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

MOHAMMAD HASAN ALSYOUF,)	NO. EDCV 11-1867 SS
)	
Plaintiff,)	
)	
v.)	
)	MEMORANDUM DECISION AND ORDER
MICHAEL J. ASTRUE,)	
Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	
)	

**I.
INTRODUCTION**

Mohammad Hasan Alsyouf ("Plaintiff") brings this action seeking to overturn the decision of the Commissioner of the Social Security Administration (hereinafter the "Commissioner" or the "Agency") denying his application for Supplemental Security Income benefits ("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 Agency is AFFIRMED.

1 II.

2 PROCEDURAL HISTORY

3
4 Plaintiff filed an application for SSI on February 2, 2005.
5 (Administrative Record ("AR") 89). He alleged a disability onset date
6 of October 24, 2002. (Id.). His last-insured date was June 30, 2006.
7 (AR 696). The Agency initially denied this claim on April 15, 2005.
8 (AR 75). After Plaintiff requested and received reconsideration of his
9 claim, Plaintiff's claim was denied again on July 15, 2005. (AR 82).
10

11 On August 28, 2005, Plaintiff filed a written request for hearing.
12 (AR 87). Plaintiff testified at a hearing held before Administrative
13 Law Judge ("ALJ") Henry M. Tai on March 14, 2007. On March 14, 2007,
14 the ALJ issued a decision denying benefits. (AR 43-56).
15

16 On May 18, 2007, Plaintiff requested that the Appeals Council
17 review the ALJ's decision. (AR 40). The Appeals Council denied
18 Plaintiff's request on August 3, 2009. (Id.). Plaintiff then filed a
19 civil action, which resulted in a Memorandum Decision and Order
20 reversing the ALJ's determination and remanding the action for further
21 proceedings. (AR 578-93). The Court concluded that ALJ Tai failed to
22 properly assess whether Plaintiff's mental health impairment was severe.
23 (AR 582-83). Specifically, the Court explained that there was objective
24 evidence that Plaintiff suffered from a mental health impairment and ALJ
25 Tai failed to follow the Secretary's regulations for evaluating such
26 impairments. (AR 586). The Court also explained that the ALJ erred in
27 basing his determination that Plaintiff's mental impairment was not
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1 severe in part on the fact that Plaintiff had not been hospitalized for
2 psychiatric treatment. (AR 586).

3
4 The Court required the Agency to consider three issues on remand.
5 First, the Court instructed the ALJ to "rate the degree of functional
6 loss resulting from the impairment by considering four areas of function
7 (a) activities of daily living; (b) social functioning; (c)
8 concentration, persistence, or pace; and (d) episodes of
9 decompensation." (AR 587 n.4) (citing 20 C.F.R. § 416.920a(c)(2)-(4)).
10 The ALJ was further instructed to "determine whether the claimant has
11 a severe mental impairment" after rating the degree of loss. (Id.)
12 (citing C.F.R. § 416.920a(d)). The Court noted that if the ALJ were to
13 determine that Plaintiff has a severe mental impairment, the ALJ must
14 then determine whether it meets or equals a listing in 20 C.F.R. Part
15 404, Subpart P, Appendix 1. (Id.) (citing C.F.R. § 416.920a(d)(2)).
16 The Court also explained that if a listing is not met, the ALJ must
17 assess Plaintiff's residual functional capacity ("RFC") and incorporate
18 into the ALJ's decision the pertinent findings and conclusions regarding
19 Plaintiff's mental impairment, including a specific finding as to the
20 degree of limitation in each of the functional areas described in C.F.R.
21 § 416.920a(c)(3). (Id.) (citing C.F.R. § 416.920a(d)(3), (e)(2)).

22
23 Second, the Court instructed the ALJ to take the testimony of a
24 vocational expert. Specifically, the Court noted that the ALJ erred in
25 relying solely on the Medical-Vocational Guidelines ("Grids") when
26 assessing whether Plaintiff is disabled. Where, as in Plaintiff's case,
27 the claimant has both exertional and significant non-exertional
28

1 limitations, the Grids are inapplicable and the ALJ must take the
2 testimony of a vocational expert. (AR 588) (citing Burkhart v. Bowen,
3 856 F.2d 1335, 1340 (9th Cir. 1988)).

4
5 Third, the Court instructed the ALJ to consider Plaintiff's
6 subjective pain testimony, explaining that the first ALJ decision failed
7 to provide clear and convincing reasons to reject such testimony. (AR
8 590-91).

9
10 Pursuant to this Court's remand, the Appeals Council vacated the
11 ALJ's decision on February 9, 2011. (AR 596). On May 11, 2011,
12 Plaintiff testified at a hearing held before ALJ Tamara Turner-Jones.
13 (AR 689-722). The ALJ denied Plaintiff's claim on July 29, 2011. (AR
14 563-77). The ALJ's decision became the final decision of the
15 Commissioner on August 29, 2011. Plaintiff requested judicial review
16 by filing the instant action on November 23, 2011.

17
18 **III.**

19 **FACTUAL BACKGROUND**

20
21 Plaintiff, who was forty-nine at the time of the second ALJ
22 hearing, has a high school education and three years of college. (AR
23 357). Plaintiff worked as a gas station cashier, car salesman, and auto
24 trader driver from 1998 until his alleged disability onset date of
25 October 24, 2002. (AR 106, 114, 131, 964). Plaintiff also worked as
26 a gas station cashier from 1992 to 1993. (AR 131). During the second
27 ALJ hearing, Plaintiff stated that he had not sought work since October
28

1 24, 2002 and instead supports himself with help from his brother and a
2 \$130,000 lump-sum workers' compensation settlement that he received in
3 2007. (AR 694-95). Plaintiff claims that he cannot walk without
4 difficulty, cannot sit for extended periods of time, has nerve damage
5 to his leg, and has numbness and no feeling in his left ankle. (AR 696-
6 707).

7
8 Plaintiff also complains that he became less self sufficient
9 following the 2002 incident. He testified that he stopped driving
10 immediately after the incident, although Plaintiff also testified that
11 he later resumed driving to the market, shopping center, and pharmacy
12 by himself. (AR 697). Plaintiff further complains of an inability to
13 handle finances, although the third party functionality report completed
14 by Plaintiff's wife states that his ability to handle money has not
15 changed since his disability onset date.¹ (AR 126). On a daily basis,
16 Plaintiff reads, watches tv, exercises, naps, and does "minimum
17 walking." (AR 114, 122).

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25 ¹ The Court notes, however, that Plaintiff's wife may have
26 intended to state that his ability to handle money has changed since the
27 October 2002 incident. Plaintiff's wife checked the "no" box on a form
28 asking whether there had been such a change in Plaintiff's ability. In
explaining her answer, Plaintiff's wife added that Plaintiff has "no
patience or concentration." (AR 126).

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

2
3 Plaintiff has seen a variety of medical professionals between his
4 alleged disability onset date and when he filed for benefits. The Court
5 summarizes Plaintiff's medical history below.

6
7 After being injured during a robbery at his workplace on October
8 24, 2002, Plaintiff sought treatment from the Riverside County Regional
9 Medical Center Emergency Department for a gunshot wound to his left
10 thigh. (AR 167-68, 705). An x-ray showed "no fracture within the
11 femur." (AR 185). Plaintiff also sought treatment for injuries
12 sustained when he was hit in the head during the incident. (AR 176).
13 Plaintiff was treated and released after his symptoms were resolved
14 within seventy-six hours. (AR 179).

15
16 On November 19, 2002, Plaintiff saw Dr. Stephen P. Suzuki for a
17 complex orthopaedic consultation regarding injuries sustained in the
18 October incident. (AR 193). Dr. Suzuki noted that Plaintiff complained
19 of neck pain, left thigh pain, left leg weakness, and left ankle pain.
20 (Id.). However, Dr. Suzuki reported that Plaintiff had a normal range
21 of motion and motor strength in all but his lower extremities. (AR 196-
22 97). Plaintiff presented with "a through and through gunshot wound to
23 the left thigh. The enter and exit wounds [were] clean and dry at [the
24 time of the exam]. There [was] no surrounding fluctuance. There [was]
25 very minimal erythema around the actual gunshot sites. There [was] no
26 drainage. There [were] no palpable masses." (AR 198). With respect
27 to Plaintiff's left ankle, Dr. Suzuki observed "a mild amount of soft
28

1 tissue swelling" coupled with "limited motion." (Id.). Dr. Suzuki also
2 noted that cervical spine x-rays showed "no evidence of specific
3 fractures, dislocations, or calcifications." (AR 198-99). X-rays taken
4 of Plaintiff's left ankle showed arthritis of the ankle joint, while x-
5 rays of his left foot and femur showed "no fractures dislocations, or
6 calcifications." (AR 199). Plaintiff was "alert and oriented" during
7 the examination and appeared to have a good memory. (AR 194). Dr.
8 Suzuki also reported that Plaintiff "sits, stands, and ambulates
9 independently." (Id.).

10
11 Dr. Suzuki diagnosed Plaintiff with (1) "[l]eft thigh gunshot wound
12 through and through with severe quadriceps atrophy," (2) cervical spine
13 strain and contusion and headaches, and (3) chronic arthritis in the
14 left ankle. (Id.). He prescribed physical therapy along with both pain
15 medication and muscle relaxants. (Id.). Medical records indicate that
16 Plaintiff went to seven physical therapy appointments and missed three,
17 at which point he was discharged for failure to attend appointments
18 despite progress being noted on the physical therapy reports. (AR 202).

19
20 Plaintiff's primary treating physician was Dr. Anthony T. Fenison,
21 who Plaintiff first saw in early December 2002 for back pain, head and
22 neck pain, and left leg pain and numbness. (AR at 321). According to
23 medical records, Plaintiff saw Dr. Fenison at various points between
24 December 2002 and January 2004. (See AR 317, 321). On January 7, 2004,
25 Dr. Fenison reported that while Plaintiff initially presented with
26 difficulties with his foot and ankle and left upper extremity, "these
27 areas have improved with appropriate conservative care." (AR 330). Dr.

1 Fenison concluded that Plaintiff was "permanent and stationary for
2 rating purposes" and opined that Plaintiff should be "limited to light
3 work . . . in a very benign atmosphere" and not "placed [in] an
4 environment that will require stressful interactions or an environment
5 that might place him at increased risk of encountering another
6 assailant." (AR 331).

7
8 Additionally, at various points between December 29, 2002 and
9 January 5, 2004, Plaintiff sought chiropractic treatment from Dr. Derick
10 Lajom for neck pain and muscle spasms. (AR 203-23). On at least one
11 occasion, Dr. Lajom noted that Plaintiff was "responding well to the
12 current treatment regimen." (AR 212).

13
14 On June 17, 2003, Plaintiff saw Dr. Jurkowitz for a qualified
15 medical evaluation in neurology. (AR 245). Dr. Jurkowitz reviewed
16 Plaintiff's medical record and performed a physical examination and
17 neurological examination. (AR 264-65). On June 23, 2003, Dr. Jurkowitz
18 diagnosed Plaintiff with posttraumatic headaches, cervical sprain,
19 lumbosacral sprain and possible radiculopathy, and "pain syndrome of
20 left lower extremity which is turning into some sort of chronic pain."
21 (AR 263). However, Dr. Jurkowitz also reported that Plaintiff's mental
22 status was "[g]rossly normal, although [Plaintiff was] somewhat nervous
23 and certainly . . . phobic about needles." (AR 262). While Dr.
24 Jurkowitz reported that Plaintiff evidenced "atrophy of the left lower
25 extremity," he also noted that Plaintiff had "normal strength in the
26 upper extremities" and that Plaintiff had "normal strength" in his right
27 lower extremity. (Id.). After a subsequent evaluation on March 31,

1 2004, Dr. Jurkowitz reported that Plaintiff's mental status seemed
2 normal, although Plaintiff evidenced a "somewhat flattened affect." (AR
3 248). Dr. Jurkowitz also reported that while it was impossible to test
4 strength in Plaintiff's left lower extremity because it was then "too
5 tender to touch," Plaintiff retained "normal strength in both upper
6 extremities and right lower extremity." (Id.). Dr. Jurkowitz again
7 diagnosed Plaintiff with posttraumatic headaches, cervical sprain,
8 lumbosacral sprain and possible radiculopathy, and pain syndrome in the
9 left lower extremity. (AR 249).

10
11 Plaintiff sought pain management treatment from Dr. Andrew W.
12 Hesselstine. On August 5, 2003, Dr. Hesselstine reported that
13 "[Plaintiff] states that overall he is doing well." (AR 272).
14 Plaintiff was then given refills of Remeron 15 mf, Lidoderm 5% patch,
15 Bextra 10 mg tab, and Effexor XR 75 mg tab. (AR 273). A few months
16 later, on July 24, 2003, complaining of neck pain, Plaintiff received
17 an MRI from Dr. Ronald Otto. (AR 275-77). Dr. Otto found no
18 significant problems. (AR 276).

19
20 Additionally, Plaintiff sought psychological treatment from Dr.
21 Marilyn Neudeck-Dicken, PhD. (AR 224-243). Plaintiff's first visit
22 appears to have been on May 21, 2003. (AR 234). However, the earliest
23 treatment notes from Dr. Neudeck-Dicken are from May 29, 2003. (AR
24 238). At that time, Plaintiff complained of anxiety, depression,
25 difficulty sleeping, and other psychological symptoms associated with
26 the October 2002 incident. Dr. Neudeck-Dicken diagnosed Plaintiff with
27 possible posttraumatic stress disorder, chronic. (AR 243). However,
28

1 On March 16, 2004, Dr. Neudeck-Dicken reported that Plaintiff "has made
2 great strides in his posttraumatic stress disorder" and that his
3 "depression has greatly improved" even though he still demonstrates "the
4 effects of a depressive triad of negative views of self worth, present
5 living, and his future." (AR 234). Dr. Neudeck-Dicken also reported
6 that Plaintiff was "no longer isolating himself within his home" and was
7 "getting out and going places," including "trips with his wife." (Id.).
8 Further, while Plaintiff still showed symptoms of anxiety, Dr. Neudeck-
9 Dicken noted that Plaintiff's anxiety was "less[ened] when he use[d] his
10 relaxation exercises." (Id.). Dr. Neudeck-Dicken also reported that
11 Plaintiff's "feeling of helplessness and hopelessness [was] not as
12 great." (Id.). At that time, Plaintiff's "cognitive functioning [was]
13 greatly improved," with Plaintiff "no longer confused" and
14 "demonstrat[ing] increased concentration." (AR 235). Plaintiff was
15 "reading, going to the library, and using his computer to study various
16 subjects of interest to him," although he retained signs of PTSD.
17 (Id.). On May 8, 2004, however, Plaintiff still complained of
18 psychological symptoms stemming from the October 2002 incident. (AR
19 230). According to Dr. Neudeck-Dicken's notes, Plaintiff reported
20 "nightmares nightly and recurrent recollections of the incident" in
21 addition to difficulty sleeping and difficulty returning to sleep.
22 (Id.). Plaintiff further reported being anxious, "in a hyper-alert
23 state," and feeling weak and vulnerable. (Id.). He also complained of
24 depression associated with self doubt and loss in self confidence, loss
25 of interest in previously enjoyed activities, and difficulty
26 concentrating and making decisions. (Id.). Dr. Neudeck-Dicken
27 diagnosed Plaintiff with chronic posttraumatic stress disorder ("PTSD"),
28

1 with "mixed anxiety and depressed mood" in addition to sleep terror
2 disorder and possible dependent personality with "[n]egativistic
3 personality traits." (AR 231). Later, in response to a June 22, 2005
4 request by the State of California Department of Social Services, Dr.
5 Neudeck-Dicken noted that Plaintiff was able to manage funds on his own
6 behalf. (AR 229). Dr. Neudeck-Dicken also noted that Plaintiff's PTSD
7 "does not interfere with" activities including "properly car[ing] for
8 personal affairs, do[ing] shopping, cook[ing], us[ing] public
9 transportation, pay[ing] bills, maintain[ing] residence, [and] car[ing]
10 for grooming and hygiene" (AR 227). Finally, Dr. Neudeck-
11 Dickson noted that she "see[s] no problem" in concentration and task
12 completion, including Plaintiff's ability to sustain focused attention,
13 complete everyday household routines, and follow and understand simple
14 written or oral instructions. (AR 228).

15
16 **B. Consultative Evaluations**

17
18 **1. Psychiatric Evaluations**

19
20 Plaintiff saw Dr. Romualdo R. Rodriguez, M.D., for a complete
21 psychiatric evaluation at the request of the Department of Social
22 Security. (AR 355, 361). No psychiatric records were reviewed in the
23 examination and Plaintiff was the sole source of information for the
24 evaluation. (AR 355) (observing that Plaintiff "appears to be a
25 reliable historian"). In a March 15, 2005 summary of that evaluation,
26 Dr. Rodriguez reported that Plaintiff complained of "becoming depressed,
27 irritable, and anxious." (AR 356). Plaintiff further complained of
28

1 suicidal feelings, nightmares, homicidal feelings toward his wife, and
2 problems with memory and concentration. (Id.). However, Dr. Rodriguez
3 reported that medication "significantly improved" the nightmares.
4 (Id.). Further, Dr. Rodriguez reported that Plaintiff does household
5 chores and "can take care of self-dressing, bathing, and personal
6 hygiene." (AR 357). Plaintiff also drives his own automobile for
7 transportation. (Id.). He watches TV, walks, and reads. (Id.).
8 Plaintiff is able to "handle cash and pay bills appropriately." (Id.).
9 His thought process was "coherent and organized" with "no tangentiality
10 or loosening of associations." (AR 358). Dr. Rodriguez found Plaintiff
11 "relevant and non-delusional" and without "bizarre or psychotic thought
12 content." (Id.). Further, while Plaintiff previously had suicidal and
13 homicidal ideation, Dr. Rodriguez reported that Plaintiff had no plans
14 or intent at that time. (Id.). Dr. Rodriguez noted that "[t]here is
15 no homicidal or paranoid ideation. He denies recent auditory or visual
16 hallucinations." (Id.). While Plaintiff described his mood as
17 "somewhat despondent," he was "alert and oriented to time, place,
18 person, and purpose." (Id.). Plaintiff also "appear[ed] to be of at
19 [sic] least average intelligence." (AR 358). Plaintiff could perform
20 serial threes as well as simple mathematic problems and was able to
21 follow conversation well. (AR 359). As for Plaintiff's insight and
22 judgment, Dr. Rodriguez reported that "[i]nsight into his problems
23 appears reasonable in that he is using medications for his nightmares
24 and post traumatic stress disorder." (Id.) (adding that Plaintiff
25 "would be able to handle the situation of a lost child in a department
26 store"). Dr. Rodriguez diagnosed Plaintiff with PTSD and observed that
27 Plaintiff was "reasonably stable" on his psychiatric medication, "has

28

1 no functional limitations" based on the examination, and "is capable of
2 independently managing funds in an appropriate manner at this time."
3 (AR 360).

4
5 **2. Orthopedic Evaluations**

6
7 On March 17, 2005, Dr. Laurence Meltzer summarized the results of
8 a complete orthopedic evaluation done at the request of the Department
9 of Social Services. According to Dr. Meltzer, Plaintiff's primary
10 complaint was pain in the neck, knees, ankle, feet, and lower back. (AR
11 362). Dr. Meltzer reported that Plaintiff "is a well-developed, well-
12 nourished male who is alert and cooperative." (Id.). Plaintiff's range
13 of motion in his hips, knees, ankles, and feet was normal. (Id.).
14 Further, while there was "some left lower extremity muscle weakness in
15 comparison to the right" and there was atrophy to Plaintiff's left thigh
16 and calf muscles as compared to the right, Plaintiff's motor strength
17 was "otherwise grossly within normal limits." (AR 366). In sum, Dr.
18 Meltzer found that Plaintiff had residual femoral nerve neuropathy and
19 atrophy of the left lower extremity but that the examination provided
20 no support for claims of neck and back pain, left knee pain, left ankle
21 discomfort, or upper extremity problems. (Id.). Dr. Meltzer concluded
22 that Plaintiff "could lift 20 pounds occasionally and 10 pounds
23 routinely" in addition to being able to "sit for unlimited periods of
24 time and stand and walk with his cane 4 hours in an 8-hour workday,
25 alternating sitting and standing every hour." (Id.).

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1 **C. Medical History After Last-Insured Date**

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3 After the last-insured date, on November 19, 2007, Dr. Nick Sharma
4 conducted an orthopedic examination of Plaintiff. Plaintiff reported
5 that on November 14, 2007, he was driving a car when he collided with
6 another vehicle. (AR 638-39). Plaintiff complained of headaches in
7 addition to pain in his neck, left shoulder, chest, and lower back. (AR
8 640). Further, while Plaintiff complained that the condition of his
9 left leg had worsened, Dr. Sharma found that Plaintiff had a normal gait
10 and evidenced no difficulty toe walking, heel walking, kneeling, or
11 squatting. (AR 640-45). Dr. Sharma also reported that Plaintiff had
12 a full range of motion of the lower extremities and that examination of
13 the ankles "revealed no tenderness." (Id.). He recommended continuing
14 chiropractic treatment. (AR 646).

15
16 Also after the last-insured date, on February 20, 2008, Plaintiff
17 was hospitalized for acute chest pain. (AR 510). An echocardiogram
18 showed left ventricular ejection fraction and severe hypokinesia of the
19 posterior lateral wall of left ventricle. (Id.). However, Plaintiff
20 was "able to move 4 extremities voluntarily or on command." (AR 516).
21 Plaintiff underwent stent placement without complication. (AR 518-22).

22
23 On April 15, 2008, Plaintiff again saw Dr. Neudeck-Dicken for
24 treatment. (AR 650). In a treatment report dated April 25, 2008, Dr.
25 Neudeck-Dicken found that Plaintiff's condition worsened following a
26 heart attack that occurred in 2007, after his last-insured date. (AR
27 652-63). Specifically, Dr. Neudeck-Dicken reported that while Plaintiff
28

1 was making great progress until that heart attack, "his heart attack has
2 caused his PTSD to escalate at greater degree then [sic] in the past
3 years." (AR 650, 652). Dr. Neudeck-Dicken noted that "[a]n incident
4 such as a heart attack, [sic] can cause the reoccurrence of the symptoms
5 of PTSD." (AR 652). Dr. Neudeck-Dicken further noted that
6 "[Plaintiff's] symptoms have increased post the heart attack causing
7 depression and anxiety, as well as the escalation of with-drawl [sic]
8 behaviors." (AR 652-63). Dr. Neudeck-Dicken diagnosed Plaintiff with
9 "Posttraumatic Stress Disorder, Chronic," "Adjustment Disorder with
10 mixed Anxiety and depressed mood [sic]," "Adjustment Disorder with
11 withdrawal [sic]," and "Somatization Disorder." (AR 655). However, Dr.
12 Neudeck-Dicken reported that "[Plaintiff's] PTSD was under control"
13 before the heart attack. (AR 656) (noting that Plaintiff was able to
14 "leave his home with his wife and travel to Las Vegas").

15
16 On May 26, 2008, Dr. Oluwafemi Adeyemo conducted a single
17 psychiatric consultive examination of Plaintiff. (AR 658). According
18 to Dr. Adeyemo, Plaintiff complained of "not doing well" due to
19 depressive symptoms and anxiety stemming from the October 2002 incident.
20 (Id.). While Plaintiff was unable to spell "world" backwards, had slow
21 speech, and claimed he had memory problems, Plaintiff was oriented to
22 self and place and appeared alert. (AR 658-660). Dr. Adeyemo diagnosed
23 Plaintiff with PTSD, a GAF score of 45, and major depressive disorder.
24 (AR 660). He also concluded that Plaintiff would have "difficulty
25 responding appropriately to co-workers, supervisors, and the public."
26 (Id.).

1 **D. Vocational Expert's Testimony**

2
3 A vocational expert testified at Plaintiff's 2011 hearing. (AR
4 711-21). The expert testified that Plaintiff worked as a cashier,
5 automobile sales person, light truck driver, and cashier checker. (AR
6 711). The expert also testified that a hypothetical individual of
7 Plaintiff's vocational profile and RFC would not be able to perform
8 Plaintiff's past relevant work. (AR 712). The vocational expert
9 testified that such a person would be able to work as a bench assembler
10 of small products, surveillance system monitor, or information clerk.
11 (Id.). The vocational expert also testified that performance of the
12 three jobs would not be prevented if the ALJ were to further restrict
13 the hypothetical by providing that "such person would work better with
14 objects than with individuals, but interaction with coworkers and
15 general public is not precluded." (AR 714-15). The vocational expert
16 testified that even if such person could not deal with the public at
17 all, performance of the small products assembler and information system
18 monitor jobs would remain possible. (Id.). Finally, upon questioning
19 by counsel, the vocational expert testified that adding a requirement
20 that such person must use a cane whenever standing or walking would not
21 preclude performance of any of the three jobs. (AR 715).

22
23 **E. Lay Witness Testimony**

24
25 On February 15, 2005, Rosa Alsyouf, Plaintiff's wife, submitted a
26 third party function report. (AR 122-130). Ms. Alsyouf reported that
27 between waking up and going to bed, Plaintiff reads, watches television,
28

1 exercises, naps, and does "minimum [sic] walking." (AR 122). According
2 to Ms. Alsyouf, Plaintiff has sleeping problems and requires assistance
3 in dressing, bathing, shaving, and sitting and standing when using the
4 toilet. (AR 123). Ms. Alsyouf further reported that Plaintiff does
5 not perform yard work, rarely goes outside, does not shop, and does not
6 drive. (AR 124-25). She noted that Plaintiff can count change but is
7 unable to pay bills or handle a savings account because he is "unable
8 to remember [and] says [he] doesn't feel like handling finances." (AR
9 125).

10
11 **F. Plaintiff's Testimony**

12
13 At the 2011 ALJ hearing, Plaintiff testified that he stopped
14 working in 2002 because he is "scared from [sic] doing anything,"
15 because he "cannot focus on things," and because his "leg is shrinking."
16 (AR 694, 700). The ALJ was careful to instruct Plaintiff that the
17 period of time relevant to the hearing was Plaintiff's alleged
18 disability onset date of October 24, 2002 to his last-insured date of
19 June 30, 2006. (AR 696). Plaintiff testified that during that period,
20 he had difficulty taking a shower and bathing without assistance.
21 (Id.). Plaintiff further testified that prior to 2006, his wife went
22 to the market and did grocery shopping. (AR 697). Plaintiff also
23 testified that prior to 2006, he did not drive himself to doctors'
24 appointments. (AR 699). However, Plaintiff testified that he now
25 drives to the shopping center, market, and pharmacy. (AR 693). When
26 the ALJ asked Plaintiff why he now drives himself to the market,
27
28

1 Plaintiff stated that his wife was more attentive prior to 2006. (Id.).
2 Plaintiff testified that he uses a cane every day. (AR 701).

3
4 **IV.**

5 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

6
7 To qualify for disability benefits, a claimant must demonstrate a
8 medically determinable physical or mental impairment that prevents him
9 from engaging in substantial gainful activity² and that is expected to
10 result in death or to last for a continuous period of at least twelve
11 months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing
12 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant
13 incapable of performing the work he previously performed and incapable
14 of performing any other substantial gainful employment that exists in
15 the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir.
16 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

17
18 To decide if a claimant is entitled to benefits, an ALJ conducts
19 a five-step inquiry. 20 C.F.R. § 416.920. The steps are:

- 20
21 (1) Is the claimant presently engaged in substantial gainful
22 activity? If so, the claimant is found not disabled.
23 If not, proceed to step two.

24
25
26 _____
27 ² 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. § 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 (3) Does the claimant's impairment meet or equal the
5 requirements of any impairment listed at 20 C.F.R. Part
6 404, Subpart P, Appendix 1? If so, the claimant is
7 found disabled. If not, proceed to step four.

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

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

14
15 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d
16 949, 953-54 (9th Cir. 2001); 20 C.F.R. § 416.920(b)-(g)(1).

17
18 The claimant has the burden of proof at steps one through four, and
19 the Commissioner has the burden of proof at step five. Bustamante, 262
20 F.3d at 953-54. If, at step four, the claimant meets her burden of
21 establishing an inability to perform the past work, the Commissioner
22 must show that the claimant can perform some other work that exists in
23 "significant numbers" in the national economy, taking into account the
24 claimant's RFC, age, education and work experience. Tackett, 180 F.3d
25 at 1100; 20 C.F.R. § 416.920(g)(1). The Commissioner may do so by the
26 testimony of a vocational expert or by reference to the Medical-
27 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,
28

1 Appendix 2 (commonly known as "the Grids"). Osenbrock v. Apfel, 240
2 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both exertional
3 (strength-related) and nonexertional limitations, the Grids are
4 inapplicable and the ALJ must take the testimony of a vocational expert.
5 Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000).

6
7 **V.**

8 **THE ALJ'S DECISION**

9
10 On remand, ALJ Tamara Turner-Jones correctly noted that Plaintiff
11 filed an application for disability and disability insurance benefits
12 on November 3, 2004, with a claimed disability onset date of October 24,
13 2002. (AR 566). As ALJ Turner-Jones also noted, Plaintiff's
14 application was previously denied by ALJ Tai on May 18, 2007. (See
15 id.). However, after the Appeals Council denied Plaintiff's request for
16 review, this Court reversed the first ALJ decision and remanded the case
17 for further administrative proceedings. As discussed in the section on
18 procedural history, pursuant to this Court's order, the Appeals Council
19 directed ALJ Turner-Jones to (1) evaluate Plaintiff's mental impairment
20 as a severe impairment; (2) re-evaluate the Plaintiff's residual
21 functional capacity with non-exertional mental limitations and procure
22 the testimony of a vocational expert to consider both the exertional and
23 non-exertional limitations of Plaintiff; and (3) further evaluate
24 Plaintiff's subjective pain testimony.

25
26 \\
27 \\
28

1 Plaintiff appeared and testified at a hearing held before ALJ
2 Turner-Jones on May 11, 2011. An impartial vocational expert also
3 testified at the hearing. (AR 691-772).

4
5 ALJ Turner-Jones then employed the five-step sequential evaluation
6 process and concluded that Plaintiff was not disabled under the Social
7 Security Act. (AR 566-77). At step one, the ALJ found that Plaintiff
8 had not engaged in substantial gainful activity since his alleged
9 disability onset date of October 24, 2002. (AR 569). At step two, the
10 ALJ found that Plaintiff had the severe impairments of "degenerative
11 spondylosis, status post gunshot wound to the left anterior thigh with
12 residual neuropathic pain in the left lower extremity, a major
13 depressive disorder, and an anxiety disorder." (Id.). At step three,
14 the ALJ thoroughly considered the impairments listed in step two and
15 found that, through the last-insured date, none of them met or medically
16 equaled a listed impairment. (AR 569-70). The ALJ then found that
17 Plaintiff had the following RFC:

18
19 [Plaintiff] has the residual functional capacity to perform
20 sedentary work (20 CFR 404.1567(a)). [Plaintiff] could lift
21 and carry 10 pounds occasionally and less than 10 pounds
22 frequently. He could sit for 6 hours out of an 8-hour
23 workday, and he could stand and walk for 2 hours out of an 8-
24 hour workday. He could not climb ladders, ramps, or
25 scaffolds. He could occasionally climb ramps and stairs; and
26 he could occasionally kneel, stoop, and crawl. His mental
27 impairment limited him to simple, repetitive tasks, which
28

1 were not production line. He could work in an object-
2 oriented work environment.

3
4 (AR 570). Next, at step four, the ALJ found that Plaintiff could not
5 return to his past work. (AR 575). The ALJ relied on the testimony of
6 a vocational expert in coming to this conclusion. (Id.). Finally, at
7 step five, the ALJ found that "considering [Plaintiff's] age, education,
8 work experience, and residual functional capacity, there were jobs that
9 existed in significant numbers in the national economy that [Plaintiff]
10 could have performed." (AR 576). In coming to this conclusion, the ALJ
11 relied on the vocational expert's testimony that a person with
12 Plaintiff's RFC would be able to work as a bench assembler of small
13 products, surveillance system monitor, or information clerk. (See AR
14 712). The ALJ found that Plaintiff was not disabled because Plaintiff
15 could have performed work that existed in significant numbers in the
16 national economy. (AR 576).

17
18 **VI.**

19 **STANDARD OF REVIEW**

20
21 Under 42 U.S.C. § 405(g), a district court may review the
22 Commissioner's decision to deny benefits. The court may set aside the
23 Commissioner's decision when the ALJ's findings are based on legal error
24 or are not supported by substantial evidence in the record as a whole.
25 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Smolen v.
26 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996). "Substantial evidence is
27 more than a scintilla, but less than a preponderance." Reddick, 157
28 F.3d at 720. It is "relevant evidence which a reasonable person might

1 accept as adequate to support a conclusion.” Id. To determine whether
2 substantial evidence supports a finding, the court must “consider the
3 record as a whole, weighing both evidence that supports and evidence
4 that detracts from the [Commissioner’s] conclusion.” Aukland, 257 F.3d
5 at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)).
6 If the evidence can reasonably support either affirming or reversing
7 that conclusion, the court may not substitute its judgment for that of
8 the Commissioner. Reddick, 157 F.3d at 720-21.

9
10 **VII.**

11 **DISCUSSION**

12
13 Plaintiff contends the ALJ erred for four reasons. First,
14 Plaintiff alleges that the ALJ failed to properly consider Plaintiff’s
15 subjective complaints and properly assess his credibility. (Id. at 13).
16 Second, Plaintiff argues that the ALJ erred in “fail[ing] to mention the
17 primary treating physician permanent and stationary report prepared by
18 the treating orthopedic surgeon Dr. Anthony T. Fenison, M.D. dated
19 January 7, 2004.” (Complaint Mem. at 4). Third, Plaintiff contends
20 that reports from Dr. Neudeck-Dicken and Dr. Adeyemo establish that “his
21 mental symptoms and limitations are far more severe than as found by the
22 ALJ in her residual functional capacity assessment.” (Id. at 9).
23 Fourth, Plaintiff contends that his residual functional limitations
24 preclude him from performing the jobs identified by the vocational
25 expert and that the vocational expert provided incorrect definitions of
26 the jobs the ALJ found that Plaintiff could perform. (Id. at 19-24).

1 However, the Court finds that Plaintiff's claims lack merit. For the
2 reasons discussed below, the Court finds that the ALJ's decision should
3 be AFFIRMED.

4
5 **A. The ALJ Provided Clear And Convincing Reasons For Rejecting**
6 **Plaintiff's Credibility**

7
8 Plaintiff contends that the ALJ failed to properly consider his
9 subjective complaints. (Complaint Mem. at 13). In sum, Plaintiff
10 claims that the ALJ failed to provide clear and convincing reasons to
11 reject Plaintiff's testimony regarding the severity of his symptoms.
12 (Id. at 17). The Court disagrees.

13
14 In assessing the credibility of a claimant's testimony regarding
15 subjective pain or the intensity of symptoms, the ALJ engages in a
16 two-step analysis. Vasquez v. Astrue, 572 F.3d 586, 591 (9th Cir.
17 2009). First, the ALJ must determine whether there is "'objective
18 medical evidence of an underlying impairment which could reasonably be
19 expected to produce the pain or other symptoms alleged.'" Id. (quoting
20 Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir. 2007)). If the
21 claimant has presented such evidence, and there is no evidence of
22 malingering, then the ALJ must give "'specific, clear and convincing
23 reasons'" in order to reject the claimant's testimony about the severity
24 of the symptoms. Id. (quoting Lingenfelter, 504 F.3d at 1036). At the
25 same time, the ALJ is not "required to believe every allegation of
26 disabling pain, or else disability benefits would be available for the
27 asking, a result plainly contrary to 42 U.S.C. § 423(d)(5)(A)." Fair
28 v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989).

1 In evaluating the claimant's testimony, the ALJ may use "'ordinary
2 techniques of credibility evaluation.'" Turner v. Comm'r of Soc. Sec.,
3 613 F.3d 1217, 1224 n.3 (9th Cir 2010) (quoting Smolen, 80 F.3d at
4 1284). For instance, the ALJ may consider inconsistencies either in the
5 claimant's testimony or between the testimony and the claimant's
6 conduct, "unexplained or inadequately explained failure to seek
7 treatment or to follow a prescribed course of treatment," and "whether
8 the claimant engages in daily activities inconsistent with the alleged
9 symptoms." See Turner, 613 F.3d at 1224 n.3 (internal quotation marks
10 omitted), Tommasetti v. Astrue, 533 F.3d at 1035, 1039 (9th Cir 2008)
11 (internal quotation marks omitted), Lingenfelter, 504 F.3d at 1040.
12 While a claimant need not "vegetate in a dark room" in order to be
13 eligible for benefits, Cooper v. Bowen, 815 F.2d 557, 561 (9th Cir.
14 1987) (internal quotation omitted), the ALJ may discredit a claimant's
15 testimony when the claimant reports participation in everyday activities
16 indicating capacities that are transferable to a work setting. See
17 Morgan, 169 F.3d at 600. Further, even where those activities suggest
18 some difficulty functioning, they may be grounds for discrediting the
19 claimant's testimony to the extent that they contradict claims of a
20 totally debilitating impairment. See Turner, 613 F.3d at 1225.
21 Likelihood of exaggeration is a clear and specific reason for
22 discounting a plaintiff's testimony. See Tonapetyan v. Halter, 242 F.3d
23 1144, 1148 (9th Cir. 2001). A plaintiff's conflicting testimony may
24 also serve as clear and convincing grounds to reject such testimony.
25 Thomas v. Barnhart, 278 F.3d 947, 959 (9th Cir. 2002).

26
27 Here, there was medical evidence of an underlying impairment.
28 However, the ALJ gave specific, clear and convincing reasons to reject

1 Plaintiff's testimony about the severity of his symptoms. Indeed, the
2 ALJ thoroughly reviewed Plaintiff's medical record before explaining
3 that the objective medical evidence does not support his testimony. (AR
4 571-75).

5
6 As a basis for discounting Plaintiff's subjective testimony, the
7 ALJ summarized the doctors' reports finding that Plaintiff appeared to
8 be exaggerating his symptoms. (AR 574). The ALJ observed that several
9 doctors reported that Plaintiff exaggerated responses to stimuli and did
10 not exert full effort during examinations. (AR 574). For example, in
11 a report dated March 17, 2005, Dr. Laurence Meltzer observed that
12 "[Plaintiff] is not totally cooperative. I can only bend his left knee
13 to 90 degrees (out of a possible 140 degrees), and I must coax him to
14 allow me to do this, despite the fact that he sits with his knees flexed
15 to 90 degrees on the examining table." (AR 365). Further, Dr. Meltzer
16 noted that Plaintiff was uncooperative despite the fact that Plaintiff's
17 ability to extend his knees bilaterally was normal and there was "no
18 pathology in either knee." (Id.). Dr. Meltzer also noted that "[t]here
19 [was] no swelling, redness, increased heat or deformity in or around the
20 knees. There [was] no effusion. There [was] no patellofemoral grating
21 or pain with patellofemoral compression. There [was] no collateral,
22 cruciate or rotatory instability. There [were] no masses in the
23 popliteal fossa nor tenderness over the pes anserine bursa. McMurray's
24 test [was] negative for a torn medial and/or lateral meniscus. Pivot-
25 shift test [was] negative. Lachman's test [was] negative." (Id.).
26 Finally, Dr. Meltzer reported that Plaintiff was uncooperative during
27 an examination of his ankles, feet, and toes. (Id.). Specifically, Dr.
28 Meltzer observed that "[e]xamination of [Plaintiff's] ankles and feet

1 is within normal limits, however, he does resist, and I must constantly
2 tell him to allow me to examine him and relax, that I am 'not going to
3 hurt him.'" (Id.). Further, as the ALJ explained, personality test
4 results indicate that Plaintiff was exaggerating or "faking" his alleged
5 disability. (See AR 345, 574). In a report dated March 31, 2004, Dr.
6 Robert D. McDaniel noted that on the Minnesota Multiphasic Personality
7 Inventory-2, Plaintiff "scored an invalid profile" and that "'faking
8 bad' is the most likely reason." (AR 345).

9
10 The ALJ also observed that Plaintiff gave inconsistent answers
11 regarding not only his ability to care for himself but also his ability
12 to leave home and the frequency with which he drove. (AR 574). As the
13 ALJ noted, while Plaintiff testified that he was "scared to go nowhere
14 [sic]" after the 2002 incident, (AR 697), the record clearly establishes
15 that Plaintiff traveled "around the world" at least twice after the
16 incident. (AR 574). During an April 2009 hospitalization for stent
17 placement, Plaintiff "mention[ed] plans that he was within a week or so
18 planning to go back home to visit his family in Jordan." (AR 10). More
19 recently, Plaintiff traveled to Jordan in 2011. (AR 687-88). The ALJ
20 also accurately observed that in a March 15, 2005 psychological
21 examination report, Dr. Romauldo R. Rodriguez observed that "[Plaintiff]
22 can leave home alone." (AR 357). Dr. Rodriguez reported that "[f]or
23 transportation, [Plaintiff] drives his own automobile." (Id.). Dr.
24 Rodriguez also reported that Plaintiff's other "[o]utside activities
25 include walking." (Id.).

1 Plaintiff also provided inconsistent testimony about his ability
2 to care for himself. At the hearing, Plaintiff testified that he was
3 unable to dress himself without assistance during the period from 2002
4 to 2006. (AR 695). Plaintiff testified that he had difficulty taking
5 a shower or a bath without assistance. (Id.). Specifically, Plaintiff
6 stated that "I cannot be standing in the shower. I have somebody to
7 hold me" (Id.). However, this testimony is contradicted by Dr.
8 Rodriguez's March 2005 report, noting that while "[Plaintiff] is careful
9 not to easily admit that he does household chores," Plaintiff stated
10 that he "can take care of self-dressing, bathing, and personal hygiene."
11 (AR 357). The ALJ cited these inconsistent statements as a separate
12 ground for discounting Plaintiff's testimony. (AR 574). The Court
13 finds that the discrepancies between the record and Plaintiff's
14 testimony constitutes a clear and convincing reason to discount
15 Plaintiff's testimony. Accordingly, the ALJ provided clear and
16 convincing reasons to reject Plaintiff's subjective testimony and no
17 remand is required.

18
19 **B. The ALJ Provided Specific And Legitimate Reasons For Discounting**
20 **Dr. Fenison's Opinion**

21
22 According to Plaintiff, the ALJ's "failure to properly consider the
23 opinions of the treating physician Dr. Fenison regarding Plaintiff's
24 physical limitations clearly constitutes reversible error." (Id. at 8).
25 Plaintiff further argues that Dr. Fenison's conclusions indicate that
26 Plaintiff would be precluded from performing the occupations listed by
27 the ALJ at step five. (Complaint Mem. at 7). For example, Plaintiff
28

1 alleges that "the occupation of Small Product Assembler identified by
2 the vocational expert . . . and relied upon by the ALJ in her decision
3 . . . would be precluded based on its repetitive nature and the fact
4 that it would obviously require repetitive motions involving Plaintiff's
5 cervical spine." (Id.).

6
7 However, Plaintiff's argument that the ALJ failed to consider Dr.
8 Fenison's opinions is not supported by the record. The most recent ALJ
9 decision incorporated by reference the prior decision. Because this
10 action was remanded only on the issue of mental impairments, the ALJ's
11 incorporation of the prior decision's analysis of other issues was
12 proper. As the ALJ accurately noted and as this Court discussed above,
13 the remand order directed the ALJ to re-evaluate Plaintiff's RFC with
14 non-exertional mental limitations and further consider Plaintiff's
15 credibility. (See AR 566, 578-93; see also AR 587 n.4). The ALJ was
16 not instructed to reconsider evidence pertaining to Plaintiff's alleged
17 physical impairments.³ Indeed, the ALJ did not need to evaluate Dr.
18 Fenison's reports on remand because such reports pertain only to
19 Plaintiff's alleged physical impairments. Furthermore, the first ALJ's
20 decision adequately addressed Dr. Fenison's reports. Accordingly,
21 Plaintiff's claim fails.

22
23 Even if the ALJ had given additional consideration to Dr. Fenison's
24 findings, it is unclear that Dr. Fenison's reports would support
25 Plaintiff's alleged disability. In his complaint, Plaintiff selectively
26

27 ³ The Court notes that this may explain why the review of
28 Plaintiff's medical history in the most recent ALJ opinion largely
focuses on the period of time subsequent to the first opinion.

1 quotes portions of Dr. Fenison's reports. Plaintiff cites Dr. Fenison
2 as finding, among other things, that Plaintiff should be "precluded from
3 performing any repetitive motions involving the cervical spine" along
4 with "any heavy work or prolonged stationary positioning involving the
5 lumbar spine." (Complaint Mem. at 4-5) (quoting AR 331). However,
6 Plaintiff ignores Dr. Fenison's conclusion that while Plaintiff was
7 "unable to return to his usual and customary duties," he "should be
8 allowed to undergo vocational rehabilitation" and "is limited to light
9 work . . . in a very benign atmosphere." (AR 331). The first ALJ
10 opinion accurately noted that Dr. Fenison found Plaintiff would be
11 "limited to light work with continued use of his cane for assistance and
12 with ambulation." (AR 53). Thus, any failure to consider Dr. Fenison's
13 opinions on remand could only be considered harmless error, as
14 consideration of Dr. Fenison's opinions would not have altered the
15 outcome. See Carmickle v. Comm'r of Soc. Sec. Admin., 533 F.3d 1155,
16 1162 (9th Cir. 2008) (if ALJ's error was inconsequential to the ultimate
17 nondisability determination, no remand required).

18
19 Finally, to the extent that Dr. Fenison's opinions may have been
20 rejected, the first ALJ opinion provides specific and legitimate reasons
21 for doing so. Although the opinion of a treating physician is entitled
22 to great deference, it is "not necessarily conclusive as to either the
23 physical condition or the ultimate issue of disability." Morgan v.
24 Comm'r of Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir. 1999). When a
25 treating doctor's opinion is contradicted by another doctor, "the
26 Commissioner may not reject his opinion without providing 'specific and
27 legitimate reasons' supported by substantial evidence." Benton ex rel.
28 Benton v. Barnhart, 331 F.3d 1030, 1036 (9th Cir. 2003) (quoting Lester

1 v. Chater, 81 F.3d 821, 830 (9th Cir. 1995)). An ALJ may allow less
2 weight to a treating physician's opinions when the treating physician's
3 opinions conflicted with those of a non-examining physician and the non-
4 examining physician's opinions were consistent with the record.
5 Magallanes v. Bowen, 881 F.2d 747, 751-755 (9th Cir. 1989).

6
7 Here, the first ALJ opinion accurately noted that in March of 2005,
8 Dr. Laurence Meltzer saw Plaintiff for a consultative orthopedic
9 evaluation and concluded that Plaintiff had the ability to "lift/carry
10 up to 20 pounds occasionally; sit for unlimited periods of time; [and]
11 stand/walk with his cane for four hours in an eight-hour workday." (AR
12 53). The ALJ also correctly observed that Dr. Meltzer reported
13 Plaintiff had "full cervical range of motion, but limited lumbar range
14 of motion;" did not appear to "put forth full effort, as he moved on and
15 off the examining table with very little effort and went from the supine
16 to the sitting position and vice versa without difficulty;" had a normal
17 heel-toe gait when using his cane; extended his knees fully; and had no
18 abnormalities in his upper extremities. (AR 53). Dr. Meltzer's
19 conclusion is consistent with evidence in the record that Plaintiff
20 exercises and goes on walks. (AR 114, 122). Dr. Meltzer's opinion is
21 also consistent with evidence that, during several examinations,
22 Plaintiff exaggerated his symptoms and did not exert full effort during
23 physical tests. (AR 251-57, 365). Reliance upon Dr. Meltzer's
24 opinions, which were consistent with evidence in the record, was a
25 legitimate and specific reason to reject Dr. Fenison's opinions.
26 Accordingly, no remand is required.

27
28 \\

1 **C. The ALJ Gave Specific and Legitimate Reasons For Discounting The**
2 **Opinions Of Drs. Neudeck-Dicken And Oluwafemi Adeyemo**

3
4 Plaintiff contends that "his mental symptoms and limitations are
5 far more severe than was found by the ALJ in her residual functional
6 capacity assessment." (Complaint Mem. at 9). As support for this
7 claim, Plaintiff alleges that the ALJ improperly discounted an April 25,
8 2008 report completed by Dr. Neudeck-Dicken and a May 26, 2008
9 consultive psychological evaluation performed by Dr. Oluwafemi Adeyemo.
10 (Id.). However, while a retrospective diagnosis or opinion may be
11 "relevant to the determination of a continuously existing disability
12 with onset prior to expiration of insured status," Flatten v. Sec'y of
13 Health & Human Servs., 44 F.3d 1453, 1461 n.5 (9th Cir. 1995), the ALJ
14 properly discounted the opinions of Drs. Neudeck-Dicken and Adeyemo on
15 multiple specific and legitimate grounds.

16
17 **1. Dr. Neudeck-Dicken**

18
19 As Plaintiff notes, Dr. Neudeck-Dicken found that his symptoms
20 became more severe following a heart attack that occurred after the
21 last-insured date. (Id. at 10). In a 2008 report, after examining
22 Plaintiff, Dr. Neudeck-Dicken did indeed conclude that "[a]n incident
23 such as a heart attack, [sic] can cause the reoccurrence of the symptoms
24 of PTSD" and that "[Plaintiff's] symptoms have increased post the heart
25 attack." (AR 652-63). She also stated that Plaintiff made great strides
26 in his [PTSD] until he sustained a heart attack last year." (AR 652).
27 Finally, Dr. Neudeck-Dicken diagnosed Plaintiff with "Posttraumatic
28 Stress Disorder, Chronic," "Adjustment Disorder with mixed Anxiety and

1 depressed mood [sic],” “Adjustment Disorder with withdrawal [sic],” and
2 “Somatization Disorder.” (AR 655). However, the ALJ provided
3 legitimate and specific reasons for discounting Dr. Neudeck-Dicken’s
4 opinions.

5
6 As the Court explained in its discussion of Dr. Fenison’s reports,
7 the opinion of a treating physician is generally entitled to great
8 deference. However, such an opinion is “not necessarily conclusive as
9 to either the physical condition or the ultimate issue of disability.”
10 Morgan, 169 F.3d at 600. “If a treating or examining doctor’s opinion
11 is contradicted by another doctor’s opinion, an ALJ may only reject it
12 by providing specific and legitimate reasons that are supported by
13 substantial evidence.” Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th
14 Cir. 2005). Indeed, less weight may be given to a treating physician’s
15 opinion where it conflicts with that of a non-examining physician and
16 the non-examining physician’s opinion is consistent with the record as
17 a whole. Magallanes, 881 F.2d at 751-755.

18
19 Here, Plaintiff alleges that the ALJ “reject[ed] the entirety of
20 Dr. Neudeck-Dicken’s report” because Dr. Neudeck-Dicken had not examined
21 Plaintiff in several years, the report was based solely on Plaintiff’s
22 statements, and at least some of those statements were inconsistent with
23 the record. (Complaint Mem. at 10). However, Plaintiff is mistaken.
24 The ALJ did not “reject” Dr. Neudeck-Dicken’s report. Instead, the ALJ
25 gave the report substantial consideration but “did not give [it] great
26 weight.” (AR 573).

1 As a basis for discounting Dr. Neudeck-Dicken's report, the ALJ
2 explained that "Dr. Neudeck-Dicken had not seen [Plaintiff] for several
3 years, when [Plaintiff] returned, complaining of [depression and
4 anxiety]." (AR 574). The ALJ also explained that "[i]t appears Dr.
5 Neudeck-Dicken relied on [Plaintiff's] statements that he did not leave
6 his house, but the record indicates otherwise." (Id.). Indeed, Dr.
7 Neudeck-Dicken reported that Plaintiff presented with symptoms including
8 "fearfulness of leaving the home." (AR 652). However, the record
9 repeatedly shows that Plaintiff left his home following the 2002
10 incident. To establish that Dr. Neudeck-Dicken's opinion was not
11 supported by the record, the ALJ cited Dr. Rodriguez's March 15, 2005
12 report. (AR 574). In that report, Dr. Rodriguez noted that
13 "[Plaintiff] can leave home alone." (AR 357). Dr. Rodriguez also noted
14 that "[f]or transportation, [Plaintiff] drives his own automobile.
15 (Id.). Finally, Dr. Rodriguez observed that Plaintiff's other
16 "[o]utside activities include walking." (Id.). Dr. Rodriguez's report
17 is consistent with the record as a whole. As explained above in the
18 discussion of Plaintiff's credibility, the record establishes that
19 Plaintiff not only drove to the market, pharmacy, and shopping center
20 by himself after the 2002 incident but also traveled internationally on
21 at least two occasions. Accordingly, the Court finds that the ALJ
22 provided specific and legitimate reasons for discounting Dr. Neudeck-
23 Dicken's opinion.⁴

24 _____
25 ⁴ Plaintiff might contend that because Dr. Neudeck-Dicken's 2008
26 report summarizes Plaintiff's condition following a 2007 heart attack,
27 (see AR 652-63), the fact that Plaintiff drove and left his home prior
28 to 2007 does not contradict Dr. Neudeck-Dicken's report. However, the
Court notes that the period of time most relevant to the ALJ's decision
is the period between Plaintiff's alleged disability onset date of
October 24, 2002 and his last-insured date of June 30, 2006. The Court

1 Disorder, Chronic," Major Depressive Disorder Recurrent Severe without
2 Psychotic Features, [and] R/O Anxiety Disorder" (See AR 660).
3 However, the ALJ provided a comprehensive summary of Dr. Adeyemo's
4 conclusions. The ALJ noted Dr. Adeyemo's diagnosis along with his
5 conclusion that Plaintiff "should not be placed in a regular work
6 environment" given his symptoms of depression and anxiety. (AR 573,
7 660). The ALJ simply "d[id] not give great weight to the opinions . .
8 . ." (AR 573). Instead, the ALJ provided clear and specific reasons
9 for discounting Dr. Adeyemo's opinions.

10
11 The Ninth Circuit has explained that an ALJ may give less weight
12 to an examining doctor's opinion "for lack of objective support."
13 Tonapetyan, 242 F.3d at 1149. Further, an ALJ may give less weight to
14 an examining doctor's opinion than to a treating physician's opinion on
15 the basis of the examining doctor's limited observation of the
16 plaintiff. Lester, 81 F.3d at 832. Here, the ALJ discounted Dr.
17 Adeyemo's opinion because "Dr. Adeyemo saw [Plaintiff] on a one-time
18 basis, and his opinion is outweighed by the totality of the evidence,
19 which reveals that the claimant's depressive and anxiety symptoms are
20 largely controlled, both with and without psychiatric medications." (AR
21 573). The Court notes that in his March 2005 report, Dr. Rodriguez
22 noted that Plaintiff was "reasonably stable" on his psychiatric
23 medication and "ha[d] no functional limitations" based on the
24 examination. (AR 360). Further, as an example of where the record
25 contradicts Dr. Adeyemo's opinion, the ALJ cited reports from
26 Plaintiff's treating psychologist. (AR 574). Specifically, in 2004,
27 Dr. Neudeck-Dicken reported that Plaintiff "has made great strides in
28 his posttraumatic stress disorder" and is "no longer isolating himself

1 within his home.” (AR 234). Dr. Neudeck-Dicken also reported that
2 Plaintiff “is now getting out and going to places with his cousins as
3 well as on trips with his wife. He is also once again driving.” (Id.).
4 Dr. Neudeck-Dicken noted that Plaintiff’s “cognitive functioning has
5 greatly improved. He is no longer confused, and demonstrates increased
6 concentration. He is now reading, going to the library, and using his
7 computer to study various subjects of interest to him.” (AR 235).
8 Finally, Dr. Neudeck-Dicken reported that Plaintiff “truly enjoys being
9 with people and has picked up his former relationships with family and
10 friends.” (Id.). As the ALJ explained, the record indicates that Dr.
11 Adeyemo only saw Plaintiff on one occasion. (AR 28-31, 34). The ALJ
12 provided numerous examples supporting his conclusion that “[Dr.
13 Adeyemo’s] opinion is outweighed by the totality of the evidence.” (AR
14 573). Accordingly, the Court finds that the ALJ provided specific and
15 legitimate reasons to discount Dr. Adeyemo’s opinions.

16
17 **D. The ALJ’s Reliance On The Vocational Expert’s Testimony Was**
18 **Supported By Substantial Evidence**

19
20 Finally, Plaintiff argues that the ALJ improperly relied on the
21 testimony of the vocational expert. (AR 19-24). The ALJ provided the
22 vocational expert with the following RFC:

23
24 [Plaintiff] has the residual functional capacity to perform
25 sedentary work (20 CFR 404.1567(a)). [Plaintiff] could lift
26 and carry 10 pounds occasionally and less than 10 pounds
27 frequently. He could sit for 6 hours out of an 8-hour
28 workday, and he could stand and walk for 2 hours out of an 8-

1 hour workday. He could not climb ladders, ramps, or
2 scaffolds. He could occasionally climb ramps and stairs; and
3 he could occasionally kneel, stoop, and crawl. His mental
4 impairment limited him to simple, repetitive tasks, which
5 were not production line. He could work in an object-
6 oriented work environment.

7
8 (AR 570). After being asked whether there are jobs in the national
9 economy that a person with Plaintiff's age, education, work experience,
10 and RFC could perform, the vocational expert testified that such a
11 person could perform work as a bench assembler of small products,
12 surveillance system monitor, and information clerk. (AR 576, 712-21).

13
14 As an initial matter, the Court notes that in order for the
15 vocational expert's testimony to constitute substantial evidence, the
16 hypothetical posed must "consider all of the claimant's limitations."
17 Andrews v. Shalala, 53 F.3d 1035, 1044 (9th Cir. 1995). However, the
18 ALJ is not required to include limitations for which there was no
19 evidence. See Osenbrock, 240 F.3d at 1164-65 (ALJ not bound to accept
20 as true the restrictions set forth in hypothetical if they were not
21 supported by substantial evidence). Here, Plaintiff contends that his
22 limitations preclude him from performing the jobs identified by the
23 vocational expert. (Complaint Mem. at 19-24). In sum, Plaintiff argues
24 that the vocational expert was wrong about what each job entails.
25 (Id.). The Court disagrees.

1 **1. Bench Assembler Of Small Products**

2
3 Plaintiff alleges that he could not be a small products assembler
4 because the ALJ's RFC excludes production line jobs and "the DOT
5 description of that occupation [requires] working on an assembly line."
6 (Complaint Mem. at 20). Specifically, Plaintiff asserts that "the ALJ's
7 preclusion from production line work activity, would clearly preclude
8 the occupation of small products assembler." (Id.). As support,
9 Plaintiff quotes, without citation, the DOT as providing that a small
10 products assembler "would 'perform any combination of following
11 repetitive tasks on assembly line to mass produce small products . . .
12 ." (Id.). However, Plaintiff's argument is misplaced. The ALJ did not
13 preclude all assembly line work. The ALJ instead only precluded fast-
14 paced assembly line work. Indeed, the ALJ limited the vocational expert
15 to listing jobs involving "simple, routine, repetitive tasks in a work
16 environment free of fast-paced production requirements or assembly line
17 work, such as that involving a conveyor belt." (AR 712). Given this
18 restriction, the vocational expert testified that a person with
19 Plaintiff's RFC could perform work as an assembler of small products.
20 (AR 713).

21
22 Further, although the expert described a job that deviated slightly
23 from the DOT, the record supported Plaintiff's ability to perform this
24 job. An ALJ may rely on expert testimony that deviates from the DOT if
25 the records contain persuasive evidence to support the deviation. See
26 Johnson v. Shalala, 60 F.3d 1428, 1435 (9th Cir. 1995); Tommasetti, 533
27 F.3d at 1042. Here, the vocational expert limited the DOT definition
28 of small products assembler to only those small products assembler jobs

1 that are sedentary. (AR 713). The vocational expert not only testified
2 that sedentary small products assembler positions exist but also
3 quantified the number of such jobs in the national and local economy.
4 (Id.). The ALJ's reliance on the vocational expert's testimony,
5 including the slight deviation from the DOT, is thus supported by
6 substantial evidence. Further, as explained above, the vocational
7 expert identified small products assembler jobs that can be performed
8 by someone with Plaintiff's RFC. Accordingly, Plaintiff's argument that
9 the ALJ improperly relied upon the vocational expert's testimony fails.

11 **2. Surveillance System Monitor**

13 Plaintiff also contends that his impairments precluded him from
14 being a surveillance system monitor. (Complaint Mem. at 20-22).
15 Plaintiff cites "Wikipedia" for the proposition that he could not work
16 as a surveillance system monitor because it is neither a sedentary nor
17 unskilled position. (Id.). According to Plaintiff, "[v]ery few, if
18 any, employers ask employees to simply sit and watch a bank of monitors
19 all day long. Rather, in order to avoid excessive boredom, fatigue, and
20 the resultant poor performance, employers ask surveillance system
21 monitors to do a wider variety of security related tasks throughout the
22 work day, thus rendering the exertional level required to do the
23 occupation greater than sedentary.'" (Complaint Mem. at 21-22) (quoting
24 Wikipedia). Plaintiff also alleges that surveillance system monitor is
25 not an unskilled occupation because "in the post 9/11 world,
26 experienced and trained workers are needed" and because "[s]ome say
27 that effective monitoring in the [gambling] industry requires training
28 beyond what would be considered required for unskilled work.'" (Id. at

1 22) (quoting Wikipedia). Plaintiff additionally states that he
2 "downloaded" two job postings for surveillance system monitor and that
3 those postings prove that work as a surveillance system monitor requires
4 quantitative, communicative, and other skills beyond Plaintiff's
5 ability. (Id. at 22).

6
7 The Court first notes that "[t]he DOT is the best source for how
8 a job is generally performed," Carmickle, 533 F.3d at 1166 (internal
9 quotation marks omitted)), and the Court questions the reliability of
10 Wikipedia as a source. To the extent Plaintiff is complaining again
11 about the vocational expert's alleged deviation from the DOT, the Court
12 notes that an ALJ may rely on expert testimony that deviates from the
13 DOT if the records contain persuasive evidence to support the deviation.
14 See Johnson, 60 F.3d at 1435. Here, the vocational expert provided a DOT
15 definition for "government service surveillance monitor." (AR 713).
16 The vocational expert then discussed the position further, explaining
17 that surveillance monitors are found throughout the labor market and
18 that being a monitor is a "fairly flexible occupation" that can be
19 performed on a sedentary basis. (Id.). Tommasetti, 533 F.3d at 1042.
20 The expert also quantified the number of surveillance system monitor
21 positions that are available at both the national and regional level.
22 (AR 713). Accordingly, the Court finds that despite Plaintiff's
23 reference to Wikipedia and despite the two job postings that Plaintiff
24 provides as evidence that the position entails work beyond Plaintiff's
25 RFC, the ALJ did not err in relying on the vocational expert's testimony
26 about the requirements of work as a surveillance system monitor. While
27
28

1 some system monitor positions no doubt require job skills that are not
2 required by other surveillance system monitor positions, the vocational
3 expert's testimony relates to the occupation in general and is supported
4 by the DOT.

6 **3. Information Clerk**

7
8 Finally, Plaintiff alleges that he cannot perform work as an
9 information clerk. When the vocational expert testified that a person
10 with Plaintiff's RFC could perform work as an information clerk, the
11 expert explained that "[t]here is no good DOT match with what is done
12 today." (AR 713). The expert then deviated from the DOT for train
13 information clerk to information clerk positions found outside the
14 transportation sector and explained that there are approximately 52,000
15 jobs nationally and 1,200 regionally. (Id.). Nevertheless, Plaintiff
16 contends that a person with his RFC could not work as an information
17 clerk because (1) "every aspect of the occupation of information clerk
18 pertains to dealing with people rather than objects;" and (2) "the ALJ's
19 RFC, which included 'He could work in an object-oriented work
20 environment' would clearly preclude the performance of the occupation
21 of information clerk." (Complaint Mem. at 24). According to Plaintiff,
22 the DOT definition of an information clerk is someone who "provides
23 travel information for bus or train patrons; [a]nswers inquiries
24 regarding departures, arrivals, stops, and destinations of scheduled
25 buses or trains." (Id.). Plaintiff claims that "[w]hether it is an
26 information clerk in a train depot, an airport, a shopping mall, or a

1 public office building, all of these information clerks involve dealing
2 with people rather than objects and thus they would clearly be precluded
3 by the ALJ's own assessment of Plaintiff's residual functional
4 capacity." (Id.).

5
6 As an initial matter, the Court notes that Plaintiff's RFC does not
7 clearly preclude all interaction with the public. It merely states that
8 Plaintiff "could work in an object-oriented environment." (AR 570).
9 It does not state that Plaintiff can only work in an object-oriented
10 environment. Accordingly, Plaintiff's claim fails to the extent that
11 he is not limited only to work in an object-oriented environment.

12
13 The Court further notes that Plaintiff's claim would fail even if
14 Plaintiff were somehow able to establish that he is limited exclusively
15 to work in an object-oriented environment. Indeed, the vocational
16 expert explained that even if "the person [with Plaintiff's RFC] would
17 work better with objects than with individuals," that person could
18 perform any of the three jobs, including information clerk. (AR 714).
19 The vocational expert also explained that the information clerk position
20 would only be precluded if such a person could not interact with the
21 public at all. (Id.). Notably, however, Plaintiff does not claim that
22 he is completely unable to interact with the public. Instead, Plaintiff
23 contends that he could not be an information clerk because "[the]
24 occupation . . . involve[s] dealing with people rather than objects the
25 vast majority of the work day [sic]." (Complaint Mem. at 24). To the
26 extend that Plaintiff admits he is capable of some interaction with the
27 public, he is capable of working as an information clerk.

1 Finally, the vocational expert testified that even if interaction
2 with the public were completely precluded, a person with Plaintiff's RFC
3 could work as a small products assembler or surveillance system monitor.
4 (AR 714-15). There is no evidence that either position is anything but
5 object-oriented. Nor does Plaintiff argue that either position is not
6 object-oriented. Accordingly, the Court finds that even if Plaintiff
7 were restricted to object-oriented jobs, the ALJ did not commit error
8 by concluding jobs existed that Plaintiff could perform. Thus,
9 Plaintiff's contention that the ALJ improperly relied on the vocational
10 expert's testimony fails.

11
12 **VIII.**
13 **CONCLUSION**
14

15 Consistent with the foregoing, and pursuant to sentence four of 42
16 U.S.C. § 405(g),⁸ IT IS ORDERED that judgment be entered AFFIRMING the
17 decision of the Commissioner and dismissing this action with prejudice.
18 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
19 Order and the Judgment on counsel for both parties.

20
21 DATED: January 29, 2013.

22 /S/

23 SUZANNE H. SEGAL
24 UNITED STATES MAGISTRATE JUDGE
25

26 _____
27 ⁸ This sentence provides: "The [district] court shall have power
28 to enter, upon the pleadings and transcript of the record, a judgment
affirming, modifying, or reversing the decision of the Commissioner of
Social Security, with or without remanding the cause for a rehearing."