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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

PHILLIP JOHNSON,)	No. CV 10-04815-VBK
)	
Plaintiff,)	MEMORANDUM OPINION
)	AND ORDER
v.)	
)	(Social Security Case)
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

Plaintiff raises the following issues:

1. Whether the Administrative Law Judge ("ALJ") properly

1 considered the medical evidence as contained in the
2 examining opinion of Homayoun Saeid, M.D.; and

3 2. Whether the ALJ properly considered Plaintiff's testimony.
4

5 This Memorandum Opinion will constitute the Court's findings of
6 fact and conclusions of law. After reviewing the matter, the Court
7 concludes that the decision of the Commissioner must be affirmed.
8

9 I

10 THE ALJ DID NOT ERR IN EVALUATING THE OPINION

11 OF EXAMINING PHYSICIAN DR. SAEID

12 On March 7, 2008, at the request of the Department of Social
13 Services, Plaintiff received a complete internal medicine evaluation
14 from Dr. Saeid. (AR 322-336.) In addition to performing a complete
15 physical examination and taking a history, Dr. Saeid completed a
16 "check-off" form provided by the Social Security Administration
17 entitled "Medical Sourced Statement of Ability to Do Work Related
18 Activities (Physical)." In that form, Dr. Saeid checked off "yes" in
19 answer to the question, "Does the individual require the use of a cane
20 to ambulate?" (AR 331.) Nevertheless, in assessing Plaintiff's
21 residual functional capacity ("RFC"), the ALJ did not restrict
22 Plaintiff to ambulation with the use of an assistive device, such as
23 a cane. (AR 23.) Plaintiff claims this is error. (JS at 6.)

24 The Court's review of all of the medical evidence in the AR
25 reveals that no physician ever opined that Plaintiff required the use
26 of an assistive device to ambulate. The only exception is in the
27 check-off form completed by Dr. Saeid. Looking further, the Court
28 notes that in Dr. Saeid's report (AR 322-326), there is no mention of

1 the need for such a device. Indeed, the physical findings do not
2 support such a conclusion. Dr. Saeid found that Plaintiff had a
3 normal gait, good motor tone with good active motion, strength is 5/5
4 in all extremities; normal reflex reaction in the biceps and knee
5 jerks, and that Plaintiff is able to stand on his heels and toes and
6 perform gait. Indeed, Dr. Saeid assessed that Plaintiff is capable of
7 lifting and carrying 50 pounds occasionally and 25 pounds frequently,
8 and can stand and walk six hours in an eight-hour day, and sit for six
9 hours in an eight-hour day. (AR 326.)

10 The question arises, then, whether Dr. Saeid's checking of "yes"
11 in answer to the question as to whether Plaintiff requires a cane to
12 ambulate, is a typographical or inadvertent error. The evidence
13 overwhelmingly supports an affirmative answer to that question.
14 First, as noted, Dr. Saeid's written report nowhere mentions that
15 Plaintiff requires an assistive device to ambulate, and in fact, Dr.
16 Saeid reported completely normal findings regarding Plaintiff's
17 ability to ambulate. Further, Plaintiff never complained to Dr. Saeid
18 that he had any problem walking, and there is no indication that he
19 utilized a cane or other device during the examination. Further, the
20 check-off form itself requires further answers if the first answer is
21 yes. Dr. Saeid provided no further answers to such questions as, how
22 far can the individual ambulate without the use of cane, is the use of
23 a cane medically necessary, and, without a cane, can the individual
24 use his or her free hand to carry small objects. In addition, the
25 form provides a space for the examiner to notate the particular
26 medical or clinical findings and symptoms which support the
27 assessment, and why the findings support the assessment. Again, this
28 was left blank. (See AR at 331.)

1 The Court also notes that Dr. Saeid made another error in the
2 check-off form, which would support an inference that he paid little
3 attention to it, and that the reference to the need for use of a cane
4 is an inadvertent error. That is, when assessing Plaintiff's ability
5 to lift and carry, he checked off "occasionally" next to the section
6 which contains limitations to 21 to 50 pounds. This is consistent
7 with his diagnostic report; however, the next section indicates that
8 Plaintiff is only capable of frequently carrying 11 to 20 pounds. (AR
9 330.) This is inconsistent with Dr. Saeid's diagnostic report, in
10 which he indicates that Plaintiff can lift and carry 25 pounds
11 frequently.

12 In addition to the inconsistencies between the check-off form and
13 Dr. Saeid's own examination, no such medical assessment was made in
14 another examination by a different physician, Dr. Klein, who performed
15 a comprehensive internal medicine evaluation on April 26, 2006, at the
16 request of the Department of Social Services. (AR 154-159.) In this
17 report, Dr. Klein made detailed observations about Plaintiff's gait,
18 which are worth repeating:

19 "[Plaintiff] is able to change position and get on and off
20 examining table without difficulty. Gait is normal; it is
21 not unsteady or unpredictable. Heel to toe walking
22 unaffected. Squatting and rising within normal limits. No
23 assistive aid is required for ambulation across the room."

24 (Emphasis added.)

25 (AR at 158.)

26
27 Dr. Klein's conclusions are consistent with his examination, in
28 which he found normal range of motion in Plaintiff's lower

1 extremities. (AR 157-158.)

2 Despite Plaintiff's complaints about the ALJ's failure to
3 incorporate Dr. Saeid's purported finding that he required use of a
4 cane, the fact is that the ALJ adopted the more restrictive functional
5 conclusions reported by Dr. Klein two years earlier in assessing
6 Plaintiff's RFC.

7 Finally, at the hearing before the ALJ in this matter (AR 466-
8 486), Plaintiff was directly asked to describe his medical problems
9 insofar as they prevented him from working. He indicated that he
10 could go shopping from time to time, that he could walk up and down
11 the aisles and pick out the items he needed, and put them in a basket,
12 and then take them to the counter and pay for them. (AR 478.) Nowhere
13 in this testimony, or anywhere else in the record, is there any
14 indication whatsoever that Plaintiff had problems ambulating, much
15 less that he required the use of an assistive device. Thus, the Court
16 can find no error whatsoever with regard to the ALJ's assessment of
17 Dr. Saeid's opinion. Indeed, Plaintiff's first issue borders on being
18 frivolous.

19
20 **II**

21 **THE ALJ'S CREDIBILITY ASSESSMENT IS SUPPORTED**

22 **BY SPECIFIC AND LEGITIMATE REASONS IN THE RECORD**

23 In his second issue, Plaintiff asserts that the ALJ failed to
24 articulate "legally sufficient reasons" to reject his testimony as to
25 subjective pain. Plaintiff cites the well recognized two-step
26 analysis (see Social Security Ruling ["SSR"] 96-7p), by which it must
27 be determined whether there is an underlying medically determinable
28 physical or mental impairment that could reasonably be expected to

1 produce the complained of pain or other symptoms, and if so, it is the
2 Commissioner's responsibility to investigate and evaluate the
3 intensity, persistence and limiting effects of these symptoms to
4 determine the extent to which they limit the individual's ability to
5 do work activities. (See Bunnell v. Sullivan, 947 F.2d 341, 345 (9th
6 Cir. 1991)(en banc).) Plaintiff asserts that the ALJ failed to
7 conduct this analysis properly, and in fact, claims that the ALJ's
8 decision is "void of any sufficient rationale at all ..." (JS at 16.)
9 Plaintiff's claims are not borne out by the record.

10 The ALJ is charged with utilizing ordinary techniques of
11 credibility evaluation. The regulations spell out many of the factors
12 which should be evaluated in this process. (See 20 C.F.R. §§404.1529,
13 416.929; SSR 96-7p.)

14 Plaintiff's complaints were of poor endurance, a disabling
15 fatigue, cramping in his whole body, back pain, and arthralgias (joint
16 pains). (AR 23, 80, 99, 107.)

17 As to Plaintiff's complaints of poor endurance, the ALJ quite
18 properly remarked that Plaintiff's "chronic alcoholism and daily
19 marijuana use could reasonably be expected to reduce one's stamina."
20 (AR 24.) This observation is well-supported by the record.
21 Plaintiff's statements at various times about his use of alcohol and
22 marijuana are inconsistent. For example, he reported to Dr. Klein on
23 April 26, 2006 that he continues to drink approximately two beers per
24 day. (AR 154.) At about the same time, he admitted that he drank
25 heavily for 20 years, and although he stopped using cocaine, he smoked
26 marijuana daily. (AR 175.) In a previous progress note from the year
27 2005, Plaintiff admitted that he is still drinking. (AR 178.) His
28 treating doctor observed in 2004 that Plaintiff most likely had

1 continued drug and alcohol abuse. (AR 188.) The ALJ also noted that
2 Plaintiff had been advised to stop consuming alcohol, as it
3 contributes to a condition called thrombocytopenia, which could be a
4 factor in causing his fatigue. (AR 24.) Further, the ALJ observed
5 (and Plaintiff has not disputed the accuracy of these observations),
6 that Plaintiff "maintained various dates of sobriety, none
7 consistent." (Id.)

8 As a second reason, although Plaintiff complained of back pain,
9 the ALJ observed that Plaintiff has never been diagnosed with or
10 treated for any such condition. (AR 24.) Again, Plaintiff does not
11 dispute the accuracy of this observation, or the fact that it is
12 relevant in the credibility analysis. Indeed, as the Court has
13 observed in discussing Plaintiff's first claim, both Doctors Saeid and
14 Klein found normal results with regard to Plaintiff's spinal range of
15 motion, negative straight leg raising tests, full power in all his
16 extremities, and normal sensation and reflexes.

17 The same observation is true as to Plaintiff's complaint of
18 arthralgias. The ALJ noted that Plaintiff's physical examinations
19 revealed that he had normal joints and no restrictions on range of
20 motion in his hands, wrists, elbows, shoulders, hips, knees and
21 ankles. There was no evidence that he had any tenderness, swelling,
22 erythema, or edema. (AR 24, 156-158, 324-326.)

23 Finally, the ALJ observed that Plaintiff made inconsistent
24 statements about his own level of daily activities. In contrast to
25 his subjective pain complaints, he admitted he could lift and carry up
26 to 25 or 30 pounds, that he shopped once a week, did household chores,
27 could drive for up to an hour at a time, and that he did other
28 household chores which would conflict with his subjective complaints.

