

O

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

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

RAFAEL A. DOMINGUEZ,  
Plaintiff,  
v.  
CAROLYN W. COLVIN,  
COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,  
Defendant.

Case No. ED CV 15-1587 JCG  
**MEMORANDUM OPINION AND  
ORDER**

Rafael A. Dominguez (“Plaintiff”) challenges the Social Security Commissioner’s decision denying his application for disability benefits. Two issues are presented for decision here:

1. Whether the Administrative Law Judge (“ALJ”) improperly assigned weight to an examining physician’s opinion (*see* Joint Stip. at 3-9); and
2. Whether the ALJ properly rejected Plaintiff’s credibility (*see id.* at 15-18).

The Court addresses Plaintiff’s contentions below, and finds that reversal is not warranted.

1           A.     The ALJ Properly Assigned Weight to the Examining Physician’s  
2                     Opinion

3           Plaintiff contends that the ALJ improperly assigned “great weight” to the  
4 opinion of orthopedic consultative examining physician Dr. Robert J. MacArthur. (*See*  
5 *Joint Stip.* at 3-9; *Administrative Record* (“AR”) at 23-24.) Dr. MacArthur opined that  
6 Plaintiff could perform medium work. (AR at 397-403.)

7           Preliminarily, as a matter of law, the Court must affirm the Commissioner’s  
8 decision if it is based on proper legal standards and the findings of fact are supported  
9 by substantial evidence in the “record as a whole.” *Magallanes v. Bowen*, 881 F.2d  
10 747, 750 (9th Cir. 1989). Further, “[w]hen the evidence before the ALJ is subject to  
11 more than one rational interpretation, [the Court] must defer to the ALJ’s conclusion.”  
12 *Batson v. Comm’r Soc. Sec. Admin.*, 359 F.3d 1190, 1198 (9th Cir. 2004).

13           As a rule, the ALJ generally must “indicate the amount of weight given to . . .  
14 items of evidence[.]” *Albalos v. Sullivan*, 907 F.2d 871, 874 (9th Cir. 1990); quoting  
15 *Lewin v. Schwieker*, 654 F.2d 631, 635 (9th Cir. 1981). In evaluating medical opinion  
16 evidence, an ALJ need not give each opinion equal weight; instead the value of each is  
17 determined by considering a number of factors including the source. *See Tapia v.*  
18 *Colvin*, 520 F. App’x 600, 601 (2013); 20 C.F.R. §§ 404.1527(c), 416.927(c).

19           Here, the ALJ provided at least four valid reasons for assigning “great weight”  
20 to Dr. MacArthur’s opinion. (AR at 24.)

21           First, Dr. MacArthur personally observed and examined Plaintiff. (AR at 24,  
22 397-403); *see Holohan v. Massanari*, 246 F.3d 1195, 1202 (9th Cir. 2001) (in general,  
23 more weight is given to opinions of medical sources who have actually examined  
24 and/or treated the claimant); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir.  
25 2001) (“[Examining physician’s] opinion alone constitutes substantial evidence,  
26 because it rests on his own independent examination of [claimant].”).

27           Second, Dr. MacArthur’s opinion was consistent with his own objective findings  
28 from the examination. (AR at 24); *see Shavin v. Com’r of Soc. Sec. Admin.*, 488 F.

1 App'x 223, 224 (9th Cir. 2012) (treating physician's opinions should have been given  
2 greater weight in part because they were internally consistent); 20 C.F.R.  
3 §§ 404.1527(c)(3), 416.927(c)(3) ("The more a medical source presents relevant  
4 evidence to support an opinion, particularly medical signs and laboratory findings, the  
5 more weight we will give that opinion."). Specifically, the opinion was consistent with  
6 (1) negative paraspinal spasms findings; (2) an unremarkable lumbar spine x-ray; (3) no  
7 gross focal neurological deficits findings; and (4) Plaintiff's questionable effort in the  
8 physical examination.<sup>1</sup> (*Id.* at 397, 399-401.)

9 Third, Dr. MacArthur's opinion was consistent with the State agency medical  
10 consultants' determinations that Plaintiff was not disabled. (AR at 24, 46-63, 66-85);  
11 *see Shavin*, 488 F. App'x at 224 (treating physician's opinions should have been given  
12 greater weight in part because they were consistent with another physician's analysis);  
13 *see also Batson*, 359 F.3d at 1197 (permissible for ALJ to assign given weight "in light  
14 of the objective medical evidence and the opinions and observations of other doctors").

15 Fourth, Dr. MacArthur's opinion was consistent with the record "as a whole."<sup>2</sup>  
16 (AR at 24); *see Magallanes*, 881 F.2d at 750; *Batson*, 359 F.3d at 1197. Specifically,  
17

---

18 <sup>1</sup> On this last point, Plaintiff contends that Dr. MacArthur's opinion is internally inconsistent  
19 because his report states he "considered [Plaintiff's] reliability to be average," yet stated that  
20 Plaintiff "was deemed a questionable historian." (Joint Stip. at 5; AR at 397.) Plaintiff further  
21 suggests that these statements are inconsistent with the doctor's notation that Plaintiff's general  
22 appearance was "cooperative." (Joint Stip. at 5; AR at 399.) However, these statements do not  
23 reveal any apparent inconsistency, or at least one that makes a difference. *See Molina v. Astrue*, 674  
24 F.3d 1104, 1111 (9th Cir. 2012) ("[T]he burden of showing that an error is harmful normally falls  
25 upon the party attacking the agency's determination." (internal quotation marks omitted)). It is clear  
26 from Dr. MacArthur's report that he doubted Plaintiff's overall credibility because Plaintiff did not  
27 put forth full effort during the examination. (AR at 397, 400.)

28 <sup>2</sup> Plaintiff contends that Dr. MacArthur's indication in the report that Plaintiff is fluent in  
English is inconsistent with the "totality of the evidence." (Joint Stip. at 4-5; AR at 397.) Even  
assuming error in that notation, Plaintiff fails to explain how it had any impact on Dr. MacArthur's  
findings or the ALJ's decision. *See Molina*, 674 F.3d at 1111; *Contreras v. Colvin*, 2014 WL  
5696443, \*10 (E.D. Cal. Nov. 4, 2014) ("Plaintiff fails to provide any evidence that her limited  
English language skills prejudiced her in any way, or that this caused any reversible error in the  
ALJ's decision.").

1 the opinion was consistent with (1) treatment notes, (2) Plaintiff's medication usage;  
2 (3) laboratory findings; and (4) Plaintiff's ongoing clinical presentation. (*See id.* at 24,  
3 242, 247, 252-54, 260, 263-68, 272, 280, 320-22, 330, 361, 366, 382-84, 406, 408,  
4 410, 415, 421, 428, 436, 452, 456, 464, 479, 482, 484.)

5 B. The ALJ Properly Assessed Plaintiff's Credibility

6 Plaintiff contends that the ALJ improperly assessed his credibility. (*See Joint*  
7 *Stip.* at 15-18.)

8 As a rule, an ALJ may reject a claimant's credibility "only upon (1) finding  
9 evidence of malingering, or (2) expressing clear and convincing reasons for doing so."  
10 *Benton v. Barnhart*, 331 F.3d 1030, 1040 (9th Cir. 2003). "General findings are  
11 insufficient; rather, the ALJ must identify what testimony is not credible and what  
12 evidence undermines the claimant's complaints." *Brown-Hunter v. Colvin*, 806 F.3d  
13 487, 493 (9th Cir. 2015) (citation and internal quotation marks omitted).

14 1. Evidence of Malingering

15 As an initial matter, the ALJ was entitled to reject Plaintiff's testimony without  
16 providing clear and convincing reasons because there was affirmative evidence of  
17 malingering. *See Benton*, 331 F.3d at 1040; *Watkins v. Comm'r Soc. Sec. Admin.*, 611  
18 F. App'x 903, 904 (9th Cir. 2015) (ALJ did not err in rejecting subjective testimony  
19 when record contained affirmative evidence suggesting claimant was malingering). As  
20 mentioned, Dr. MacArthur doubted Plaintiff's credibility due to his poor effort during  
21 the examination. (AR at 397, 400.) Additionally, (1) Dr. MacArthur noted that  
22 Plaintiff used a cane at the examination that was not medically necessary; (2) Dr.  
23 MacArthur stated that Plaintiff did not appear to actually be in acute or chronic  
24 distress; and (3) other reviewing doctors noted Plaintiff's "poor effort and  
25 embellishment of symptoms." (*Id.* at 50-52, 59-60, 71, 81, 83, 213 (Plaintiff's  
26 exertional questionnaire admitting he does not use a cane), 265, 399.)  
27  
28

1                   2.     Clear and Convincing Reasons for Rejecting Plaintiff’s Credibility

2                   Additionally, despite having no need to do so, *see Lester v. Chater*, 81 F.3d 821,  
3 834 (9th Cir. 1995), the ALJ provided at least four clear and convincing reasons for  
4 discounting Plaintiff’s testimony.

5                   First, Plaintiff’s received routine and conservative treatment of medication and  
6 physical therapy.<sup>3</sup> (AR at 18-23, 35-36, 272-73, 331, 351, 363, 406, 456, 480, 482,  
7 484); *see Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007) (“[E]vidence of  
8 ‘conservative treatment’ is sufficient to discount a claimant’s testimony regarding  
9 severity of an impairment.”) (citation omitted); *Edginton v. Colvin*, 625 F. App’x 334,  
10 336 (9th Cir. 2015) (ALJ properly relied on claimant’s “routine and conservative” back  
11 treatment, which generally consisted of medication and transcutaneous electrical nerve  
12 stimulation).

13                   Second, Plaintiff responded favorably to treatment. (AR at 18-23, 34-37, 263,  
14 270, 272, 275-78, 281, 361, 364, 406, 427, 440, 446, 453-54, 456, 466, 469, 476, 478,  
15 482, 484); *see Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (ALJ  
16 properly rejected claimant’s subjective complaints where medical records showed that  
17 she responded favorably to conservative treatment of physical therapy and  
18 medication); *Warre v. Comm’r Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006)  
19 (“Impairments that can be controlled effectively with medication are not disabling[.]”).

20                   Third, there were significant gaps in Plaintiff’s treatment.<sup>4</sup> (AR at 22-23; *see*  
21 *also* AR at 18-21.); *see Marsh v. Colvin*, 792 F.3d 1170, 1173 n.2 (9th Cir. 2015) (ALJ

---

22  
23 <sup>3</sup> Plaintiff fails to discuss, or even acknowledge, the ALJ’s credibility findings related to his  
24 treatment. *See Greger v. Barnhart*, 464 F.3d 968, 973 (9th Cir. 2006) (claimant waived issues not  
25 raised before the district court); *Owens v. Colvin*, 2014 WL 5602884, at \*4 (C.D. Cal. Nov. 4, 2014)  
(claimant’s failure to discuss, or even acknowledge, ALJ’s reliance on certain reasons waived any  
challenge to those aspects of ALJ’s credibility finding).

26 <sup>4</sup> Notably, Plaintiff also makes no attempt to dispute the factual assertions regarding the gaps in  
27 treatment – including the more than five month delay in treatment for his back – outlined by the  
28 Commissioner and the ALJ. (Joint Stip. at 19; AR at 22-23, 189, 192-94, 217-18, 227, 251, 330,  
413); *see Greger*, 464 F.3d at 973; *Schoonmaker v. Colvin*, 2015 WL 6658669, at \*5 (D. Or. Oct. 30,  
2015) (agreeing with Commissioner that ALJ made permissible inferences regarding intensity and

1 properly considered treatment gap in assessing claimant’s credibility); *Burch v.*  
2 *Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) (ALJ properly relied on three- to four-  
3 month treatment gap in partially discrediting claimant’s testimony).

4 Fourth, and finally, Plaintiff’s allegations of severe symptoms contradicted the  
5 objective and diagnostic findings of record. (AR at 22-23); *see Rollins v. Massanari*,  
6 261 F.3d 853, 856-57 (9th Cir. 2001) (inconsistencies with objective evidence, when  
7 combined with other factors, are valid reasons for rejecting a claimant’s testimony).  
8 For example, Plaintiff had a number of normal findings, including (1) those made by  
9 Dr. MacArthur; (2) multiple physical examinations within in the normal range; and  
10 (3) an ex-ray showing discogenic changes along with evidence of osteoarthritis, but no  
11 evidence of fracture or malalignment. (*Id.* at 242, 247, 252-54, 260, 263-68, 272, 280,  
12 320-22, 330, 361, 366, 382-84, 406, 408, 410, 415, 421, 428, 436, 452, 456, 464, 479,  
13 482, 484.)

14 Thus, the ALJ properly discounted Plaintiff’s credibility.<sup>5</sup>

15 //

17 //

19 //

---

21 persistence of symptoms based on amount and type of treatment, and that Plaintiff failed to dispute  
22 the factual assertions regarding gaps in treatment).

23 <sup>5</sup> Plaintiff primarily discusses two factors in attacking the credibility determination: the ALJ’s  
24 reliance on (1) daily activities, and (2) Plaintiff quitting work before his onset date for reasons  
25 unrelated to disability. (*See* Joint Stip. at 15-16; AR 22-23.) In light of the four valid reasons for  
26 rejecting the testimony discussed above, any error in the ALJ’s reliance on those additional factors is  
27 harmless. *See Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008) (when  
28 ALJ provides specific reasons for discounting claimant’s credibility, decision may be upheld even if  
certain reasons were invalid as long as “remaining reasoning and ultimate credibility determination”  
were supported by substantial evidence (emphasis omitted)); *Strutz v. Colvin*, 2015 WL 4727459, at  
\*7 (D. Or. Aug. 10, 2015) (upholding credibility finding because ALJ provided at least one valid  
reason to discount claimant’s testimony).

1 Based on the foregoing, **IT IS ORDERED THAT** judgment shall be entered  
2 **AFFIRMING** the decision of the Commissioner denying benefits.

3  
4 DATED: August 23, 2016

  
\_\_\_\_\_  
5 Hon. Jay C. Gandhi  
6 United States Magistrate Judge

7 \*\*\*

8  
9 **This Memorandum Opinion and Order is not intended for publication. Nor is it**  
10 **intended to be included or submitted to any online service such as**  
11 **Westlaw or Lexis.**

12 \*\*\*