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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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| RICHARD EUGENE LIRA, |) | No. ED CV 10-01280-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 issues:

1. Whether the Administrative Law Judge ("ALJ") properly

1 considered the relevant medical evidence of record; and

- 2 2. Whether the ALJ properly considered Plaintiff's subjective
3 complaints and those statements made by third parties.

4 (JS at 3.)

5
6 This Memorandum Opinion will constitute the Court's findings of
7 fact and conclusions of law. After reviewing the matter, the Court
8 concludes that the decision of the Commissioner must be affirmed.

9
10 I

11 **THE ALJ PROPERLY CONSIDERED THE RELEVANT MEDICAL EVIDENCE OF RECORD**

12 In Plaintiff's first issue, he asserts that the ALJ failed to
13 account for and evaluate the report of Dr. Kalfuss, dated July 22,
14 1993. (See AR at 257-283.) Plaintiff notes that he was found to be
15 temporarily totally disabled by Dr. Kalfuss from the period July 27,
16 1990 through January 1991. Noting that Dr. Kalfuss had limited
17 Plaintiff to a significantly narrowed range of light work in 1993, and
18 that he had described Plaintiff's condition as "degenerative" and
19 "progressive," Plaintiff questions how the ALJ, 17 years later, could
20 assess that he had a greater physical capacity for work than he did in
21 1993. Finally, Plaintiff notes that Dr. Kalfuss' opinions are
22 consistent with other medical opinions rendered concurrently, such as
23 that of Dr. King in 1992 (AR 309) and Dr. Sanford, in 1990 (AR 248).

24 Plaintiff has filed several applications, which were denied as
25 recently as 1997 and 2005. (AR 10.) The ALJ noted that there was no
26 basis for reopening these decisions, and Plaintiff does not claim
27 otherwise. Thus, they are subject to administrative res judicata.
28 The ALJ determined that Plaintiff has not been disabled within the

1 meaning of the Social Security Act any time after November 7, 2007,
2 the date of his most recent application for Supplemental Security
3 Income ("SSI").

4 With regard to the ALJ's evaluation of medical opinions, he did
5 not, in fact, ignore the opinions of Drs. Kalfuss or Sanford. As to
6 Dr. Sanford, the ALJ characterized his diagnostic opinion as a "remote
7 document." (AR 13.) Nevertheless, the ALJ correctly noted that Dr.
8 Sanford's opinion does not speak to the disability time frame at
9 issue. Indeed, Dr. Sanford's November 1990 report predates the
10 starting point of that period by 17 years.

11 Dr. Kalfuss' 1993 opinion was rendered as part of Plaintiff's
12 workers' compensation claim. This report is 14 years prior to the
13 disability date at issue. While, certainly, it is not required that
14 relevant medical evidence have been obtained during the period of
15 disability, it is fair to state that the more remote such an
16 examination and report is, the less importance it will have in the
17 disability analysis. Here, while Dr. Kalfuss may have projected a
18 degenerative condition, that was only a prediction, and would not
19 support a current finding of disability. In any event, it is not
20 necessary to go down that avenue, because in this case the ALJ
21 obtained two current independent medical evaluations. Dr. Altman, an
22 orthopedic consultative examiner, saw Plaintiff in late 2007, and
23 wrote a report on December 22 of that year. (AR 204-207.) Following
24 a physical examination, Dr. Altman assessed Plaintiff's capacity as
25 being able to lift and carry 20 pounds occasionally and 10 pounds
26 frequently; to walk and stand for six hours in an eight-hour workday;
27 to sit for six hours in an eight-hour workday; frequent postural
28 activities as well as agility activities; no assistive device

1 necessary; and gross and fine manipulations can be done without
2 restrictions. (AR 207.) This is consistent with an assessment that
3 Plaintiff could perform light work with some limitations. It is also
4 consistent with the ALJ's residual functional capacity ("RFC"). (AR
5 13.)

6 Plaintiff was also examined by Dr. Goldman, an independent
7 psychological examiner. (AR 208-211.) After examining Plaintiff and
8 performing objective testing, Dr. Goldman wrote a report in which he
9 concluded that Plaintiff was malingering. (AR 208-211, at 210.)
10 Plaintiff refused to answer Dr. Goldman's questions concerning his
11 activities (AR 209), and also refused to take part in psychological
12 testing. (AR 210.)

13 Plaintiff's concern about the ALJ's failure to rely upon a 14-
14 year-old report which substantially predated the disability period is
15 without merit. It is difficult to conceive why that report has any
16 probative value at all. Indeed, while Plaintiff asserts disability,
17 he was employed as a painter in 2006 (AR 10), and as a "mixer" until
18 2003 (AR 205). Thus, the Court finds that the ALJ properly determined
19 Plaintiff's RFC based on current medical evidence in the record, and
20 while he did not ignore Dr. Kalfuss' opinion from 1993, he accorded it
21 less credibility because it was so stale. The Court concludes that
22 the ALJ properly performed his function of weighing conflicting
23 evidence in reaching his conclusion regarding disability.

24
25 **II**

26 **THE ALJ DID NOT ERR IN ASSESSING PLAINTIFF'S CREDIBILITY**

27 In Plaintiff's second issue, he asserts that the ALJ did not
28 properly consider his subjective statements regarding his pain and

1 other symptomology. Indeed, Plaintiff asserts that the ALJ ignored
2 his pain statements, and performed no credibility analysis at all.

3 An examination of the ALJ's opinion does not corroborate
4 Plaintiff's claims that the credibility issue was ignored. To the
5 contrary, the ALJ set forth several reasons for depreciating
6 Plaintiff's credibility. First, he noted Dr. Altman's assessment that
7 Plaintiff was malingering. (AR 14.) A finding of malingering is
8 sufficient to support an adverse credibility determination. See
9 Benton ex. rel. v. Barnhart, 331 F.3d 1030, 1040 (9th Cir. 2003). The
10 ALJ went further, and cited additional reasons. First, the ALJ noted
11 that the objective medical evidence did not support Plaintiff's
12 extreme allegations. While a discrepancy between subjective pain
13 complaints and the objective medical evidence is not a sufficient
14 reason, in and of itself, to depreciate credibility, it is relevant in
15 combination with other factors. See Carmickle v. Commissioner, 533
16 F.3d 1155, 1161 (9th Cir. 2008).

17 In addition to the foregoing, the ALJ noted that Plaintiff's
18 subjective complaints were inconsistent with his activities of daily
19 living ("ADL"). Certainly, an individual can do some ADLs and yet
20 remain disabled, but where an ability to perform ADLs is inconsistent
21 with the existence of a condition that would preclude all work
22 activity, it may be recognized in the credibility analysis. See Curry
23 v. Sullivan, 925 F.2d 1127, 1130 (9th Cir. 1990). Here, the ALJ
24 assessed that Plaintiff could perform light work with some physical
25 restrictions, and this is not inconsistent with Plaintiff's ability to
26 ride a bicycle, shop, and perform other like activities.

27 Finally, the ALJ noted that Plaintiff had received very little
28 medical treatment over the years. This is a recognized credibility

1 assessment factor. See Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir.
2 2005).

3 Based on the foregoing, the Court finds no error in the ALJ's
4 credibility analysis.

5 Finally, the lay witness statement of Janet Powell, Plaintiff's
6 friend, provides identical information to that provided by Plaintiff.
7 (See AR 156-163, 164-170.) As such, there is no reversible error in
8 the ALJ's failure to reach any different conclusion based on the lay
9 witness statement of Ms. Powell. Further, since the ALJ depreciated
10 Plaintiff's credibility, his failure to address Ms. Powell's
11 statements was on no consequence in the determination of disability.
12 At most, it constituted harmless error. See Stout v. Commissioner of
13 Social Security Administration, 454 F.3d 1056, 1053 (9th Cir. 2006).

14 The decision of the ALJ will be affirmed. The Complaint will be
15 dismissed with prejudice.

16 **IT IS SO ORDERED.**

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18 DATED: May 5, 2011

18 /s/
19 VICTOR B. KENTON
20 UNITED STATES MAGISTRATE JUDGE
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