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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ARTHUR LOPEZ, JR.,)	Case No. ED CV 07-383-PJW
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
COMMISSIONER OF THE)	
SOCIAL SECURITY ADMINISTRATION,)	
)	
Defendant.)	

17 Before the Court is Plaintiff's appeal of a decision by Defendant
18 Social Security Administration ("the Agency"), denying his application
19 for disability insurance benefits. Because the Agency's decision that
20 Plaintiff was not disabled within the meaning of the Social Security
21 Act at any time during the period at issue is supported by substantial
22 evidence, it is affirmed.

23 Plaintiff applied for disability benefits on September 30, 2003,
24 alleging that he had been disabled since November 3, 1994.
25 (Administrative Record ("AR") 65, 85.) After his application was
26 denied initially and on reconsideration, Plaintiff requested and was
27 granted a hearing before an administrative law judge ("ALJ").
28 Plaintiff appeared with counsel and testified at the hearing on

1 October 12, 2005. (AR 680-743.) Plaintiff told the ALJ, among other
2 things, that he first became disabled on March 3, 1995. (AR 685.)

3 On May 26, 2006, the ALJ denied the application. (AR 13-22.)
4 First, he found that Plaintiff had engaged in substantial gainful
5 activity for much of the time that he alleged that he was disabled
6 and, thus, did not qualify for benefits. (AR 15-18.) Alternatively,
7 he found that Plaintiff retained the residual functional capacity to
8 work. (AR 19-22.) After the Appeals Council denied review, Plaintiff
9 commenced this action.

10 Plaintiff claims that the ALJ failed to properly evaluate the
11 medical evidence and wrongly concluded that he was not credible.
12 (Joint Stip. at 3-8, 13-15.) Plaintiff does not, however, challenge
13 the ALJ's finding that he was working almost continuously during the
14 entire period he claims that he was disabled, a finding which is
15 dispositive as to that period of time, even if Plaintiff's other
16 arguments were meritorious.¹ For the following reasons, the Court
17 rejects Plaintiff's claims in this appeal.

18 An individual is not disabled if he can work, i.e., engage in
19 substantial gainful activity. 20 C.F.R. § 404.1571. In addition, to
20 be disabled, a clamant must establish that his impairment precluded
21 work (or will preclude work in the future) for at least 12 months. 42
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24 ¹ Nor has Plaintiff attempted to argue that work-related
25 expenses would bring his earnings below the statutory presumption or
26 that he worked in a special environment. *See, e.g., Katz v. Sec'y of*
27 *Health & Human Servs.*, 972 F.2d 290, 293-94 (9th Cir. 1992). In fact,
28 Plaintiff stated in his initial disability report that, although he
became "unable to work because of" his condition on November 3, 1994,
he continued to work the same number of hours, and with no change in
job-related duties, through July 12, 2003. (AR 85-86.)

1 U.S.C. § 1382c(a)(3)(A). The Agency may use a claimant's earnings as
2 proof that he has engaged in substantial gainful activity. 20 C.F.R.
3 § 404.1574(a)(1).

4 Here, relying on Plaintiff's earnings statements, the ALJ made
5 uncontroverted findings that Plaintiff was working from January 1996
6 to December 2004, and from June to October 2005. (AR 18.) Based on a
7 disability onset date of March 3, 1995, the ALJ found that the only
8 periods when Plaintiff was *not* engaged in substantial gainful activity
9 were March 3 through December 31, 1995; January 1 through May 31,
10 2005; and November 1, 2005 through May 26, 2006, the date of the ALJ's
11 decision. (AR 13, 18.) Because none of these periods meets or
12 exceeds the required 12-month period, the ALJ found that Plaintiff's
13 "periods of alleged disability do not satisfy the duration
14 requirement." (AR 22.) This finding is supported by substantial
15 evidence in the record and is affirmed.²

16 Plaintiff claims that the ALJ made a "mistake of fact" in finding
17 that he had amended his disability onset date from November 3, 1994 to
18 March 3, 1995. (Joint Stip. at 2.) The difference is important
19 because, if Plaintiff's onset date was November 3, 1994, as alleged in
20 his application, (AR 65, 85), he could be eligible for disability
21 benefits for the 14-month period between November 3, 1994 and December
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24 ² The record demonstrates that Plaintiff earned between
25 \$10,461.58 and \$28,960.49 every year from 1996 to 2004, making his
26 monthly income average between approximately \$871 (in 2003) and \$2,413
27 (in 2002), (AR 76), amounts which exceeded the substantial gainful
28 activity earnings levels provided in the governing regulations. See
20 C.F.R. § 404.1574(a),(b). Additionally, Plaintiff reported
\$6,538.10 in earnings in 2005, (AR 83), an amount which the ALJ found
exceeded the substantial gainful activity level for that year. (AR
17.) Plaintiff has not challenged these findings.

1 31, 1995. But, as explained below, the ALJ's finding that Plaintiff's
2 disability onset date was March 3, 1995, is supported by substantial
3 evidence in the record.

4 At the hearing, the ALJ asked Plaintiff when he first became
5 disabled. (AR 685.) Plaintiff responded: "1995. I don't remember
6 the date. It was March, I believe, the 3rd." (AR 685.) Although
7 this conflicted with the onset date alleged in Plaintiff's
8 application, (AR 65, 85), neither Plaintiff nor his counsel, who was
9 present at the hearing, raised any issue about the new date. In his
10 decision, the ALJ adopted the March 3rd date as the onset date.
11 Plaintiff claims that this was error.

12 The ALJ was entitled to rely on Plaintiff's testimony in finding
13 that March 3, 1995, was the onset date. See *Gatliff v. Comm'r of Soc.*
14 *Sec. Admin.*, 172 F.3d 690, 694 (9th Cir. 1999) ("Although [claimant]
15 alleged a date of onset of June 1, 1991 in his application for
16 benefits, he agreed at oral argument to accept the earliest onset date
17 supported by the medical evidence ... September 29, 1993.") Moreover,
18 the medical evidence does not support an earlier onset date. For the
19 period from November 1994 through March 1995, the record contains only
20 one note, dated December 6, 1994, outlining a complaint of rectal
21 bleeding and "internal fissures" and Plaintiff's request for surgical
22 intervention, with the added notation that Plaintiff "was followed in
23 general surgery for this problem, last appt 2/94, missed last 2
24 appts." (AR 348, 586-87.) Plaintiff did not allege in his

1 application that rectal bleeding or internal fissures limited his
2 ability to work, (AR 85), nor did he do so at any time during the
3 hearing. Thus, an earlier onset date was not warranted.³


4 There remains, however, an issue as to disability for the 12-
5 month period following November 1, 2005 (the last date Plaintiff was
6 gainfully employed). Had Plaintiff established that he was unable to
7 work during this period (even though a portion of it extended beyond
8 the date of the ALJ's decision), he would have been eligible for
9 benefits. There is, however, very little evidence in the record
10 supporting any such argument. And the evidence that is there comes
11 primarily from Plaintiff's submissions and his testimony. The problem
12 with this evidence is that the ALJ found that Plaintiff was not
13 credible. Though Plaintiff challenges that finding in this appeal,
14 the Court concludes that the ALJ's credibility finding is fully
15 supported by the record. As the ALJ observed, "[Plaintiff's]
16 allegations and testimony are marked by inconsistency and self-
17 contradiction." (AR 20.) When you combine the dearth of objective
18 medical evidence with the ALJ's finding that Plaintiff was not
19 credible, you arrive at only one conclusion: the evidence does not

24 ³ Although neither party has raised the issue, this Court also
25 finds that Plaintiff's situation is distinguishable from that
26 presented in *Gatliff*, 172 F.3d at 692-93, where the Ninth Circuit held
27 that a claimant who can hold a job for only a short period of time is
28 not capable of substantial gainful activity. Here, unlike the
claimant in *Gatliff*, who could perform a job for only two months at a
time, Plaintiff testified that he regularly worked as a carpet
installer until approximately July of 2003. (AR 692.)

1 establish that Plaintiff would have been disabled for a 12-month
2 period beginning November 1, 2005. For these reasons, the ALJ's
3 decision is affirmed.

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5 IT IS SO ORDERED.

6 DATED: September 23, 2008.

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PATRICK J. WALSH
11 UNITED STATES MAGISTRATE JUDGE
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