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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

NASARET ASESYAN,)	No. CV 12-03750-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 issue:

1. Whether the Administrative Law Judge's ("ALJ") failure to

1 impose any manipulative limitations is supported by
2 substantial evidence.

3 (JS at 3.)
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'S RESIDUAL FUNCTIONAL CAPACITY DETERMINATION**

11 **IS SUPPORTED BY SUBSTANTIAL EVIDENCE**

12 Plaintiff asserts that the ALJ erred by failing to impose any
13 manipulative limitations in determining his residual functional
14 capacity ("RFC"). For the reasons to be set forth, the Court
15 disagrees and affirms the Decision.

16 An administrative hearing was held before ALJ Hesse, at which
17 Plaintiff appeared and testified, and was represented by the same
18 attorney who is representing him in this litigation. Testimony was
19 also taken from a vocational expert ("VE"), and a medical expert
20 ("ME"). (AR 33-63.)

21 Following the hearing, an unfavorable Decision was issued. (AR
22 12-20.)

23 The ALJ followed the familiar five step procedure (see AR at 13-
24 14). As such, she determined that Plaintiff's severe impairments at
25 Step Two are diabetes mellitus with peripheral neuropathy, coronary
26 artery disease and disorder of the lumbar spine. (AR 14.) The ALJ
27 noted that Plaintiff has alleged numerous additional medical
28 conditions, but she determined that they do not rise to the level of

1 a severe impairment. These are summarized at AR 15, and include
2 Plaintiff's allegation that he is disabled due to numbness in his
3 fingers, which was first reported on the initial disability report of
4 June 4, 2008. (AR 15, 151.) The ALJ remarked upon this issue in the
5 following portion of her Decision:

6 "However, during his physical consultative examination on
7 July 28, 2008, [Plaintiff] did not complain of numbness in
8 his fingers and he exhibited a normal grip and finger
9 approximation with sensory examination revealing grossly
10 intact and equal bilaterally sensation. (Exhibit 9F/4)
11 Further, an upper extremity neuro-conduction study conducted
12 in December 2009 showed normal results specifically with the
13 sensory nerve study showing no evidence of axonal
14 degeneration. (Exhibit 15F/4) Again as with [Plaintiff's]
15 other above referenced alleged impairments, [Plaintiff] has
16 not sought specific treatment for the alleged numbness in
17 his fingers and as such the undersigned finds that this
18 condition is not severe based upon the conclusions assessed
19 in his 2008 physical consultative examination, the objective
20 medical evidence and the lack of any treatment history."

21 (AR 15-16.)
22

23 The RFC assessed by ALJ Hesse imposed no manipulative limitations
24 concerning Plaintiff's hands. (AR 17.)

25 Plaintiff asserts error, relying on a form called "Medical Source
26 Statement - Physical" completed by a physician's assistant at St. John
27 Medical Clinic, where Plaintiff received treatment and medication
28 refills on monthly visits between July 2009 and December 2009

1 (approximately six visits). (AR 19, 305-320.)

2 In evaluating the conclusions of the physician's assistant
3 (identified as Mr. Gougran), the ALJ noted the following:

4 "Further, the source statement was merely a standard form
5 that was filled out with little substantive medical
6 explanation. While a certified physician's assistant's
7 opinions are not an acceptable medical source, the
8 undersigned has considered Mr. Gougran's opinion and has
9 reflected his opinion in [Plaintiff's] residual functional
10 capacity determination. 20 CFR §§ 404.1513(a) and
11 416.913(a) There are no other treating source opinions in
12 the remainder of [Plaintiff's] medical records. [Plaintiff]
13 has participated in 4 separate consultative examinations
14 with 2 physical evaluations and 2 psychiatric. The
15 undersigned affords great weight to the opinions of Gabriel
16 T. Fabella, M.D., John Sedgh, M.D. and Dr. Yang as all of
17 their opinions are consistent with each other and the record
18 as a whole."

19 (AR 19.)

20
21 Plaintiff believes that the testimony of the ME at the hearing
22 supports his contention that he has neuropathy in his hands, which is
23 disabling, or, in the alternative, should form the basis for
24 manipulative limitations in his RFC. Plaintiff summarizes the
25 testimony of the ME, Dr. Nafosi, as indicating that if there were
26 clinical signs of neuropathy documented on physical examination, then,
27 coupled with nerve conduction studies, the doctor would agree with
28 manipulative limitations assessed by Mr. Gougran. (JS at 4, citing AR

1 57-59.) Plaintiff claims that clinical signs of neuropathy have in
2 fact been documented on physical examination as far back as 2006.
3 (Id.)

4 The Commissioner argues that there is no error in the Decision
5 because the record fails to document any functional limitations
6 related to hand neuropathy. (JS at 5, citing AR 145, 215-219, 223,
7 251, 308-310, 314, 318-320.)

8 At the administrative hearing, Plaintiff testified that his hands
9 and feet are "always numb." (AR 45.) His testimony was that this has
10 persisted for almost four years. (AR 46.) Plaintiff's attorney
11 elicited additional testimony about his asserted hand numbness. (AR
12 56-57.)

13 In contrast to Plaintiff's testimony about his subjective
14 symptoms, the ALJ noted that examining physicians Drs. Fabella and
15 Sedgh found no objective evidence of any impairment related to
16 Plaintiff's hands. (AR 45, 215-220, 249-253.) Indeed, during the
17 internal medicine consultative examination ("CE") performed on July
18 20, 2006 by Dr. Fabella (AR 215-220), Plaintiff made no complaint of
19 any numbness or manipulative difficulties in his hands. (AR 215.)
20 This is consistent throughout the record; e.g., Plaintiff failed to
21 make complaints of any numbness in his hands during examinations by
22 different doctors. (See citations to the record by the Commissioner at
23 JS 7, which document a lack of any complaints by Plaintiff of hand
24 numbness or manipulative difficulties.) During Dr. Fabella's CE,
25 Plaintiff's manipulative abilities were tested, and it was noted that
26 his hand joint flexion was grossly within normal limits bilaterally,
27 that he had normal muscle bulk and tone without any atrophy, and his
28 strength was 5/5 throughout without any focal motor deficits. (AR 218-

1 219.)

2 Plaintiff also received an internal medicine CE from Dr. Sedgh on
3 July 28, 2008 (AR 249-253), and again, while Plaintiff complained of
4 numbness in his feet, he made no complaint of hand impairments. (AR
5 249.) Dr. Sedgh's examination concluded that Plaintiff had a normal
6 grip and finger approximation. (AR 251.) Plaintiff had good tone and
7 good active motion, 5/5 strength in all of his extremities, and his
8 sensations were grossly intact and equal bilaterally. (AR 252.)

9 The evidence in the record indicates that the conclusions of the
10 physician's assistant, Mr. Gougran, were not supported either by any
11 other objective clinical findings in the record, or even by the
12 documentation from that facility.¹ It is not the ALJ's obligation to
13 accord controlling weight to a treating physician's opinion unless it
14 is well supported and not inconsistent with other evidence in the
15 record. See 20 C.F.R. § 404.1527(e)(2); Social Security Ruling
16 ("SSR") 96-2p. Moreover, Mr. Gougran's opinion as to Plaintiff's
17 asserted manipulative limitations in his hands and fingering is
18 identified by a one-word limitation ("occasionally"), but is not
19 supported by underlying objective medical evidence. Essentially, Mr.
20 Gougran completed a check-the-box form, which is frowned upon in the
21 absence of supporting objective evidence. See Batson v. Commissioner,
22 359 F.3d 1190, 1195 (9th Cir. 2004). There is not one record which
23 indicates that Plaintiff received treatment related to complaints of
24 hand numbness or any such symptoms. This renders Mr. Gougran's
25 opinion unsupportable by any findings in the record. See Rollins v.

26
27 ¹ Mr. Gougran is not an acceptable medical source under 20
28 C.F.R. § 404.1513; however, the ALJ, while noting this, provided a
thorough analysis of the reasons for her depreciation of Mr. Gougran's
opinion.

1 Massanari, 261 F.3d 853, 856 (9th Cir. 2001).

2 Plaintiff asserts that the Upper Extremity Neuroconduction
3 Studies Report demonstrates objective evidence of hand neuropathy.
4 (See JS at, citing AR 301-304.) An examination of these records,
5 however, does not substantiate Plaintiff's interpretation. For the
6 most part, the sensory nerve study was normal, as was the delayed
7 response study, and a motor nerve study yielded some mixed results
8 with normal findings and others showing some diminished or decreased
9 results. (AR 301.) This issue was covered by the testimony of the ME,
10 who indicated that there must be abnormal physical findings of
11 numbness demonstrated on physical examination in order to support a
12 conclusion of disability. (AR 61-62.) As such, Plaintiff's
13 interpretation of the ME's testimony is incorrect, as he eliminates
14 that part of the testimony which concluded that there must be clinical
15 signs of neuropathy documented on physical examination which, if
16 coupled with nerve conduction studies, might support manipulative
17 limitations in Plaintiff's hands. As the ME testified, the record did
18 not contain any such objective examination support. (AR 47, 58, 61-
19 62.)

20 In conclusion, the ALJ did give full consideration to the
21 conclusions of the physician's assistant, but properly discarded or
22 depreciated them because of their lack of objective support, their
23 inconsistency with the evidence in the record and with Plaintiff's own
24 history of subjective complaints. The Court thus can find no error in
25 the ALJ's determination that Plaintiff does not suffer any hand
26 neuropathy as part of a severe impairment, which, therefore, would
27 preclude assessing any such manipulative limitations as part of
28 Plaintiff's RFC.

