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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SHAD P. BOYD,	)	Case No. ED CV 11-493-PJW
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM OPINION AND ORDER
	)	
MICHAEL J. ASTRUE,	)	
COMMISSIONER OF THE	)	
SOCIAL SECURITY ADMINISTRATION,	)	
	)	
Defendant.	)	

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I. INTRODUCTION

Plaintiff Shad Boyd appeals a decision by Defendant Social Security Administration ("the Agency"), denying his application for Disability Insurance benefits ("DIB"). He claims that the Administrative Law Judge ("ALJ") erred when he failed to: (1) comply with the Appeals Council's remand orders; and (2) properly consider the workers' compensation findings. (Joint Stip. at 3.) For the reasons explained below, the appeal is denied and the action is dismissed with prejudice.

II. SUMMARY OF PROCEEDINGS

In September 2005, Plaintiff applied for DIB, alleging that he had been disabled since February 2004, due to degenerative disc

1 disease and loss of a finger. (Administrative Record ("AR") 336-38,  
2 356, 363-65.) The Agency denied the application initially and on  
3 reconsideration. Plaintiff then requested and was granted a hearing  
4 before an ALJ. In January 2009, he appeared with counsel at the  
5 hearing. (AR 24-62.) In March 2009, the ALJ held a supplemental  
6 hearing. (AR 63-124.) In June 2009, the ALJ issued a decision,  
7 finding that Plaintiff was disabled as of May 16, 2006, but not before  
8 then.<sup>1</sup> (AR 201-11.)

9 Plaintiff appealed to the Appeals Council, which remanded the  
10 case to the ALJ for further proceedings. (AR 311-13.) The ALJ then  
11 held another hearing on March 22, 2010, and, on May 4, 2010, issued a  
12 second decision, again concluding that Plaintiff was not disabled  
13 prior to May 16, 2006. (AR 11-19, 125-91.) Plaintiff appealed to the  
14 Appeals Council, which denied review. (AR 1-3.) He then commenced  
15 the instant action.

### 16 III. ANALYSIS

#### 17 A. The ALJ's Failure to Adhere to the Appeal's Council's Remand 18 Order

19 Following the ALJ's initial decision, Plaintiff appealed to the  
20 Appeals Council, arguing that the ALJ had erred. The Appeals Council  
21 agreed and sent the case back to the ALJ with instructions to, among  
22 other things, reconsider the credibility finding and re-evaluate  
23 Plaintiff's neck and back ailments. (AR 311-13.) Plaintiff complains  
24 that the ALJ failed to follow the Appeals Council's remand order and  
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26 <sup>1</sup> Plaintiff's insurance expired on December 31, 2004. (AR 349.)  
27 In order to qualify for benefits, he was required to establish that he  
28 was disabled prior to that date. *Tidwell v. Apfel*, 161 F.3d 599, 601  
(9th Cir. 1989).

1 argues that, as a result, the ALJ's decision should be reversed. For  
2 the following reasons, this argument is rejected.

3 The Court has a limited role in reviewing Agency decisions. It  
4 is tasked with determining whether the Agency's final decision is  
5 supported by substantial evidence and is not based on legal error.  
6 See 42 U.S.C. § 405(g); *Tyler v. Astrue*, 305 F. App'x 331, 332 (9th  
7 Cir. 2008); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989).  
8 In *Tyler*, the Ninth Circuit explained in an unpublished decision  
9 closely on point:

10 The district court properly declined to evaluate whether the  
11 ALJ's second decision satisfied the demands of the Appeals  
12 Council's remand . . . . [F]ederal courts only have  
13 jurisdiction to review the final decisions of administrative  
14 agencies. When the Appeals Council denied review of the  
15 ALJ's second decision, it made that decision final, and  
16 declined to find that the ALJ had not complied with its  
17 remand instructions.

18 *Id.* at 332.

19 Thus, the issue of whether the ALJ followed the Appeals Council's  
20 remand order is not properly before the Court. As such, Plaintiff's  
21 claim here is rejected.

22 Plaintiff argues that the ALJ failed to properly evaluate  
23 Plaintiff's credibility and failed to make specific findings regarding  
24 credibility. (Joint Stip. at 4-8.) The record does not support this  
25 claim.

26 In his decision following remand, the ALJ incorporated his  
27 earlier decision and supplemented it with additional findings. (AR  
28 12.) In the earlier decision, the ALJ found that Plaintiff's ability

1 to perform daily activities, like taking care of his children, driving  
2 a car, changing his 25-pound one-year-old, washing dishes, doing  
3 laundry, and taking out the trash, was inconsistent with his claim  
4 that he was severely limited by pain. (AR 208.) In addition, the ALJ  
5 noted that some of the doctors who examined Plaintiff questioned his  
6 sincerity and suggested that he might be exaggerating his claims. (AR  
7 208.) In the second decision, the ALJ added to this the medical  
8 expert's observations from the administrative hearing following remand  
9 that Plaintiff's complaints were disproportionate to the clinical  
10 findings. (AR 16.)

11 These were legitimate reasons for questioning Plaintiff's  
12 testimony. See *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir.  
13 2008) (upholding ALJ's finding that Plaintiff was not credible based  
14 in part on his ability to perform daily activities, including caring  
15 for his ailing sister); *Thomas v. Barnhart*, 278 F.3d 947, 959-60 (9th  
16 Cir. 2002) (affirming ALJ's credibility finding based in part on fact  
17 that claimant exaggerated her condition). And they are supported by  
18 the record. (AR 163-66, 432, 455.) Thus, the ALJ's finding that  
19 Plaintiff's testimony regarding his pain prior to May 2006 was not  
20 credible will not be disturbed.

21 Plaintiff also takes exception to the ALJ's findings regarding  
22 his neck and back disorders. (Joint Stip. at 15-17.) Here, again,  
23 the Court finds that the ALJ provided sufficient support for his  
24 findings. In his 2009 decision, the ALJ pointed out that the agreed  
25 medical examiner in his workers' compensation case determined on  
26 September 30, 2004--three months before Plaintiff's insurance expired--  
27 -that Plaintiff was capable of performing light work, despite his  
28 pain. (AR 206.) The ALJ emphasized that Plaintiff was able to

1 perform numerous daily activities that were inconsistent with  
2 incapacitating pain. (AR 208.) The ALJ also noted that some of the  
3 doctors who examined Plaintiff questioned his sincerity. (AR 208.)

4 Following remand, the ALJ added to this evidence the testimony of  
5 medical expert Arthur Lorber, a board certified orthopedic surgeon.  
6 (AR 135-74.) According to Dr. Lorber, Plaintiff's degenerative disc  
7 disease and neck pain did not preclude him from performing light work  
8 in December 2004. (AR 141-43.) This evidence, taken as a whole, is  
9 sufficient to support the ALJ's finding that Plaintiff was not  
10 disabled prior to his date last insured.

11 B. Dr. Feiwell's Findings

12 In January 2002, Plaintiff injured his back driving a bus when he  
13 drove over a dip in the street and banged down hard on his seat. (AR  
14 591.) He was able to continue working that day but later began  
15 experiencing pain. (AR 591.) A week later, he was placed on light  
16 duty for about two months and, in April 2002, he returned to work  
17 without restrictions. (AR 591.)

18 Plaintiff, however, continued experiencing pain and, in September  
19 2002, was referred to Dr. John Sasaki, a pain management specialist.  
20 (AR 591.) Thereafter, Dr. Sasaki became Plaintiff's treating  
21 physician. Dr. Sasaki prescribed epidural injections, Motrin, and  
22 physical therapy. (AR 593.) He authorized Plaintiff to continue  
23 working full time without restriction until May 2003, when Plaintiff  
24 reported that he was experiencing persistent, increased pain in his  
25 neck and back. (AR 593-95.) Plaintiff was treated with an epidural  
26 and physical therapy. (AR 596.) He was placed on medical leave for  
27 three days as a result. (AR 595.) In August 2003, he was excused  
28

1 from work for three more days and in October 2003 for two more. (AR  
2 596.)

3 In October 2003, Plaintiff re-injured his back when he drove his  
4 bus into a curb. (AR 597.) He was seen by Dr. Sasaki in November  
5 2003, 18 days after the accident. (AR 597.) Dr. Sasaki did not place  
6 Plaintiff on medical leave and treated him with epidural injections  
7 and nerve blocks. (AR 597.) Plaintiff returned to Dr. Sasaki in  
8 February 2004 and reported "near complete relief" from his pain  
9 following the epidurals and nerve blocks. (AR 598.)

10 In March 2004, Plaintiff returned to Dr. Sasaki, complaining that  
11 he had recently suffered another injury when he banged down hard on  
12 his seat again while driving his bus. (AR 584.) Dr. Sasaki concluded  
13 that Plaintiff was temporarily totally disabled until April 1, 2004.  
14 (AR 584.) Plaintiff was treated with epidural injections, medication,  
15 and physical therapy. (AR 585.) In subsequent visits through October  
16 2005, Dr. Sasaki noted that Plaintiff was either "off work" or  
17 temporarily totally disabled. (AR 584-89.)

18 Plaintiff argues that the ALJ, the vocational expert, and the  
19 medical expert misunderstood Dr. Sasaki's use of the term "temporarily  
20 totally disabled" in the context of the workers' compensation case.  
21 (Joint Stip. at 22-24.) He contends that they interpreted this term  
22 to mean that Plaintiff was unable to perform his job as a bus driver  
23 but could perform other work. (Joint Stip. at 23.) He argues that  
24 the term actually means that he was incapable of performing any work.  
25 (Joint Stip. at 23.) According to Plaintiff, this misunderstanding  
26 tainted the ALJ's decision. This argument is rejected.

27 State workers' compensation findings are not binding on the  
28 Agency in disability cases. *Macri v. Chater*, 93 F.3d 540, 543-44 (9th

1 Cir. 1996); *Desrosiers v. Sec'y of Health & Human Servs.*, 846 F.2d  
2 573, 576 (9th Cir. 1988). Nor are workers' compensation doctors'  
3 conclusions regarding the ultimate issue of disability. *Tomasetti*,  
4 533 F.3d at 1041. Assuming without deciding that the ALJ, the  
5 vocational expert, and the medical expert misunderstood the meaning of  
6 temporarily totally disabled, any error does not warrant reversal.  
7 Dr. Sasaki's conclusion that Plaintiff was disabled in workers'  
8 compensation terms, i.e., he was unable to perform any work, was not  
9 binding on the ALJ and, therefore, the ALJ's error in misunderstanding  
10 that term does not warrant reversal.<sup>2</sup>

11 In September 2004, Plaintiff was examined by doctor Earl Feiwell,  
12 the "agreed medical examiner" in Plaintiff's workers' compensation  
13 case. (AR 441-58.) Dr. Feiwell determined that Plaintiff would  
14 experience slight to moderate pain with activity, increasing to  
15 moderate pain with prolonged standing, walking, bending, and lifting,  
16 and lead to severe pain with heavier activity. (AR 456.) Plaintiff

17 \_\_\_\_\_  
18 <sup>2</sup> This is not to say that the ALJ's treatment of Dr. Sasaki's  
19 opinion was flawless. The fact that Dr. Sasaki couched his opinion in  
20 workers' compensation terms and offered an opinion on the ultimate  
21 issue of disability does not mean that his entire opinion should have  
22 been disregarded. *Orn v. Astrue*, 495 F.3d 625, 631-33 (9th Cir. 2007)  
23 (explaining, even if treating doctor's opinion is not entitled to  
24 controlling weight, it must still be considered by ALJ). As the  
25 treating physician, Dr. Sasaki was entitled to deference, all things  
26 being equal. See *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995).  
27 In order to discount Dr. Sasaki's opinion, the ALJ was required to  
28 provide specific and legitimate reasons supported by substantial  
evidence in the record for doing so. *Id.* It does not appear that he  
did that here. In his 2009 decision, instead of explaining why he was  
rejecting Dr. Sasaki's opinion, he cryptically explained that he was  
accepting Dr. Feiwell's opinion because it was "reasonable." (AR  
207.) The ALJ did not mention Dr. Sasaki in the 2010 decision.  
Despite these apparent problems with the ALJ's decision, the Court is  
not inclined to address this issue further because it was not raised  
by Plaintiff and was not briefed by the parties.

1 argues that the ALJ erred in analyzing Dr. Feiwell's findings. (Joint  
2 Stip. at 19-21.) He points out that, in workers' compensation terms,  
3 moderate pain would cause a marked limitation in activity and severe  
4 pain would preclude it. (Joint Stip. at 20.) In Plaintiff's view,  
5 this means that Dr. Feiwell found that Plaintiff was incapable of  
6 working in 2004. The record does not support Plaintiff's argument.

7 In his 2009 decision, the ALJ discussed Dr. Feiwell's findings in  
8 detail. (AR 206-07.) Importantly, as the ALJ pointed out, Dr.  
9 Feiwell determined in September 2004 that, despite his back and neck  
10 ailments and the pain that they caused, Plaintiff had the residual  
11 functional capacity to perform light work. (AR 206, 456.) In his  
12 2009 decision, the ALJ found that Plaintiff could perform sedentary  
13 work prior to May 2006, which is obviously more restrictive than Dr.  
14 Feiwell's finding that he could perform light work. (AR 204-08.) In  
15 his 2010 decision, the ALJ incorporated the 2009 decision and, after  
16 discussing additional evidence he considered, including Dr. Lorber's  
17 testimony, he concluded that, prior to May 2006, Plaintiff was capable  
18 of performing light work. (AR 15-16.)

19 The fact that the ALJ did not analyze the workers' compensation  
20 terms used by Dr. Feiwell and discuss how they corresponded to social  
21 security terms was not error. Clearly, Dr. Feiwell believed that  
22 Plaintiff was capable of performing light work in September 2004--  
23 three months before Plaintiff's insurance ran out--regardless of any  
24 limitations due to pain. As such, the ALJ's finding that Plaintiff  
25 could work was in line with Dr. Feiwell's findings and will not be  
26 disturbed.



1 IV. CONCLUSION

2 For these reasons, the Court concludes that the Agency's decision  
3 denying benefits is affirmed and the action is dismissed with  
4 prejudice.

5 IT IS SO ORDERED.

6 Dated: September 27, 2012.

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9 PATRICK J. WALSH  
UNITED STATES MAGISTRATE JUDGE