

O

1  
2  
3  
4  
5 **UNITED STATES DISTRICT COURT**  
6 **CENTRAL DISTRICT OF CALIFORNIA**  
7 **EASTERN DIVISION**  
8

9 RICHARD ALAN BENJAMIN, ) Case No. EDCV 12-1021-MLG  
10 ) Plaintiff, ) MEMORANDUM OPINION AND ORDER  
11 ) v. )  
12 )  
13 ) MICHAEL J. ASTRUE,  
14 ) Commissioner of the  
15 ) Social Security  
Administration, )  
Defendant. )

---

16  
17 Plaintiff Richard Benjamin seeks judicial review of the  
18 Commissioner's final decision denying his application for Supplemental  
19 Security Income ("SSI") benefits. For the reasons stated below, the  
20 decision of the Commissioner is affirmed and the matter is dismissed  
21 with prejudice.

22  
23 **I. Background**

24 Plaintiff was born on June 28, 1960, and was 48 years old at the  
25 time he filed his application for benefits. (Administrative Record  
26 ("AR") at 107.) He has a tenth grade education and no relevant work  
27 experience. (AR at 16, 111, 115.) Plaintiff filed his SSI application on  
28

1 May 7, 2009, alleging disability since July 1, 1996, due to back pain.<sup>1</sup>  
2 (AR at 100, 107, 110.)

3 Plaintiff's applications were denied initially on September 10,  
4 2009, and upon reconsideration on April 15, 2010. (AR at 48-52, 54-59.)  
5 An administrative hearing was held on June 28, 2011, before  
6 Administrative Law Judge ("ALJ") William Mueller, during which Plaintiff  
7 testified, as did a vocational expert ("VE"). (AR at 22-43.)

8 On July 27, 2011, ALJ Mueller issued an unfavorable decision. (AR  
9 at 7-18.) The ALJ found that the medical evidence established that  
10 Plaintiff suffered from the following severe impairments:  
11 musculoskeletal disorders of the spine, affective disorder and anxiety.  
12 (AR at 12.) The ALJ determined that Plaintiff's impairments did not  
13 meet, or were not medically equal to, one of the listed impairments in  
14 20 C.F.R., Part 404, Subpart P, Appendix 1. (Id.) The ALJ further found  
15 that Plaintiff retained the residual functional capacity ("RFC") to  
16 perform light work as defined in 20 C.F.R. 404.1567(b) and 416.967(b)  
17 "except the claimant should have a sit stand option and would be limited  
18 to simple, routine, repetitive tasks." (AR at 13.) The ALJ concluded,  
19 based upon the testimony of the VE, that there were jobs that exist in  
20 significant numbers in the national economy that Plaintiff was capable  
21 of performing, such as electronic worker, parking lot booth attendant  
22 and ticket taker, and was therefore not disabled within the meaning of  
23 the Social Security Act. See 20 C.F.R. § 416.920(f). (AR at 17-18.)

24 //

---

25  
26 <sup>1</sup> Plaintiff originally filed applications for both SSI benefits and  
27 Disability Insurance benefits. At the administrative hearing, Plaintiff  
28 amended his alleged onset date to June 28, 2010, his 50th birthday, and  
withdrew his application for Disability Insurance benefits. (AR at 10,  
26-27.)

1 On April 27, 2012, the Appeals Council denied review. (AR at 1-4.)  
2 Plaintiff then timely commenced this action for judicial review. On  
3 October 26, 2012, the parties filed a Joint Stipulation ("Joint Stip.")  
4 of disputed facts and issues. Plaintiff contends that the ALJ erred in  
5 assessing Plaintiff's RFC. (Joint Stip. at 4.) Plaintiff seeks remand  
6 for a new administrative hearing. (Joint Stip. at 15.) The Commissioner  
7 requests that the ALJ's decision be affirmed. (Joint Stip. at 16.)

## 8 9 **II. Standard of Review**

10 Under 42 U.S.C. § 405(g), a district court may review the  
11 Commissioner's decision to deny benefits. The Commissioner's or ALJ's  
12 decision must be upheld unless "the ALJ's findings are based on legal  
13 error or are not supported by substantial evidence in the record as a  
14 whole." *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1990); *Batson v.*  
15 *Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004); *Parra*  
16 *v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence means  
17 such evidence as a reasonable person might accept as adequate to support  
18 a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Widmark*  
19 *v. Barnhart*, 454 F.3d 1063, 1066 (9th Cir. 2006). It is more than a  
20 scintilla, but less than a preponderance. *Robbins v. Soc. Sec. Admin.*,  
21 466 F.3d 880, 882 (9th Cir. 2006). To determine whether substantial  
22 evidence supports a finding, the reviewing court "must review the  
23 administrative record as a whole, weighing both the evidence that  
24 supports and the evidence that detracts from the Commissioner's  
25 conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996). "If  
26 the evidence can support either affirming or reversing the ALJ's  
27 conclusion," the reviewing court "may not substitute its judgment for  
28 that of the ALJ." *Robbins*, 466 F.3d at 882.

1 **III. Discussion**

2 Plaintiff contends that the ALJ erred in determining that Plaintiff  
3 retained an RFC for a limited range of light work with a sit-stand  
4 option. (Joint Stip. at 4.) Plaintiff argues that his chronic low back  
5 pain prevents him from sustaining full time work at any exertional  
6 level. (Id. at 5.) Alternatively, Plaintiff contends that at best, he is  
7 limited to sedentary work, which would mandate a disability finding  
8 under the Medical-Vocational Guidelines, 20 C.F.R., Part 404, Subpart P,  
9 Appendix 2. (Joint Stip. at 8.)

10 A claimant's RFC is what he is capable of doing despite his  
11 physical and mental limitations. 20 C.F.R. § 404.1545(a)(1); *Cooper v.*  
12 *Sullivan*, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). "RFC is an assessment  
13 of an individual's ability to do sustained work-related physical and  
14 mental activities in a work setting on a regular and continuing basis."  
15 SSR 96-8p, 1996 WL 374184, at \*1 (S.S.A. July 2, 1996). An RFC  
16 assessment is ultimately an administrative finding reserved to the  
17 Commissioner. 20 C.F.R. § 404.1527(e)(2). However, an RFC determination  
18 is based on all of the relevant evidence, including the diagnoses,  
19 treatment, observations, and opinions of medical sources, such as  
20 treating and examining physicians. *Id.*

21 Although Plaintiff cites to medical records that reference  
22 Plaintiff's chronic low back pain (Joint Stip. at 4), he has completely  
23 failed to show how this back pain prevents him from sustaining full time  
24 work at the light exertional level. The ALJ properly referred to the  
25 medical evidence in the record in reaching his RFC determination. (AR at  
26 13-16.) This evidence did not demonstrate that Plaintiff's low back pain  
27 was so severe as to prevent Plaintiff from sustaining light work with a  
28 sit stand option.

1           Indeed, the record shows that the ALJ gave Plaintiff the benefit of  
2 the doubt in determining that Plaintiff was capable only of light work  
3 with a sit-stand option. One of the State Agency reviewing physicians,  
4 Dr. J. Ross, M.D., concluded that Plaintiff retained an RFC for medium  
5 work (AR at 217), while another State Agency physician, A. Lizarraras,  
6 concluded that Plaintiff did not have any severe physical impairment.  
7 (AR at 167.) The ALJ properly synthesized the medical record and the  
8 conclusions of the reviewing physicians in assessing Plaintiff with an  
9 RFC for light work with a sit-stand option. The ALJ's RFC assessment was  
10 supported by substantial evidence in the record, and therefore,  
11 Plaintiff is not entitled to relief on this claim.

12           Plaintiff also makes several other arguments which are interspersed  
13 with his claim of RFC error. The Court will address each of these in  
14 turn:

15           Plaintiff contends that the ALJ erred in assessing his credibility.  
16 (Joint Stip. at 5-7.) To determine whether a claimant's testimony about  
17 subjective pain or symptoms is credible, an ALJ must engage in a two-  
18 step analysis. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)  
19 (citing *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007)).  
20 First, the ALJ must determine whether the claimant has presented  
21 objective medical evidence of an underlying impairment which could  
22 reasonably be expected to produce the alleged pain or other symptoms.  
23 *Lingenfelter*, 504 F.3d at 1036. "[O]nce the claimant produces objective  
24 medical evidence of an underlying impairment, an adjudicator may not  
25 reject a claimant's subjective complaints based solely on a lack of  
26 objective medical evidence to fully corroborate the alleged severity of  
27 pain." *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc).  
28 To the extent that an individual's claims of functional limitations and

1 restrictions due to alleged pain is reasonably consistent with the  
2 objective medical evidence and other evidence in the case, the  
3 claimant's allegations will be credited. SSR 96-7p, 1996 WL 374186 at \*2  
4 (explaining 20 C.F.R. §§ 404.1529(c)(4), 416.929(c)(4)).

5 Unless there is affirmative evidence showing that the claimant is  
6 malingering, the ALJ must provide specific, clear and convincing reasons  
7 for discrediting a claimant's complaints. *Robbins*, 466 F.3d at 883.  
8 Here, the ALJ provided several acceptable reasons for discrediting  
9 Plaintiff's testimony, each of which is fully supported by the record.  
10 First, the ALJ noted that Plaintiff had a "poor earnings history with no  
11 earnings since 1993 and has never earned more than \$5,348 in one year."  
12 (AR at 14, citing AR at 106.) At the administrative hearing, Plaintiff  
13 admitted that he had not worked for a long time. (AR at 28-29.) An ALJ  
14 may properly consider a claimant's poor or nonexistent work history in  
15 making a negative credibility determination. See *Thomas v. Barnhart*, 278  
16 F.3d 947, 959 (9th Cir. 2002) (claimant's "spotty" work history with  
17 "years of unemployment between jobs" negatively affected claimant's  
18 credibility). The ALJ also noted that at least part of the reason for  
19 Plaintiff's poor work history was that he was periodically incarcerated  
20 for drug possession and sales. (AR at 14, 29, 200.)

21 The ALJ also concluded that Plaintiff stopped working for reasons  
22 other than disability, noting that Plaintiff told the psychiatric  
23 examiner that he quit his job as a mechanic three years earlier and that  
24 he had attempted to do roofing and painting jobs under the table but was  
25 never able to do this for long because he could not stick with a job.  
26 (AR at 14, citing AR at 28-29.) An ALJ may consider the fact that a  
27 claimant stopped working for reasons other than disability in assessing  
28 credibility. See *Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001).

1 The ALJ made specific findings articulating clear and convincing  
2 reasons for his rejection of Plaintiff's subjective testimony. *Smolen*,  
3 80 F.3d at 1284. Because it is the responsibility of the ALJ to  
4 determine credibility and resolve conflicts or ambiguities in the  
5 evidence, a reviewing court may not second-guess the ALJ's credibility  
6 determination when it is supported by substantial evidence in the  
7 record, as here. *Magallanes*, 881 F.2d at 750; *See Fair*, 885 F.2d at 604.  
8 It was reasonable for the ALJ to rely on the reasons stated above, each  
9 of which is fully supported by the record, in rejecting the credibility  
10 of Plaintiff's subjective complaints.

11 Plaintiff also claims that the ALJ erred in failing to consider the  
12 alleged side effects of his medication. (Joint Stip. at 5-6.) In support  
13 of this argument, Plaintiff states he was taking Soma and Indocin<sup>2</sup> and  
14 testified at the administrative hearing that these medicines made him  
15 drowsy. (Id.)

16 "The ALJ must consider *all factors* that might have a 'significant  
17 impact on an individual's ability to work.'" *Erickson v. Shalala*, 9 F.3d  
18 813, 817 (9th Cir. 1993) (emphasis in original) (quoting *Varney v.*  
19 *Secretary of Health & Human Serv.*, 846 F.2d 581, 585 (9th Cir. 1987)),  
20 *relief modified*, 859 F.2d 1396 (1988)). Such factors "may include side  
21 effects of medications as well as subjective evidence of pain."  
22 *Erickson*, 9 F.3d at 818; *Varney*, 846 F.3d at 585 ("[S]ide effects can be  
23 a 'highly idiosyncratic phenomenon' and a claimant's testimony as to  
24 their limiting effects should not be trivialized.") (citation omitted).

---

26  
27 <sup>2</sup> Soma is a muscle relaxant used to relieve pain and discomfort  
28 caused by muscle injuries. Indocin is an anti-inflammatory drug used to  
<<http://www.nlm.nih.gov>>

1 However, Plaintiff bears the burden of producing medical evidence to  
2 show that any claimed side effects from medication are severe enough to  
3 interfere with the ability to work. See *Osenbrock v. Apfel*, 240 F.3d  
4 1157, 1164 (9th Cir. 2001) (finding that "passing mentions of the side  
5 effects of ... medication in some of the medical records" was  
6 insufficient evidence); *Bayliss v. Barnhart*, 427 F.3d 1211, 1217-18 (9th  
7 Cir. 2005) (finding no error in ALJ's lack of discussion regarding  
8 drowsiness from medication where the only evidence of side effects came  
9 through the claimant's subjective testimony).

10 Here, a review of Plaintiff's medical records reveals no objective  
11 evidence of disabling side effects from medications. The only evidence  
12 of side effects comes from Plaintiff's subjective complaints at the  
13 hearing, which the ALJ properly rejected. (AR at 14.) Plaintiff points  
14 to no objective evidence in the record that the side effects of his  
15 medications prevented him from sustaining full-time employment. There  
16 was no error.

17  
18 **IV. Conclusion**

19 For the reasons stated above, the decision of the Social Security  
20 Commissioner is affirmed and the matter is dismissed with prejudice.

21  
22 DATED: November 9, 2012

23  
24 

25 \_\_\_\_\_  
26 Marc L. Goldman  
27 United States Magistrate Judge  
28