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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JABARI CLEVER BLACK,)	No. ED CV 11-00494-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") erred as a

1 matter of law by failing to properly assess Plaintiff's
2 credibility (JS at 3);

3 2. Whether the ALJ erred as a matter of law by failing to
4 properly assess the witness testimony (JS at 9); and

5 3. Whether the ALJ erred as a matter of law by failing to pose
6 a complete hypothetical question (JS at 14).

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

11
12 I

13 **THE ALJ CORRECTLY ASSESSED PLAINTIFF'S CREDIBILITY**

14 In his Decision (AR 15-23), the ALJ made a negative credibility
15 assessment of Plaintiff's testimony. (AR 19-21.) After laying out the
16 applicable factors identified in Social Security Ruling ("SSR") 96-7p,
17 the ALJ determined that the following credibility factors were
18 particularly applicable:

19 "... whether the person has a pecuniary interest in the
20 outcome of the hearing or may otherwise be motivated by
21 secondary gain; whether a person's evidence is inconsistent
22 with or contradicted by prior statements or other evidence
23 in the record; and the appearance and demeanor of a person
24 as a witness at the hearing."

25 (AR 21.)

26
27 In addition to the foregoing factors, the ALJ extensively
28 discussed the findings of various medical professionals who concluded

1 that Plaintiff was a malingerer. ("Indeed, numerous examiners of
2 record have noted and commented upon the claimant's lack of
3 credibility, efforts at feigning a disorder, and objective evidence
4 showing malingering and/or exaggeration." [AR 21.]) The ALJ then
5 recounted these instances in his decision. (Id.)

6 In addition to the foregoing, the ALJ cited evidence of instances
7 in which Plaintiff "has given inconsistent evidence about using
8 alcohol and/or illegal drugs." (Id.)

9 The Court is called upon to determine whether the ALJ properly
10 discharged his function in assessing Plaintiff's credibility.

11 The credibility assessment process in Social Security matters is
12 well known, and has been identified in numerous cases, perhaps the
13 principal one of which is Bunnell v. Sullivan, 947 F.2d 341, 344 (9th
14 Cir. 1991)(en banc). This case established a two-step standard, by
15 which the ALJ must first determine whether a claimant has presented
16 objective medical evidence of an underlying impairment which could
17 reasonably be expected to produce pain or other alleged symptoms. If
18 the first criterion is met, and there is no evidence of malingering,
19 an ALJ can reject a claimant's testimony only by offering specific,
20 clear and convincing reasons for doing so. (See also Lingenfelter v.
21 Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007).

22 While Plaintiff argues to the contrary, it is quite apparent that
23 the evidence in the record, cited by the ALJ, was more than ample to
24 support his credibility assessment. As to malingering, numerous
25 medical professionals have reached this conclusion. (See, e.g., Dr.
26 Fischer [AR 207-219]; Dr. S. Janzen [AR 278]; Dr. Marks [AR 281].)

27 With regard to the ALJ's notation of Plaintiff's own inconsistent
28 statements, this is also borne out by the record. When examined by

1 Dr. Reznick on March 6, 2008 (AR 245-51), it was concluded that
2 Plaintiff failed a test of Memory Malingered and "appears to have
3 deliberately responded incorrectly ... which in turn indicated an
4 extremely high probability of malingering." (AR 250.) Plaintiff's
5 intelligence test results indicated a conscious desire to
6 underperform, and medical records from Kaiser led the examining
7 physician to describe Plaintiff's "vague claims of auditory
8 hallucinations" as supporting a conclusion of malingering. (AR 320,
9 332.)

10 With regard to Plaintiff's own statements, it is also clear in
11 the record that Plaintiff has made statements that he wanted SSI for
12 pecuniary reasons only ("easy money"). (AR 286.) Plaintiff stated he
13 really didn't need to have mental health treatment and that he "never
14 took his meds anyway." (AR 286.) The ALJ carefully cited a consistent
15 and lengthy history on Plaintiff's part of exaggerated allegations.
16 (AR 19-21.) See Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir.
17 2001).

18 As the Commissioner notes, also contradicting Plaintiff's
19 exaggerations of his subjective state were medical records indicating
20 that when he took his medications, his condition was effectively
21 controlled by the treatment. (AR 20, 301.) This again is a valid
22 credibility assessment factor. See Warre v. Commissioner, 439 F.3d
23 1001, 1006 (9th Cir. 2006).

24 Plaintiff's report that he had last drunk alcohol five or six
25 years previously (AR 43) is belied by probation records which indicate
26 that he occasionally used alcohol in 2007. (AR 266.)

27 All in all, the ALJ's assessment is well supported, and there is
28 no basis in the record to reject it.

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II

THE ALJ PROPERLY THE CREDIBILITY OF PLAINTIFF'S FATHER

In his second issue, Plaintiff argues that the ALJ failed to properly assess the testimony of his father, Booker Black.

In the decision, the following credibility assessment is provided:

"I have also assessed the credibility of the evidence given by the claimant's father. As noted above, with regard to such evidence, I determined that other evidence is entitled to greater weight. Further, the following credibility factors were particularly applicable in assessing the statements of the claimant's father: whether and to what extent the person may have a pecuniary interest in the outcome of the hearing; whether and to what extent the evidence may be colored by friendship or kinship; and whether and to what extent a person's evidence is inconsistent with or contradicted by prior statements or other evidence in the record. After having considered the credibility factors just mentioned, I find that such evidence is not fully credible."

(AR 22.)

It is the ALJ's responsibility to consider and assess testimony of friends and family members. Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996). At the hearing held on August 3, 2009 (AR 27-75), testimony was taken from Booker A. Black, Jr., Plaintiff's father. (AR 60-68.) While Plaintiff asserts that the ALJ did not give legally sufficient reasons to disregard that testimony, citing Smolen, supra,

1 and 20 C.F.R. § 404.1513(e)(2), the ALJ's Decision does not provide
2 support for that claim. Thus, while Plaintiff's father assessed
3 Plaintiff as seeming more depressed, suicidal and difficult to deal
4 with (AR 61), and also opined that Plaintiff's treatments have not
5 seemed to help him (AR 67), the records do not support this assertion.
6 (See, discussion as to Issue I, supra.) Indeed, the ALJ's assessment
7 of Booker Black's credibility must be considered in relation to the
8 chronological history of malingering and exaggerations, and feigned
9 symptoms, which characterize Plaintiff's contact with many medical
10 professionals. Simply put, if Plaintiff often malingers, exaggerates,
11 and feigns symptoms, then observations of these types of "conditions"
12 by a lay witness such as his father would not be entitled to much
13 credibility. See Valentine v. Commissioner Social Sec. Admin., 574
14 F.3d 685, 694 (9th Cir. 2009).

15 For the foregoing reasons, the Court rejects Plaintiff's second
16 issue, finding that the ALJ gave relevant, specific, and supportable
17 reasons in the record to reject the testimony of Booker Black.

18 19 III

20 THE ALJ POSED A COMPLETE HYPOTHETICAL QUESTION

21 At the hearing before the ALJ, testimony was taken from a
22 vocational expert ("VE"). (AR 68-75.) The ALJ took testimony,
23 including additional information elicited from Plaintiff, and then
24 posed a hypothetical question to the VE. (AR 70-71.) In the
25 hypothetical, the individual would have no exertional limitations with
26 minor exceptions, and would be capable of performing "simple,
27 repetitive tasks." (AR 71.) Based on the hypothetical, the VE
28 identified available work. (Id.)

1 Plaintiff's complaint is that the ALJ never defined what he meant
2 by "simple" in the hypothetical. (JS at 14, et seq.)

3 Plaintiff also argues that the ALJ failed to provide any
4 definition of "repetitive" in the hypothetical. (JS at 15.) For the
5 following reasons, neither argument has merit.

6 The applicable regulations do in fact define the meaning of the
7 applicable terms. Thus, 20 C.F.R. § 416.968(a) defines "unskilled
8 work" as "work which needs little or no judgment to do simple duties
9 that can be learned on the job in a short period of time."

10 Plaintiff's complaint is more with the asserted ambiguity in the
11 regulation than with the application of that regulation by the ALJ.

12 Plaintiff claims there is no definition of "simple" contained in the
13 regulations. But in fact there is. As noted, simple duties are ones
14 which "can be learned on the job in a short period of time." The
15 Court perceives no ambiguity or incompleteness in this definition.
16 Consequently, when an individual is limited to simple, repetitive
17 tasks, he or she is precluded from performing both semi-skilled and
18 skilled occupations. See 20 C.F.R. § 416.668(b)-(c).

19 Other regulations are consistent with this basic definition. 20
20 C.F.R. § 416.969a(c)(1)(iii) provides that a non-exertional mental
21 impairment may cause an individual to have difficulty understanding or
22 remembering detailed instructions, and in 20 C.F.R. Part 404, Subpart
23 P, Appendix 1, Listing 12.00(c)(3) (an individual "may be able to
24 sustain attention and persist at simple tasks but may still have
25 difficulty with complicated tasks").

26 Plaintiff's argument that the terms "simple," "repetitive," and
27 "simple repetitive tasks" are inadequately defined in the regulations
28 does not withstand scrutiny, and as a result, his argument fails.

