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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION**

JOSE LUIS JIMENEZ,	}	CV 12-09200-SH
Plaintiff,	}	MEMORANDUM DECISION
v.	}	AND ORDER
CAROLYN W. COLVIN, Acting	}	
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 Supplemental Security Income benefits and 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. Plaintiff and defendant have filed their pleadings, defendant has filed the certified transcript of record, and each party has filed

1 its supporting brief. After reviewing the matter, the Court concludes the Decision of the
2 Commissioner should be affirmed.

3 4 **I. PROCEDURAL BACKGROUND**

5 Plaintiff, Jose Luis Jimenez, applied for Disability Insurance Benefits (“DIB”) and
6 Supplemental Security Income (“SSI”) on March 11, 2009 (AR 51, 135-145). Plaintiff
7 alleges disability commencing June 2003. (AR 146-47). However, he remained
8 “insured” through December 31, 2009, and must establish that a disability existed on or
9 before that date. (AR 53). Plaintiff’s applications were denied initially and upon
10 reconsideration. (AR 70-74, 79-89). Plaintiff requested a hearing before an
11 administrative law judge (“ALJ”) (AR 91-93). The hearing before the ALJ was held on
12 June 15, 2010. (AR 32-52). On July 13, 2010, the ALJ issued an unfavorable decision
13 (AR 45-61). The Appeals Council denied Plaintiff’s request for review. (AR 1-3).
14 Plaintiff commenced this civil action seeking judicial review of his case.
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17 **II. DISCUSSION**

18 **A. The ALJ Properly Evaluated Plaintiff’s Credibility.**

19 Plaintiff asserts that the ALJ failed to properly assess his credibility and consider
20 his subjective complaints. In response, Defendant argues that the ALJ properly evaluated
21 Plaintiff’s credibility.
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23 Plaintiff alleges severe chronic pain in the left knee. Plaintiff also asserts residual
24 hand numbness post-carpal tunnel release. (AR 251). Furthermore, Plaintiff claims to
25 have shoulder pain post-surgery and depression. Id.

26 The ALJ provided the following reasons for finding Plaintiff not credible: (1)
27 Plaintiff’s credibility was diminished because the medical evidence provided little
28 support for the degree of disability Plaintiff alleges; (2) there was a long gap in plaintiff’s
treatment history; (3) inconsistent statements and actions by the Plaintiff; (4) the level of

1 treatment Plaintiff received; (5) Plaintiff's daily activities did not provide support for
2 finding him credible.

3 The Commissioner's assessment of a plaintiff's credibility should be given great
4 weight. Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). A claimant initially must
5 produce objective medical evidence establishing a medical impairment reasonably likely
6 to be the cause of the pain. Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir. 1996). Once
7 a claimant produces objective medical evidence of an underlying impairment that could
8 reasonably be expected to produce the pain or other symptoms alleged, and there is no
9 evidence of malingering, the ALJ may reject the claimant's testimony regarding the
10 severity of pain and symptoms only by articulating clear and convincing reasons for
11 doing so. Valentine v. Comm'r, 574 F.3d 685,693 (9th Cir. 2009).

12 To determine whether the plaintiff's testimony regarding the severity of his
13 symptoms is credible, the ALJ may consider, among other things, the: (1) ordinary
14 techniques of credibility evaluation, such as the claimant's reputation for lying, prior
15 inconsistent statements concerning the symptoms, and other testimony by the claimant
16 that appears less than candid; (2) unexplained or inadequately explained failure to seek
17 treatment or to follow a proscribed course of treatment; and (3) the claimant's daily
18 activities. Smolen, 158 F.3d at 1273. See also Thomas v. Barnhart, 278 F.3d 947, 958-59
19 (9th Cir. 2002) (listing factors such as (1) claimant's reputation for truthfulness; (2)
20 inconsistencies either in testimony or between claimant's testimony and claimant's
21 conduct; (3) testimony from physicians and third parties concerning the nature, severity,
22 and effect of the symptoms of which she complains).

23 An error is harmless when the ALJ has provided an invalid reason for an adverse
24 credibility finding, but there are also other valid reasons for the finding. Carmickle v.
25 Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1162 (9th Cir. 2008). "The relevant inquiry
26 in this context is not whether the ALJ would have made a different decision absent any
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1 error, it is whether the ALJ's decision remains legally valid, despite such error." Id. See
2 also Molina v. Astrue, 674 F.3d 1104, 1115 (9th Cir. 2012).

3 Here, overall, the ALJ made the credibility findings which were supported by clear
4 and convincing reasons. First, the ALJ stated that the medical evidence did not provide
5 support for the degree of disability that Plaintiff was alleging (AR 58). The ALJ noted
6 "[a]s of 2006, the claimant only presented with knee pain complaints and clinical findings
7 and x-rays revealed no particular problems with the left knee." (AR 58, 199).

8 While the ALJ may not reject a Plaintiff's testimony solely because it is not
9 supported by objective medical evidence, the ALJ may consider this conflict for a
10 credibility finding. Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001). Plaintiff
11 points to the Valley Presbyterian Hospital report from June of 2006 in which the doctor
12 states "Spur off the superior aspect of the medial femoral condyle can be seen." (AR
13 193). However, another sentence follows which states, "It is otherwise noted to be
14 unremarkable." (Id.)

15 The second basis the ALJ cited to for finding Plaintiff not fully credible was the
16 long gap in Plaintiff's treatment history. According to the record, Plaintiff did not seek or
17 require any medical treatment from 2006 to 2009. (AR 54). Nor did Plaintiff seek any
18 treatment until 2010 for his mental impairments which, according to Plaintiff, arose from
19 incidents in the late 1990's. (AR 56). Indeed, there is no evidence from any treating
20 physicians. Since Plaintiff did not present any evidence from treating physicians, the
21 ALJ considered the opinions of examining and consultative physicians to make his
22 Residual functional Capacity ("RFC") determinations.

23 The ALJ may consider unexplained or inadequately explained failure to seek
24 treatment in credibility findings. Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir.
25 2008). Furthermore, courts have upheld an ALJ's adverse credibility findings when the
26 claimant claimed he or she did not seek treatment because of cost but sought medical care
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1 for some ailments but not others. Flaten v. Sec’y of Health and Human Services, 44 F.3d
2 1453, 1464 (9th Cir. 1995).

3 The Plaintiff, in briefing before this Court, has contended that he did not seek
4 medical treatment because of the costs associated with it. However, Plaintiff did not cite
5 this as a reason for the gap in medical treatment history at the hearing before the ALJ,
6 even though he had the opportunity to do so. Additionally, the ALJ reasonably noted the
7 fact that Plaintiff did not seek mental health treatment until over ten years after the
8 incidents that allegedly caused his mental impairments also undermined his credibility.
9 (AR 56).

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11 The third reason the ALJ cited were the inconsistencies in Plaintiff’s statements
12 and actions. (AR 59). Verduzco v. Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999) (holding
13 the claimant was properly discredited because his testimony was inconsistent with his
14 own statements or actions, as well as the medical evidence).

15 The ALJ noted that Plaintiff testified at the hearing that he spoke no English at all,
16 yet he was able to answer some questions before they were translated, and was able to
17 communicate with Dr. Swanson in English to a degree (AR 59, 238). However, Dr.
18 Swanson noted that Plaintiff required an interpreter, undermining the ALJ’s credibility
19 decision in this respect. Additionally, Plaintiff stated he only possessed a third grade
20 education but in fact he had completed the sixth grade according to his previous report
21 (AR 21, 59, 164). Furthermore, at the hearing, the ALJ concluded that Plaintiff could lift
22 his arm to shoulder level. (AR 59). However, Plaintiff testified that the issue he has with
23 his left arm is that when he raises it, it “gets stuck, and I’m not able to move it.” (AR 26).
24 The ALJ misunderstood Plaintiff’s testimony in this respect. Lastly, the ALJ noted that
25 the Plaintiff’s memory was sketchy with regard to some important events such as when
26 he last worked and had surgery. (AR 21, 24, 59). Plaintiff contends his testimony was
27 not inconsistent. Given the ALJ’s partial misunderstanding of the record, the Court
28 partially rejects the ALJ’s reasoning.

1 However, the ALJ states two other reasons for finding Plaintiff not credible. These
2 findings provide support for the adverse credibility finding. The ALJ noted the level of
3 treatment Plaintiff received in 2006, specifically that no doctor recommended surgery,
4 physical therapy, or pain management, which undermined Plaintiff's subjective
5 complaints. Conservative treatment may diminish a claimant's credibility regarding the
6 severity of an impairment. Parra v. Astrue, 481 F.3d 742, 750-51 (9th Cir. 2007).
7 Additionally, the ALJ considered Plaintiff's ability to perform basic daily activities such
8 as shopping, cleaning, and doing laundry. While performing basic daily activities by
9 itself is not a sufficient reason to reject a Plaintiff's credibility, the ALJ used this
10 information to provide additional support for his credibility finding. See Stubbs-
11 Danielson v. Astrue, 539 F.3d 1169, 1175 (9th Cir. 2008) (ALJ properly discredited the
12 claimant's testimony based on the lack of support for claimant's allegations and
13 claimant's normal daily activities which included cooking, cleaning, and laundry).

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15 Overall, the ALJ provided sufficient clear and convincing reasons supported by
16 substantial evidence in the record for finding Plaintiff's testimony regarding his
17 symptoms not fully credible.

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19 **B. The ALJ Properly Evaluated the Medical Opinions on the Record.**

20 The ALJ considered the medical opinions on the record and made an RFC finding
21 in accordance to the evidence presented to him. The ALJ considered the opinions of Dr.
22 Yu, Dr. Contreras, and Dr. Swanson. The record did not contain any opinions from
23 treating physicians.

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25 Dr. Contreras is a physician who examined Plaintiff in 2006 for worker's
26 compensation benefits, and provided his findings and opinions. Dr. Contreras opined that
27 Plaintiff could not engage in repetitive bending, repetitive work above the shoulder level,
28 heavy lifting, repetitive pushing and pulling with the left arm, very repetitive grasping
and gripping with both hands, repetitive squatting, repetitive kneeling, repetitive

1 stooping, and prolonged walking on uneven ground. (AR 54, 252). This opinion was
2 provided in worker's compensation terms. Dr. Contreras stated that Plaintiff was "totally
3 and temporarily disabled" from 8/31/01 to 10/02/02 and from 7/12/05 to 7/12/06. (AR
4 253).

5 Plaintiff argues the ALJ erred in rejecting Dr. Contreras' opinion. Defendant
6 argues the ALJ did not reject the doctor's medical opinions, but in fact credited them in
7 his ultimate RFC assessment. (AR 58). The only part of Dr. Contreras' opinions the ALJ
8 did not address was the portion in worker's compensation terminology that stated that
9 Plaintiff had been "totally and temporarily disabled" during two periods.
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11 A finding of disability under the worker's compensation scheme does not bind the
12 Commissioner. 20 C.F.R. §§ 404.1504, 416.904. However, every medical opinion,
13 regardless of its source will be evaluated by the SSA. 20 C.F.R. § 404.1527 (d).
14 Furthermore, an ALJ is "not bound by an expert medical opinion on the ultimate question
15 of disability." Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir. 2008).

16 Here, the ALJ properly evaluated the medical and non-medical opinions presented
17 by Dr. Contreras. The ALJ's RFC finding was in accordance with Dr. Contreras' medical
18 opinions. This worker's compensation opinion, which stated Plaintiff was "totally and
19 temporarily disabled," was a conclusion on the ultimate issue of disability, rather than a
20 medical opinion. Although every medical opinion is to be evaluated by the SSA, the
21 quoted language at issue is not a medical opinion. The ALJ did not evaluate this portion
22 of Dr. Contreras' report because he was not bound by an opinion under the worker's
23 compensation scheme. Furthermore, this writing is merely a brief summary or
24 explanation of Plaintiff's worker's compensation claim, which the ALJ was not required
25 to address at all.
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27 Plaintiff further argues that the ALJ erred in rejecting Dr. Swanson's opinion.
28 Defendant argues that the ALJ properly rejected Dr. Swanson's opinion. Dr. Swanson
was an examining psychologist who opined that Plaintiff was friendly and cooperative

1 but passive and indifferent, and showed psychomotor delays and cognitive impairments.
2 (AR 55, 238-42). Dr. Swanson opined that Plaintiff would have difficulty with complex
3 tasks, memory, and adapting to work conditions. (AR 55, 240).

4 The opinions of an examining physician may only be rejected for specific and
5 legitimate reasons that are supported by substantial evidence in the record. Lester v.
6 Chater, 81 F.3d 821, 830-831 (9th Cir. 1995). An ALJ is not required to accept the
7 opinion of any physician if that opinion is brief, conclusory, and inadequately supported
8 by clinical findings. Thomas, 278 F. 3d 947, 957 (9th Cir. 2002). Furthermore, an ALJ
9 may reject the opinion of a physician if it is based on Plaintiff's discredited subjective
10 complaints. Id.

12 Here, the ALJ identified specific and legitimate reasons that were supported by
13 substantial evidence in rejecting Dr. Swanson's opinions. First, the ALJ correctly stated
14 that Dr. Swanson's opinion contained no formal psychiatric testing and was largely based
15 on Plaintiff's subjective complaints. The ALJ was correct in rejecting Dr. Swanson's
16 opinion because the opinion was not supported by adequate clinical findings. Second, the
17 ALJ rejected Dr. Swanson's opinion because it was largely based on Plaintiff's
18 discredited subjective complaints. Since the ALJ correctly discredited the Plaintiff's
19 subjective complaints, the ALJ was correct in rejecting an opinion that was based mostly
20 on those complaints. Third, the ALJ considered the consistency of Dr. Swanson's
21 opinion with the 2010 reports from the Northeast Valley Health Corporation and with the
22 reported impairments at the hearing before the ALJ. In January 2010, Plaintiff mentioned
23 depression to the Northeast Valley Health Corporation, but not his alleged problems with
24 memory or complex tasks. (AR 56, 233-34). He did not even mention the memory and
25 performing of complex tasks problems at the hearing. Id. The ALJ correctly considered
26 the inconsistency of Dr. Swanson's opinion with the entire record in rejecting his
27 opinion. Lastly, the ALJ, in rejecting Dr. Swanson's opinion, took into consideration the
28 fact that Plaintiff had reported that his prescribed medication for depression improved his

1 mood. (AR 56, 230). This is significant because it demonstrates that Plaintiff's
2 depression is amenable to control with medication. Overall, the ALJ correctly rejected
3 Dr. Swanson's opinion by stating specific and legitimate reasons that were supported by
4 substantial evidence on the record.

5 The ALJ properly considered and adopted the opinion of Dr. Warren David Yu, an
6 orthopedic surgeon who examined Plaintiff on May 17, 2009. (AR 54-55, 59, 196-99).
7 In his examination, Dr. Yu found that Plaintiff had normal gait, he was able to "toe and
8 heel walk," and required no assistive device for ambulation. (AR 197). Dr. Yu also
9 noted Plaintiff's shoulder range of motion was within normal limits. He further noted that
10 there were some residual impingement signs on the left shoulder, however no atrophy.
11 Id. Dr. Yu stated the wrists and hands had normal ranges of motion. (AR 198). The
12 doctor also noted that the knee examination revealed mild tenderness, however the range
13 of motion of the knee was normal and there was no effusion or joint line tenderness, and
14 no instability. Id. Dr. Yu stated Plaintiff's motor strengthened sensation in the upper and
15 lower extremities were within the normal limits. Id. Furthermore, the doctor noted
16 residual hand numbness, status post carpal tunnel releases, bilaterally. (AT 199).
17 Additionally, per Dr. Yu, Plaintiff had residual left shoulder pain post arthroscopic
18 surgery. Id. Based on the examination, Dr. Yu stated Plaintiff should be able to walk
19 without an assistive device, should be able to sit or stand or walk for up to six hours in an
20 eight-hour workday. Id. He should also occasionally be allowed to pick up 20 pounds
21 and frequently 10 pounds. Id. Also, Dr. Yu stated Plaintiff could have frequent use of
22 the upper extremities for "pushing, pulling, fine finger motor movements, handling and
23 fingering." (AR 199).
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26 The opinions of a consultative physician based on an examination constitute
27 substantial evidence. Tonapetyan v. Halter, 242 F. 3d 1144, 1149 (9th Cir. 2001).

28 Here, the ALJ was entitled to rely on Dr. Yu's opinions because Dr. Yu conducted
an examination of Plaintiff and based his medical opinion on that examination.

1 Furthermore, the ALJ was not presented with any opinions from any treating physicians
2 who would have a closer relationship with the Plaintiff, and whose opinions the ALJ
3 would have to consider. The ALJ was required to view the record as a whole and make
4 his RFC assessment based on substantial evidence on the record. The Court finds that Dr.
5 Yu's opinion was consistent with the record as a whole. Thus, the ALJ did not err in
6 relying on Dr. Yu's medical opinion in his RFC determination.
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9 **C. The ALJ's Residual Functional Capacity Finding was Based on Substantial**
10 **Evidence in the Record.**

11 The Plaintiff contends that the ALJ did not factor in Plaintiff's obesity when
12 determining his Residual Functional Capacity. In response, Defendant argues that the
13 ALJ's findings were proper and based on substantial evidence on the record.

14 When there is no evidence of Plaintiff's obesity actually limiting his or her
15 functioning, the ALJ's failure to consider such alleged limitations is not reversible error.
16 Burch v. Barnhart, 400 F.3d 676, 683-84 (9th Cir. 2005).

17 Here, the ALJ did not err in not including the impact that Plaintiff's obesity might
18 have on his other impairments. The ALJ was not obligated to do so because there was no
19 evidence of such limitations presented by Plaintiff. There is no evidence in the record that
20 any doctor diagnosed Plaintiff with obesity. Nor did any doctors suggest that obesity
21 intensified Plaintiff's other impairments. In fact, doctors did not even make any
22 recommendations regarding Plaintiff needing to lose weight. Therefore, the ALJ did not
23 err in not considering Plaintiff's obesity in his RFC assessment.
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26 **III. CONCLUSION**

27 In Court finds the ALJ properly evaluated Plaintiff's credibility. The court further
28 finds that the ALJ correctly evaluated the opinions of Dr. Contreras and Dr. Swanson.
Lastly, the Court finds the ALJ's determination of Plaintiff's RFC was correct.

1 For the foregoing reasons, the Decision of the Commissioner is affirmed and the
2 Complaint is dismissed.

3 DATED: November 5, 2013
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7 STEPHEN J. HILLMAN
8 UNITED STATES MAGISTRATE JUDGE
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