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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CRAIG WILLIAM AUBUCHON,)	No. CV 11-09619-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 rejected the treating physician's opinion;

2 2. Whether the ALJ properly articulated Plaintiff's residual
3 functional capacity; and

4 3. Whether the ALJ properly considered Plaintiff's testimony.
5 (JS at 4.)

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

10
11 I

12 **THE ALJ PROPERLY DISCOUNTED THE OPINION OF DR. PULIDO**

13 In his Decision (AR 20-25), the ALJ assessed Plaintiff with a
14 Residual Functional Capacity ("RFC") to perform the full range of
15 light work. (AR 23.) In making his determination, the ALJ evaluated
16 the medical evidence in the record, giving "little weight" to the
17 opinion of treating physician Dr. Pulido. (AR 24.) Plaintiff asserts
18 that this was error.

19 Although Plaintiff disputes any contention that Dr. Pulido is not
20 his treating physician, this does not appear to be a real issue in
21 this case, as the Commissioner does not contend to the contrary. What
22 is contested, rather, is the extent of treatment, and the type of
23 treatment that Dr. Pulido provided. Plaintiff claims that he has been
24 treated by Dr. Pulido for 12 years, and sees him at least every other
25 month. (AR 55-56.) That would be approximately 70 visits; however,
26 the record does not contain documentation reflecting such a frequency
27 of treatment. Thus, while Dr. Pulido, in the hierarchy of medical
28 sources, must be considered a treating physician, the absence of a

1 longitudinal treatment record is relevant because the records which
2 are included in the file (AR 221-223; 281-295) are essentially
3 conclusory, "check the box" forms, which do not reflect any underlying
4 objective testing, laboratory results, or the like. As such, they are
5 entitled to less credibility than if they had such support. See
6 Social Security Ruling ("SSR") 96-2p; Crane v. Shalala, 76 F.3d 251,
7 253 (9th Cir. 1996), citing Murray v. Heckler, 722 F.2d 499, 501 (9th
8 Cir. 1983). See also Magallanes v. Bowen, 881 F.2d 749, 751 (9th Cir.
9 1989).

10 Moreover, the ALJ relied upon opinions of consultative examiners
11 ("CE") whose opinions were rendered after doing objective testing
12 (see, e.g., internal medicine evaluation of Dr. Sicarz at AR 224-228,
13 referenced in ALJ Decision). The testing performed during this 2009
14 examination indicated that Plaintiff at most had muscle spasm in his
15 back (AR 227), a normal gait, and the straight leg raising test was
16 negative. (AR 226-227.)

17 Moreover, the ALJ was entitled to and did rely upon the opinion
18 of the medical expert ("ME") who had reviewed all of the medical
19 records. (AR 24, 306, 309-314.) All of these opinions were contrary
20 to the functional assessment rendered by Dr. Pulido. It is the ALJ's
21 task to evaluate competing opinions and the evidence upon which they
22 are based, and that is exactly what occurred in this case. The Court
23 finds no reason to disturb the ALJ's conclusions, and thus, rejects
24 Plaintiff's first issue.

25 26 II

27 THE ALJ PROPERLY DETERMINED PLAINTIFF'S RESIDUAL FUNCTIONAL CAPACITY

28 Plaintiff argues in his second issue that although the ALJ found

1 that his severe impairments include urinary incontinence (AR 22), any
2 limitations on Plaintiff's RFC due to this impairment were not
3 factored into the ALJ's RFC, which allowed that he could perform the
4 full range of light work. (AR 23.)

5 There is no direct correlation in Social Security law between the
6 existence of a severe impairment at Step Two of the sequential
7 evaluation process, and the inclusion of functional limitations based
8 on all severe impairments at Step Four. In this case, Plaintiff
9 simply did not meet his burden of establishing that there were any
10 functional effects from his incontinence, vis-a-vis his ability to do
11 work. Even his treating physician, Dr. Pulido, did not assess any
12 specific limitations due to incontinence. Moreover, evidence in the
13 record indicates that Plaintiff did continue to perform part-time or
14 sporadic work in the construction industry after his 2003 accident.
15 (AR 55-56, 62, 127-129, 130-137, 238.)

16 For the foregoing reasons, the Court does not find merit in
17 Plaintiff's second issue.

18
19 **III**

20 **THE ALJ PROPERLY ASSESSED PLAINTIFF'S TESTIMONY**

21 In his Decision, the ALJ acknowledged Plaintiff's allegation that
22 he is unable to perform any work because of severe pain and
23 incontinence. (AR 23.) The ALJ provided limited credibility to these
24 claims. The issue for the Court is whether the ALJ's decision
25 demonstrates an articulation of legally sufficient reasons to reject
26 Plaintiff's testimony. See Andrews v. Shalala, 53 F.3d 1035, 1043 (9th
27 Cir. 1995); Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir. 1996).

28 Plaintiff cites Dr. Pulido's statement that his continuation of

1 work activities after his 2003 accident reflected a valiant but
2 ultimately unsuccessful attempt to continue employment. But the fact
3 is that Plaintiff did continue to work, although in an admittedly
4 sporadic fashion, at a very demanding physical occupation, after his
5 accident. Despite that, the ALJ, at Step Four of the sequential
6 evaluation process, did not find that Plaintiff was able to perform
7 the demands of his prior employment, but instead, reduced his RFC to
8 an ability to perform light work.

9 As a proper credibility assessment factor, the ALJ also noted
10 that despite Plaintiff's complaints of extreme disabling pain, he did
11 not receive significant treatment, including the fact that his
12 treating physician of 11 years never referred him to a back
13 specialist, and there are no apparent records such as x-rays or MRIs
14 for that entire period of time, although Plaintiff was able to pursue
15 treatment. This lack of objective evidence in the face of allegedly
16 disabling pain is a proper credibility factor. See Rollins v.
17 Massanari, 261 F.3d 853, 857 (9th Cir. 2001). Plaintiff makes the
18 claim that he could not afford additional treatment, and should not be
19 faulted for not seeking or obtaining more comprehensive treatment for
20 his severe pain, but this does not appear to be a very credible
21 assertion in view of the fact that Plaintiff did have a treating
22 doctor for what he claims is a continuous period of 11 years, but
23 simply never got referred out for additional treatment.

24 In addition to the foregoing, the ALJ did consider some
25 contradictions between Plaintiff's subjective claims and the objective
26 medical evidence as a credibility factor. Of course, this cannot be
27 the sole factor, but the clinical findings, which the Court has
28 already referenced in this decision, are not consistent with a level

