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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

GEORGE E. LAMBERSON,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security
Administration,

Defendant.

) CV 11-10106-SH

) MEMORANDUM DECISION

This Matter is before the Court for review of the decision by the Commissioner of Social Security denying the plaintiff's application for Social Security Disability Insurance benefits. Pursuant to 28 U.S.C. § 636(c), the parties have consented that the case may be handled by the undersigned. 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 plaintiff and

1 defendant have filed their pleadings (Plaintiff’s Brief in Support of Complaint
2 [“Plaintiff’s Brief”]; Defendant’s Memorandum of Points and Authorities in
3 Opposition to Plaintiff’s Complaint [“Defendant’s Brief”]), and the defendant has
4 filed the Certified Administrative Record [AR]. After reviewing the matter, the
5 Court concludes that the decision of the Commissioner should be affirmed.

6 **I. PROCEEDINGS**

7 On June 22, 2006, George Lamberson (Plaintiff) filed an application for
8 Disability Insurance Benefits (DIB) under Title II of the Social Security Act.
9 (AR 62-64, 247). In Plaintiff’s application, he alleged that he had been disabled
10 since March 1, 2004. (AR 62, 247). Upon reviewing Plaintiff’s application, the
11 Social Security Administration (SSA) determined that Plaintiff did not qualify
12 for DIB. (AR 48, 247). After reconsideration, the SSA again denied Plaintiff’s
13 application, on April 17, 2007. (AR 41, 247). Plaintiff then filed a request on
14 June 11, 2007 for a hearing by an Administrative Law Judge (ALJ) (AR 40,
15 247). The hearing was held on November 28, 2007. (AR 247, 255). At the
16 hearing, Plaintiff and a vocational expert appeared before the ALJ. (AR 247).

17
18 On December 20, 2007, the ALJ issued a decision affirming the SSA’s
19 denial of DIB. (AR 244). With regard to Plaintiff’s subjective statements about
20 his symptoms, the ALJ discussed numerous daily activities that Plaintiff testified
21 he was capable of completing, which were inconsistent with a finding of total
22 disability. (AR 252). With regard to Plaintiff’s subjective statements about his
23 pain, the ALJ highlighted his failure to seek out physical therapy or chiropractic
24 treatment, and concluded that Plaintiff’s testimony was not credible. *Id.*

25 The Appeals Council remanded the matter to the ALJ on November 28,
26 2008 with instructions to reevaluate medical evidence from James K. Styner,
27 M.D. (AR 275). Additionally, the Appeals Council ordered the ALJ to consider
28 Plaintiff’s newly submitted testimony from orthopedist Jeffrey A. Kantor, M.D.

1 (AR 275-76). Notably, the Appeals Council did not order that the ALJ revisit his
2 credibility findings regarding the Plaintiff's subjective statements about his
3 symptoms and level of pain. (AR 275-76).

4 After Dr. Styner reexamined Plaintiff for a second time in March 2009, the
5 ALJ held a hearing on April 1, 2009. (AR 678). On July 20, 2009, the ALJ
6 again denied Plaintiff DIB benefits. (AR 16).

7 The Appeals Council denied Plaintiff's request for a review of the July 20,
8 2009 decision, rendering the ALJ's July 20, 2009 opinion the final decision of
9 the Commissioner. (AR 8.)

10 Plaintiff has filed this civil action for review of the ALJ's decision on two
11 grounds: 1) The ALJ improperly rejected the medical evidence from Dr. James
12 Styner; 2) The ALJ failed to provide legally sufficient reasons to reject Plaintiff's
13 testimony about his subjective pain and symptoms. (Plaintiff's Brief at 4, 8).

14 **II. STANDARD OF REVIEW**

15 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's decision to
16 determine if: (1) the Commissioner's findings are supported by substantial
17 evidence; and (2) the Commissioner used proper legal standards. *Delorme v.*
18 *Sullivan*, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means "more
19 than a mere scintilla," *Richardson v. Perales*, 402 U.S. 389, 401, 91 S. Ct. 1420,
20 1427 (1971), but "less than a preponderance." *Desrosiers v. Sec'y of Health &*
21 *Human Servs.*, 846 F.2d 573, 576 (9th Cir. 1988). This court cannot disturb the
22 Commissioner's findings if those findings are supported by substantial evidence,
23 even though other evidence may exist which supports plaintiff's claim. *See*
24 *Torske v. Richardson*, 484 F.2d 59, 60 (9th Cir. 1973), *cert. denied*, *Torske v.*
25 *Weinberger*, 417 U.S. 933, 94 S. Ct. 2646 (1974); *Harvey v. Richardson*, 451
26 F.2d 589, 590 (9th Cir. 1971). When represented by counsel, claimants must
27 raise all issues and evidence at their administrative hearings to preserve them on
28 appeal. *Meanel v. Apfel*, 172 F.3d 1111 (9th Cir. 1999).

1 It is the duty of this court to review the record as a whole and to consider
2 adverse as well as supporting evidence. *Green v. Heckler*, 803 F.2d 528, 529-30
3 (9th Cir. 1986). The court is required to uphold the decision of the
4 Commissioner where evidence is susceptible of more than one rational
5 interpretation. *Gallant v. Heckler*, 753 F.2d 1450, 1453 (9th Cir. 1984). The
6 court has the authority to affirm, modify, or reverse the Commissioner’s decision
7 “with or without remanding the cause for rehearing.” 42 U.S.C. § 405(g).

8 **III. DISCUSSION**

9 A person is “disabled” for purposes of receiving benefits if the person is
10 “unable to engage in any substantial gainful activity by reason of any medically
11 determinable physical or mental impairment which can be expected to last for a
12 continuous period of not more than 12 months.” 42 U.S.C. § 423(d)(1)(A)
13 (1988). The plaintiff has the burden of establishing a prima facie case of
14 disability. *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992) (citing
15 *Gallant v. Heckler*, 753 F.2d at 1452).

16 The Commissioner has established a five-step sequential evaluation for
17 determining whether a person is disabled. At issue here is the Commissioner’s
18 finding at Step Five, which takes place after the Commissioner finds that the
19 claimant cannot perform past relevant work. At Step Five, the burden shifts to
20 the Commissioner to show that the person is able to perform other kinds of work.
21 The person is entitled to disability benefits only if he is unable to perform other
22 work. 20 C.F.R § 416.920; *Bowen v. Yuckert*, 482 U.S. 137, 140-42, 107 S. Ct.
23 2287, 2290-91 (1987).

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28 **1. The ALJ Correctly Identified Dr. Styner As A Nontreating Physician**

1 **And Assigned Dr. Styner’s Conclusions Proper Weight In Light Of**
2 **Medical Evidence Inconsistent With His Opinions.**

3 A “treating physician,” maintains an ongoing treatment relationship with his
4 or her patient. 20 C.F.R. § 404.1502. A “nontreating source” is an acceptable
5 medical practitioner who has examined a person for purposes of determining his
6 or her disability benefits. *Id.* For purposes of assessing disability benefits, a
7 treating physician’s opinion is entitled to greater weight than that of an
8 examining physician. *Magallenes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989),
9 citing *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9th Cir. 1987). Courts take this
10 position because treating physicians are hired to cure, and have a better
11 opportunity to know and observe the claimant as an individual. *Id.*; *Connett v.*
12 *Barnhard*, 340 F.3d 871, 874 (9th Cir. 2003); *Thomas v. Barnhart*, 278 F.3d 947,
13 956-57 (9th Cir. 2002).

14 An ALJ cannot “reach a conclusion first, and then attempt to justify it by
15 ignoring competent evidence in the record that suggests the opposite result.”
16 *Gallant v. Heckler*, 753 F.2d 1450, 1455-56 (9th Cir. 1984). *See also Ryan v.*
17 *Comm’r of Soc. Sec.*, 528 F.3d 1194, (9th Cir. 2008) (“[A] court must consider
18 the entire record as a whole and may not affirm simply by isolating a ‘specific
19 quantum of supporting evidence.’”) (quoting *Robbins v. Soc. Sec. Admin.*, 466
20 F.3d 880, 882 (9th Cir. 2006)); *Reddick v. Chater*, 157 F.3d 715, 722-23 (9th
21 Cir. 1988) (impermissible for ALJ to develop evidentiary basis by “not fully
22 accounting for the context of materials or all parts of the testimony and reports”).

23 The ALJ correctly identified Dr. Styner as a nontreating source, (AR 24), and
24 appropriately dismissed several of his contentions as overly speculative.
25 Plaintiff’s medical records demonstrate that Dr. Valentino and doctors of the
26 High Desert Medical Group served as Plaintiff’s treating physicians. (*See* AR
27 121-96, 219-43, 292-312, 342-667). Dr. Valentino maintained an ongoing
28 treating relationship with Plaintiff from 2007 to 2009, assessing Plaintiff’s

1 medical condition, identifying proper treatment, providing medication refills, and
2 referring Plaintiff to other doctors when necessary. (*See* AR 292-312, 342-667).

3 In contrast to Dr. Valentino, the Record contains evidence of only two
4 consultations between Plaintiff and Dr. Styner. (AR 196-216, 318-41). On both
5 occasions, Dr. Styner noted that he was seeing Plaintiff for the purposes of a
6 Social Security Disability evaluation, an action which squarely qualifies Dr.
7 Styner as a nontreating source under 20 C.F.R. § 404.1502. (AR 318, 319).
8 Therefore, the ALJ properly classified Dr. Styner, (AR 24), and assigned greater
9 weight to the opinions of Dr. Valentino.

10 The treating physician's observations should be given great weight because
11 they are corroborated by other medical evidence suggesting Plaintiff is not
12 disabled. In 2007, Plaintiff's examining neurologist Dr. Austin Colohan found
13 no focal or sensory abnormalities in Plaintiff's upper and lower extremities. (AR
14 242). In 2008, examining orthopedist Dr. Jeffrey A. Kantor took X-rays and
15 performed a physical examination of Plaintiff. (AR 314-15). Although X-rays
16 showed evidence of tricompartmental degenerative joint disease, Dr. Kantor
17 noted that Plaintiff appeared "to be in no acute distress," with his sensations
18 intact, and that he was capable of walking on his toes and heels. (AR 315). Dr.
19 Valentino's 2009 examination of Plaintiff documented that Plaintiff's extremities
20 and neurological state also appeared normal. (AR 342, 349). Because Dr.
21 Colohan and Dr. Kantor's medical evidence supported Dr. Valentino's
22 assessments, the ALJ appropriately gave the treating physician's evidence great
23 weight.

24 Moreover, the ALJ identified a statement from Dr. Styner that plainly
25 suggests that Plaintiff is not disabled. Despite Dr. Styner's belief that Plaintiff
26 has been disabled since January 2006, (AR 206), Dr. Styner said in his March
27 2009 evaluation that Plaintiff would be "unable to work in the open labor market
28 at any level above light work." (Defendant's Brief at 4, AR 23, 327). Here, Dr.

1 Styner may have confused worker compensation disability regulations with
2 Social Security regulations. (Defendant’s Brief at 4, AR 23). Regardless,
3 Plaintiff is not disabled so long as he can still perform other work, albeit light
4 and sedentary. *Id.* Therefore, Dr. Styner’s statement weighs in favor of finding
5 Plaintiff not disabled.

6 Additionally, Dr. Styner made relatively mild findings about Plaintiff’s
7 medical condition which were confirmed by Dr. Kantor and Plaintiff’s other
8 physicians. For example, in 2007, Dr. Styner observed that Plaintiff had full
9 motor power in his upper and lower extremities, including normal sensation and
10 reflexes. (Defendant’s Brief at 3, AR 23, 201-03). In 2008, between Dr. Kantor
11 and a radiologist referred to Plaintiff by Dr. Valentino, Plaintiff’s hips, ankles,
12 joints, and soft tissues were found to be “unremarkable,” (AR 23, 24, 315, 360,
13 361). Plaintiff’s radiologist also concluded that Plaintiff’s knees showed only
14 “moderate” osteoarthritis. (AR 23, 294, 295). Although Dr. Kantor noted that
15 Plaintiff could benefit from bilateral knee replacement surgery, (AR 315), Dr.
16 Styner in 2009 encouraged Plaintiff to delay such a procedure, perhaps indicating
17 that Plaintiff’s condition was not debilitating. (AR 326-27). Further, Dr. Styner
18 noted that by 2009, Plaintiff’s range of motion in his knees had merely
19 “decreased.” (AR 23, 327). Overall, Dr. Styner’s medical observations do not
20 contribute evidence that Plaintiff is disabled.

21 Substantial evidence supports the ALJ’s analysis of Dr. Styner’s medical
22 evidence. Dr. Valentino and the High Desert Medical Group, not Dr. Styner,
23 served as Plaintiff’s treating physicians. Because Dr. Valentino’s findings are
24 consistent with other medical data in the record, the ALJ gave proper weight to
25 his observations which suggest that Plaintiff is not disabled. Viewing the record
26 as a whole, the ALJ identified statements and mild findings from Dr. Styner and
27 other physicians which also suggest that the Plaintiff is not disabled. Therefore,
28 substantial evidence supports the ALJ’s consideration of Dr. Styner’s testimony.

1 **2. The ALJ Provided Explicit And Cogent Reasons To Reject Plaintiff's**
2 **Subjective Testimony About Plaintiff's Pain And Symptoms.**

3 The Commissioner's assessment of the plaintiff's credibility should be
4 given great weight. *Nyman v. Heckler*, 779 F.2d 528, 531 (9th Cir. 1985).
5 Whenever an ALJ's evaluation of a claimant's testimony is a critical factor in a
6 decision to deny benefits, the ALJ must make explicit credibility findings.
7 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). To determine whether
8 the plaintiff's testimony regarding the severity of his symptoms is credible, the
9 ALJ may consider, among other things, the: (1) ordinary techniques of credibility
10 evaluation, such as the claimant's reputation for lying, prior inconsistent
11 statements concerning the symptoms, and other testimony by the claimant that
12 appears less than candid; (2) unexplained or inadequately explained failure to
13 seek treatment or to follow a proscribed course of treatment; and (3) the
14 claimant's daily activities. *Smolen v. Chater*, 80 F.3d 1273 (9th Cir. 1996). *See*
15 *also Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002) (listing factors
16 such as (1) a claimant's reputation for truthfulness; (2) inconsistencies either in
17 testimony or between claimant's testimony and claimant's conduct; (3)
18 claimant's daily activities; (4) claimant's work record; and (5) testimony from
19 physicians and third parties concerning the nature, severity, and effect of the
20 symptoms of which she complains). Unless there is affirmative evidence
21 showing that the claimant is malingering, the ALJ's reasons for rejecting the
22 claimant's testimony must be "clear and convincing." *Valentine v*
23 *Commissioner*, 574 F.3d 685, 693 (9th Cir. 2009). Although disability claimants
24 should not be penalized for trying to lead normal lives despite their limitations,
25 when the level of their activities are inconsistent with their claimed limitations,
26 those activities have bearing on the claimants' credibility. *Reddick v. Chater*,
27 157 F.3d 715, 722 (9th Cir. 1988). If the Commissioner chooses to disregard
28 plaintiff's testimony, the Commissioner must set forth specific cogent reasons

1 for disbelieving it. *Lewin v. Schweiker*, 654 F.2d 631, 635 (9th Cir. 1981).

2 The ALJ's comments regarding Plaintiff's behavior during the April 1,
3 2009 hearing do not form the sole basis for the ALJ's opinion that Plaintiff is not
4 credible. The ALJ made several observations about Plaintiff in his 2009
5 decision, including Plaintiff's use of a cane despite having no prescription for it,
6 and Plaintiff's unclear responses to the ALJ's questions about his age and
7 educational background. (AR 24). However the ALJ only "note[d]" these items
8 in his opinion. *Id.* The ALJ made additional findings about Plaintiff's
9 credibility in his 2007 decision, which he incorporated by reference in his 2009
10 decision.¹ (Defendant's Brief at 9, AR 22). Therefore, it is a reasonable
11 inference that the ALJ intended for his observations about Plaintiff's cane and
12 unclear responses to supplement his 2007 findings.

13 The Court accepts in part the ALJ's credibility findings from his 2007
14 decision. In the 2007 decision, the ALJ stated that a truly "disabled" person
15 could not perform the normal daily chores and activities that Plaintiff testified he
16 was conducting at home. These activities included "bathing, grooming,
17 household chores, shopping, and car-driving." (AR 252). Further, the ALJ
18 found that Plaintiff's treatment record, which included, "no history of physical
19 therapy, chiropractic treatment, epidural injection, referral to a pain management
20 specialist, or surgical intervention", and medication inconsistent with serious
21 pain, did not support Plaintiff's allegations of physical suffering. (AR 252).

22 The ALJ did not err in failing to document Plaintiff's work history.

24 ¹ The court agrees with Plaintiff that Defendant cannot substitute its own *post hoc*
25 analysis about the Plaintiff's credibility if the ALJ failed to explicitly lay out his conclusions.
26 (Plaintiff Brief at 14-15). However, here, the ALJ incorporated his 2007 decision which
27 contributed additional credibility findings.

1 Plaintiff argues that his exemplary work history is probative of his credibility
2 about his pain and symptoms. (Plaintiff's Brief at 12-13). Plaintiff further
3 contends the ALJ erred in failing to account for Plaintiff's good work history
4 because courts often make liberal use of bad work history for purposes of finding
5 a claimant not credible. (Plaintiff's Brief at 13, fn. 3). Even if Plaintiff's work
6 history is commendable, Plaintiff has not cited any case law that requires an ALJ
7 to elevate work history to a dispositive factor, or to discuss it in his ruling if it is
8 not necessary to do so. Here, the ALJ made explicit findings in recognition of
9 other credibility factors, such as Plaintiff's failure to seek appropriate treatment,
10 and Plaintiff's less than candid behavior at an administrative hearing. (AR 24).
11 Therefore, we do not find Plaintiff's argument regarding his work history
12 persuasive.

13 Where the Court pays great deference to the ALJ's credibility
14 determination, substantial evidence supports the ALJ's findings about Plaintiff's
15 subjective testimony. The ALJ's credibility findings consist of observations
16 from both his 2007 and 2009 decisions. Additionally, the Court does not
17 compel the ALJ to document Plaintiff's work history because the ALJ supported
18 his conclusion that Plaintiff is not credible by focusing on other acceptable
19 factors. From Plaintiff's treatment record, to his questionable use of a cane
20 during an administrative proceeding, to his unclear testimony about his education
21 and age, the Court finds that the ALJ supplied explicit and cogent reasons to
22 reject the Plaintiff's subjective testimony. Therefore, the Court finds that
23 substantial evidence supports the ALJ's decision regarding the Plaintiff's
24 credibility.

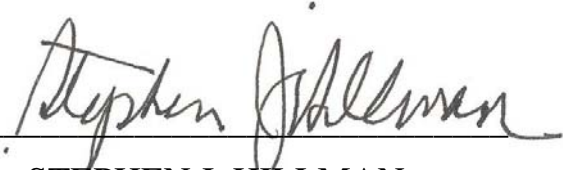
CONCLUSION

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26 In sum, we find the ALJ's decision neither lacks substantial evidence nor
27 contains legal error. Plaintiff's two contentions fail. The ALJ did not
28 improperly reject Dr. Styner's medical evidence. The ALJ also provided legally

1 sufficient reasons for finding Plaintiff's testimony about his pain and symptoms
2 not credible.

3 For the foregoing reasons, the decision of the Commissioner is affirmed, and
4 the Complaint is dismissed.

5 DATED: September 28, 2012



STEPHEN J. HILLMAN
UNITED STATES MAGISTRATE JUDGE

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