

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

WASHINGTON REYES,	)	NO. CV 12-3779-E
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM OPINION</b>
	)	
CAROLYN W. COLVIN, ACTING	)	
COMMISSIONER OF SOCIAL SECURITY, <sup>1</sup>	)	
	)	
Defendant.	)	
_____	)	

PROCEEDINGS

Plaintiff filed a Complaint on May 7, 2012, seeking review of the Commissioner's denial of benefits. The parties filed a consent to proceed before a United States Magistrate Judge on June 14, 2012.

///

///

---

<sup>1</sup> Carolyn W. Colvin, who became Acting Commissioner of Social Security as of February 14, 2013, is hereby substituted as Defendant in this matter. See Fed. R. Civ. P. 25(d)(1); 42 U.S.C. § 405(g).

1 Plaintiff filed a motion for summary judgment on December 22,  
2 2012. Defendant filed a cross-motion for summary judgment on March 4,  
3 2013. The Court has taken both motions under submission without oral  
4 argument. See L.R. 7-15; "Order," filed May 8, 2012.

5  
6 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**  
7

8 Plaintiff asserted disability since March 1, 2006, based on  
9 alleged pain in his back and feet (Administrative Record ("A.R.") 27,  
10 136-43, 150). An Administrative Law Judge ("ALJ") examined the record  
11 and heard testimony from Plaintiff and a vocational expert (A.R. 37-  
12 82).

13  
14 The ALJ found Plaintiff has a severe "lower back strain with  
15 degenerative changes" and "burning foot syndrome" (A.R. 29 (adopting  
16 diagnoses at A.R. 250-51, 262, 305, 307)). The ALJ also found,  
17 however, that Plaintiff retains the residual functional capacity to  
18 perform the full range of medium work (A.R. 30, 32 (adopting  
19 consultative examiner's opinion at A.R. 266)). The ALJ determined  
20 that, with this capacity, Plaintiff could still perform his past  
21 relevant work (A.R. 32-33 (adopting vocational expert testimony at  
22 A.R. 73-75)). The ALJ deemed not credible Plaintiff's testimony  
23 regarding the severity of his symptoms, to the extent any such  
24 testimony was inconsistent with the residual functional capacity the  
25 ALJ found to exist (A.R. 30-32). Accordingly, the ALJ found Plaintiff  
26 not disabled (A.R. 33). The Appeals Council denied review (A.R. 1-3).

27 ///

28 ///

1 **PLAINTIFF'S CONTENTION**

2  
3 Plaintiff contends that the ALJ erred in finding Plaintiff's  
4 testimony not entirely credible.

5  
6 **STANDARD OF REVIEW**

7  
8 Under 42 U.S.C. section 405(g), this Court reviews the  
9 Administration's decision to determine if: (1) the Administration's  
10 findings are supported by substantial evidence; and (2) the  
11 Administration used correct legal standards. See Carmickle v.  
12 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,  
13 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is "such  
14 relevant evidence as a reasonable mind might accept as adequate to  
15 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401  
16 (1971) (citation and quotations omitted); see also Widmark v.  
17 Barnhart, 454 F.3d 1063, 1067 (9th Cir. 2006).

18  
19 This Court "may not affirm [the Administration's] decision simply  
20 by isolating a specific quantum of supporting evidence, but must also  
21 consider evidence that detracts from [the Administration's]  
22 conclusion." Ray v. Bowen, 813 F.2d 914, 915 (9th Cir. 1987)  
23 (citation and quotations omitted); see Lingenfelter v. Astrue, 504  
24 F.3d 1028 (9th Cir. 2007) (same). However, the Court cannot disturb  
25 findings supported by substantial evidence, even though there may  
26 exist other evidence supporting Plaintiff's claim. See Torske v.  
27 Richardson, 484 F.2d 59, 60 (9th Cir. 1973), cert. denied, 417 U.S.  
28 933 (1974); Harvey v. Richardson, 451 F.2d 589, 590 (9th Cir. 1971).



1 crouch and crawl frequently (A.R. 266; see also 20 C.F.R. §§  
2 404.1567(c) and 416.967(c) (defining medium work)).

3  
4 Dr. Yashruti's findings constitute substantial evidence  
5 supporting the ALJ's decision. See Tonapetyan v. Halter, 242 F.3d  
6 1144, 1149 (9th Cir. 2001) (consulting examiner's opinion is  
7 substantial evidence that can support an ALJ's finding of  
8 nondisability); see also Orn v. Astrue, 495 F.3d 625, 632 (9th Cir.  
9 2007) (examining physician's independent clinical findings are  
10 substantial evidence).

11  
12 The opinions of the non-examining State agency physicians provide  
13 additional support for the ALJ's decision. Tonapetyan v. Halter, 242  
14 F.3d at 1149 (non-examining physician's opinion may constitute  
15 substantial evidence when opinion is consistent with independent  
16 evidence of record);<sup>3</sup> Lester v. Chater, 81 F.3d 821, 831 (9th Cir.  
17 1995) (same). State agency physicians F. Wilson and D. Gray reviewed  
18 the record, including Dr. Yashruti's evaluation, and opined that  
19 Plaintiff is capable of performing medium work. See A.R. 269-75.

20  
21 The vocational expert testified that a person having the  
22 limitations identified by the ALJ could perform Plaintiff's past  
23 relevant work as a material handler (A.R. 73-75). This testimony  
24 furnished substantial evidence that Plaintiff is not disabled. See  
25 Bray v. Commissioner of Social Security Admin., 554 F.3d 1219, 1228

26  
27 <sup>3</sup> The record contains no medical opinions regarding  
28 Plaintiff's alleged limitations, other than the opinions of Dr.  
Yashruti and the state agency physicians.

1 (9th Cir. 2009) (vocational expert opinion evidence is reliable to  
2 support a finding that a claimant can work if hypothetical questioning  
3 "set[s] out *all* the limitations and restrictions of a particular  
4 claimant") (citation omitted); Hubble v. Astrue, 2012 WL 258406, at \*2  
5 (9th Cir. Jan. 30, 2012) (finding no error in ALJ's conclusion that  
6 claimant was capable of performing her past relevant work as generally  
7 performed in the national economy, based on a vocational expert's  
8 answer to a hypothetical question presenting claimant's residual  
9 functional capacity); see also 20 C.F.R. §§ 404.1560(b)(2),  
10 416.960(b)(2); Bayliss v. Barnhart, 427 F.3d 1211, 1218 (9th Cir.  
11 2005) ("A [vocational expert's] recognized expertise provides the  
12 necessary foundation for his or her testimony. Thus, no additional  
13 foundation is required.").

14  
15 **II. The ALJ Did Not Materially Err in Evaluating Plaintiff's**  
16 **Credibility.**

17  
18 An ALJ's assessment of a claimant's credibility is entitled to  
19 "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir.  
20 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). The  
21 discounting of a claimant's testimony regarding subjective symptoms  
22 must be supported by specific, cogent findings. See Lester v. Chater,  
23 81 F.3d at 834; see also Berry v. Astrue, 622 F.3d 1228, 1234 (9th  
24 Cir. 2010) (reaffirming same); but see Smolen v. Chater, 80 F.3d 1273,  
25 1282-84 (9th Cir. 1996) (indicating that ALJ must offer "specific,  
26 clear and convincing" reasons to reject a claimant's testimony where  
27 ///

1 there is no evidence of malingering).<sup>4</sup> Contrary to Plaintiff's  
2 arguments, the ALJ stated sufficient reasons for deeming Plaintiff's  
3 testimony less than fully credible.

4  
5 Plaintiff testified that he stopped working due to pain in his  
6 back and feet (A.R. 46-47, 56). Plaintiff said that for six or more  
7 years he has had progressively worsening swelling, pain and burning in  
8 his feet (A.R. 50-51). Plaintiff claimed his pain was constant and he  
9 supposedly obtained little relief from medication (A.R. 48-49). Yet,  
10 when Plaintiff's doctor had wanted to administer injections for  
11 Plaintiff's back pain, Plaintiff declined (A.R. 50).

12  
13 Plaintiff, who was using a cane his son bought for him,  
14 estimated that he can walk 15-20 minutes without a cane, and can stand  
15 for 10 minutes and sit for 20 minutes (A.R. 54). Plaintiff said he  
16 can lift only five to eight pounds (A.R. 55).

17 ///

18 ///

19 ///

20 ///

21 ///

---

22  
23 <sup>4</sup> In the absence of an ALJ's reliance on evidence of  
24 "malingering," most recent Ninth Circuit cases have applied the  
25 "clear and convincing" standard. See, e.g., Chaudhry v. Astrue,  
26 688 F.3d 661, 670, 672 n.10 (9th Cir. 2012); Molina v. Astrue,  
27 674 F.3d 1104, 1112 (9th Cir. 2012); Taylor v. Commissioner, 659  
28 F.3d 1228, 1234 (9th Cir. 2011); see also Ballard v. Apfel, 2000  
WL 1899797, at \*2 n.1 (C.D. Cal. Dec. 19, 2000) (collecting  
earlier cases). In the present case, the ALJ's findings are  
sufficient under either standard, so the distinction between the  
two standards (if any) is academic.

1 The ALJ found Plaintiff's testimony less than entirely credible,  
2 citing four reasons: (1) Plaintiff's conservative treatment,<sup>5</sup>  
3 (2) lack of support in the objective medical record, (3) the extent of  
4 Plaintiff's daily activities, and (4) inconsistencies between  
5 Plaintiff's testimony and other information contained in the record  
6 (A.R. 31-32). Specifically, the ALJ observed that although Plaintiff  
7 alleged his pain became disabling as of March 2006, the first  
8 treatment record concerning Plaintiff's back or feet bore a date in  
9 August of 2007 (A.R. 31 (citing, inter alia, A.R. 262, 280 (radiology  
10 reports for Plaintiff's lumbar spine)).<sup>6</sup> The ALJ further observed  
11 that the medical record, which consists of only a few treatment notes,  
12 lab reports, two normal nerve conduction studies, and xrays of  
13 Plaintiff's back, suggests that Plaintiff's condition had been managed  
14 with conservative care. See A.R. 31 (discussing Plaintiff's limited  
15 treatment); A.R. 249-62, 276-302, 305-12, 317 (medical records). A  
16 conservative course of treatment may discredit a claimant's  
17 allegations of disabling symptoms. See Parra v. Astrue, 481 F.3d 742,  
18 750-51 (9th Cir. 2007), cert. denied, 552 U.S. 1141 (2008); Meanel v.  
19 Apfel, 172 F.3d 1111, 1114 (9th Cir. 1999) (failure to request "any  
20 serious medical treatment for [claimant's] supposedly excruciating  
21 pain" was adequate reason to reject claimant's pain testimony);  
22 Johnson v. Shalala, 60 F.3d 1428, 1434 (9th Cir. 1995) (conservative  
23 treatment can suggest a lower level of both pain and functional  
24

---

25 <sup>5</sup> Plaintiff testified that he did not have health  
26 insurance coverage, but was receiving treatment through a county  
27 program (A.R. 43).

28 <sup>6</sup> Podiatry records for Plaintiff's feet did not show any  
kind of treatment until December 2007 (A.R. 250).

1 limitation, justifying adverse credibility determination); see also  
2 Bunnell v. Sullivan, 947 F.2d 341, 346 (9th Cir. 1991) (failure to  
3 seek medical treatment can justify an adverse credibility  
4 determination); Fair v. Bowen, 885 F.2d 597, 603-04 (9th Cir. 1989)  
5 (same).

6  
7 The ALJ also noted that the objective medical evidence did not  
8 support a level of symptomatology that would prevent Plaintiff from  
9 working. Although a claimant's credibility "cannot be rejected on the  
10 sole ground that it is not fully corroborated by objective medical  
11 evidence, the medical evidence is still a relevant factor. . . ."  
12 Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001). Here, as the  
13 ALJ observed, the xrays of Plaintiff's lumbar spine showed  
14 degenerative disc disease at L5-S1, but no evidence that the condition  
15 was advanced. See A.R. 31 (ALJ's observation); A.R. 262, 302, 305  
16 (radiology reports). Nerve conduction studies were normal. See A.R.  
17 280-81, 296-97. As discussed above, Plaintiff's orthopedic  
18 consultative examination was essentially normal, revealing only  
19 tenderness on palpation to the lumbar spine and feet, but no pain on  
20 range of motion. See A.R. 263-66.

21  
22 The ALJ also cited the extent of Plaintiff's daily activities as  
23 assertedly inconsistent with disabling pain (A.R. 31 (Plaintiff  
24 "spend[s] a substantial part of the day in activities involving the  
25 performance of functions readily transferrable to competitive work")).  
26 The extent of a claimant's daily activities can constitute "clear and  
27 convincing reasons" for discounting the credibility of a claimant's  
28 testimony that the claimant cannot work. See Burch v. Barnhart, 400

1 F.3d at 680-81 (daily activities in caring for own personal needs,  
2 cooking, cleaning, and shopping undermined claimant's credibility  
3 since those skills could be transferred to the workplace); see also  
4 Rollins v. Massanari, 261 F.3d at 857 (claimant's testimony regarding  
5 daily domestic activities undermined the credibility of her pain-  
6 related testimony). Here, Plaintiff testified that on a typical day  
7 he gets up, takes care of his own personal grooming, prepares coffee,  
8 helps prepare meals, washes dishes, and drives a half mile to the  
9 market three to four times a week where he shops for 15-20 minutes  
10 (A.R. 52-53, 55). Plaintiff also said he plays Bingo with his  
11 sisters, watches television, and reads (A.R. 53). These daily  
12 activities<sup>7</sup> arguably could contribute toward the ALJ's discounting of  
13 Plaintiff's testimony concerning allegedly disabling pain. See, e.g.,  
14 Thune v. Astrue, 2012 WL 5990952, at \*1 (9th Cir. Nov. 29, 2012) (ALJ  
15 properly discredited pain allegations as contradicting claimant's  
16 testimony that she gardened, cleaned, cooked, and ran errands);  
17 Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1175 (9th Cir. 2008)  
18 (claimant's "normal activities of daily living, including cooking,  
19 house cleaning, doing laundry, and helping her husband in managing  
20 finances" was sufficient explanation for rejecting claimant's

21 ///

22 \_\_\_\_\_  
23 <sup>7</sup> Plaintiff was not always consistent in reporting his  
24 daily activities. In an undated exertion questionnaire,  
25 Plaintiff reported that he does not do his own grocery shopping  
26 and does not clean his home (A.R. 178). Plaintiff explained that  
27 the house work he does do is very light and brief (A.R. 179).  
28 Similarly, in undated "Disability Report - Appeal" forms,  
Plaintiff reported that he is unable to care for his lawn, home,  
go shopping for groceries, or exercise (A.R. 161), and supposedly  
is unable to "even care for [his] personal hygiene w/out  
experiencing amount of pain" (A.R. 168).

1 | credibility).<sup>8</sup>

2 |  
3 |       The ALJ also discounted Plaintiff's credibility based on  
4 | inconsistencies between Plaintiff's testimony and information in the  
5 | record concerning Plaintiff's English language abilities and job  
6 | history (A.R. 32). Plaintiff had testified that he could not read,  
7 | write, speak or understand English despite having been in the United  
8 | States for 35 years (A.R. 43-44). Yet, medical records show that  
9 | Plaintiff was given discharge instructions in English (A.R. 250-51,  
10 | 253-54, 283-84; see also A.R. 291 (stating discharge language was  
11 | Spanish and English and "Translator not needed"); but see A.R. 287-88  
12 | (stating discharge language was Spanish and reflecting the use of a  
13 | translator)). A disparity between a claimant's representations and  
14 | the observations of medical examiners may properly impeach a

15 | \_\_\_\_\_  
16 |       <sup>8</sup> It is difficult to reconcile certain Ninth Circuit  
17 | opinions discussing when a claimant's daily activities properly  
18 | may undermine the claimant's credibility. Compare Stubbs-  
19 | Danielson v. Astrue (cited above) and Burch v. Barnhart (cited  
20 | above) with Vertigan v. Halter, 260 F.3d 1044, 1049-50 (9th Cir.  
21 | 2001) ("the mere fact that a plaintiff has carried on certain  
22 | daily activities, such as grocery shopping, driving a car, or  
23 | limited walking for exercise, does not in any way detract from  
24 | her credibility as to her overall disability.") and Gallant v.  
25 | Heckler, 753 F.2d 1450, 1453-55 (9th Cir. 1984) (fact that  
26 | claimant could cook for himself and family members as well as  
27 | wash dishes did not preclude a finding that claimant was disabled  
28 | due to constant back and leg pain). Because of this difficulty,  
the Court in the present case elects not to rely on the ALJ's  
finding regarding Plaintiff's daily activities. Assuming  
arguendo that the ALJ's partial reliance on Plaintiff's daily  
activities was improper, the Court nevertheless upholds the ALJ's  
credibility determination. Under Carmickle v. Commissioner, 533  
F.3d 1155, 1163 (9th Cir. 2008), the infirmity of one or two  
supporting reasons for an ALJ's credibility determination does  
not require overturning the determination if independently valid  
supporting reasons remain. Independently valid supporting  
reasons remain in the present case.

1 claimant's credibility. See, e.g., Copeland v. Bowen, 861 F.2d 536,  
2 541 (9th Cir. 1988).

3  
4 As to job history, Plaintiff indicated in a disability report  
5 form that at one of his jobs he lifted 50 pounds regularly and  
6 sometimes lifted up to 100 pounds (A.R. 152). Yet, in a subsequent  
7 form, Plaintiff indicated that the same job had required the lifting  
8 of only 10 pounds (A.R. 184, 187). During the hearing, the ALJ and  
9 Plaintiff's counsel asked questions of Plaintiff to attempt to clarify  
10 the job's requirements, as well as the issue of whether Plaintiff was  
11 given any kind of accommodation in the job, but the job's lifting  
12 requirements were not clarified and Plaintiff's answers suggested that  
13 he had been given no accommodation. See A.R. 57-61. This kind of  
14 inconsistency also can support the rejection of a claimant's  
15 credibility. See Burch v. Barnhart, 400 F.3d at 680 ("In determining  
16 credibility, an ALJ may engage in ordinary techniques of credibility  
17 evaluation, such as considering claimant's reputation for truthfulness  
18 and inconsistencies in claimant's testimony."); see also Thomas v.  
19 Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002) (conflicting  
20 information from claimant supported the rejection of the claimant's  
21 credibility); Verduzco v. Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999)  
22 (inconsistencies in claimant's various statements cited as a clear and  
23 convincing reason for rejecting the claimant's testimony).

24  
25 Thus, the ALJ stated sufficient reasons to allow this Court to  
26 conclude that the ALJ discounted Plaintiff's credibility on  
27 permissible grounds. See Moisa v. Barnhart, 367 F.3d 882, 885 (9th  
28 Cir. 2004). The Court therefore defers to the ALJ's credibility

1 determination. See Lasich v. Astrue, 252 Fed. App'x 823, 825 (9th  
2 Cir. 2007) (court will defer to ALJ's credibility determination when  
3 the proper process is used and proper reasons for the decision are  
4 provided); accord Flaten v. Secretary of Health & Human Services, 44  
5 F.3d 1453, 1464 (9th Cir. 1995).

6  
7 **CONCLUSION**

8  
9 For all of the foregoing reasons, Plaintiff's motion for summary  
10 judgment is denied and Defendant's motion for summary judgment is  
11 granted.

12  
13 LET JUDGMENT BE ENTERED ACCORDINGLY.

14  
15 DATED: March 20, 2013.

16  
17 \_\_\_\_\_/S/\_\_\_\_\_  
18 CHARLES F. EICK  
19 UNITED STATES MAGISTRATE JUDGE  
20  
21  
22  
23  
24  
25  
26  
27  
28