

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

| | | |
|----------------------------|---|--------------------------------------|
| PATRICIA JAMES, |) | NO. EDCV 11-01471-SS |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | MEMORANDUM DECISION AND ORDER |
| |) | |
| MICHAEL J. ASTRUE, |) | |
| Commissioner of the Social |) | |
| Security Administration, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

**I.
INTRODUCTION**

Patricia James ("Plaintiff") brings this action seeking to overturn the decision of the Commissioner of the Social Security Administration (hereinafter the "Commissioner" or the "Agency") denying her application for Supplemental Security Income ("SSI"). The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate Judge. For the reasons stated below, the decision of the Commissioner is AFFIRMED.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

PROCEDURAL HISTORY

Plaintiff filed an application for SSI on April 30, 2007. (Administrative Record ("AR") 14, 56-57). She alleged a disability onset date of April 24, 2007 (AR 14, 107), for arthritis, a left arm injury, and depression. (AR 106-07).

The Agency denied Plaintiff's application initially on October 9, 2007, and on reconsideration on December 20, 2007. (AR 58-62, 66-70). Plaintiff then requested a hearing, which was held before Administrative Law Judge ("ALJ") Lowell Fortune on March 20, 2009. (AR 22). Plaintiff appeared with counsel and testified at the hearing. (AR 22-55).

On September 9, 2009, the ALJ issued a decision denying benefits. (AR 14-21). Plaintiff sought review of the ALJ's decision before the Appeals Council (AR 9-10), which denied her request on July 19, 2011. (AR 1-4). Plaintiff commenced the instant action on September 19, 2011.

III.

FACTUAL BACKGROUND

Plaintiff was born on August 21, 1961, and was forty-seven years old at the time of the hearing. (AR 26). She has a twelfth-grade education, and speaks, reads, and writes English. (AR 48, 106, 110). Plaintiff's past work experience has been as a janitor. (AR 107-08).

1 **A. Plaintiff's Medical History**

2
3 Plaintiff arrived at the emergency room of Arrowhead Regional
4 Medical Center ("ARMC") on June 11, 2007, complaining of back and hip
5 pain. (See AR 134-36). X-rays of her lumbar spine and right hip were
6 normal. (AR 207). She was diagnosed with sciatica, a condition that
7 usually "improves greatly with conservative treatment." (AR 135).

8
9 On January 8, 2008, Plaintiff was assessed by Drs. Miulli and
10 Panchal in the Neurosurgery Clinic at ARMC. (AR 202-03). They noted
11 Plaintiff's "chief complaint of lower back pain" and performed a
12 physical and neurological examination. They also noted that an MRI
13 showed "degenerative disk disease with mild central canal stenosis [at]
14 L3 through 4" and "[d]egenerative disk disease and facet joint disease
15 with moderate central canal and neural foraminal stenosis at L4 through
16 5." (AR 202; see AR 204-06). They diagnosed Plaintiff with "[r]ight
17 L3 radiculitis with possible radiculopathy versus pain" and a "[p]soas
18 spur." (AR 203). They recommended that Plaintiff see her primary care
19 physician to begin treatment with Naprosyn and Robaxin, that Plaintiff
20 receive nerve stimulation treatment, and that she receive physical
21 therapy three times per week. (Id.).

22
23 Plaintiff underwent an outpatient physical therapy evaluation at
24 ARMC that day (January 8, 2008). (AR 197-98). Plaintiff complained of
25 pain in her back and was found to have "limited and painful" rotation
26 of her hips and limited range of motion in her lumbar spine. (AR 197).
27 The physical therapist believed Plaintiff's "rehab potential" was fair
28 and that a limiting factor was her compliance. (AR 198).

1 A medical report completed by N. Pham at the San Bernardino
2 Transitional Assistance Department on September 30, 2008, relayed that
3 Plaintiff was temporarily incapacitated due to low back pain from
4 September 30, 2008, through January 30, 2009. (AR 224). More tests
5 were necessary "before the degree and permanence of the incapacity
6 [could] be determined." (Id.). There do not appear to be any treatment
7 notes accompanying this report.

8
9 Plaintiff was evaluated by Dr. Jothan on November 25, 2008. She
10 was diagnosed with degenerative disk disease and herniated nucleus
11 pulposus at L3-L4 and L4-L5. (AR 221). It was recommended that she
12 receive an epidural facet joint block and follow up with her primary
13 care physician for pain control. (Id.). Dr. Miulli recommended facet
14 joint injections on January 6, 2009. (AR 220).

15
16 On February 5, 2009, Plaintiff was seen at ARMC for an "initial
17 consultation for chronic pain." (AR 216-17). She was diagnosed with
18 an "L4-L5 disk bulge with mild to moderate facet hypertrophy," "mild to
19 moderate canal stenosis," "[b]ilateral neuroforaminal stenosis," and
20 "[m]ultiple degenerative disk disease canal foraminal stenosis." (AR
21 217). Plaintiff was scheduled for epidural steroid injections, which
22 she received on February 18, 2009 (AR 215), "[c]autioned on overuse of
23 narcotics," and prescribed ibuprofen and Neurontin. (AR 217).

24
25 On February 24, 2009, a nurse practitioner at ARMC Rehabilitation
26 Services evaluated Plaintiff for use of a front wheel walker. Plaintiff
27 was noted to have an unsteady gait and bilateral lower extremity
28 weakness. Plaintiff's goals were to increase strength and become

1 capable of independent ambulation. (AR 225). Plaintiff was prescribed
2 a front wheel walker on April 9, 2009. (AR 227).

3
4 On January 21, 2011, Plaintiff underwent surgery at ARMC to excise
5 an intervertebral disc (laminectomy).¹ Her principal diagnosis was
6 “[d]isplacement of lumbar intervertebral disc without myelopathy.” (AR
7 236, see 535-37). She also had L3-L4 and L4-L5 stenosis, and left L4-L5
8 radiculitis and radiculopathy with “failed nonoperative treatment in the
9 past.” (AR 535). The surgeons found that Plaintiff had “severe central
10 canal and lateral foraminal stenosis at L3, L4 and L5,” “severe
11 degenerative disk disease,” and that the “disk space was so small [they]
12 could barely get [their] instruments into the disk space.” (Id.).
13 Plaintiff “did well” after her operation and “[a]ggressive physical
14 therapy was sought.” (AR 329). She was ambulating with a walker and
15 assistance when she was discharged from the hospital on January 29,
16 2011. (AR 331; see AR 329).

17
18 **B. Examining and Non-Examining Physicians**

19
20 Dr. William Boeck performed a consultative orthopedic examination
21 on September 25, 2007. (AR 169-73). He noted that Plaintiff had “low
22 back pain,” “persistent hip pain,” and multiple disc bulges. (AR 169).
23 Plaintiff was currently taking Norco, Soma and Motrin for pain. (Id.).
24 Plaintiff had a normal stance and walked evenly without a limp. (AR
25 170). She complained of pain to palpation around her lumbar spine.

26
27
28

¹ The Appeals Council made this evidence, generated almost two
years after Plaintiff’s hearing, part of the record. (AR 5-6).

1 (Id.). The range of motion in her back was limited. (AR 170, 173).
2 Plaintiff "readily [came] to a seated position on the examining table"
3 and there were "free motions in the cervical spine." (AR 171). Range
4 of motion was normal in her shoulders, right elbow, and wrists. (Id.).
5 Plaintiff was also able to "readily come[] to a recumbent position face
6 up on the examining table," and the ranges of motion in her hips, knees,
7 ankles, and feet were normal. (AR 172). She did have "marked
8 tenderness" to palpation around her right hip. (Id.).
9

10 Dr. Boeck concluded that the only "positive findings" from his
11 examinations were the limited motion in Plaintiff's lumbar spine, the
12 "marked tenderness" around her right hip, "and an old deformity at the
13 left elbow." (AR 173). He diagnosed Plaintiff with "accumulated
14 changes" of the lumbar spine and bursitis of the right hip. (Id.). He
15 opined that Plaintiff could "lift and carry 50 pounds occasionally, 25
16 pounds frequently, stand and walk 6 hours in an 8-hour day, [and] sit
17 6 hours in an 8-hour day." (Id.).
18

19 On October 4, 2007, medical consultant George G. Spellman reviewed
20 Plaintiff's medical records and issued a Physical Residual Functional
21 Capacity² ("RFC") Assessment. (AR 189-93). Dr. Spellman reported that
22 Plaintiff could occasionally lift and/or carry fifty pounds, could
23 frequently lift and/or carry twenty-five pounds, could stand, walk or
24 sit for about six hours per eight hour work day, and had unlimited
25

26 ² Residual functional capacity is "the most [one] can still do
27 despite [one's] limitations" and represents an assessment "based on all
28 the relevant evidence in [one's] case record." 20 C.F.R. §§
404.1545(a), 416.945(a).

1 pushing and pulling abilities. (AR 190). Dr. Spellman further
2 indicated that Plaintiff had no postural, manipulative, visual,
3 communicative, or environmental limitations. (AR 190-92). He believed
4 Plaintiff's allegations were only "partially credible." (AR 193).
5 Another non-examining physician agreed with Dr. Spellman's assessment.
6 (AR 194-95).

7
8 Dr. Linda Smith performed a psychiatric consultative examination
9 of Plaintiff on September 18, 2007. (AR 162-67). Dr. Smith diagnosed
10 Plaintiff with "Depressive Disorder, Not Otherwise Specified," but
11 concluded Plaintiff would not "be impaired to work from a psychiatric
12 standpoint" and had no mental functional limitations. (AR 166-67). A
13 State Agency physician reviewed the evidence and concluded Plaintiff did
14 not have a severe psychiatric impairment. (AR 176-88).

15
16 **C. Plaintiff's Testimony**

17
18 Before the ALJ, Plaintiff testified that she had back pain and that
19 her spine was "twisted" and her discs were deteriorating. (AR 32-33).
20 She felt "knots" in her back and "could barely move." (AR 37). She
21 rated the level of pain at eight out of ten, and testified that she felt
22 it constantly. (AR 38, 42). She took medications for the pain but they
23 did not help. (AR 39, 42). She also stated that problems with her hip
24 and elbow kept her from working. (AR 33, 40). In addition, Plaintiff
25 was experiencing bilateral leg pain and sometimes had difficulty moving
26 her legs. (AR 33, 40-41). She testified that it was difficult for her
27 to sit, stand, or lay for very long. (AR 33, 43). Moreover, she was
28 becoming depressed because "[t]he pain hurts so bad." (AR 34; see AR

1 44). Plaintiff had a tendency to lose her balance "four or five times
2 a day" and began using a walker shortly before the hearing. (AR 29-30,
3 40). In addition, she had "[e]ight pain shots" in her spine the week
4 before the hearing. (AR 41-42). She did no chores around the house and
5 needed help taking a shower and getting dressed. (AR 45).
6

7 Plaintiff testified that she did about twenty hours per week of
8 yard work for her boyfriend's company until April or May of 2007. (See
9 AR 27-29). She was paid in cash and did not report her earnings to the
10 IRS. (RT 28-29).
11

12 Plaintiff testified that she had tested positive for "codeine or
13 cocaine" the month before the hearing. (AR 34-35). She then admitted
14 that she used cocaine in February 2009, but denied using any illegal
15 drugs in 2007 or 2008. (AR 36-37).
16

17 **D. Third Party Report**
18

19 Charles Vance, Plaintiff's roommate and boyfriend, completed a
20 "Function Report - Adult - Third Party." (AR 119-26). He wrote that
21 Plaintiff spent her days eating, showering, watching television, taking
22 medication, going on short walks, visiting neighbors, and taking naps,
23 and that she spent most of the time resting on the couch. (AR 119).
24 Plaintiff was able to do yard work, play with her grandchildren, and
25 prepare home-cooked meals before she became disabled. (AR 120-21). She
26 was "unable to lift" and could not "stand very long." (AR 121). She
27 also had "trouble with [her] legs going out" and "need[ed] help getting
28 up." (AR 123). Her disability interfered with numerous of her physical

1 abilities, and she could not walk very far before needing to rest. (AR
2 124). Vance's report largely echoed a "Function Report - Adult"
3 completed by Plaintiff. (See AR 127-34).
4

5 **IV.**

6 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**
7

8 To qualify for disability benefits, a claimant must demonstrate a
9 medically determinable physical or mental impairment that prevents her
10 from engaging in substantial gainful activity³ and that is expected to
11 result in death or to last for a continuous period of at least twelve
12 months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing 42
13 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant
14 incapable of performing the work he previously performed and incapable
15 of performing any other substantial gainful employment that exists in
16 the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir.
17 1999) (citing 42 U.S.C. § 423(d)(2)(A)).
18

19 To decide if a claimant is entitled to benefits, an ALJ conducts a
20 five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are as
21 follows:
22

- 23 (1) Is the claimant presently engaged in substantial gainful
24 activity? If so, the claimant is found not disabled. If
25 not, proceed to step two.
26

27 ³ Substantial gainful activity means work that involves doing
28 significant and productive physical or mental duties and is done for pay
or profit. 20 C.F.R. §§ 404.1510, 416.910.

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

4
5 (3) Does the claimant's impairment meet or equal one of a
6 list of specific impairments described in 20 C.F.R. Part
7 404, Subpart P, Appendix 1? If so, the claimant is found
8 disabled. If not, proceed to step four.

9
10 (4) Is the claimant capable of performing her past work? If
11 so, the claimant is found not disabled. If not, proceed
12 to step five.

13
14 (5) Is the claimant able to do any other work? If not, the
15 claimant is found disabled. If so, the claimant is found
16 not disabled.

17
18 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d
19 949, 953-54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b)-(g)(1),
20 416.920(b)-(g)(1).

21
22 The claimant has the burden of proof at steps one through four, and
23 the Commissioner has the burden of proof at step five. Bustamante, 262
24 F.3d at 953-54. If, at step four, the claimant meets her burden of
25 establishing an inability to perform past work, the Commissioner must
26 show that the claimant can perform some other work that exists in
27 "significant numbers" in the national economy, taking into account the
28 claimant's RFC, age, education, and work experience. Tackett, 180 F.3d

1 at 1098, 1100; Reddick, 157 F.3d at 721; 20 C.F.R. §§ 404.1520(g)(1),
2 416.920(g)(1). The Commissioner may do so by the testimony of a
3 vocational expert ("VE") or by reference to the Medical-Vocational
4 Guidelines appearing in 20 C.F.R. Part 404, Subpart P, Appendix 2
5 (commonly known as "the Grids"). Osenbrock v. Apfel, 240 F.3d 1157,
6 1162 (9th Cir. 2001). When a claimant has both exertional (strength-
7 related) and nonexertional limitations, the Grids are inapplicable and
8 the ALJ must take the testimony of a VE. Moore v. Apfel, 216 F.3d 864,
9 869 (9th Cir. 2000).

10
11 **V.**

12 **THE ALJ'S DECISION**

13
14 At the first step of the sequential evaluation process, the ALJ
15 observed that Plaintiff "did work after the asserted onset date on a
16 part-time basis." (AR 16). Plaintiff's earnings were "unclear,"
17 however, leaving no evidence that she had engaged in substantial gainful
18 activity. (Id.). At step two, the ALJ found that Plaintiff had the
19 severe impairments of "a lumbar spine disorder and a disorder of the
20 right hip and left elbow." (Id.). At the third step, the ALJ found that
21 Plaintiff did not have an impairment or combination of impairments that
22 met or medically equaled a listed impairment. (AR 17).

23
24 Next, the ALJ determined that Plaintiff had the RFC to perform light
25 work with the limitations that she could occasionally balance, bend,
26 stoop, crouch, kneel, crawl, and climb stairs or ramps, but could not
27 climb ladders, ropes or scaffolds. (AR 17). At step four, the ALJ found
28 that Plaintiff could not perform her past relevant work as a janitor.

1 (AR 20). At step five, the ALJ determined that Plaintiff could perform
2 work as a cashier, mail clerk, or sewing machine operator. (AR 20-21).
3 Accordingly, the ALJ concluded that Plaintiff was not disabled. (AR 21).
4

5 **VI.**

6 **STANDARD OF REVIEW**

7
8 Under 42 U.S.C. § 405(g), a district court may review the
9 Commissioner's decision to deny benefits. The court may set aside the
10 Commissioner's decision when the ALJ's findings are based on legal error
11 or are not supported by substantial evidence in the record as a whole.
12 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Smolen v.
13 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996).
14

15 "Substantial evidence is more than a scintilla, but less than a
16 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence
17 which a reasonable person might accept as adequate to support a
18 conclusion." Id. To determine whether substantial evidence supports a
19 finding, the court must "'consider the record as a whole, weighing both
20 evidence that supports and evidence that detracts from the
21 [Commissioner's] conclusion.'" Aukland, 257 F.3d at 1035 (quoting Penny
22 v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can
23 reasonably support either affirming or reversing that conclusion, the
24 court may not substitute its judgment for that of the Commissioner.
25 Reddick, 157 F.3d at 720-21.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VII.

DISCUSSION

Plaintiff contends a reversal or remand is warranted because the ALJ committed two errors: (1) the ALJ did not properly consider Plaintiff's testimony (Memorandum in Support of Plaintiff's Complaint ("Complaint Memo") at 4-8); and (2) the ALJ did not properly consider lay witness evidence. (Id. at 8-10). For the reasons discussed below, the Court disagrees with Plaintiff's contentions.

A. The ALJ Provided Clear And Convincing Reasons For Rejecting Plaintiff's Subjective Complaints

Plaintiff asserts that the ALJ failed to provide legally sufficient reasons for finding that Plaintiff's subjective complaints were not fully credible. (Complaint Memo at 4-8). The Court disagrees.

To determine whether a claimant's testimony regarding subjective pain or symptoms is credible, an ALJ must engage in a two-step analysis. First, the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment "which could reasonably be expected to produce the pain or other symptoms alleged." Lingenfelter v. Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007) (internal quotation marks omitted). "The claimant, however, 'need not show that her impairment could reasonably be expected to cause the severity of the symptom she has alleged; she need only show that it could reasonably have caused some degree of the symptom.'" Id. (quoting Smolen, 80 F.3d at 1282). Second, if the claimant meets this first test, and there is no

1 evidence of malingering, "the ALJ can reject the claimant's testimony
2 about the severity of her symptoms only by offering specific, clear and
3 convincing reasons for doing so." Smolen, 80 F.3d at 1281.

4
5 The ALJ cited no affirmative evidence that Plaintiff was
6 malingering. (See AR 17-20). However, the ALJ determined that Plaintiff
7 was "not fully credible." (AR 20). The ALJ provided a specific, clear
8 and convincing reason⁴ for rejecting Plaintiff's credibility: "her
9 failure to comply with governmental laws, rules and regulations" by
10 failing to report to the IRS the income from her part-time work for a
11 lawn service. (Id.). At least one other court has found that a
12 claimant's failure to report income to the IRS supports an ALJ's adverse
13 credibility determination. See Berger v. Astrue, 516 F.3d 539, 546 (7th
14 Cir. 2008). This Court agrees that Plaintiff's admitted failure to
15 comply with the law (see AR 29) clearly and convincingly detracts from
16 her credibility. See Fair v. Bowen, 885 F.2d 597, 604 n.5 (9th Cir.
17 1989) (noting that an ALJ may apply "ordinary techniques of credibility

18
19 ⁴ The ALJ also noted that several "credibility factors were
20 particularly applicable: whether the person has a pecuniary interest in
21 the outcome of the hearing or may otherwise be motivated by secondary
22 gain; whether a person's evidence is inconsistent with or contradicted
23 by prior statements or other evidence in the record; and the appearance
24 and demeanor of a person as a witness at the hearing." (AR 19-20.)
25 However, the ALJ offered no further explanation of the reasoning
26 underlying these factors. (See id.). Accordingly, they do not suffice
27 to support his rejection of Plaintiff's credibility. See Thomas v.
28 Barnhart, 278 F.3d 947, 958 (9th Cir. 2002) (holding that an ALJ's
credibility findings must be "sufficiently specific to permit the court
to conclude that the ALJ did not arbitrarily discredit claimant's
testimony"); see also Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219,
1227 (9th Cir. 2009) (holding that an ALJ's arguably invalid reason for
discounting a claimant's credibility was harmless error because the ALJ
provided other legitimate reasons to do so).

1 evaluation" such as considering whether a claimant has "been less than
2 candid"). Accordingly, the ALJ did not err in rejecting Plaintiff's
3 credibility, and Plaintiff's claim does not warrant remand.

4
5 **B. The ALJ's Failure To Expressly Consider Lay Witness Evidence Does**
6 **Not Require Remand**

7
8 Plaintiff contends that the ALJ failed to properly consider the
9 third party statement of Charles Vance. (Complaint Memo at 8-10).
10 Although the ALJ erred by failing to expressly consider Vance's report,
11 the Court concludes the error was harmless.

12
13 In determining whether a claimant is disabled, an ALJ must consider
14 lay witness testimony concerning a claimant's ability to work. Stout v.
15 Commissioner, 454 F.3d 1050, 1053 (9th Cir. 2006); Smolen, 80 F.3d at
16 1288; 20 C. F. R. §§ 404.1513(d) (4) & (e), and 416.913(d) (4) & (e). The
17 ALJ may discount the testimony of lay witnesses only if he gives "reasons
18 that are germane to each witness." Dodrill v. Shalala, 12 F.3d 915, 919
19 (9th Cir. 1993); see also Lewis v. Apfel, 236 F.3d 503, 511 (9th Cir.
20 2001) ("Lay testimony as to a claimant's symptoms is competent evidence
21 that an ALJ must take into account, unless he or she expressly determines
22 to disregard such testimony and gives reasons germane to each witness for
23 doing so.").

24
25 If an ALJ fails to expressly consider lay witness testimony, the
26 Court must determine whether the ALJ's decision remains legally valid
27 despite such error. Carmickle v. Comm'r of Soc. Sec. Admin., 533 F.3d
28 1155, 1162 (9th Cir. 2008). If the ALJ's ultimate credibility

1 determination and reasoning are adequately supported by substantial
2 evidence in the record, no remand is required. Id. (citing Batson v.
3 Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1195-97 (9th Cir. 2004)); see
4 Molina v. Astrue, 674 F.3d 1104, 1115-22 (9th Cir. 2012).

5
6 As Plaintiff notes, the ALJ failed to expressly evaluate Vance's
7 report about Plaintiff's abilities.⁵ However, Vance's statements
8 essentially mirrored that of Plaintiff's own testimony and did not
9 strengthen Plaintiff's disability claim. (Compare AR 119-26 with AR 32-
10 34, 37-47, 127-34). Vance's report therefore did not provide any insight
11 into Plaintiff's condition beyond Plaintiff's own testimony, which, as
12 discussed above, the ALJ provided legally sufficient reasons to
13 discredit. Accordingly, the ALJ's failure to discuss Vance's report was
14 harmless error because it was inconsequential to the ultimate
15 nondisability determination. See Molina, 674 F.3d at 1121-22 (holding
16 that "an ALJ's failure to comment upon lay witness testimony is harmless
17 where the same evidence that the ALJ referred to in discrediting the
18 claimant's claims also discredits the lay witness's claims" (brackets and
19 internal quotation marks omitted)); Valentine v. Comm'r of Soc. Sec.
20 Admin., 574 F.3d 685, 694 (9th Cir. 2009) (holding that an ALJ's clear
21 and convincing reasons for discounting a claimant's testimony are equally
22 germane to reject similar testimony by a lay witness). Thus, the Court
23 "confidently conclude[s] that no reasonable ALJ, when fully crediting
24

25
26 ⁵ The ALJ stated that he "assessed the credibility of the evidence
27 given by each person," and that the evidence included "pre-hearing
28 statements or reports." (AR 19 & n.6). Even if the ALJ reviewed
Vance's report, however, he erred by disregarding it without comment.
See Lewis, 236 F.3d at 511.

