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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FORREST E.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 19-5331-MLP

ORDER

**I. INTRODUCTION**

Plaintiff seeks review of the denial of his applications for Supplemental Security Income and Disability Insurance Benefits. Plaintiff contends the administrative law judge (“ALJ”) erred at step five by relying on vocational expert (“VE”) testimony that Plaintiff could perform jobs that exist in significant numbers in the national economy, despite Plaintiff’s post-hearing challenge and request for a supplemental hearing. (Dkt. # 10 at 1.) As discussed below, the Court **AFFIRMS** the Commissioner’s final decision and **DISMISSES** the case with prejudice.

**II. BACKGROUND**

Plaintiff was born in 1974, has a high school diploma and some college education, and has worked as a tractor-trailer truck driver. AR at 52, 60. Plaintiff was last gainfully employed in 2015. *Id.* at 231.

1 In October 2015, Plaintiff applied for benefits, alleging disability as of June 1, 2013. AR  
2 at 190-205. Plaintiff's applications were denied initially and on reconsideration, and Plaintiff  
3 requested a hearing. *Id.* at 123-26, 131-38. After the ALJ conducted a hearing on October 25,  
4 2017 (*id.* at 46-66), the ALJ issued a decision finding Plaintiff not disabled. *Id.* at 17-28.

5 Utilizing the five-step disability evaluation process,<sup>1</sup> the ALJ found:

6 Step one: Plaintiff has worked since the alleged onset date, but the work did not rise to  
7 the level of substantial gainful activity.

8 Step two: Plaintiff has the following severe impairments: obesity; status post gastric  
9 bypass; history of traumatic brain injury with residual headaches; obstructive sleep  
10 apnea; left knee osteoarthritis and degenerative joint disease; and mental health  
11 conditions described as depression and attention deficit disorders.

12 Step three: These impairments do not meet or equal the requirements of a listed  
13 impairment.<sup>2</sup>

14 Residual Functional Capacity: Plaintiff can perform sedentary work with additional  
15 limitations: he can lift/carry 10 pounds occasionally and frequently. He can sit about six  
16 hours, and can stand and walk about two hours in an eight-hour workday. He can  
17 frequently stoop, and occasionally kneel and crawl. He must avoid concentrated exposure  
18 to cold, heat, vibration, and hazards such as machinery and heights. He can do simple  
19 routine work with occasional contact with the public.

20 Step four: Plaintiff cannot perform past relevant work.

21 Step five: As there are jobs that exist in significant numbers in the national economy that  
22 Plaintiff can perform, Plaintiff is not disabled.

23 AR at 17-28.

As the Appeals Council denied Plaintiff's request for review, the ALJ's decision is the  
Commissioner's final decision. AR at 1-8. Plaintiff appealed the final decision of the  
Commissioner to this Court. (Dkt. # 1, 4.)

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<sup>1</sup> 20 C.F.R. §§ 404.1520, 416.920.

<sup>2</sup> 20 C.F.R. Part 404, Subpart P, Appendix 1.



1 on a VE's testimony regarding job numbers. *See Shaibi v. Berryhill*, 883 F.3d 1102, 1110 (9th  
2 Cir. 2017); *Rincon v. Colvin*, 636 Fed. Appx. 963, 964 (9th Cir. Feb. 17, 2016).

3 In this case, Plaintiff's counsel asked the VE to explain the basis for her testimony  
4 regarding the job numbers for the three jobs she had identified:

5 [Plaintiff's counsel]: . . . And, as far as the numbers you provided, where did  
6 those come from?

7 [VE]: Those are based on a variety of resources that I use. I use Bureau of Labor  
8 Statistics, U.S. Publishing. And, also, I perform labor market surveys, which  
allow me to make judgment calls on whether numbers appear to be accurate in the  
national economy.

9 [Plaintiff's counsel]: Have you done a labor market survey on any of these three  
10 jobs?

11 [VE]: I have. I've done them for both table worker, and lens inserter. I have not  
done them for masker.

12 [Plaintiff's counsel]: Lens inserter says, "Fits lenses into plastic sunglass frames,  
13 and places frames on conveyer belts that passes under heat lamps, which softens  
frames, preparatory to setting of lenses." Last updated 1977.

14 [VE]: Yes.

15 [Plaintiff's counsel]: That's not automated now?

16 [VE]: No, there are multiple occupations that allow for someone to sit at a  
17 workbench, and insert the lenses by hand.

18 [Plaintiff's counsel]: So, they still do it like that?

19 [VE]: Yes. I mean, there's both options. I've seen it in the job market where it's  
either produced mechanically, or it's produced – it depends on the type of setting,  
20 and the employer contact.

21 [Plaintiff's counsel]: Okay. I have no further questions at the moment.

22 AR at 64-65.

23 After the hearing, Plaintiff filed supplemental materials challenging the job numbers  
identified by the VE for all three jobs identified, contending that the VE had inflated the job

1 numbers in light of reports from the Bureau of Census and Bureau of Labor Statistics. AR at 33-  
2 45, 286-87. Plaintiff requested that if the ALJ intended to rely on the VE's testimony, the ALJ  
3 schedule a supplemental hearing. *Id.* at 286. The ALJ denied Plaintiff's request for a  
4 supplemental hearing in the written decision, finding that Plaintiff's argument was not persuasive  
5 in light of Bureau of Labor Statistics reports for 2017 corroborating the VE's testimony, and in  
6 light of the VE's explanation for the foundation of her testimony. *Id.* at 27. Specifically, the ALJ  
7 found that Plaintiff had failed to provide a citation for the Bureau of Census report mentioned,  
8 and that the 2017 Bureau of Labor Statistics numbers shows that there were "more than 25,000  
9 workers in the ophthalmic goods manufacturing industry[,]” which was consistent with the VE's  
10 identification of 25,000 lens inserter jobs nationally. *Id.* at 26-27.

11 Plaintiff renews his challenge to the VE's testimony in his briefing to this Court, arguing  
12 that the ALJ erred in denying his request for a supplemental hearing because the ALJ  
13 inadequately explained why he found the VE's testimony persuasive. (Dkt. # 10 at 5-8.) Plaintiff  
14 contends that the ALJ did not cite any reliable evidence corroborating the VE's job numbers as  
15 to the lens inserter position, and thus failed to meet the Commissioner's burden to show that the  
16 jobs identified at step five exist in significant numbers. (*Id.* at 5-7.) He argues that this error is  
17 harmful because the other two jobs identified at step five do not exist in significant numbers on  
18 their own. (*Id.* at 7.)

19 The Court finds that Plaintiff's lay assessment of job numbers is not sufficient to  
20 establish harmful legal error in the ALJ's decision. Plaintiff excerpted a Bureau of Census report  
21 that references 19,199 ophthalmic goods manufacturing jobs in 2015, with a 2.5% margin of  
22 error. AR at 33-34. Plaintiff also cited a Bureau of Labor Statistics report listing 251,670 total  
23 jobs in the production worker occupational classification, and he suggests that because

1 ophthalmic goods manufacturing jobs were not listed as one of the top five categories, it can be  
2 assumed that there must be fewer than 3,960 national jobs in that category. *See id.* at 37. Plaintiff  
3 has raised at most an alternative interpretation of the evidence regarding job numbers but has  
4 provided no expert opinion interpreting the data he relies upon as inconsistent with the VE's  
5 testimony. An alternative interpretation does not show error in the ALJ's decision. *See Morgan*  
6 *v. Comm'r of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999) ("Where the evidence is  
7 susceptible to more than one rational interpretation, it is the ALJ's conclusion that must be  
8 upheld.").

9         Given that the VE provided a detailed explanation about how she calculated the job  
10 numbers, and because Plaintiff has offered only lay interpretation of the allegedly conflicting  
11 source material, Plaintiff has failed to establish that the ALJ's step-five findings lack the support  
12 of substantial evidence. *See, e.g., Shaibi v. Saul*, 2019 WL 3530388, at \*6-7 (E.D. Cal. Aug. 2,  
13 2019); *Frayar v. Berryhill*, 2019 WL 1206747, at \*5 (E.D. Cal. Mar. 14, 2019); *Harper v.*  
14 *Berryhill*, 2018 WL 6592446, at \*5 (N.D. Cal. Dec. 14, 2018); *Kirby v. Berryhill*, 2018 WL  
15 4927107, at \* 4-5 (C.D. Cal. Oct. 10, 2018). A VE's "recognized expertise provides the  
16 necessary foundation for his or her testimony[,]" and the VE's testimony constitutes substantial  
17 evidence supporting the ALJ's step-five findings. *Bayliss*, 427 F.3d at 1217-18; *see also Reguero*  
18 *v. Berryhill*, 2018 WL 1804678, at \*6 (C.D. Cal. Apr. 13, 2018) ("Notwithstanding Plaintiff's  
19 contentions, the ALJ was entitled to rely on the VE's testimony on job numbers, which  
20 constitutes substantial evidence."). Accordingly, the Court finds that Plaintiff has not established  
21 harmful legal error in the ALJ's step-five findings.

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V. CONCLUSION

For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and this case is **DISMISSED** with prejudice.

Dated this 4th day of December, 2019.



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MICHELLE L. PETERSON  
United States Magistrate Judge