity, rare overhead reaching, lifting and carrying at ten pounds maximum at all  
4 times, rare full extension reaching — by that I mean the arm fully extended from the body — no  
5 repetitive push/pul, no forceful push/pull, and no forceful gripping or handling” (AR 48–49).  
6 This hypothetical question was *more restrictive* than plaintiff’s residual functional capacity,  
7 because it applied her specific right-arm limitations to the hypothetical person generally. The  
8 vocational expert testified that such a person would qualify for “no jobs” (AR 53).

9           The ALJ then modified the hypothetical question. He asked the vocational expert to  
10 assume that “the lifting and carrying were at the full light level” of “ten pounds frequently,  
11 20 pounds . . . occasionally” (AR 53–54). This second hypothetical question was *less restrictive*  
12 than plaintiff’s residual functional capacity, because only her left arm could perform the full level  
13 of light work. The vocational expert testified that such a person would qualify for a number of  
14 jobs. He identified several such jobs and the rates at which they were available in the national  
15 economy (AR 54–55).

16           Finally, the ALJ asked whether the availability of those jobs to plaintiff “would be  
17 eroded” because of the additional limitations to plaintiff’s use of her right upper extremity, *i.e.*,  
18 her right arm. The vocational expert testified that the numbers he provided would be eroded by  
19 “[a]bout 40 percent” (AR 55). Thus, the vocational expert indicated that plaintiff would be  
20 qualified for the types of jobs he identified in response to the second hypothetical question, but  
21 that the rates at which those jobs would be available to her would be about 40% less than the rates  
22 he quoted.

23           The ALJ’s written order repeated this information and acknowledged that the  
24 job-availability rates provided by the vocational expert had to be “eroded by about 40% because  
25 of the upper extremity restrictions.” The ALJ nonetheless found, “[b]ased on the testimony of the  
26 vocational expert,” that plaintiff was “capable of making a successful adjustment to other work  
27 that exists in significant numbers in the national economy” (AR 18). That finding was based on  
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testimony by the vocational expert that addressed plaintiff's precise residual functional capacity.  
It was supported by substantial evidence and free of legal error.

Plaintiff does not dispute any other aspect of the ALJ's decision. Because plaintiff has failed to show that the ALJ's decision lacked substantial evidentiary support or contained legal error, plaintiff's motion for summary judgment is **DENIED** and defendant's motion for summary judgment is **GRANTED**.

**CONCLUSION**

For the foregoing reasons, plaintiff's motion for summary judgment is **DENIED** and defendant's motion for summary judgment is **GRANTED**. Judgment shall be entered accordingly.

**IT IS SO ORDERED.**

Dated: October 20, 2011.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE