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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

RENE RODRIGUEZ, JR.,)	NO. EDCV 10-01598 (SS)
)	
Plaintiff,)	
)	
v.)	
)	MEMORANDUM DECISION AND ORDER
MICHAEL J. ASTRUE,)	
Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	
)	

**I.
INTRODUCTION**

Plaintiff Rene Rodriguez, Jr. ("Plaintiff") brings this instant action seeking to overturn the decision of the Commissioner of the Social Security Administration (hereinafter the "Commissioner" or the "Agency") denying his application for period of disability and Disability Insurance Benefits ("DIB"). On October 19, 2010, Plaintiff filed a request to proceed In Forma Pauperis ("IFP request") and lodged a complaint (the "Complaint"). On October 25, 2010, this Court granted Plaintiff's IFP request and filed his Complaint. Pursuant to this

1 Court's October 26, 2010 order, the Commissioner filed an answer
2 ("Answer") and a certified Administrative Record ("AR") on February 24,
3 2011. Plaintiff then filed a memorandum of points and authorities in
4 support of his Complaint ("Plaintiff's Memorandum") on April 25, 2011,
5 and the Commissioner filed a memorandum in support of the Commissioner's
6 Answer ("Commissioner's Memorandum") on June 24, 2011. The parties
7 consented to the jurisdiction of the undersigned United States
8 Magistrate Judge, pursuant to 28 U.S.C. § 636(c). For the reasons
9 stated below, the decision of the Commissioner is AFFIRMED.

10
11 **II.**

12 **PROCEDURAL HISTORY**

13
14 Plaintiff filed an application for DIB on June 20, 2008. (AR 86).
15 In his application, Plaintiff claimed he became disabled on June 1,
16 2008. (Id.). The Agency initially denied Plaintiff's claim on
17 October 3, 2008. (AR 54-57). On February 4, 2009, the Agency denied
18 Plaintiff's claim again on reconsideration. (AR 58-62). On April 2,
19 2009, Plaintiff requested a hearing before an Administrative Law Judge
20 ("ALJ"). (AR 63). The Agency scheduled a hearing for March 2, 2010.
21 (AR 70).

22
23 At the hearing, Plaintiff and Luis Moss, a vocational expert,
24 testified before the ALJ. (AR 23-51). On April 9, 2010, the ALJ issued
25 an unfavorable decision. (AR 6-18). Plaintiff requested review of the
26 ALJ's decision. (AR 5). On August 19, 2010, the Appeals Council denied
27 Plaintiff's request, and the ALJ's decision became final. (AR 1-3).

1 Plaintiff's "right posterior iliac crest" was tender. (AR 215-216).
2 Dr. Sadler reported no other abnormalities. (AR 215-217).

3
4 Dr. Sadler recommended and scheduled an MRI of Plaintiff's lumbar
5 spine on December 4, 1997. (AR 217, 225-26). In his notes from
6 November 3, 1998, approximately ten years prior to the alleged onset of
7 disability, Dr. Sadler stated that Plaintiff's MRI showed significant
8 abnormalities. (AR 219). Dr. Sadler also noted that Plaintiff's x-rays
9 showed minimal degenerative changes. (AR 218). On that date, Plaintiff
10 reported numbness and tingling in both his right hand and leg. (Id.).
11 The physical examination revealed that Plaintiff's neck motion was still
12 minimally limited with associated complaints of pain. (Id.). However,
13 straight leg raising and L4-S1 motor function were both intact
14 bilaterally. (AR 218). Dr. Sadler diagnosed Plaintiff with a cervical
15 strain, a probable lumbar spine disc rupture and bilateral carpal tunnel
16 syndrome. (AR 218).

17
18 Dr. Sadler opined that Plaintiff had certain work restrictions, but
19 he added that the restrictions were partially prophylactic and that the
20 restrictions could be relaxed if Plaintiff used bilateral wrist braces
21 with metal reinforcement. (AR 219-20). Although Dr. Sadler added that
22 temporary total disability would have been reasonable from September 2,
23 1997 to November 3, 1998, (AR 220), Plaintiff was not a candidate for
24 surgery at that time. (AR 221). Plaintiff reported to the Agency that
25 he resumed work in April 2001. (AR 139).

26 //

1 **2. Plaintiff's Treatment Records**

2
3 Shalini Bhatia, D.O., wrote a discharge summary of Plaintiff's
4 hospitalization from October 9, 2007 to October 13, 2007 due to open
5 wounds on his feet. (AR 146-47). Dr. Bhatia examined Plaintiff and
6 reported that Plaintiff was normal other than obesity and decreased
7 erythema of the lower extremity. (Id.). Dr. Roger Martinez wrote an
8 emergency room report regarding the same hospitalization. (AR 148-49).
9 Dr. Martinez also reported that Plaintiff had a normal review of systems
10 other than the wounds on the lower extremities. (AR 148).

11
12 Similarly, Dr. Hanna Demarco examined Plaintiff and reported a
13 normal physical besides Plaintiff's obesity and foot wounds. (AR 150-
14 52). At Dr. Demarco's request, Dr. Brian Lipman examined Plaintiff on
15 October 10, 2007. (AR 151, 153-54). Dr. Lipman diagnosed Plaintiff
16 with a diabetic foot infection and ordered a three-phase bone scan and
17 x-ray of Plaintiff's foot. (AR 154). The bone scan revealed no
18 osteomyelitis, and the x-ray revealed no acute pathology. (AR 161,
19 163).

20
21 Plaintiff visited the Riverside County Regional Medical Center
22 emergency room due to back pain on June 27, 2008. (AR 166-171).
23 Plaintiff walked into the emergency room without assistance after being
24 dropped off. (AR 166, 170). During the visit, Plaintiff reported a
25 history of chronic back pain since 1997 and complained of localized
26 lower back pain on the right side of his body and bilateral hand pain.
27 (AR 166, 170). Plaintiff described the back pain as an "ache," rated
28 the back pain as a nine out of ten, and rated the hand pain as a seven

1 out of ten. (AR 170). The physician's exam revealed generalized pain
2 in Plaintiff's right flank without redness or swelling. (AR 167). The
3 physician diagnosed Plaintiff with "chronic back pain," (id.), made no
4 diagnosis regarding the hand pain, (see AR 166-171), and prescribed
5 Motrin, Flexeril and Novolin N. (AR 168, 171).

6 7 **3. Consulting Doctors** 8

9 On September 19, 2008, Dr. Kristof Siciarz, a board eligible
10 internal medicine specialist, submitted a summary report of an internal
11 medicine evaluation. (AR 172-76). Dr. Siciarz took a medical history
12 as reported by Plaintiff and examined Plaintiff. (Id.). Dr. Siciarz
13 reported that "[Plaintiff] state[d] he has had back pain since 1997
14 after a work injury." (AR 172). Plaintiff also reported to Dr. Siciarz
15 that he was diagnosed with bilateral carpal tunnel syndrome in 1997.
16 (Id.). Dr. Siciarz reported that Plaintiff's past medical history was
17 "significant" for diabetes and hypertension. (Id.).
18

19 Regarding Plaintiff's treatment history, Plaintiff did not report
20 any past surgical procedures, taking any medications at that time, or
21 any drug allergies. (AR 172-73). Plaintiff stated he had declined back
22 surgery that other doctors recommended. (AR 172).
23

24 At the time of the examination, Plaintiff complained of "a dull
25 ache in the lower lumbar area that radiates down to the right leg" and
26 numbness down the right leg. (Id.). Plaintiff stated that his symptoms
27 intensified with bending and lifting but improved with rest. (Id.).
28 Plaintiff also complained of intermittent twitching in his hands, sharp

1 pain in the back of his neck for approximately four years, and
2 intermittent leg swelling. (Id.).

3
4 Dr. Siciarz's physical examination discovered "no significant
5 abnormalities." (AR 175). Dr. Siciarz reported that, although
6 Plaintiff is morbidly obese, his "[m]ovements [were] noted to be
7 normal," he "[did] not use an assistive device for ambulation," he
8 "could sit comfortably without shifting, and he "is able to stand up
9 from a sitting position and sit up from the supine position without
10 difficulty." (AR 173). Dr. Siciarz's back inspection "[did] not reveal
11 any evidence of significant kyphosis, lordosis, or noticeable scoliosis.
12 Palpation along the paravertebral area does not elicit complaints of
13 pain. The range of motion appears to be within normal
14 limits. Straight-leg rising is negative, bilaterally." (AR 174). Dr.
15 Siciarz reported that Plaintiff's gait and station were within normal
16 limits. (AR 174). Dr. Siciarz also found that all other systems were
17 generally unremarkable or normal, (AR 173-175), and Plaintiff's mental
18 status was normal, observing that "[Plaintiff's] sensorium is clear and
19 alert. [Plaintiff] is oriented to person, place, time, and the purpose
20 fo the evaluation." (AR 173).

21
22 Dr. Siciarz found that Plaintiff's functional capacity was
23 restricted by Plaintiff's obesity, diabetes and hypertension. (AR 175).
24 Specifically, Dr. Siciarz restricted Plaintiff to pushing, pulling,
25 lifting and carrying fifty pounds occasionally and twenty-five pounds
26 frequently. (Id.). Dr. Siciarz also restricted Plaintiff to standing
27 and walking only six hours of an eight hour day. (Id.). However, he
28 did not restrict Plaintiff's ability to sit for extended periods of

1 time. (Id.). Dr. Siciarz found Plaintiff could occasionally
2 participate in postural activities or activities requiring agility and
3 did not restrict Plaintiff from hearing, seeing, speaking or using
4 Plaintiff's hands. (Id.). Dr. Siciarz recommended fewer restrictions
5 than the ones imposed by the ALJ. (AR 12).

6
7 On October 2, 2008, Dr. Thu Do completed a Residual Functional
8 Capacity Assessment form. (AR 177-81, 183). The assessment mirrored
9 Dr. Siciarz's conclusions, but added that Plaintiff can only sit for six
10 hours of an eight hour day. (AR 178). Although more restrictive than
11 Dr. Siciarz's recommendations, Dr. Do recommended fewer restrictions on
12 Plaintiff than the ones found by the ALJ. (AR 12).

13
14 On January 28, 2009, Dr. Reynaldo Abejuela, a diplomate of the
15 American Board of Psychiatry & Neurology and a diplomate of the American
16 Board of Forensic Examiners, performed a complete psychiatric evaluation
17 of Plaintiff. (AR 186-192). Dr. Abejuela reported that Plaintiff
18 stated feeling depressed, feeling anxious and preferring isolation. (AR
19 187). Despite these feelings, Plaintiff stated that he was not seeing
20 a psychiatrist or therapist and was not taking any psychiatric
21 medication. (Id.).

22
23 Plaintiff reported trouble sleeping, waking up "four to six times
24 at night." (Id.). Plaintiff described experiencing loss of appetite
25 and weight loss despite weighing 425 pounds. (Id.). Plaintiff
26 complained of headaches but denied suicidal or homicidal ideation.
27 (Id.). Plaintiff also denied experiencing guilt, helplessness,

1 worthless, hopelessness or a decrease in pleasurable activities.
2 (Id.).

3
4 Plaintiff reported no history of psychiatric hospitalization and
5 denied drug or alcohol use. (AR 187-88). Plaintiff stated that he was
6 able to care for his hygiene and grooming without assistance, has no
7 hobbies or outside activities, and has "fair" relations with
8 others. (AR 188).

9
10 Dr. Abejuela's observed that Plaintiff could walk without an
11 assistive device. (Id.). Dr. Abejuela reported that Plaintiff was
12 cooperative and non-hostile, and he noted no psychomotor retardation or
13 agitation. (Id.). Plaintiff's cognitive function was within normal
14 limits and commensurate to his level of education. (Id.). In his
15 discussion, Dr. Abejuela stated that Plaintiff has "some mild depression
16 and mild anxiety." (AR 190). However, "[Plaintiff's] [r]easoning and
17 comprehension remain[ed] intact and commensurate with [Plaintiff's]
18 educational level and cultural background. Cognitive function [was]
19 within normal [limits]." (AR 190-91). Dr. Abejuela reported that
20 Plaintiff had, at most, mild psychiatric limitations. (AR 191). Dr.
21 Abejuela concluded Plaintiff had a "fair to good" prognosis. (AR 192).

22 23 **4. Other Agency Observations**

24
25 In a Field Office Disability Report Form dated June 20, 2008, M.
26 Douglas interviewed Plaintiff in person. (AR 90-92). Under the
27 observations section, Mr. Douglas reported that Plaintiff had no
28 difficulty with any of the major categories of functionality, including

1 sitting, standing, walking, using hands or writing. (AR 91). Mr.
2 Douglas also noted that Plaintiff was "pleasant and cooperative" and "in
3 no apparent ortho distress." (Id.).

4
5 **B. Plaintiff's Testimony**

6
7 **1. Plaintiff's Hearing Testimony**

8
9 On March 2, 2010, Plaintiff appeared pro se and testified at the
10 hearing that he stopped working at the end of May 2008 as an armed
11 security guard because of a back injury. (AR 27). Plaintiff reported
12 that he had applied for "desk type jobs" since that time but has not
13 received any responses. (AR 29). Plaintiff also described "extreme
14 pain [in his] lower back" caused by a "ruptured disc that occurred
15 during [his] employment with Avery Dennison." (Id.). Plaintiff
16 elaborated that he was picking up a box and felt a sharp pain in his
17 back. (AR 30).

18
19 Plaintiff testified that he did not have surgery to remedy his back
20 problems because "[a]t the time, [the doctors] weren't giving
21 [Plaintiff] a good outcome of the surgery." (AR 30-31). Later, the ALJ
22 continued to question Plaintiff regarding treatments for his back. (AR
23 34). Plaintiff stated that the doctors suggested fusing his discs, but
24 he opted to go with epidural injections. (Id.).

25
26 Plaintiff stated that he takes Novolin and Glyburide for his
27 diabetes and reported that he currently takes Vicodin, Motrin, and over-
28 the-counter drugs Advil and Tylenol for his back pain. (AR 32, 35-36).

1 Plaintiff also stated he has not received anything stronger than Vicodin
2 from his current doctor, but a prior doctor in Las Vegas provided
3 OxyContin. (AR 36-37). Plaintiff also stated taking Soma, a muscle
4 relaxer. (AR 37). He testified that the "pain is there all the time
5 . . . [the medication will] help for the temporary. . . fix, but the
6 pain doesn't go away." (AR 32-33).

7
8 Plaintiff believed that doctors last x-rayed his spine in 2008
9 during an emergency visit. (AR 32). When the ALJ informed Plaintiff
10 that the medical records from the emergency room visit did not contain
11 an x-ray, Plaintiff responded that "[he] went to the ER." (Id.). The
12 ALJ also asked Plaintiff regarding the MRI mentioned in Dr. Sadler's
13 report. (AR 33). Plaintiff produced the MRI during the
14 Hearing. (Id.). The ALJ stated, "[The MRI] says then there was no
15 rupture." (Id.). To which, Plaintiff replied, "That's what he told
16 me." (Id.). Plaintiff also stated he has not had an MRI since the MRI
17 taken on December 4, 1997. (AR 33-34).

18
19 Plaintiff also testified that he experiences pain while sitting and
20 standing and stated that "[i]f [Plaintiff] sit[s], 20/30 minutes . . .
21 [he] feel[s] the discomfort depending on how [he] sit[s]." (AR 34).
22 Plaintiff stated that he can only stand for fifteen to twenty minutes
23 before experiencing pain. (AR 35). He testified that he cannot lift
24 "too much" because his fingers will start cramping and twitching due to
25 his CTS. (Id.).

26
27 Plaintiff stated he lives with his mother and a sibling's
28 granddaughter. (AR 38-39). Plaintiff initially testified that he does

1 no chores but later stated that he "picks up [his] clothes and [his]
2 room." (AR 40). However, Plaintiff reported that any little activity,
3 such as dusting, would cause pain. (Id.). Plaintiff stated that he
4 primarily watches television while laying in bed and that he has not
5 driven a vehicle in two years because "[driving] is uncomfortable for
6 [Plaintiff]." (AR 37-38, 40).

7
8 The ALJ asked Plaintiff about his weight. (AR 41-42). Plaintiff
9 testified that he is five feet ten inches tall and weighed over 400
10 pounds. (AR 41). Plaintiff testified that doctors told him to lose
11 weight and he had successfully reduced his weight to approximately 375
12 pounds but subsequently gained the weight back. (Id.). Doctors later
13 suggested a gastric bypass or an adjustable gastric band to help with
14 his weight control. (AR 41-42).

15
16 Plaintiff stated that he has been depressed since his injury,
17 suffers from migraines that cannot be relieved, and experiences a
18 numbing sensation in both legs. (AR 44, 46). When asked if Plaintiff
19 experienced any pain radiating down his legs, Plaintiff stated that it
20 was "[l]ike a sharp pain" that radiates down each leg, one at a time,
21 with greater frequency on his right side. (AR 45-46).

22
23 Plaintiff testified reporting depression and migraines to doctors.
24 (AR 44). Although Plaintiff's doctors prescribed Vicodin for
25 Plaintiff's migraines, the doctors did not prescribe any anti-depression
26 medication because Plaintiff was not medically depressed. (AR 45).
27 Plaintiff also testified that he has not had any infections in his feet
28 since his hospitalization in 2007. (AR 46).

1 **2. Plaintiff's Adult Function Report**

2
3 On January 3, 2009, Plaintiff filled out an adult function report
4 form and a headache questionnaire provided by the Agency. (AR 118-27).
5 In his function report, Plaintiff reported he only sleeps "about 4-5
6 hours of broken sleep due to pain." (AR 118). Plaintiff elaborated
7 that he has lower back pain, bilateral hand pain, bilateral leg pain and
8 headaches. (Id.). Plaintiff continued describing his typical day.
9 (Id.). After waking up "at about 5AM-6AM," Plaintiff reported taking
10 over-the-counter medication, taking hot showers, and using heating pads
11 for temporary pain relief. (Id.).
12

13 Plaintiff stated he could not put shoes on without pain but
14 described no other difficulties with self care. (AR 119). Plaintiff
15 stated he prepares his own simple meals, such as sandwiches and frozen
16 foods, approximately once a day. (AR 120). Plaintiff stated that he
17 is unable to do any household chores but also states that he needs
18 encouragement and family member help to do his chores. (AR 120).
19

20 Plaintiff reported that he goes outside around once a week, that
21 he rides in a car when traveling, and that he could not go outside alone
22 because "sometimes [Plaintiff's] back gives out" (Id.).
23 Plaintiff also reported that he drives, (id.), inconsistent with his
24 testimony that he has not driven in the past two years. (AR 37-38).
25 Plaintiff reported shopping in stores for personal items approximately
26 once a month. (AR 121). Plaintiff reported "watching T.V." as a hobby
27 or interest that he does everyday. (AR 122). Plaintiff reported
28

1 spending time with others but also reported difficulties getting along
2 with others because he becomes anti-social. (AR 122-23).

3
4 Plaintiff reported being able to walk one to two blocks before
5 needing a five to ten minute rest. (AR 123). Plaintiff reported that
6 he can follow written and spoken instructions well and that he has no
7 problems getting along with authority figures. (AR 123-24).

8
9 In his headache questionnaire, Plaintiff reported his headaches
10 became severe on or around July 2008. (AR 126). Plaintiff reported
11 daily headaches with varying intensity. (Id.). Plaintiff described the
12 pain as a "sharp pain from back of neck to top of head." (Id.).
13 Plaintiff reported that doctors had not diagnosed the type of headache
14 and treated his symptoms only with over-the-counter medication. (AR
15 127). However, the medication has not been effective at all times.
16 (Id.). Plaintiff reported that his headaches were not treated due to
17 his medical insurance. (Id.).

18
19 **C. Third Party Testimony**

20
21 On January 3, 2009, Iris Perez, Plaintiff's mother, filled out a
22 third party function report. (AR 110-17). Ms. Perez's statements are
23 nearly identical to Plaintiff's report, in some cases using nearly
24 identical language (Compare AR 111 with AR 119). Ms. Perez reported
25 that Plaintiff spends most of his day in bed due to pain. (AR 110).
26 Ms. Perez also reported that Plaintiff prepares his own meals, stating
27 that "[Plaintiff] is able to do a quick meal[,] something fast[.]
28 [U]nable to stand for long time." (AR 112). Ms. Perez stated that

1 Plaintiff prepares food once a day, taking him approximately five to ten
2 minutes. (AR 112).

3

4 Ms. Perez reported that Plaintiff participates in household chores,
5 with assistance from family members. (Id.). However, Ms. Perez
6 reported that "[Plaintiff] is unable to do house/yard work due to pain."
7 (AR 113). Ms. Perez also reported that Plaintiff goes outside
8 approximately once a week "if that." (Id.). Ms. Perez also reported
9 Plaintiff shops for personal needs and is able to shop for 30-60
10 minutes. According to Ms. Perez, Plaintiff is able to pay bills, count
11 change, handle a savings account, and use checkbooks or money orders.
12 (Id.).

13

14 Ms. Perez stated that Plaintiff cannot do anything with heavy
15 activity and he primarily watches television. (AR 114). Ms. Perez
16 reported plaintiff spends time with family members that live with
17 Plaintiff or talked to family members on the
18 telephone. (Id.). However, Ms. Perez reported that Plaintiff had
19 difficulties getting along with others because "[Plaintiff] has become
20 anti-social and short tempered." (AR 115). Ms. Perez stated Plaintiff
21 can only walk one to two blocks before needing a five minute rest.
22 (Id.). Ms. Perez reported that Plaintiff follows written and spoken
23 instructions well, and that Plaintiff can interact with authority
24 figures well. (AR 115-16).

25 \\

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28

1 **D. Plaintiff's Waiver Of Counsel**

2
3 The Agency sent Plaintiff a letter dated October 3, 2008 that
4 informed Plaintiff that his claim had been denied. (AR 54-57). On page
5 three and four of that letter, the Agency wrote the following:
6

7 **If You Want Help With Your Appeal**

8
9 You can have a friend, lawyer, or someone else help you.
10 There are groups that can help you find a lawyer or give you
11 free legal services if you qualify. There are also lawyers
12 who do not charge unless you win your appeal. Your local
13 Social Security office has a list of groups that can help you
14 with your appeal.
15

16 (AR 56-57) (emphasis in original). The Agency also provided Plaintiff
17 with a telephone number to call if he had questions. (AR 57). On
18 February 4, 2009, the Agency sent another letter notifying Plaintiff
19 that his claims had been denied again. (AR 58-62). That letter
20 contained the same notice as the October 3, 2008 letter. (AR 61).
21

22 On May 22, 2009, the Agency sent Plaintiff a letter confirming
23 receipt of Plaintiff's request for a hearing. (AR 64-67). The letter
24 stated that Plaintiff may choose to bring a lawyer or another
25 representative to the hearing to assist:
26
27
28

1 **Your Right to Representation**

2
3 You may choose to be represented by a lawyer or other person.
4 A representative can help you get evidence, prepare for the
5 hearing, and present your case at the hearing. If you decide
6 to have a representative, you should find one immediately so
7 that he or she can start preparing your case.

8
9 Some private lawyers charge a fee only if you receive
10 benefits. Some organizations may be able to represent you
11 free of charge. Your representative may not charge or
12 receive any fee unless we approve it.

13
14 (AR 64-65) (emphasis in original). The Agency also included a brochure
15 entitled "Your Right to Representation" and a list of contacts to help
16 find legal representation. (AR 66-68).

17
18 Prior to Plaintiff's March 2, 2010 hearing, the Agency sent a
19 Notice Of Hearing to Plaintiff. (AR 70-82). The letter included the
20 same brochure as the May 22, 2009 letter, (AR 74, 76-77), and explained
21 the hearing process. (AR 71-73). The ALJ also enclosed a letter to VE
22 Luis O Mas, who would be testifying at the March 2, 2010 hearing. (AR
23 81-82). The enclosure contained a notification that stated the purpose
24 of the VE testimony, the type of questions the VE would be asked, and
25 who could ask questions. (AR 82). The notice explicitly stated that
26 "[q]uestions may also be asked of [the VE] by [Plaintiff] (or
27 representative, if any)." (Id.).

1 At the March 2, 2010 hearing, the ALJ discussed with Plaintiff his
2 right to counsel. (AR 25). The ALJ directed the following question to
3 Plaintiff:

4
5 I need to talk to you about a right that you have and that's
6 the right to have an attorney or other representative here
7 with you. It's not a requirement, but it is a right that you
8 have. I know that you have been advised of this right
9 previously and I see you're today without representation. Is
10 it your wish to proceed today without representation?

11
12 (Id.). Plaintiff replied "[y]es," waiving his right to counsel at the
13 hearing. (Id.).

14
15 **E. ALJ's Efforts To Develop The Record**

16
17 **1. Record Requests**

18
19 On June 25, 2008, the Agency contacted St. Rose Dominican Hospital
20 requesting Plaintiff's medical records. (AR 144). The Agency
21 specifically identified the alleged impairments and noted that the
22 Agency requested the dates of treatment, the history of the impairments,
23 the objective clinical findings, as well as the diagnosis and prognosis
24 based on the clinical findings. (Id.). The letter also asked for an
25 opinion regarding Plaintiff's ability to do "work-related physical
26 and/or mental activities as appropriate." (AR 145). St Rose Dominical
27 Hospital submitted notes and diagnostic results from Plaintiff's
28 hospital stay from October 9 to October 13, 2007. (AR 146-63).

1 On December 24, 2008, the Agency contacted Riverside County
2 Regional Medical Center to obtain Plaintiff's medical records. (AR
3 164). The letter provided some identifying information, the alleged
4 impairments and a request for specific information. (Id.). The letter
5 also requested a statement based on medical findings that expressed the
6 treating doctor's opinion regarding Plaintiff's ability to do work
7 related activities. (AR 165). Riverside County Regional Medical Center
8 provided six pages of notes from a June 28, 2008 emergency room visit.
9 (AR 166-71). On January 13, 2009, the Agency followed up for additional
10 records. (AR 207).
11

12 In a May 22, 2009 letter, the Agency explained the hearing process
13 to Plaintiff and also stated that Plaintiff should submit any additional
14 evidence that Plaintiff intended for the ALJ to consider. (AR 65). The
15 letter explained that "[i]f a physician, expert or other witness is not
16 cooperating with the production of documents important to [Plaintiff's]
17 case, [Plaintiff] may ask the ALJ to issue a subpoena that requires a
18 person to submit documents or testify at [Plaintiff's] hearing." (Id.).
19 The Agency also offered Plaintiff an opportunity to view the evidence
20 in his file. (Id.).
21

22 In a February 3, 2010 Notice Of Hearing, like in the May 22, 2009
23 letter, the Agency again notified Plaintiff to submit all evidence as
24 soon as possible so that the ALJ had a complete record. (AR 71). The
25 Agency again offered Plaintiff an opportunity to review the evidence in
26 his file. (Id.).
27
28

1 result in death or to last for a continuous period of at least twelve
2 months. See Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998)
3 (citing 42 U.S.C. § 423(d)(1)(A)). The impairment must render the
4 claimant incapable of performing the work she previously performed and
5 incapable of performing any other substantial gainful employment that
6 exists in the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098
7 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

8
9 To determine if a claimant is entitled to benefits, an ALJ conducts
10 a five-step inquiry. See 20 C.F.R. § 416.920 ("This section explains
11 the five-step sequential evaluation process we use to decide whether you
12 are disabled, as defined in § 416.905."). The steps are:

13
14 (1) Is the claimant presently engaged in substantial gainful
15 activity? If so, the claimant is found not
16 disabled. If not, proceed to step two.

17 (2) Is the claimant's impairment severe? If not, the
18 claimant is found not disabled. If so, proceed to step
19 three.

20 (3) Does the claimant's impairment meet or equal the
21 requirements of any impairment listed at 20 C.F.R. Part
22 404, Subpart P, Appendix 1? If so, the claimant is
23 found disabled. If not, proceed to step four.

24 (4) Is the claimant capable of performing h[er] past work?
25 If so, the claimant is found not disabled. If not,
26 proceed to step five.

27 (5) Is the claimant able to do any other work? If not, the
28 or profit. See 20 C.F.R. § 416.910.

1 claimant is found disabled. If so, the claimant is
2 found not disabled.

3
4 Tackett, 180 F.3d at 1098-99; see Bustamante v. Massanari, 262 F.3d 949,
5 953-54 (9th Cir. 2001); see 20 C.F.R. § 416.920(b)-(g)(1).

6
7 The claimant has the burden of proof at steps one through four and
8 the Commissioner has the burden of proof at step five. See Bustamante,
9 262 F.3d at 953-54; see Andrews v. Shalala, 53 F.3d 1035, 1040
10 (9th Cir. 1995) (holding that "[t]he claimant bears the burden of
11 proving entitlement to disability benefits."); see Johnson v. Shalala,
12 60 F.3d 1428, 1432 (9th Cir. 1995) ("In determining the ultimate issue
13 of disability, claimant bears the burden of proving she is disabled.").
14 If, at step four, the claimant meets her burden of establishing an
15 inability to perform the past work, the Commissioner must show that the
16 claimant can perform some other work that exists in "significant
17 numbers" in the national economy, taking into account the claimant's
18 RFC, age, education and work experience. See Tackett, 180 F.3d at 1100;
19 20 C.F.R. § 416.920(g)(1). The Commissioner may do so by the testimony
20 of a vocational expert or by reference to the Medical-Vocational
21 Guidelines appearing in 20 C.F.R. Part 404, Subpart P, Appendix 2
22 (commonly known as "the Grids"). Osenbrock v. Apfel, 240 F.3d 1157,
23 1162 (9th Cir. 2001). When a claimant has both exertional (strength-
24 related) and nonexertional limitations, the Grids are inapplicable and
25 the ALJ must take the testimony of a vocational expert. Moore v. Apfel,
26 216 F.3d 864, 869 (9th Cir. 2000).

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V.

THE ALJ'S DECISION

Here, the ALJ employed the five-step sequential evaluation process and concluded that Plaintiff was not disabled under the Social Security Act. (AR 9-18). At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity since the alleged onset of disability on June 1, 2008. (AR 11). At step two, the ALJ determined that Plaintiff suffered three severe impairments: (1) morbid obesity; (2) diabetes mellitus; and (3) degenerative disc disease of the lumbosacral spine. (AR 11). The ALJ concluded that Plaintiff's alleged mood disorder was nonsevere because Plaintiff did not provide evidence indicating that Plaintiff received treatment for his mood disorder or suffered episodes of decompensation during the relevant time period. (AR 11-12). The ALJ concluded that Plaintiff's mental impairment causes no more than mild limitations and is nonsevere pursuant to 20 CFR 404.1520a(d)(1). (AR 12)

At step three, the ALJ concluded that Plaintiff's impairments does not match or equal one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1. (AR 12). At step four, the ALJ determined that Plaintiff could not perform his past relevant work. (AR 16).

To reach his step four conclusion, the ALJ first determined Plaintiff's residual functional capacity. (AR 12-16). The ALJ determined Plaintiff's residual functional capacity with the following steps: (1) determining whether Plaintiff suffered an underlying medically determinable impairment that could reasonably be expected to

1 produce Plaintiff's symptoms, and (2) how much those symptoms limit
2 Plaintiff's ability to function. (AR 12). The ALJ considered
3 Plaintiff's testimony, any medical evidence in the record, as well as
4 third party statements to reach his conclusion. (AR 13-16).

5
6 The ALJ determined that Plaintiff suffered from medically
7 determinable impairments that could reasonably be expected to cause
8 Plaintiff's alleged symptoms. (AR 14). However, the ALJ found that
9 Plaintiff was not credible regarding the severity of his symptoms.
10 (Id.). The ALJ based his credibility determination on inconsistencies
11 between Plaintiff's testimony and the record. (AR 13, 14-16). The ALJ
12 also rejected the third party function report submitted by Plaintiff's
13 mother because, among other things, it largely repeated Plaintiff's
14 function report and discredited allegations. (AR 14). Although the ALJ
15 did not find Plaintiff credible, the ALJ concluded that Plaintiff
16 suffered from the following restrictions that were far more restrictive
17 than the limitations suggested by the consulting examiners:

18
19 "[Plaintiff] could lift 10 pounds frequently and 20 pounds
20 occasionally; he could stand and/or walk 2 hours in an eight-
21 hour workday; he could sit without any restrictions but with
22 normal breaks every 2 hours; the claimant could not climb
23 ladders, ropes, and scaffolds, but he could occasionally
24 climb ramps and stairs; he could occasionally balance, stoop,
25 kneel, crouch, and crawl."

26
27 (AR 12). Based on these limitations, the ALJ determined that Plaintiff
28 could not return to any past relevant work. (AR 16).

1 At step five, the ALJ determined that a person with Plaintiff's
2 age, education, work experience and residual functional capacity could
3 meet the requirements of jobs that exist in significant numbers in the
4 national economy. (AR 17). The ALJ based his decision on vocational
5 expert ("VE") testimony. (See id.). The VE testified that Plaintiff
6 could work as a "small parts assembler," "Cashier II" and "Production
7 Assembler." (AR 17, 48-49). The ALJ found that the VE testimony was
8 consistent with the Dictionary of Occupational Titles ("DOT")
9 definitions. (AR 17). Therefore, the ALJ concluded that Plaintiff was
10 not disabled under the Social Security Act. (Id.)

11
12 **VI.**

13 **STANDARD OF REVIEW**

14
15 Under 42 U.S.C. § 405(g), a district court may review the
16 Commissioner's denial of benefits. "The findings of the Secretary as
17 to any fact, if supported by substantial evidence, shall be conclusive."
18 See Andrews, 53 F.3d at 1039. Therefore, "[t]he Secretary's decision
19 to deny benefits will be disturbed only if it is not supported by
20 substantial evidence or is based on legal error." Id.; see Aukland v.
21 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (holding that "[t]his
22 court may set aside the Commissioner's denial of benefits when the ALJ's
23 findings are based on legal error or are not supported by substantial
24 evidence in the record as a whole."); see also Smolen v. Chater, 80 F.3d
25 1273, 1279 (9th Cir. 1996).

1 “Substantial evidence is more than a scintilla, but less than a
2 preponderance.” Reddick, 157 F.3d at 720. It is “relevant evidence
3 which a reasonable person might accept as adequate to support a
4 conclusion.” Id. To determine whether substantial evidence supports
5 a finding, the court must “consider the record as a whole, weighing
6 both evidence that supports and evidence that detracts from the
7 [Commissioner’s] conclusion.” Aukland, 257 F.3d at 1035 (quoting Penny
8 v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)); see also Andrews, 53 F.3d
9 at 1039. “If the evidence can reasonably support either affirming or
10 reversing the Secretary’s conclusion, the court may not substitute its
11 judgment for that of the Secretary.” See Reddick, 157 F.3d at 720-21.
12 Indeed:

13
14 To determine whether substantial evidence supports the ALJ’s
15 decision, [the Court of Appeals] review[s] the administrative
16 record as a whole, weighing both the evidence that supports
17 and that which detracts from the ALJ’s conclusion. The ALJ
18 is responsible for determining credibility, resolving
19 conflicts in medical testimony, and for resolving
20 ambiguities. [The Court of Appeals] must uphold the ALJ’s
21 decision where the evidence is susceptible to more than one
22 rational interpretation.

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24 Andrews, 53 F.3d at 1039-40.
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VII.
DISCUSSION

Plaintiff contends that the Commissioner's decision should be reversed for the following reasons: (1) the ALJ failed to obtain a fully informed waiver of Plaintiff's right to counsel; (2) the ALJ failed to properly consider all of the relevant medical evidence; (3) the ALJ failed to properly consider Plaintiff's subjective complaints; (4) the ALJ failed to consider third party statements. (Plaintiff's Memorandum at 2-11). Plaintiff appears to also argue that the ALJ did not satisfy his duty to fully develop the record. (Plaintiff's Memorandum at 3-6). The Court disagrees with Plaintiff's contentions. For the reasons stated below, the ALJ's decision is AFFIRMED.

A. Plaintiff Validly Waived His Right To Counsel Because The ALJ Properly Notified Plaintiff Of His Right To Representation

Plaintiff contends that Plaintiff did not properly waive his right to counsel because the ALJ did not provide Plaintiff with sufficient notice of Plaintiff's rights. (Plaintiff's Memorandum at 2-6). In particular, Plaintiff contends that the ALJ "failed to properly inform him of the multiple ways in which an attorney representative could assist in the full and fair development of [Plaintiff's] case" such as obtaining evidence and cross-examining vocational experts. (Plaintiff's Memorandum at 4-5). The Court disagrees.

1 When a claimant appears at a hearing without counsel, the ALJ has
2 an obligation to inform the claimant of options other than self-
3 representation. The Ninth Circuit has held that an ALJ must explain to
4 a pro se claimant in a disability case the "avenues which [the pro se
5 claimant] could pursue in obtaining counsel," or alternatively, the ALJ
6 must probe for additional facts and "explain to the claimant the type
7 of showing which the applicant had to make in order to prove his case
8 successfully." Cruz v. Schweiker, 645 F.2d 812, 814 (9th Cir. 1981).

9
10 However, the Ninth Circuit recently rejected notice standards that
11 exceed the requirements listed in 42 U.S.C. 406(c). See Roberts v.
12 Comm'r Of The Soc. Sec. Admin., ___ F.3d ___, 2011 WL 1998337, at *2 (9th
13 Cir. May 24, 2011) (per curiam). In Roberts, the Ninth Circuit held
14 that an ALJ meets his duty to notify pro se claimants of their right to
15 counsel if the ALJ satisfies the standards stated in 42 U.S.C. section
16 406(c). Id. 42 U.S.C. section 406(c) states that an ALJ is obligated
17 to inform a pro se claimant in writing "of the options for obtaining
18 attorneys to represent [the claimant] in presenting their case before
19 the Commissioner of Social Security" with any notices of adverse
20 decisions, and "[s]uch notification shall also advise the claimant of
21 the availability to qualifying claimants of legal services organizations
22 which provide legal services free of charge." The Ninth Circuit stated
23 that "the statutory requirements are all that [a court] can apply," and
24 that "no disclosure is required other than the disclosure required by
25 [42 U.S.C.] section 406(cd)." Id. (citing Lamay v. Comm'r of Soc. Sec.
26 Admin, 562 F.3d 503, 508 (2d Cir. 2009)).

1 Here, the Commissioner clearly satisfied his duty to notify
2 Plaintiff of his right to counsel. 42 U.S.C. section 406(c) requires
3 the Commissioner to provide written notice "of the options for obtaining
4 attorneys to represent [the claimant] in presenting their case before
5 the Commissioner of Social Security" with any adverse decisions, and
6 "[s]uch notification shall also advise the claimant of the availability
7 to qualifying claimants of legal services organizations which provide
8 legal services free of charge." Here, Plaintiff received written notice
9 of his right to counsel that included options for obtaining attorneys
10 and information regarding the availability of free legal services with
11 each notice of adverse decision. (See AR 54-57, 70-82)

12
13 The Agency sent written notices describing his right to counsel in
14 multiple notices. On October 3, 2008, the Agency sent Plaintiff a
15 Notice of Disapproved Claims. (AR 54-57). On page three of the October
16 3, 2008 notice, the notice states that "[y]ou can have a friend, lawyer,
17 or someone else help you. There are groups that can help you find a
18 lawyer or give you free legal services if you qualify. There are also
19 lawyers who do not charge unless you win your appeal. Your local Social
20 Security office has a list of groups that can help you with your
21 appeal." (AR 56-57). On February 4, 2009, the Agency sent Plaintiff
22 another Notice of Disapproved Claims after Plaintiff requested review.
23 (AR 58-62). Page four of that notice contains a nearly identical
24 statement regarding rights and information regarding counsel. (AR 61).

25
26 Additionally, the Agency provided Plaintiff with a detailed leaflet
27 titled "Your Right To Representation" in a May 22, 2009 notice of
28 hearing. (AR 64-68). Furthermore, the Agency provided additional

1 notices regarding Plaintiff's right to counsel on February 3, 2010, (AR
2 71), and at the March 2, 2010 hearing. (AR 25). Therefore, the Agency
3 and the ALJ adequately notified Plaintiff regarding his right to counsel
4 under 42 U.S.C. section 406(cd).

5
6 Plaintiff argues that this Court adopt the heightened notice
7 standards from other decisions. (Plaintiff's Memorandum at 3-4).
8 Specifically, Plaintiff cites to Gullett v. Chater, 973 F. Supp. 614
9 (E.D. Tex. 1997), and Vaile v. Chater, 916 F. Supp. 821 (N.D. Ill.
10 1996). (Plaintiff's Memorandum at 3-4). The court in Gullett held that
11 a valid waiver of counsel requires the claimant receive written notice
12 prior to a hearing and oral notice at the beginning of a hearing of the
13 following elements: (1) how an attorney can help; (2) availability of
14 free counsel or a contingency arrangement; and (3) the twenty-five
15 percent of past due benefits limit on attorney's fees. Gullett, 973 F.
16 Supp at 620 (citing Clark v. Schweiker, 652 F.2d 399, 403 (5th Cir.
17 1981)). The court in Vaile required the ALJ to explain the above
18 factors to a claimant. Vaile, 916 F. Supp at 828. These cases are
19 inapplicable because the Ninth Circuit has rejected judicially imposed
20 notice standards that exceed the requirements of 42 U.S.C. section
21 406(c). Roberts, 2011 WL 1998337, at *2.

22
23 **B. The ALJ Satisfied His Duty To Fully And Fairly Develop The Record**

24
25 Plaintiff argues that the ALJ did not satisfy his duty to fully and
26 fairly develop the record. (Plaintiff's Memorandum at 4, 5).
27 Specifically, Plaintiff argues that the ALJ failed to develop the record
28 by not obtaining updated medical records and by not obtaining

1 information regarding the extent of Plaintiff's limitations as a result
2 of his CTS. (Plaintiff's Memorandum at 5). The Court disagrees.

3
4 The Ninth Circuit has found that "where the claimant is not
5 represented, it is incumbent upon the ALJ to scrupulously and
6 conscientiously probe into, inquire of and explore for all the relevant
7 facts. He must be especially diligent in ensuring that favorable as
8 well as unfavorable facts and circumstances are elicited." Higbee v.
9 Sullivan, 975 F.2d 558, 561 (9th Cir. 1992) (per curiam) (citing Cox v.
10 Califano, 587 F.2d 988, 991 (9th Cir. 1978) (citations omitted); and
11 Heckler v. Campbell, 461 U.S. 458 470-73, 103 S. Ct. 1952, 1959-60, 76
12 L. Ed. 2d 66 (1983) (Brennan, J., concurring)). Subsequent Ninth
13 Circuit cases have recognized this heightened duty. See Tonapetyan v.
14 Halter, 242 F.3d 1144, 1150 (9th Cir. 2001) (stating that the ALJ's duty
15 to develop the record increases when the claimant is unrepresented or
16 is mentally ill and thus unable to protect her own interests).

17
18 However, only ambiguous evidence, or the ALJ's own finding that the
19 record is inadequate to allow for proper evaluation of the evidence,
20 triggers the ALJ's duty to conduct an appropriate inquiry or gather
21 additional information. Id.; Webb v. Barnhart, 433 F.3d 683, 687 (9th
22 Cir. 2005); see also Thomas v. Barnhart, 278 F.3d 947, 958 (9th Cir.
23 2002) (duty not triggered where the ALJ did not make a finding that the
24 medical report was inadequate to make a disability determination);
25 McLeod v. Astrue, 640 F.3d 881, 885 (9th Cir. 2011) (stating "[a]
26 specific finding of ambiguity or inadequacy of the record is not
27 necessary to trigger [the ALJ's] duty to inquire, where the record
28 establishes ambiguity or inadequacy").

1 An ALJ may discharge his duty to develop the record by issuing
2 subpoenas for records, submitting questions to a claimant's physicians,
3 continuing the hearing, or keeping the record open after the hearing to
4 supplement the record. Tonapetyan, 242 F.3d at 1150. However, this
5 list is not exhaustive. Id.

6
7 Assuming that the incomplete medical records triggered the ALJ's
8 duty to develop the record, the ALJ discharged his duty by requesting
9 records, scheduling examinations and diligently questioning Plaintiff.
10 On June 25, 2008, the ALJ requested records from St. Rose Dominican
11 Hospital. (AR 144-45). On December 24, 2008, the ALJ requested records
12 from Riverside County Regional Medical Center. (AR 164-65). The Agency
13 scheduled Dr. Siciarz to examine Plaintiff On September 19, 2008. (AR
14 172-76). The Agency also scheduled Dr. Abejuela to examine Plaintiff
15 on January 28, 2009. (AR 186-92). On January 13, 2009, the Agency
16 followed up with Riverside County Regional Medical Center. (AR 207).
17 The Agency satisfied its duty by requesting records and scheduling
18 examinations.

19
20 In addition, the ALJ diligently examined Plaintiff during the March
21 2, 2010 hearing to elicit testimony that would either clarify the
22 evidence already in the record or find additional sources of records.
23 (AR 25-47). The ALJ asked Plaintiff regarding any treatments he
24 received for his back, such as surgery. (AR 30, 34). The ALJ also
25 asked what treatments Plaintiff had sought for other conditions, such
26 as a gastric bypass and a "Lap-Band." (AR 41-42). The ALJ asked if
27 Plaintiff had any other diagnostic tests, such as x-rays or MRIs. (AR
28 32). The ALJ asked Plaintiff regarding his medication. (AR 32). The

1 ALJ received a copy of the MRI taken by Dr. Sadler. (AR 33). The ALJ
2 asked about Plaintiff's specific limitations. (AR 35). The ALJ asked
3 about Plaintiff's daily activities. (AR 37-40). Finally, the ALJ asked
4 the Plaintiff to explain or describe any other problems that he would
5 like the ALJ to consider. (AR 44). Clearly, the ALJ affirmatively
6 sought information and satisfied its duty to develop the record.

7
8 Furthermore, any additional attempts to obtain records would have
9 been futile. At the hearing, Plaintiff testified that his last x-ray
10 was likely taken at Riverside General during an emergency room visit in
11 2008. (AR 32). However, the ALJ had already obtained records from
12 Riverside General regarding a 2008 emergency room visit that did not
13 include x-rays and had not received any new records after a follow up
14 phone call in January 2009. (AR 166-72, 207). Moreover, Plaintiff
15 stated in a disability report that no additional medical tests had been
16 done or scheduled since June 20, 2008, and he also stated that he had
17 not been hospitalized for psychiatric reasons or received any
18 psychiatric treatment. (AR 106, 187). Therefore, any additional
19 requests for records would not have added any additional information
20 because the ALJ had already obtained substantially all of Plaintiff's
21 records.

22
23 Plaintiff argues that the ALJ failed to obtain updated medical
24 records especially in light of Plaintiff's pro se status. (Plaintiff's
25 Memorandum at 4, 5-6). Arguably, Plaintiff reported additional medical
26 appointments in February, June and November 2009. (AR 140). However,
27 Plaintiff only reported receiving medication identical or similar to his
28 already reported medication. (AR 141-43). Plaintiff did not mention

1 any additional diagnostic tests or diagnoses made by these doctors that
2 would add additional information to support Plaintiff's case. (AR 140-
3 43). Therefore, the ALJ satisfied his duty to develop the record, and
4 this Court finds no reason to remand Plaintiff's claim.

5
6 **C. The ALJ Did Not Err By Omitting Mention Of Plaintiff's 1998 Record**
7 **Regarding Carpal Tunnel Syndrome**

8
9 Plaintiff argues that the ALJ failed to properly consider all of
10 the relevant medical evidence. (Plaintiff's Memorandum at 6).
11 Specifically, Plaintiff argues that the ALJ must account for Dr.
12 Sadler's November 3, 1998 assessment. (Plaintiff's Memorandum at 6).
13 The Court disagrees.

14
15 An ALJ must make consider the combined effect of all impairments
16 whether or not each impairment is severe enough to render a claimant
17 disabled. Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th
18 Cir. 2003). However, an ALJ need not discuss all evidence presented to
19 him. Id.; Vincent v. Heckler, 739 F.2d 1393, 1394-95 (9th Cir. 1984)
20 (per curiam). An ALJ need only explain why the ALJ rejected
21 significantly probative evidence. Vincent, 739 F.2d at 1395; Flores v.
22 Shalala, 49 F.3d 562, 571 (9th Cir. 1995).

23
24 An ALJ may reject medical opinions formed prior to the relevant
25 time period, especially when evidence suggests that the disability did
26 not continue through the relevant time period, because these opinions
27 are not significantly probative. Burkhart v. Bowen, 856 F.2d 1335, 1340
28 n.1 (9th Cir. 1988) (reasoning that the ALJ properly rejected a medical

1 opinion formed prior to the relevant time period when the doctor also
2 noted improvement). Here, Dr. Sadler opined in 1998 that Plaintiff
3 suffered Carpal Tunnel Syndrome that restricted the capabilities of
4 Plaintiff's arms, approximately ten years before the relevant time
5 period. (AR 212-224). Since that diagnosis, Plaintiff worked as a
6 security guard and cashier providing strong evidence that the
7 Plaintiff's impairment had diminished or possibly resolved. (AR 138-
8 139). Additionally, Dr. Siciarz noted that none of Plaintiff's joints
9 showed swelling or deformity and all ranges of motion were within normal
10 limits during a 2008 examination. (AR 174). Therefore, the Court finds
11 that the ALJ appropriately disregarded Dr. Sadler's opinion regarding
12 Plaintiff's CTS because it was not significantly probative.

13
14 Even if the ALJ erred by not discussing Dr. Sadler's opinion
15 regarding Plaintiff's Carpal Tunnel Syndrome, the error was harmless.
16 A court will not overturn an ALJ's decision if, despite error, the
17 decision remains legally valid. See Carmickle v. Comm'r of Social Sec.
18 Admin., 533 F.3d 1155, 1162 (9th Cir. 2008); Tommasetti v. Astrue, 533
19 F.3d 1035, 1042-43 (9th Cir. 2008); Robbins v. Soc. Sec. Admin., 466
20 F.3d 880, 885 (9th Cir. 2006). Here, even if the ALJ included the CTS
21 evidence, the ALJ would have most likely found that Plaintiff, a thirty-
22 seven year old individual with a high school education and no language
23 limitations, could work. (AR 29, 83, 93, 98, 188). Indeed, the
24 inclusion of CTS evidence may have added limitations to Plaintiff's
25 residual functional capacity, but would not render Plaintiff disabled
26 considering that the ALJ noted that Plaintiff's daily activities
27 involved the same physical and mental skills needed to maintain
28 employment. (AR 13). Therefore, any error was harmless.

1 **D. The ALJ Properly Rejected Plaintiff's Credibility**

2
3 Plaintiff argues that the ALJ improperly rejected Plaintiff's
4 subjective complaints. (Plaintiff's Memorandum at 7-10). Specifically,
5 Plaintiff argues that "the ALJ has failed to specify which allegations
6 of pain and/or other symptoms he found not credible," "appl[y] the
7 factors mandated by Social Security Ruling 96-7P," and "state clear and
8 convincing reasons for rejecting Plaintiff's testimony." (Plaintiff's
9 Memorandum at 9). The Court disagrees.

10
11 To determine whether a claimant's testimony regarding subjective
12 pain or symptoms is credible, an ALJ must engage in a two-step analysis.
13 First, the ALJ must determine whether the claimant has presented
14 objective medical evidence of an underlying impairment "which could
15 reasonably be expected to produce the pain or other symptoms alleged."
16 Lingenfelter v. Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007) (citing
17 Bunnell v. Sullivan, 947 f.2d 341, 344 (9th Cir. 1991) (en banc))
18 (internal quotation marks omitted). The claimant, however, "need not
19 show that her impairment could reasonably be expected to cause the
20 severity of the symptoms she has alleged; she need only show that it
21 could reasonably have caused some degree of the symptom." Id. (quoting
22 Smolen v. Chater, 80 f.3d 1273, 1282 (9th cir. 1996)).

23
24 Second if the claimant meets this first test, and there is no
25 evidence of malingering, "the ALJ can reject the claimant's testimony
26 about the severity of her symptoms only by offering specific, clear and
27 convincing reasons for doing so." Smolen, 80 F.3d at 1281. An ALJ may
28 rely on "prior inconsistent statements," "unexplained or inadequately

1 explained failure to seek treatment or to follow a prescribed course of
2 treatment" or "the claimant's daily activities" to make a credibility
3 determination. Id. at 1284. The ALJ must make specific findings to
4 allow the court to conclude that "the ALJ did not arbitrarily discredit
5 claimant's testimony." Turner v. Comm'r of Soc. Sec., 613 F.3d 1217,
6 1224 n.3 (9th Cir. 2010) (quoting Thomas, 278 F.3d at 958).

7
8 In addition, Social Security Ruling 96-7P requires an ALJ to
9 consider the following factors in addition to the objective medical
10 evidence when assessing an individual's credibility: (1) the
11 individual's daily activities; (2) the location, duration, frequency and
12 intensity of an individual's symptoms; (3) factors that precipitate or
13 aggravate symptoms; (4) the type and effectiveness of an individual's
14 medication; (5) treatment beyond medication that the individual has
15 received; (6) other measures that the individual uses to alleviate
16 symptoms; and (7) any other factors concerning the individual's
17 restrictions or limitations due to symptoms. Here, the ALJ satisfied
18 the relevant standards and appropriately rejected Plaintiff's
19 credibility.

20
21 Plaintiff's argument that the ALJ did not specify which testimony
22 was not credible lacks merit. In his decision, the ALJ initially
23 explains why Plaintiff does not have a severe mental impairment, and
24 then discusses Plaintiff and Plaintiff's mother's functional reports.
25 (AR 13-14). Each functional report discusses Plaintiff's alleged anti-
26 social behavior and physical limitations due to pain. (AR 110-25). The
27 ALJ also noted, however, a "lengthy face-to-face interview with
28 [Plaintiff] and noted [he] had no physical or mental problems besides

1 exhibiting problems with standing.” (AR 14). The ALJ subsequently found
2 that “the claimant’s statements concerning the intensity, persistence
3 and limiting effects of these symptoms are not credible to the extent
4 that are inconsistent with the above residual functional capacity
5 assessment.” (AR 14). Although the phrase “these symptoms” may be
6 ambiguous when read in isolation, in context, “these symptoms” clearly
7 refer to Plaintiff’s alleged mental impairments and limitations due to
8 pain. Therefore, the Court finds that the ALJ here clearly specified
9 that he rejected Plaintiff’s testimony regarding his pain and mental
10 impairments.

11
12 Plaintiff’s argument that the ALJ did not provide clear and
13 convincing reasons to reject Plaintiff’s testimony also lacks merit. In
14 his decision, the ALJ observed that Plaintiff could “maintain[] his
15 personal care, prepar[e] his own meals, rid[e] in a car, shop[] for
16 personal items, manag[e] his finances, and spend[] time with others.”
17 (AR 13). The ALJ stated that “in order [for Plaintiff] to perform the
18 above-described activities of daily living are the same as those
19 necessary for obtaining and maintaining employment.” (Id.). The ALJ
20 found “no medical evidence indicating [Plaintiff] received any mental
21 treatment,” (AR 11), and that “[Plaintiff’s] medical records involving
22 the relevant time period reveal [Plaintiff] was overall stable”
23 (AR 16). The ALJ found that Plaintiff’s records “document routine and
24 conservative care for his impairments. [Plaintiff’s] alleged
25 impairments are remediable with current conservative care.” (AR 16).
26 Furthermore, the ALJ found that Plaintiff “was not seeking any
27 psychiatric treatment or taking any psychiatric medication,”
28

1 demonstrating a failure to seek treatment. (Id.) (internal citation
2 omitted).

3
4 The ALJ also discussed the observations of interviewers and
5 consulting examiners. The ALJ stated that a "claims representative
6 conducted a lengthy face-to-face interview with [Plaintiff] . . . The
7 claims representative noted [Plaintiff] was pleasant and cooperative;
8 [Plaintiff] was observed not to be in any apparent distress." (AR 14).
9 The ALJ also noted that both Dr. Siciarz and Dr. Abejuela noted that
10 Plaintiff was "overall normal." (AR 15). Finally, the ALJ also noted
11 that Dr. Abejuela found Plaintiff had no or mild mental limitations.
12 (AR 16). Therefore, the ALJ did not arbitrarily discredit Plaintiff's
13 testimony but rather found that Plaintiff was not credible because his
14 testimony was inconsistent with the observations and findings of
15 examining doctors, his daily activities, and because Plaintiff did not
16 pursue more aggressive treatments.

17
18 The ALJ's conclusions are supported by substantial evidence in the
19 record. Plaintiff reported in his adult function report that he could
20 maintain his personal care, prepare his own meals, ride in a car, shop
21 for personal items, manage his finances and spend time with others. (AR
22 119-23). Plaintiff's physical examination revealed very few
23 abnormalities. (AR 173-175). Plaintiff's psychological evaluation
24 revealed little to no functional impairment. (AR 191). The claims
25 representative observed Plaintiff in a face-to-face interview and noted
26 that Plaintiff displayed no difficulties with any major functional
27 categories. (AR 91). Although Plaintiff testified that he had an
28 epidural and doctors recommended surgery, (AR 31-32), the medical

1 records simply do not support Plaintiff's testimony. Plaintiff's
2 medical records fail to make any mention of surgery other than Dr.
3 Sadler stating Plaintiff was not a candidate for surgery. (AR 221).
4 The record shows that Plaintiff primarily relies on over-the-counter
5 medication for his pain, (AR 118, 142-43), and has not received
6 psychiatric treatment. (See, e.g., AR 187). Furthermore, Plaintiff has
7 reported inconsistent information to the Agency. For example, Plaintiff
8 testified on March 3, 2010 that he could not drive and had not driven
9 a car in two years yet reported in his adult function report dated
10 January 3, 2009 that he did drive. (AR 37-38, 121 ("Do you drive?
11 Yes")). Therefore, the ALJ's conclusion that Plaintiff was not entirely
12 credible was supported by substantial evidence in the record.

13
14 **E. The ALJ Properly Considered And Rejected The Third Party Statement**
15 **From Plaintiff's Mother**

16
17 Plaintiff argues that the ALJ failed to properly consider the third
18 party report prepared by Plaintiff's mother. (Plaintiff's Memorandum
19 at 10-11). Specifically, Plaintiff argues that the ALJ cited irrelevant
20 reasons to reject the third party report prepared by Plaintiff's mother
21 and that the fact that Plaintiff's mother is related to Plaintiff should
22 not undermine her statements. (Id.). No remand is required this claim.

23
24 In determining whether a claimant is disabled, an ALJ must consider
25 lay witness testimony concerning a claimant's ability to work. Stout
26 v. Comm'r Soc. Sec. Admin., 454 F.3d 1050, 1053 (9th Cir. July 25,
27 2006); Smolen, 80 F.3d at 1288; 20 C.F.R. §§ 404.1519(d) (4) & (e), and
28 416(d) (4) & (e). The ALJ may discount the testimony of lay witnesses

1 only if she gives "reasons that are germane to each witness." Valentine
2 v. Comm'r of Soc. Sec. Admin., 574 F.3d 685, 694 (9th Cir. 2009) (citing
3 Dodrill v. Shalala, 12 F.3d 915, 919 (9th Cir. 1993)); see also Lewis
4 v. Apfel, 236 F.3d 503, 511 (9th Cir. 2001) ("Lay testimony as to a
5 claimant's symptoms is competent evidence that an ALJ must take into
6 account, unless he or she expressly determines to disregard such
7 testimony and gives reasons germane to each witness for doing so."
8 (citations omitted)). If the ALJ's ultimate credibility determination
9 and reasoning are adequately supported by substantial evidence in the
10 record, no remand is required. Carmickle, 533 F.3d at 1162.

11
12 Plaintiff's mother prepared a third party function report that was
13 extremely similar to Plaintiff's adult function report. (Compare AR
14 118-125 with AR 110-117). In some instances, the wording was nearly
15 identical. Plaintiff described his sleep as "sleeping 4-5 hours a night
16 of broken sleep if I sleep at all due to pain." (AR 119). Plaintiff's
17 mother states "Plaintiff cannot sleep at times due to pain. Sleeps 4-5
18 hours of broken sleep a night." (AR 111). Plaintiff states he is
19 "unable to put shoes on without pain." (AR 119). Plaintiff's mother
20 reported that Plaintiff is "unable at time[s] to put shoes on without
21 pain." (AR 111).

22
23 Many other similarities permeate their reports. Plaintiff and his
24 mother reported that Plaintiff is able to make quick simple meals "maybe
25 once a day" but is "unable to stand for [a] long time." (AR 112, 120).
26 Similarly, they bot report that Plaintiff can participate in chores with
27 assistance from family members (AR 112, 120); that Plaintiff goes
28 outside "maybe once a week if that" (AR 113, 121); that Plaintiff goes

1 shopping in stores for personal items and that he takes "maybe 30-60
2 min." when shopping (AR 113, 121); that Plaintiff can manage his
3 finances, (AR 113, 121), and has become anti-social. (AR 115, 123).
4 Both listed that Plaintiff's disabilities affect his ability to lift,
5 squat, bend, stand, reach, walk, sit, kneel, stair climb, use hands, and
6 get along with others. (AR 115, 123).

7
8 The ALJ provided three reasons to reject Plaintiff's mother's third
9 party function report: (1) it provides "very little probative value"
10 because it mirrors Plaintiff's function report; (2) Plaintiff's mother
11 cannot make a diagnosis or argue the severity of Plaintiff's symptoms
12 because she is not a medical professional; (3) Plaintiff's mother has
13 a pecuniary motivation to help Plaintiff obtain benefits. (AR 14).

14
15 The ALJ's finding that the testimony of Plaintiff's mother mirrored
16 Plaintiff's testimony provided two germane reasons to reject her
17 testimony. An ALJ may reject lay witness testimony if the witness's
18 testimony is inconsistent with the medical evidence. Bayliss v.
19 Barnhart, 427 F.3d 1211, 1218 (9th Cir. 2005). Here, the ALJ found that
20 the testimony of Plaintiff's mother "mirror[ed] Plaintiff's function
21 report." (AR 14). The ALJ subsequently properly found that
22 "[Plaintiff's] subjective complaints are less than fully credible and
23 the objective medical evidence does not support the alleged severity of
24 symptoms." (AR 16); see supra VII.D. Therefore, the ALJ found that the
25 testimony of Plaintiff's mother was inconsistent with the objective
26 medical evidence because it alleged the same restrictions as Plaintiff's
27 discredited subjective complaints. Valentine, 574 F.3d at 694.
28 Furthermore, Plaintiff's mother did not provide any additional testimony

1 beyond repeating Plaintiff's own testimony, and her testimony was not
2 significantly probative and could be disregarded. See Vincent, 739 F.2d
3 at 1395.

4
5 The ALJ also provided a germane reason to reject the testimony of
6 Plaintiff's mother by finding her not competent to argue the severity
7 of the claimant's symptoms in relation to his ability to work. (AR 14).
8 Credible lay witness testimony that is consistent with the medical
9 evidence may be competent evidence to show the severity of Plaintiff's
10 symptoms and how it affects a Plaintiff's ability to work. See Bruce
11 v. Astrue, 557 F.3d 1113, 1116 (9th Cir. 2009). Here, as discussed
12 above, the ALJ necessarily found that the testimony of Plaintiff's
13 mother was not consistent with the objective medical evidence and was
14 therefore properly rejected on this ground. (AR 14).

15
16 Additionally, an ALJ may reject lay witness testimony if the ALJ
17 finds evidence that the witness "exaggerated a claimant's symptoms in
18 order to get access to his disability benefits. . . ." Valentine, 574
19 F.3d at 694 (original emphasis omitted). Here, the ALJ found that
20 Plaintiff's mother had no attachment to employment. (AR 14).
21 Plaintiff's testimony at the hearing supports the ALJ's finding.
22 Plaintiff testified that his mother's only sources of income are
23 payments from a foster care program, disability benefits, and
24 Plaintiff's food stamps. (AR 42-43). As discussed above, the ALJ found
25 that the medical evidence, Plaintiff's daily activities, and
26 conservative treatment fail to support the alleged severity of
27 Plaintiff's symptoms. Altogether, the ALJ found Plaintiff's mother had
28 a pecuniary interest to exaggerate, and she likely did exaggerate

1 because her testimony was inconsistent with the medical evidence.
2 Therefore, the ALJ provided a germane reason to discredit the testimony
3 of Plaintiff's mother.

4
5 Furthermore, even if the ALJ erred by disregarding the testimony
6 of Plaintiff's mother, any error was harmless. Because the testimony
7 of Plaintiff's mother was substantively identical to Plaintiff's
8 testimony, its inclusion in the decision would not add any evidence that
9 for the ALJ to consider, and her testimony would not affect the outcome
10 of Plaintiff's case. See Stout, 454 F.3d at 1056 ("[Where the ALJ's
11 error lies in a failure to properly discuss competent lay testimony
12 favorable to the claimant, a reviewing court cannot consider the error
13 harmless unless it can confidently conclude that no reasonable ALJ, when
14 fully crediting the testimony, could have reached a different
15 determination.>"). Therefore, even if the ALJ committed error, the error
16 was harmless.

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