

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

Erica K. v. Martin J. O'Malley, et al.

Erica K. · No. 4:24-cv-03740-DMR · Decided September 8, 2025

OPINION

Kitchen v. O'Malley

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6

ERICA K.,

7 Case No. 24-cv-03740-DMR Plaintiff, 8

v. ORDER DENYING MOTION FOR

9 SUMMARY JUDGMENT

MARTIN J. O'MALLEY, et al., 10 Re: Dkt. No. 14 Defendants. 11 12 Self-represented Plaintiff Erica K. appeals the Commissioner of the Social Security 13 Administration's (the "Commissioner's") suspension of her benefits, notice of overpayment, and 14 dismissal of her hearing request. [Docket No. 1 (Compl.).] Plaintiff now moves for summary 15 judgment. [Docket No. 14 (Mot.).] The Commissioner filed an opposition (Docket No. 16 16 (Opp'n)), and Plaintiff did not file a reply. For the reasons stated below, the court denies Plaintiff's 17 motion.

18 I. PROCEDURAL HISTORY

19 Plaintiff was found disabled in February 2011. Administrative Record ("AR") 60. On 20 November 1, 2018, following a continuing disability review, a disability examiner determined that

21 Plaintiff's disability had ceased. AR 64-75. A consultative examination was scheduled for May 22 2019; however, Plaintiff failed to appear. AR 355-60; see AR 355-56 ("CE was scheduled to assess 23 her current functioning[;] however claimant did not show for the CE."); AR 360 ("In order to obtain 24 current functioning, IMCE was scheduled but claimant missed the CE – to date, no response to mail 25 or voice messages – appears to again be I.E. for FTC for PH claim.") 26 Plaintiff failed to appear at a June 19, 2019 hearing before a disability hearing officer. 27 AR 130-32. In July 2019, the disability hearing officer issued a Notice of Reconsideration that 1 138-40. On October 1, 2019, Plaintiff requested a hearing by an administrative law judge ("ALJ") 2 and indicated that she would like to appear at the hearing. AR 141; see AR 151-53. Plaintiff's basis 3 for appeal was that she did not receive her notice of actions because her address had not been

updated 4 in the system. AR 141. 5 An in-person hearing took place on March 20, 2023, which Plaintiff attended. AR 41-56. 6 The ALJ explained that “the decision that [the ALJ] would be making is whether [Plaintiff] 7 continue[s] to be disabled or whether health, physical or mental, has [improved] to the point where 8 [Plaintiff] can work.” AR 47. The ALJ advised Plaintiff that she “ha[d] the right to be represented 9 by an attorney or a non-attorney advocate” that “[w]e can provide that list [of legal aid agencies and 10 organizations that provide referrals to private attorneys] to [Plaintiff] today and if [Plaintiff] 11 decide[s] [she would] like more time to get legal advice or representation [the ALJ] can grant one 12 more postponement for this hearing.” AR 45-46. Plaintiff “would continue to receive [her] 13 benefits . . . pending through until [the ALJ] ma[d]e a decision[.]” AR 46. 14 At the hearing, Plaintiff requested a postponement so she could obtain evidence from her 15 doctor, which the ALJ granted. AR 47. Plaintiff provided her mailing address, and the ALJ 16 informed her that “we will also be sending you a notice in the mail with a new hearing date.” AR 52, 17 54-55. The ALJ stated that “you can also come back in person, just like you are today, or you can 18 agree to do it over the telephone or through online video[. W]hen you get a notice of hearing I think 19 it tells you what your options are and you can agree to any of those.” AR 55. 20 On March 21, 2023, the Office of Hearings Operation sent Plaintiff an Important Notice 21 About Representation that provided a list of organizations she could contact to try to retain counsel. 22 AR 261-62. 23 The hearing was rescheduled for July 10, 2023. AR 263-67. A Notice of Hearing dated

24 April 15, 2023 informing Plaintiff of the new date was sent to Plaintiff at the address that she 25 provided at the March 20, 2023 hearing. Id.; see AR 52. The Notice of Hearing warned Plaintiff 26 that “It Is Important That You Attend Your Hearing” and that “[i]f you do not attend the hearing, 27 I may dismiss your request for hearing, without further notice, unless I find that you have a good 1 On June 12, 2023, the Office of Hearings Operations sent Plaintiff a Notice of Hearing – 2 Important Reminder, which stated that “[w]e recently mailed you a Notice stating the time and place 3 of the hearing you requested” and provided the date and time for the hearing. AR 281. It further 4 advised Plaintiff that “[i]f you do not attend the hearing, the administrative law judge (ALJ) may 5 dismiss your request for hearing, without further notice, unless he or she finds that you have a good 6 reason for not attending. If you do not understand this notice, or if some unexpected problem arises, 7 please call this hearing office at the phone number listed above.” Id. (emphasis in the original). 8 Plaintiff did not attend the July 10, 2023 hearing. AR 284. The ALJ sent a letter to Plaintiff 9 stating that “[s]ince you did not appear at your hearing, you will need to show good cause if you 10 still want to have a hearing with an administrative law judge.” Id. In response, Plaintiff explained 11 that she missed the hearing because “[i]t took 20 minutes just to get into [the] federal [building], 12 and that “3-4 days per [week] I cannot be far from a toilet and today was one of them.” AR 353. 13 Plaintiff further stated that she needed additional time to collect evidence of her disability and that 14 she “d[id] not understand the way to get a lawyer for free to help [her] with this appeal.” AR 353- 15 54. 16 The ALJ found good cause to reschedule

the hearing “one more time” but warned Plaintiff 17 that, “[i]f you do not appear for your next hearing, your case may be dismissed.” AR 287. On

18 July 14, 2023, Plaintiff was issued a Notice of Hearing, which stated that the hearing had been 19 rescheduled to October 2, 2023. AR 288. Under a heading titled “It Is Important That You 20 Attend Your Hearing,” the Notice stated, “I have set aside this time for you to tell me about your 21 case. If you do not attend the hearing, I may dismiss your request for hearing, without further notice, 22 unless I find that you have a good reason for not attending.” Id. (emphasis in the original). The 23 Notice further informed Plaintiff that “[y]ou may ask us if you want to appear by telephone” and 24 that the ALJ “will schedule you to appear by telephone if we find that it is not possible for you to 25 attend in person or by video teleconference, or other extraordinary circumstances prevent you from 26 attending in person or by video teleconference.” Id. The Notice of Hearing requested that Plaintiff 27 “complete and return the enclosed acknowledgement form at the earliest opportunity.” Id. 1 of Hearings Operations sent Plaintiff a Notice of Hearing – Important Reminder, stating that “[w]e 2 recently mailed you a Notice stating the time and place of the hearing you requested” and again 3 providing the date and time for the hearing. AR 306. This Notice again warned Plaintiff that “[i]f 4 you do not attend the hearing, the administrative law judge (ALJ) may dismiss your request for 5 hearing, without further notice, unless he or she finds that you have a good reason for not attending. 6 If you do not understand this notice, or if some unexpected problem arises, please call this hearing 7 office at the phone number listed above.” Id. (emphasis in the original). 8 Plaintiff did not appear at the October 2, 2023 hearing, and the ALJ subsequently sent her a 9 notice stating that “you will need to show good cause if you still want to have a hearing with an 10 administrative law judge.” AR 307. Plaintiff responded that she “mixed up the date” and “wrote 11 10-3-23 back in July 2023.” AR 311. Plaintiff also requested “to change to a phone court hearing 12 if I am [given] ‘good cause’ and giv[e]n another date.” AR 313. 13 On November 27, 2023, the ALJ issued an Order of Dismissal. AR 36-38; see AR 33-35 14 (notice of dismissal). After analyzing the factors set forth in 20 CFR § 416.1457(b) (2), the ALJ 15 found “there is no good cause or good reason for the claimant’s failure to appear at the time and 16 place of the hearing.” AR 37. Plaintiff was informed of the hearing date, had twice failed to appear 17 at hearings, and “failed to adequately participate in this continuing disability review for many years, 18 which does not inspire confidence that scheduling a third hearing will result in her attendance.” Id. 19 (citation omitted). Moreover, although Plaintiff had been offered a telephonic hearing (AR 288), she 20 did not request one until she was asked to explain the reason for her failure to appear. AR 37. 21 Plaintiff also “had many months to seek assistance from a representative.” Id. Furthermore, 22 although Plaintiff realized that she missed her October 2, 2023 hearing that same day, “there is no 23 evidence [Plaintiff] called the agency on the day of her hearing to inquire about her hearing or ask 24 for a phone hearing that day.” Id. Plaintiff also “speaks, reads, writes and understands English,” 25 “has a 12th grade education,” and that her “failure to appear is not explained by lack of mental 26 capacity.” Id. The ALJ also found that

Plaintiff “has physical impairments, including wrist deformities and a cervical spine condition, which qualified her for benefits in the past but which do not mentally able to attend the March 20, 2023 hearing and respond in writing to two notices to show cause.” *Id.* “Based on the totality of the circumstances, the [ALJ] did not find good cause for the claimant’s failure to attend the second hearing,” dismissed Plaintiff’s request for hearing dated October 1, 2019, and found that “the determination dated July 5, 2019, remains in effect.” *Id.*; see

AR 75, 138-41. Plaintiff appealed the ALJ’s Order of Dismissal of the Appeals Council on grounds that she did not receive the Notice of Hearing. AR 3-4. The Appeals Council denied the appeal, “[f]inding that [Plaintiff’s] reasons do not provide a basis for changing the Administrative Law Judge’s dismissal.” AR 1.

II. STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this court has the authority to review a decision by the Commissioner denying a claimant disability benefits. “This court may set aside the Commissioner’s denial of disability insurance benefits when the ALJ’s findings are based on legal error or are not supported by substantial evidence in the record as a whole.” *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999) (citations omitted). “The phrase ‘substantial evidence’ is a ‘term of art’ used throughout administrative law to describe how courts are to review agency factfinding.” *Biestek v. Berryhill*, 587 U.S. 97, 102 (2019). Substantial evidence is evidence within the record that could lead a reasonable mind to accept a conclusion regarding disability status. See *Richardson v. Perales*, 402 U.S. 389, 401 (1971). “[T]he threshold for such evidentiary sufficiency is not high. Substantial evidence, this Court has said, is ‘more than a mere scintilla.’” *Biestek*, 587 U.S. at 103 (citation omitted). “It means—and means only—‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Id.* (citation omitted). When performing this analysis, the court must “consider the entire record as a whole and may not affirm simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (citation and quotation marks omitted). If the evidence reasonably could support two conclusions, the court “may not substitute its judgment for that of the Commissioner” and must affirm the decision. *Jamerson v. Chater*, 112 F.3d 1121, 1123 (9th Cir. 1997) (en banc). “A decision for harmless error, which exists when it is clear from the record that the ALJ’s error was inconsequential to the ultimate nondisability determination.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (cleaned up).

III. ISSUES FOR REVIEW

Before turning to the merits of Plaintiff’s motion, the court first considers the scope of her appeal to this court. The basis for Plaintiff’s motion is not entirely clear. Plaintiff states that “I do not agree with much of the papers I submitted that I got as SSA responding to my filed . . . District Court case” and that “I’m sure that if I get my day in court I can explain all that is wrong with that [SSA] file about me[.]” Mot. at ECF p.1-2; see Docket No. 15 (Pl. Decl.) at 1

(“I included the record 10 from SSA of my file because I see many many discrepancies of the facts. I want to have my day 11 and set it [straight].”). Plaintiff does not identify what in her SSA file she disagrees with or why, or 12 what the factual discrepancies are. Plaintiff’s complaint, however, identifies the following: “notice 13 of dismissal,” “notice of overpayment,” and “benefits suspended.” Compl. at 1. 14 An individual may obtain judicial review of any final decision of the Commissioner of Social 15 Security regarding entitlement to benefits. 42 U.S.C. § 405(g). “Modern-day claimants must 16 generally proceed through a four-step process before they can obtain review from a federal court”: 17 First, the claimant must seek an initial determination as to his eligibility. Second, the claimant must seek reconsideration of the 18 initial determination. Third, the claimant must request a hearing, which is conducted by an ALJ. Fourth, the claimant must seek review 19 of the ALJ’s decision by the Appeals Council. See 20 CFR § 416.1400. If a claimant has proceeded through all four steps on the 20 merits, all agree, § 405(g) entitles him to judicial review in federal district court. 21 22 *Smith v. Berryhill*, 587 U.S. 471, 475-76 (2019). “While § 405(g) delegates to the SSA the authority 23 to dictate which steps are generally required [for judicial review], . . . exhaustion of those steps may 24 not only be waived by the agency, . . . but also excused by the courts[.]” *Id.* (citations omitted); see 25 *id.* at 484 (“[T]he Court’s precedents do not make exhaustion a pure necessity, indicating instead 26 that while the SSA is empowered to define the steps claimants must generally take, the SSA is not 27 also the unreviewable arbiter of whether a claimant has sufficiently complied with those steps.”) 1 Nevertheless, “[f]undamental principles of administrative law . . . teach that a federal court 2 generally goes astray if it decides a question that has been delegated to an agency if that agency has 3 not first had a chance to address the question.” *Id.* at 488. Supreme Court precedent “discussing 4 exhaustion in the Social Security context confirm[s] the prudence of applying this general 5 principle . . . where the agency’s final decisionmaker has not had a chance to address the merits at 6 all.” *Id.* 7 Here, the Commissioner concedes that “[t]his Court has jurisdiction to review the findings 8 included in the ALJ’s 2023 dismissal” but argues that, as “that dismissal did not include any findings 9 on an overpayment, waiver of overpayment, or any subsequent application for disability[.]” those 10 issues are not subject to appeal. Opp’n at 7. The court agrees. The Appeals Council addressed only 11 one issue: Plaintiff’s “request for review of the Administrative Law Judge’s dismissal dated

12 November 27, 2023.” AR 1; see AR 33-38 (notice of dismissal). The court thus finds that it may

13 consider the dismissal of Plaintiff’s request for a hearing. See *Curlee v. Comm’r of Soc. Sec.*, No. 14 20-CV-00145-SAB, 2022 WL 993005, at *2-3 (E.D. Cal. Apr. 1, 2022), *aff’d sub nom.* *Curlee v.* 15 *O’Malley*, No. 22-15655, 2024 WL 2103275 (9th Cir. May 10, 2024) (court had jurisdiction to 16 review Appeals Council’s denial of plaintiff’s request to review ALJ’s dismissal of request for 17 hearing due to failure to appear); *Johnson v. O’Malley*, No. 23-CV-481 JLS (AHG), 2024 WL 18 2000641, at *12 (S.D. Cal. May 6, 2024), reconsideration denied, No. 23-

CV-481 JLS (AHG), 2024 19 WL 2965596 (S.D. Cal. June 11, 2024), and appeal dismissed, No. 24-4808, 2024 WL 4763192 20 (9th Cir. Aug. 29, 2024) (“[T]he Court is satisfied that, given the circumstances of this case, the 21 ALJ’s decision to dismiss Plaintiff’s request for a hearing for failing to appear—made binding after 22 the Appeals Council denied review—is a ‘final decision . . . made after a hearing’ within the 23 meaning of § 405(g).”) (ellipses in the original). 24 However, the Appeals Council did not consider Plaintiff’s overpayment or suspension of 25 benefits and therefore has not addressed the merits of those claims. See AR 1-2. Accordingly, the 26 court declines to consider those issues. See *Quattlebaum v. Saul*, No. DLB-19-3258, 2021 WL 27 1225542, at *3 (D. Md. Mar. 31, 2021) (“confin[ing] . . . review to the finding that plaintiff failed 1 plaintiff’s disability claim).

2 IV. DISCUSSION

3 The court finds that substantial evidence supports the ALJ’s dismissal of Plaintiff’s request 4 for a hearing. Pursuant to 20 C.F.R. § 404.957(b), “[a]n administrative law judge may dismiss a 5 request for a hearing” if 6 (1)(i) Neither you nor the person you designate to act as your representative appears at the time and place set for the hearing and 7 you have been notified before the time set for the hearing that your request for hearing may be dismissed without further notice if you did 8 not appear at the time and place of hearing, and good cause has not been found by the administrative law judge for your failure to appear; 9 or (ii) Neither you nor the person you designate to act as your 10 representative appears at the time and place set for the hearing and within 10 days after the administrative law judge mails you a notice 11 asking why you did not appear, you do not give a good reason for the failure to appear. 12

(2) In determining good cause or good reason under this paragraph,

13 we will consider any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) 14 which you may have. 15 See also I-2-4-25. *Dismissal Due To Claimant’s Failure To Appear*, 1993 WL 643012, at *2 (“Good 16 cause” is defined as “a reasonable explanation for failing to comply with a requirement” and, 17 “[w]hen determining whether good cause exists for failure to appear, an ALJ must base their 18 decision on the circumstances of each case[,]” including “any physical, mental, educational, or 19 linguistic limitations that may have prevented the claimant from appearing at the scheduled time 20 and, if applicable, place of the hearing . . .”). 21 The record shows that Plaintiff received notice of the hearings and was warned that her 22 request for a hearing may be dismissed if she failed to appear. She was sent two written notices 23 informing her of the date and time of the July 10, 2023 hearing. AR 263, 281. Plaintiff similarly 24 received two written notices for the October 2, 2023 hearing. AR 288, 306. Each of these notices 25 advised Plaintiff that the ALJ may dismiss her request for hearing if she failed to appear. AR 263, 26 281, 288, 306. The notices further informed Plaintiff that she could request to attend the hearings 27 remotely. AR 263, 288. Moreover, after she failed to appear at the July 10, 2023 hearing, Plaintiff 1 next hearing, your case may be dismissed.” AR 287. Despite these repeated warnings, Plaintiff 2 || failed to attend

both the July 10 and the October 2, 2023 hearings (AR 284, 307), and nothing in the 3 record indicates that Plaintiff attempted to reschedule them or to appear remotely. 4 Nor can the court find that the ALJ erred in finding that Plaintiff did not demonstrate good 5 cause to excuse her failure to appear at the October 2, 2023 hearing. Plaintiffs statement confirms 6 || that she received notice of the hearing, but wrote down an incorrect date. AR 311 (“I mixed up the 7 || date. I looked wrong and wrote 10-3-23 back in July 2023The Monday 10-2 I did finally find 8 || papers... It was in fact Monday not Sunday and the date was not 10-3 but 10-2.”). The evidence 9 shows that Plaintiff was aware of the hearing, understood that she must attend and the consequences 10 || if she did not appear, and that she could have requested a telephonic hearing if her physical 11 limitations prevented her from leaving her house. AR 311-13. Plaintiff's history of missing three 12 || other hearings (AR 130-32, 287, 355-60) provides further justification for the ALJ's decision to 5 13 dismiss her request for hearing. 14 On this record, the court cannot conclude that the ALJ clearly erred in finding that Plaintiff 3 15 lacked good cause such that the dismissal of her request for hearing was improper. See *Biestek*, a 16 || 587 U.S. at 103 (“[T]he threshold for such evidentiary sufficiency is not high. Substantial evidence, 3 17 || this Court has said, is ‘more than a mere scintilla. . . . It means—and means only—‘such relevant 18 || evidence as a reasonable mind might accept as adequate to support a conclusion.’”) (citation 19 omitted).

20 || V. CONCLUSION

21 For these reasons, the court denies Plaintiff's motion for summary judgment. A separate 22 || judgment will follow. 23 24 IT IS SO ORDERED. 25 Dated: September 8, 2025 ☐) 26 Donna M. Ryu 7 Chief Magistrate Judge 28