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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

RAYMOND CLARK,	)	Case No. CV 08-07398-MLG
	)	
Plaintiff,	)	MEMORANDUM OPINION AND ORDER
	)	
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of the	)	
Social Security	)	
Administration,	)	
	)	
Defendant.	)	
_____	)	

**I. Factual and Procedural Background**

Plaintiff Raymond Clark ("Plaintiff") seeks judicial review of the Commissioner's final decision denying his application for disability insurance benefits ("DIB") pursuant to Title II of the Social Security Act. Plaintiff was born on July 27, 1957. (Administrative Record ("AR") at 26, 36). He has a high school education and is able to communicate in English. (AR at 14, 23, 50). Plaintiff has relevant work experience as a facilities coordinator and a material handler. (AR at 26).

In January 1999, Plaintiff filed applications for DIB and supplemental security income benefits. (AR at 14). An administrative law

1 judge denied the applications after a hearing, in a decision issued on  
2 July 20, 2001. (AR at 14). That decision became final when the Appeals  
3 Council denied review. (AR at 14).

4 Plaintiff filed a second application for DIB on February 15, 2002.  
5 (AR at 14). Administrative Law Judge Peggy Zirlin ("ALJ Zirlin") issued  
6 a decision on July 19, 2003. (AR at 14). ALJ Zirlin found that Plaintiff  
7 suffered from reflex sympathetic dystrophy in the upper right extremity,  
8 that Plaintiff had the residual functional capacity to lift and carry 20  
9 pounds occasionally and 10 pounds frequently with the left non-dominant  
10 upper extremity, stand/walk six hours in an eight-hour workday, and sit  
11 six hours in an eight-hour workday, but Plaintiff should avoid exposure  
12 to vibrations and was unable to crawl, reach, grasp or finger with the  
13 right upper extremity. (AR at 14). Based on this residual functional  
14 capacity and the testimony from a vocational expert, ALJ Zirlin  
15 concluded that Plaintiff could perform work as an information clerk and  
16 surveillance systems monitor. (AR at 15). The Appeals Council denied  
17 review on April 23, 2004. (AR at 15).

18 Plaintiff filed his current application for DIB on May 25, 2004.  
19 (AR at 87-92). Plaintiff alleged he had been disabled due to reflex  
20 sympathetic dystrophy in the right dominant arm, stomach cramping, and  
21 diarrhea since July 20, 2003. (AR at 14-15, 93-99, 123-32). Plaintiff's  
22 insured status for DIB expired on September 30, 2003. (AR at 15).  
23 Therefore, the period at issue in this case is July 20, 2003,  
24 Plaintiff's alleged onset date, through September 30, 2003, Plaintiff's  
25 date last insured.<sup>1</sup> (AR at 15).

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27 <sup>1</sup> In order to qualify for disability insurance benefits, a claimant  
28 is required to establish that he was disabled on or before the date of  
termination of his insured status. 20 C.F.R. §404.131(b)(1); *Vincent ex*

1 The Social Security Administration denied Plaintiff's current  
2 application at the initial and reconsideration stages. (AR at 58-62). An  
3 administrative hearing was held before ALJ Zirlin on October 4, 2006.  
4 (AR at 33-57). Plaintiff, who was represented by counsel, testified in  
5 his own behalf. *Id.* On October 25, 2006, ALJ Zirlin issued a decision  
6 denying Plaintiff's application for DIB. (AR at 14-27). ALJ Zirlin found  
7 that through September 30, 2003, Plaintiff: (1) had not engaged in  
8 substantial gainful activity; (2) suffered from reflex sympathetic  
9 dystrophy in the dominant right upper extremity; (3) did not have any  
10 impairments that met or equaled a listed impairment; (4) had the  
11 residual functional capacity to lift and carry 20 pounds occasionally  
12 and 10 pounds frequently with the left non-dominant upper extremity,  
13 stand/walk six hours in an eight-hour workday, and sit six hours in an  
14 eight-hour workday, but Plaintiff needed to avoid exposure to even  
15 moderate vibrations and was unable to crawl, reach, grasp or finger with  
16 the right upper extremity; and (5) was unable to perform his past  
17 relevant work. (AR at 18, 26-27). Based on his residual functional  
18 capacity and the testimony from the vocational expert at Plaintiff's  
19 second hearing,<sup>2</sup> ALJ Zirlin concluded that Plaintiff was not disabled  
20 because he was able to perform other work that exists in significant  
21 numbers in the economy, including work as an information clerk and  
22 surveillance systems monitor. (AR at 15, 25-26). ALJ Zirlin found no  
23 basis for reopening the prior decisions. (AR at 15). On August 27, 2008,  
24 the Appeals Council denied review and ALJ Zirlin's decision became the

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26 *rel. Vincent v. Heckler*, 739 F.2d 1393, 1394 (9th Cir. 1984); *Flaten v.*  
27 *Secretary of Health & Human Serv.*, 44 F.3d 1453, 1463 (9th Cir. 1995).

28 <sup>2</sup> The hearing transcript from Plaintiff's second hearing is not  
included in the record.

1 final decision of the Commissioner. (AR at 5-7).

2 Plaintiff commenced this action for judicial review on November 7,  
3 2008. On July 13, 2009, the parties filed a joint statement of disputed  
4 issues. The disputed issues are whether ALJ Zirlin: (1) improperly  
5 applied administrative res judicata and relied on evidence not included  
6 in the record; and (2) failed to adequately consider the medical  
7 evidence and testimony of Plaintiff. (Joint Stipulation at 4-8, 12-16,  
8 21-23). Plaintiff seeks remand for a payment of benefits or, in the  
9 alternative, remand for a new administrative hearing and further  
10 development of the record. (Joint Stipulation at 23). The Commissioner  
11 requests that ALJ Zirlin's decision be affirmed. (Joint Stipulation at  
12 23). The Joint Stipulation has been taken under submission without oral  
13 argument.

14  
15 **II. Standard of Review**

16 Under 42 U.S.C. § 405(g), a district court may review the  
17 Commissioner's decision to deny benefits. The Commissioner's or ALJ's  
18 findings and decision should be upheld if they are free from legal error  
19 and are supported by substantial evidence based on the record as a  
20 whole. 42 U.S.C. § 405(g); *Richardson v. Perales*, 402 U.S. 389, 401  
21 (1971); *Holohan v. Massanari*, 246 F.3d 1195, 1201 (9th Cir. 2001).  
22 Substantial evidence means such evidence as a reasonable person might  
23 accept as adequate to support a conclusion. *Richardson*, 402 U.S. at 401;  
24 *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996). It is more than a  
25 scintilla, but less than a preponderance. *Reddick*, 157 F.3d at 720. To  
26 determine whether substantial evidence supports a finding, the reviewing  
27 court "must review the administrative record as a whole, weighing both  
28 the evidence that supports and the evidence that detracts from the

1 Commissioner's conclusion." *Id.* "If the evidence can reasonably support  
2 either affirming or reversing," the reviewing court "may not substitute  
3 its judgment" for that of the Commissioner. *Id.* at 720-721.

4  
5 **III. Discussion**

6 **A. ALJ's Reliance on Prior Administrative Decision**

7 The principles of *res judicata* apply to administrative decisions.  
8 A previous final determination of nondisability creates a presumption of  
9 continuing nondisability with respect to any subsequent unadjudicated  
10 period of alleged disability. See *Lester v. Chater*, 81 F.3d 821, 827  
11 (9th Cir. 1996); see also *Miller v. Heckler*, 770 F.2d 845, 848 (9th Cir.  
12 1985); *Lyle v. Secretary of Health and Human Services*, 700 F.2d 566,  
13 568-69 (9th Cir. 1983); Social Security Acquiescence Ruling 97-4(9).  
14 This presumption may be overcome by a showing of "changed  
15 circumstances." *Chavez v. Bowen*, 844 F.2d 691, 693 (9th Cir. 1988);  
16 *Taylor v. Heckler*, 765 F.2d 872, 875 (9th Cir. 1985). To show "changed  
17 circumstances," the evidence must establish that the claimant suffers  
18 from an impairment that indicates a greater disability since the prior  
19 decision denying benefits. *Chavez*, 844 F.2d at 693. In other words, the  
20 presumption of nondisability does not apply if the claimant raises an  
21 issue not considered in the previous decision, such as the existence of  
22 a new impairment, or demonstrates an increase in the severity of an  
23 impairment, either one of which adversely affects his residual  
24 functional capacity. See *Lester*, 81 F.3d at 827; see also Acquiescence  
25 Ruling 97-4(9) ("where the final decision by the ALJ on the prior claim,  
26 which found the claimant not disabled, contained findings of the  
27 claimant's residual functional capacity, education, and work experience,  
28 SSA may not make different findings in adjudicating the subsequent

1 disability claim unless there is new and material evidence relating to  
2 the claimant's residual functional capacity, education or work  
3 experience").

4 Here, Plaintiff is alleging the same medical basis for disability  
5 (reflex sympathetic dystrophy ("RSD")) that was previously alleged in  
6 his prior two claims for benefits. Under such circumstances, the  
7 presumption of continuing non-disability would ordinarily apply. See  
8 *Lester*, 81 F.3d at 827. Nevertheless, Plaintiff asserts that  
9 administrative res judicata is not applicable, as the Administration  
10 implemented a Ruling during the pendency of his application that affects  
11 the evaluation of RSD claims. The ruling is entitled: Social Security  
12 Ruling 03-2p, Titles II and XVI: Evaluating Cases Involving Reflex  
13 Sympathetic Dystrophy Syndrome/Complex Regional Pain Syndrome, 2003 WL  
14 22399117 ("SSR 03-2p"). (Joint Stipulation at 4-5). In support of this  
15 argument, Plaintiff cites Hallex I-2-4-40 ¶ K,<sup>3</sup> which provides as  
16 follows:

17 The ALJ may not use *res judicata* as the basis for  
18 dismissing [a request for hearing] based on a  
19 current application when there has been a change in  
20 a statute, regulation, ruling or legal precedent  
21 which was applied in reaching the final  
22 determination or decision on the prior application.  
23 A new adjudicative standard exists and the issues  
24 cannot be considered the same as the issues in the  
25 prior case. The ALJ must issue a decision.

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27 <sup>3</sup> HALLEX is the Commissioner of Social Security's Hearings,  
28 Appeals, and Litigation Manual. *Clark v. Astrue*, 529 F.3d 1211, 1216  
(9th Cir. 2008)

1 (See Joint Stipulation at 5). Plaintiff contends that because the  
2 "issuance of Social Security Ruling 03-2p constitutes a change in agency  
3 policy and interpretation," ALJ Zirlin could not apply administrative  
4 res judicata. (Joint Stipulation at 5 (citing Hallex I-2-4-40 ¶ K and I-  
5 2-9-40 ¶ E.1 (defining "change of legal interpretation or administrative  
6 ruling" in the context of reopening final a decision))). Plaintiff's  
7 argument is not persuasive.

8 First and most importantly, Hallex is an internal agency manual and  
9 has no binding legal effect on the SSA or this court. *Clark v. Astrue*,  
10 529 F.3d 1211, 1216 (9th Cir. 2008); *Moore v. Apfel*, 216 F.3d 864, 869  
11 (9th Cir. 2000) (explaining that HALLEX is an "internal guidance  
12 tool[,] " which does not create substantive rights); *see also Christensen*  
13 *v. Harris County*, 529 U.S. 576, 587 (2000) (holding that agency  
14 interpretations contained in "policy statements, agency manuals, and  
15 enforcement guidelines[ ] all ... lack the force of law"). As Hallex  
16 does not have the force and effect of law, it is not binding on the  
17 Commissioner. *Bunnell v. Barnhart*, 336 F.3d 1112, 1115 (9th Cir. 2003)  
18 (explaining that HALLEX "has no legal force and is not binding" and  
19 "does not prescribe substantive rules and therefore does not carry the  
20 force and effect of law"); *see also Lowry v. Barnhart*, 329 F.3d 1019,  
21 1023 (9th Cir. 2003) (stating that HALLEX does not "impose[ ] judicially  
22 enforceable duties"). Thus, the Court rejects Plaintiff's argument that  
23 Hallex I-2-4-40 ¶ K precluded the application of res judicata in this  
24 case. *Bunnell*, 336 F.3d at 1115; *Lowry*, 329 F.3d at 1023. Furthermore,  
25 res judicata was not applied in this case to deny a request for hearing  
26 entirely. *Cf.* Hallex I-2-4-40 ¶ K. Rather, res judicata was applied to  
27 the period of time which had been the focus of the prior decisions.  
28 Plaintiff received a hearing and an administrative decision was issued

1 with respect to the time period during which he remained insured. Thus,  
2 Hallex I-2-4-40 ¶ K was not violated.

3 Plaintiff's argument also fails because SSR 03-2p does not  
4 represent a change in policy. The ruling itself clearly states that RSD  
5 claims "are adjudicated using the sequential evaluation process, just as  
6 for any other impairment." SSR 03-2p at \*6. In accordance with SSR 03-  
7 2p, ALJ Zirlin evaluated Plaintiff's claim for benefits at all five  
8 steps of the sequential process. See SSR 03-2p at \*6-7 (explaining that  
9 if RSD is determined to be a severe impairment and the claimant's  
10 impairments do not meet or equal a listed impairment, "an assessment of  
11 [the claimant's residual functional capacity] must be made, and  
12 adjudication must proceed to the fourth and, if necessary, the fifth  
13 step of the sequential evaluation process"). At steps one through four,  
14 ALJ Zirlin considered Plaintiff's claim and the new evidence submitted,  
15 de novo. (See Joint Stipulation at 6; AR at 18-26). At step five, ALJ  
16 Zirlin relied on the vocational expert testimony from the previous two  
17 hearings to find that Plaintiff was capable of performing other work to  
18 find Plaintiff not disabled at step five. (AR at 15, 18, 24-25, 27).  
19 Although the record did not contain the transcripts of the vocational  
20 experts' testimony from the previous two hearings, Plaintiff has not  
21 shown prejudice from the asserted omission. Significantly, ALJ Zirlin  
22 found that Plaintiff's RSD impairment did not increase in severity since  
23 the last two administrative decisions. (AR at 14-15, 18). Therefore, ALJ  
24 Zirlin assessed Plaintiff with the exact same residual functional  
25 capacity as in the previous two decisions. (AR at 15, 24). ALJ Zirlin  
26 also carefully and thoroughly summarized the vocational experts'  
27 testimonies from the previous hearings. (AR at 15, 27). In view of the  
28 analysis undertaken by ALJ Zirlin, any error in failing to include the



1 transcripts in the current record was harmless. (AR at 14-15); see *Curry*  
2 *v. Sullivan*, 925 F.2d 1127, 1131 (9th Cir. 1991) (harmless error rule  
3 applies to review of administrative decisions regarding disability).

4 In sum, Plaintiff has not shown that the decision of ALJ Zirlin was  
5 tainted by legal error.

## 6 **B. Plaintiff's Medical Records and Subjective Pain Testimony**

7 Plaintiff contends that ALJ Zirlin's evaluation of the medical  
8 evidence and rejection of Plaintiff's subjective symptom testimony was  
9 not supported by substantial evidence. (Joint Stipulation at 13-16, 21-  
10 23).

### 11 **1. Treating Physician Opinion**

12 Plaintiff claims that ALJ Zirlin erred by improperly rejecting the  
13 opinion of his treating doctor, Eric Arosemena, M.D. (Joint Stipulation  
14 at 15). Dr. Arosemena has been Plaintiff's treating physician for many  
15 years. (AR at 142-82, 186-256). In June 2004, about eight months after  
16 Plaintiff's insured status expired, Dr. Arosemena wrote a letter  
17 indicating that Plaintiff's RSD prevented him from using his right arm.  
18 (AR at 138). Dr. Arosemena also opined that Plaintiff's chronic pain  
19 would increase if he used his left arm for strenuous or even moderate  
20 activities. (AR at 138). In a Physical Capacities Evaluation form, Dr.  
21 Arosemena reported that Plaintiff could sit for two hours, stand for one  
22 hour, walk for one hour, bend and squat occasionally, use his left  
23 hand/arm to lift and carry 10 pounds frequently and 20 pounds  
24 occasionally, and reach above shoulder level with his left arm  
25 occasionally. (AR at 139-40).

26 The opinion of a treating physician is entitled to greater weight  
27 than that of a non-treating physician because the treating physician is  
28 employed to cure and has a greater opportunity to know and observe the

1 patient as an individual. *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th Cir.  
2 1996); *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989); *Sprague*  
3 *v. Bowen*, 812 F.2d 1226, 1230 (9th Cir. 1987). Where the treating  
4 physician's medical opinion is uncontroverted, the ALJ must make  
5 specific findings stating "clear and convincing" reasons for rejecting  
6 it. *Lester*, 81 F.3d at 830; *Regennitter v. Commissioner of Social*  
7 *Security Admin.*, 166 F.3d 1294, 1298-99 (9th Cir. 1999). Similarly, the  
8 ALJ cannot reject a treating physician's ultimate conclusions on  
9 disability without clear and convincing reasons. *Lester*, 81 F.3d at 830.  
10 This is because "[t]he treating physician's continuing relationship with  
11 the claimant makes him especially qualified to evaluate reports from  
12 examining doctors, to integrate the medical information they provide,  
13 and to form an overall conclusion as to the [claimant's] functional  
14 capacities and limitations ...." *Id.* at 833.

15 ALJ Zirlin found that Dr. Arosemena's records did not establish a  
16 material change in Plaintiff's condition between the prior denial of  
17 benefits and the expiration of his insured status. (AR at 20). ALJ  
18 Zirlin's conclusion is consistent with and supported by the record. With  
19 respect to the two-month period at issue in this case (July 20, 2003  
20 through September 30, 2003), Dr. Arosemena did not report any objective  
21 findings concerning Plaintiff's RSD. (AR at 20, 152-55); *Thomas v.*  
22 *Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002) (finding that the  
23 Commissioner appropriately discounted physician's opinion because it was  
24 not adequately supported by clinical records or treatment records).  
25 Instead, Dr. Arosemena's reports appear to be based largely on Plaintiff  
26 subjective complaints sometime after Plaintiff's insured status expired.  
27 (AR at 20, 152-55). As discussed more fully below, ALJ Zirlin properly  
28 discredited Plaintiff's subjective symptom testimony. *Morgan v.*

1 *Commissioner of Social Security*, 169 F.3d 595, 602 (9th Cir. 1999) ("A  
2 physician's opinion of disability 'premised to a large extent upon the  
3 claimant's own accounts of his symptoms and limitations' may be  
4 disregarded where those complaints have been 'properly discounted'")  
5 (quoting *Fair v. Bowen*, 885 F.2d 597, 605 (9th Cir. 1989)).

6 ALJ Zirlin also provided clear and convincing reasons for rejecting  
7 Dr. Arosemena's assessment of Plaintiff's residual functional capacity.  
8 (AR at 20, 23). ALJ Zirlin pointed out that Dr. Arosemena's opinion was  
9 inconsistent with Plaintiff's established abilities. (AR at 23). For  
10 example, in June 2004, Dr Arosemena noted that Plaintiff had asked him  
11 to complete paperwork for his disability claim. (AR at 143). In response  
12 to Plaintiff's request, Dr. Arosemena filled out a physical capacities  
13 assessment and wrote a letter indicating that Plaintiff's use of his  
14 left arm for even moderate activities would aggravate his chronic RSD  
15 pain on his right side. (AR at 138). However, in other records, Dr.  
16 Arosemena specifically noted that Plaintiff used his left hand for  
17 almost everything. (AR at 22, 154, 203). This apparent inconsistency was  
18 a proper basis for discounting Dr. Arosemena's opinion. See *Saelee v.*  
19 *Chater*, 94 F.3d 520, 522 (9th Cir. 1996) (the ALJ could disregard an  
20 examining physician's opinion because "it was obtained solely for the  
21 purposes of the administrative hearing, varied from [the physician's]  
22 own treatment notes, and was worded ambiguously in an apparent attempt  
23 to assist [the claimant] in obtaining social security benefits").

24 Plaintiff himself even admitted that he was able to shop, drive,  
25 maintain his home, care for his dog, cook, do laundry, load the  
26 dishwasher, vacuum, and take care of his personal needs without use of  
27 his right arm. (AR at 22, 113, 116-18). When a claimant's testimony  
28 about daily activities is inconsistent with a condition that would

1 preclude all work activity, the ALJ may reject a physician's opinion to  
2 the contrary. See, e.g., *Morgan*, 169 F.3d at 602-03; *Curry*, 925 F.2d at  
3 1130. Finally, Dr. Arosemena's assessment of Plaintiff's functional  
4 limitations was not relevant to the period at issue in this case, as it  
5 was prepared in June 2004, long after Plaintiff's insured status  
6 expired. (AR at 23). See *Flaten v. Sec'y of Health & Human Servs.*, 44  
7 F.3d 1453, 1461 & n.4 (9th Cir. 1995) (observing that a "long line of  
8 cases" has established that a claimant must establish disability as of  
9 the date last insured, and that "any deterioration in her condition  
10 subsequent to that time is, of course, irrelevant'" (quoting *Waters v.*  
11 *Gardner*, 452 F.2d 855 (9th Cir. 1971))). Thus, it was appropriate for  
12 ALJ Zirlin to disregard Dr. Arosemena's functional capacity assessment.

13 Plaintiff also contends that ALJ Zirlin failed to properly consider  
14 a medical record from Dr. Arosemena dated June 5, 2003. (Joint  
15 Stipulation at 15, 21-22, 202-03). However, that record pertained to the  
16 previously adjudicated period. Therefore, ALJ Zirlin was not required to  
17 discuss it in the decision. See *Vincent v. Heckler*, 739 F.2d 1393,  
18 1394-95 (9th Cir. 1984) (explaining that ALJ need only explain why  
19 significant, probative evidence was rejected).

## 20 **2. Plaintiff's Subjective Pain Testimony**

21 Plaintiff next contends that the ALJ Zirlin failed to properly  
22 consider Plaintiff's testimony regarding his impairments. (Joint  
23 Stipulation at 16).

24 The determination of credibility and the resolution of conflicts in  
25 the testimony are functions of the ALJ acting on behalf of the  
26 Commissioner. *Morgan*, 169 F.3d at 599; *Saelee*, 94 F.3d at 522). In  
27 general, an ALJ's assessment of credibility should be given great  
28 weight. *Nyman v. Heckler*, 779 F.2d 528, 531 (9th Cir. 1985). The ALJ may

1 employ ordinary techniques of credibility evaluation and may take into  
2 account prior inconsistent statements or a lack of candor by the  
3 witness. *Fair*, 885 F.2d at 604 n.5. However, once a claimant has  
4 presented medical evidence of an underlying impairment, the ALJ may not  
5 discredit the claimant's testimony regarding subjective pain and other  
6 symptoms merely because the symptoms, as opposed to the impairments, are  
7 unsupported by objective medical evidence. *Lingenfelter v. Astrue*, 504  
8 F.3d 1028, 1035-36 (9th Cir. 2007); *Reddick v. Chater*, 157 F.3d 715, 722  
9 (9th Cir. 1998); *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir.  
10 1997). "[T]he ALJ can reject the claimant's testimony about the  
11 severity of her symptoms only by offering specific, clear and convincing  
12 reasons for doing so." *Lingenfelter*, 504 F.3d at 1036 (quoting *Smolen*,  
13 80 F.3d at 1281.

14 In this case, Plaintiff reported that his condition deteriorated  
15 since his last hearing. (AR at 50). He also testified that he suffers  
16 from depression and that his medications cause him to be constipated.  
17 (AR at 50).

18 ALJ Zirlin found that Plaintiff's medically determinable  
19 impairments could have reasonably been expected to produce Plaintiff's  
20 symptoms, but that the intensity, persistence and limiting effects of  
21 those symptoms were not entirely credible for the period from July 20,  
22 2003, through September 30, 2003. (AR at 25). As ALJ Zirlin made no  
23 finding that Plaintiff was malingering, she was required to justify her  
24 adverse credibility determination with clear and convincing reasons.  
25 *Benton v. Barnhart*, 331 F.3d 1030, 1040 (9th Cir. 2003).

26 In evaluating Plaintiff's alleged symptoms and limitations, ALJ  
27 Zirlin found that Plaintiff received conservative treatment which  
28 consisted of only medication management. (AR at 25); see *Fair*, 885 F.2d

1 at 604 (an ALJ may rely on a claimant's conservative treatment regimen  
2 to reject a claimant's testimony of disabling limitations or disabling  
3 pain); see also *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995)  
4 (that the claimant received only conservative treatment for back injury  
5 is a clear and convincing reason for disregarding testimony that the  
6 claimant is disabled). During the period at issue, Plaintiff took only  
7 one Percocet (analgesic) per day for pain. (AR at 25, 154). More  
8 aggressive treatment, including surgery, was not prescribed by  
9 Plaintiff's doctors. (AR at 25). And, while Dr. Arosemena instructed  
10 Plaintiff to exercise, the record does not show that Plaintiff made any  
11 effort to comply with this recommendation. (AR at 25); see *Fair*, 885  
12 F.2d at 603 (holding that non-compliance with prescribed treatment is  
13 proper evidence relating to the credibility of the patient).  
14 Furthermore, in finding Plaintiff not entirely credible, ALJ Zirlin  
15 observed inconsistencies in Plaintiff's testimony regarding his  
16 discussions with his doctor concerning nerve blocks. (AR at 25, 43, 47);  
17 see *Smolen*, 80 F.3d at 1283-84 (an ALJ may consider inconsistent  
18 statements made by a claimant in evaluating credibility).

19 ALJ Zirlin properly employed ordinary techniques of credibility  
20 determination to conclude that Plaintiff's subjective complaints were  
21 not entirely credible. See *Fair*, 885 F.2d at 604 n.5; see also 20 C.F.R.  
22 §§ 404.1529(c), 416.929(c); SSR 96-7p. As such, remand or reversal is  
23 not warranted on this issue.

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1 **IV. Conclusion**

2 For the reasons stated above, the final decision of the  
3 Commissioner of Social Security is **AFFIRMED**.

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5 DATED: August 20, 2009

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Marc L. Goldman  
United States Magistrate Judge

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