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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT E. SPRING,)	Case No. ED CV 11-1804-PJW
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of the)	
Social Security Administration,)	
)	
Defendant.)	

I. INTRODUCTION

Before the Court is Plaintiff's appeal of a decision by Defendant Social Security Administration ("the Agency"), denying his application for Disability Insurance benefits ("DIB"). Plaintiff claims that the Administrative Law Judge ("ALJ") erred when he found that Plaintiff was not credible and when he rejected the opinions of a treating and an examining doctor. For the reasons explained below, the Court concludes that the ALJ erred and remands the case to the Agency for further consideration.

II. SUMMARY OF PROCEEDINGS

On December 13, 2005, Plaintiff applied for DIB, claiming that he had been unable to work since October 27, 2004, due to a heart attack,

1 high blood pressure, cholesterol, and arterial stenosis.
2 (Administrative Record ("AR") 147, 174.) The Agency denied the
3 application initially and on reconsideration. (AR 35-36, 48-58.)
4 Plaintiff then requested and was granted a hearing before an ALJ. (AR
5 60-62.) On March 25, 2008, Plaintiff appeared with counsel and
6 testified at the hearing. (AR 796-827.) On April 25, 2008, the ALJ
7 issued a decision denying benefits. (AR 37-45.)

8 Plaintiff appealed to the Appeals Council, which remanded the
9 case to the ALJ with instructions to clarify his treatment of the
10 treating and examining physicians' opinions and his finding that
11 Plaintiff was not credible. (AR 82-85.) On November 10, 2009, the
12 ALJ held a second hearing. (AR 26-34.) At the outset of the hearing,
13 Plaintiff's counsel requested that Plaintiff's claim be amended to
14 seek disability benefits for a closed period from October 27, 2004 to
15 September 1, 2008, due to the fact that Plaintiff had returned to the
16 work force. (AR 29.) On January 6, 2010, the ALJ issued a second
17 decision, again denying Plaintiff's application for benefits. (AR 10-
18 20.) Plaintiff appealed to the Appeals Council, which denied review.
19 (AR 1-9.) He then commenced this action.

20 III. DISCUSSION

21 1. The ALJ's Credibility Evaluation

22 Plaintiff contends that the ALJ's credibility determination is
23 not supported by substantial evidence. (Joint Stip. at 18-20.) For
24 the following reasons, the Court agrees.

25 ALJs are tasked with judging the credibility of witnesses. In
26 making these determinations, they may employ ordinary credibility
27 evaluation techniques. *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir.
28 1996). Where a claimant has produced objective medical evidence of an

1 impairment which could reasonably be expected to produce the symptoms
2 alleged and there is no evidence of malingering, the ALJ can only
3 reject the claimant's testimony for specific, clear, and convincing
4 reasons that are supported by substantial evidence in the record. *Id.*
5 at 1283-84; *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002).

6 Plaintiff testified at the first hearing in March 2008 that he
7 was unable to work for more than three or four hours a day because of
8 aches and pain. (AR 802.) He testified that the pain was
9 particularly bad in his hands, shoulders, and feet. (AR 813.) He
10 also testified that he thought that some of the medication he was
11 taking--amounting to 25 to 30 pills a day--might be making his
12 symptoms worse. (AR 802, 813-14.) Plaintiff explained that his back
13 hurt if he sat too long and that his shoulders and feet hurt if he
14 stood for more than an hour. (AR 816.) He explained that, on a good
15 day, it took him an hour to get out of bed and, on a bad day, it took
16 him two hours. (AR 818.) In a written statement submitted with his
17 disability application, Plaintiff noted that he experienced swelling
18 in his hands, legs, and feet and that he often fell asleep when he sat
19 down to work on his computer or to read a book. (AR 182.) He also
20 complained that he had trouble walking a block or more because his
21 whole body hurt and he had trouble breathing. (AR 191.)

22 The ALJ found that there was no objective evidence to support
23 Plaintiff's claimed limitations. (AR 18-19.) He noted, for example,
24 that Plaintiff's claims of an inflammatory condition were not
25 supported by evidence of swelling in the joints, arms, or legs. (AR
26 19.) He also pointed out that Plaintiff's "motion remained intact,"
27 his pain responded to treatment, and his activities were "self
28 limited." (AR 19.) He noted that Plaintiff's uric acid levels were

1 no higher than normal for more than 12 months and that there was no
2 nerve root impingement. (AR 19.)

3 The record does not seem to support any of these findings. Dr.
4 Glen Smith, Plaintiff's treating physician, noted swelling in
5 Plaintiff's hands, legs, and feet on a number of occasions. (AR 318
6 (hand); 322 (legs/feet), 453 (hands).) So did Dr. Robert Steinberg,
7 who examined Plaintiff in December 2007. (AR 444 (noting edema in
8 joints).) Dr. Steinberg also observed that Plaintiff's range of
9 motion was diminished in his shoulders, elbows, wrists, hands, hips,
10 knees, ankles, and toes. (AR 444-46.) Rheumatologist Joo-Hyung Lee
11 noted that Plaintiff's pain was "suggestive of an inflammatory
12 arthritis," though Plaintiff did not exhibit any swelling on the day
13 Dr. Lee examined him. (AR 272.)

14 The ALJ's finding that Plaintiff's pain responded to treatment is
15 a one-sided interpretation of the evidence. Although Plaintiff
16 testified that, if he did not take pain pills, he found it hard to
17 function, he also testified that the pain "just continues to get
18 worse." (AR 814.) Clearly, the pills afforded him some relief, but,
19 nevertheless, he repeatedly emphasized that he continued to experience
20 pain, so much so that, at times, he felt "like somebody [was] taking a
21 nail through me." (AR 33, 816-17.) Likewise, the ALJ did not set
22 forth a basis for his finding that Plaintiff's activities were "self
23 limited." (AR 19.) Thus, the Court cannot evaluate that finding,
24 either.

25 As to Plaintiff's uric acid levels, the ALJ did not explain what
26 impact they had on Plaintiff's condition and how the absence of high
27 uric acid levels for 12 months undermined Plaintiff's testimony
28 regarding his symptoms. Thus, the Court is not able to evaluate the

1 ALJ's finding regarding the uric acid level. Further, because the ALJ
2 had already found that Plaintiff's medically determinable impairments
3 could reasonably be expected to cause his alleged symptoms (AR 18),
4 the fact that Plaintiff lacked other signs of impairment was not a
5 proper basis for disbelieving his testimony.

6 Another reason cited by the ALJ for questioning Plaintiff's
7 testimony was that Plaintiff continued to work out of his house for a
8 time in 2007 and 2008--while he was disabled--and attended a life
9 insurance seminar during this period. (AR 18-19.) This rationale,
10 too, is rejected.

11 Plaintiff testified that his work involved making phone calls
12 from his home for 30 minutes a day, two or three days a week, and
13 attending a meeting once every two weeks. (AR 800-01.) The work
14 required him to sit for no more than one hour at a time. (AR 206.)
15 Plaintiff's ability to perform at this level does not show that he was
16 capable of working 40 hours a week or that his claim that he could not
17 work full time was untrue.

18 The ALJ also focused on the fact that Plaintiff had returned to
19 the work force in September 2008, despite there being no evidence that
20 his condition had improved, thus implying that he had been capable of
21 working all along. The Court does not find this evidence convincing,
22 either. Plaintiff testified that his job in 2008 came from a former
23 employer who allowed Plaintiff to work mainly out of his home with
24 only occasional trips to the employer's stores to check on them. (AR
25 30.) Plaintiff testified that he could "roll into" work "whenever"
26 and that his employer would not know if he fell asleep at his
27 computer, which sometimes happened. (AR 30, 32.) He also testified
28 that he would probably not be able to work if he had to go to an

1 office or drive on the freeway. (AR 32.) Thus, there is simply
2 nothing in this testimony to suggest that Plaintiff was capable of
3 full-time work outside the home or that his earlier testimony that he
4 could not work full time outside the home was false.

5 As for the life insurance seminar that Plaintiff attended, it is
6 not clear from the record when the seminar took place or what it
7 entailed. As such, the Court does not find this reason for
8 discounting Plaintiff's testimony convincing.

9 Finally, the ALJ found that Plaintiff was not credible because he
10 was only taking Excedrin for his joint pain, despite his claim that
11 muscle aches and pain were the main reasons that he could not work.
12 (AR 19.) This finding is contradicted by the record. The medical
13 records show that--consistent with Plaintiff's testimony at the
14 hearing--throughout the period in question, he was taking Tramadol, a
15 prescription pain reliever prescribed for moderate to moderately
16 severe chronic pain for adults who require around-the-clock treatment
17 for an extended period of time.¹ (AR 179, 196, 201, 235, 820.) Thus,
18 the ALJ's finding that Plaintiff was only taking Excedrin is not
19 supported by the record and is not a valid reason for questioning
20 Plaintiff's credibility.

21 Because the ALJ's reasons for rejecting Plaintiff's testimony are
22 not clear and convincing and/or are not supported by substantial
23 evidence in the record, remand is required on the credibility issue.

27
28 ¹ See The Physician's Desk Reference Pocket Guide to
Prescription Drugs at www.pdr.net/drug-summary/ultram.

