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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAURIE LEMLEY,

Plaintiff,

V.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

No. 2:13-CV-0299-JTR

ORDER GRANTING
DEFENDANT’S MOTION
FOR SUMMARY JUDGMENT

BEFORE THE COURT are Plaintiff Maurie Lemley’s (Plaintiff’s) Motions for Summary Judgment, ECF No. 33, 37, and the Commissioner of Social Security’s (Defendant’s) Cross-Motion for Summary Judgment, ECF No. 38. Plaintiff is unrepresented and is thus proceeding *pro se*; Special Assistant United States Attorney Jeffrey Eric Staples represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 7. After considering the administrative record, briefs filed by the parties, and the oral argument provided on April 14, 2014, the Court **GRANTS** Defendant’s Motion for Summary Judgment and **DENIES** Plaintiff’s Motions for Summary Judgment.

JURISDICTION

Plaintiff protectively filed applications for Disability Insurance Benefits and Supplemental Security Income on June 2, 2010, alleging disability since April 1,

1 2010, due to hepatitis C with chronic muscle and joint pain; rheumatoid arthritis;
2 gout; and depression. Tr. 180. The applications were denied initially and upon
3 reconsideration. Administrative Law Judge (ALJ) Caroline Siderius held a hearing
4 on April 24, 2012, Tr. 26-63, and issued an unfavorable decision on June 11, 2012,
5 Tr. 71-82. The Appeals Council denied review on June 13, 2013. Tr. 11-17. The
6 ALJ's June 2012 decision became the final decision of the Commissioner, which is
7 appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this
8 action for judicial review on August 9, 2013. ECF No. 2, 5.

9 **STATEMENT OF FACTS**

10 The facts of the case are set forth in the administrative hearing transcript, the
11 ALJ's decision, and the briefs of the parties. They are only briefly summarized
12 here.

13 Plaintiff was born on May 22, 1964, and was 45 years old on the alleged
14 onset date, April 1, 2010. Tr. 198. He completed the 10th grade in school, received
15 his GED and attended some college. Tr. 364. Plaintiff indicated he stopped
16 working on December 28, 2009, because he was "fired for something [he] did not
17 do." Tr. 180. However, he asserts his impairments did not prevent him from
18 performing work until April 1, 2010. Tr. 180. Plaintiff testified at the
19 administrative hearing that he is not able to work because he gets too tired and
20 sore. Tr. 33. He stated if he tries to do physical tasks, like mow the lawn, he gets
21 so tired he may end up sleeping for 20 hours. Tr. 34. He also indicated he has
22 pain all over his body, including sharp pains in his joints. Tr. 34. Plaintiff testified
23 he gets depressed because he can no longer do the things he used to be able to do.
24 Tr. 52. He stated he spends 18 hours a day lying down and is not able to do
25 anything other than sleep for eight hours in a day. Tr. 53-54.

26 Irvine S. Belzer, M.D., testified as a medical expert at the administrative
27 hearing. Dr. Belzer indicated Plaintiff has persistent hepatitis C, mild disc disease
28 of the lumbar spine, a history of obstructive airways disease, and a history of gout.

1 Tr. 36-37. Dr. Belzer stated that the treatment for hepatitis C can be very
2 debilitating, like chemotherapy, and the side effects can last for two to three
3 months. Tr. 38-39. Given the recent liver function tests in the record, Dr. Belzer
4 opined Plaintiff's most recent treatment for hepatitis C had not been successful.
5 Tr. 39. Dr. Belzer testified there was no further treatment available to Plaintiff and
6 the hepatitis C disease could be progressive. Tr. 39.

7 STANDARD OF REVIEW

8 The ALJ is responsible for determining credibility, resolving conflicts in
9 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
10 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed de novo,
11 although deference is owed to a reasonable construction of the applicable statutes.
12 *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ
13 may be reversed only if it is not supported by substantial evidence or if it is based
14 on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
15 evidence is defined as being more than a mere scintilla, but less than a
16 preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant
17 evidence as a reasonable mind might accept as adequate to support a conclusion.
18 *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to
19 more than one rational interpretation, the court may not substitute its judgment for
20 that of the ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec.*
21 *Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). Nevertheless, a decision supported by
22 substantial evidence will still be set aside if the proper legal standards were not
23 applied in weighing the evidence and making the decision. *Brawner v. Secretary*
24 *of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial
25 evidence exists to support the administrative findings, or if conflicting evidence
26 exists that will support a finding of either disability or non-disability, the ALJ's
27 determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th
28 Cir. 1987).

1 ropes/ladders/scaffolds but can occasionally climb stairs/ramps; he is able to
2 occasionally reach overhead; he is able to perform one to three step tasks; he can
3 have occasional contact with the public and coworkers; and he needs to avoid
4 odors, gases, dust and fumes. Tr. 76-77. At step four, the ALJ determined
5 Plaintiff was unable to perform his past relevant work as an injection mold
6 machine tender, a molding machine supervisor and a hand packager. Tr. 80. At
7 step five, the ALJ found that, considering Plaintiff's age, education, work
8 experience and RFC, and based on the testimony of the vocational expert, Plaintiff
9 was able to perform work existing in significant numbers in the national economy.
10 Tr. 80-81. The ALJ thus determined that Plaintiff was not under a disability within
11 the meaning of the Social Security Act at any time from April 1, 2010, the alleged
12 onset date, through the date of the ALJ's decision, June 11, 2012. Tr. 82.

13 ISSUES

14 The question presented is whether substantial evidence exists to support the
15 ALJ's decision denying benefits and, if so, whether that decision is based on
16 proper legal standards.

17 Plaintiff asserts multiple errors by the ALJ and the Social Security
18 Administration. Tr. 33, 36, 37. He contends (1) a missing medical report from Dr.
19 Thomas R. Hull should have been provided; (2) the ALJ erred at step two by not
20 finding fibromyalgia and myofascial pain were severe impairments; (3) the ALJ
21 failed to properly consider the statements of lay witnesses; (4) the physical RFC
22 determination was improper; (5) the determination with respect to Plaintiff's
23 credibility was flawed; and (6) the ALJ improperly relied on the medical opinions
24 of Drs. Belzer, Scottolini, Weir and Awbery.

25 DISCUSSION

26 A. Dr. Thomas R. Hull

27 Plaintiff repeatedly argues that the medical report of Dr. Thomas R. Hull is
28 erroneously absent from the evidence of record. Plaintiff asserts "Social Security

1 did not provide the medical report from Dr. Thomas R. Hull to the ALJ. Which
2 made me look [untruthful] because I told the ALJ what he told me. But at that
3 time I didn't know his name so I couldn't prove which doctor said it." ECF No. 33
4 at 2. On February 25, 2014, Defendant wrote to Plaintiff indicating information
5 about Plaintiff's appointment with Dr. Hull had been discovered; however,
6 pursuant to the Privacy Act, 5 U.S.C. § 552a, Defendant was unable to discuss the
7 information with the Court without Plaintiff's consent. ECF No. 37 at 10.

8 Plaintiff was apparently provided a consent form by Defendant, but has not
9 provided Defendant with his consent. Plaintiff has thus been given the opportunity
10 to consent to disclosure regarding information pertaining to Dr. Hull, but has
11 declined to do so. ECF No. 38 at 24. Consequently, Defendant is prohibited from
12 discussing the information pursuant to the Privacy Act, 5 U.S.C. § 552a. ECF No.
13 38 at 24. In any event, Plaintiff has not specified what information would be
14 gleaned from a report by Dr. Hull or how the report would otherwise provide
15 support for Plaintiff's Motion for Summary Judgment. The Court finds any
16 information pertaining to Dr. Hull has not been shown to be material to this case.
17 Accordingly, Plaintiff's assertions with respect to a report by Dr. Hull are without
18 merit.

19 **B. Step Two Determination**

20 Plaintiff contends the ALJ erred by ignoring the diagnosis of fibromyalgia
21 and dismissing Plaintiff's myofascial pain syndrome. ECF No. 37 at 2, 5.

22 The undersigned finds it important to note at the outset that Plaintiff's
23 application for disability benefits alleges disability due to hepatitis C with chronic
24 muscle and joint pain, rheumatoid arthritis, gout and depression. Tr. 180.

25 Although fibromyalgia and myofascial pain syndrome were discussed at the
26 administrative hearing, his application for disability does not allege fibromyalgia
27 or myofascial pain syndrome significantly limited his physical or mental ability to
28 work.

1 Plaintiff has the burden of proving he has a severe impairment at step two of
2 the sequential evaluation process. 42 U.S.C. § 423(d)(1)(A); 20 C.F.R. §§
3 423(d)(1)(A), 416.912. In order to meet this burden, Plaintiff must furnish medical
4 and other evidence that shows that he has a severe impairment. 20 C.F.R. §
5 416.912(a). The regulations, 20 C.F.R. §§ 404.1520(c), 416.920(c), provide that
6 an impairment is severe if it significantly limits one’s ability to perform basic work
7 activities. An impairment is considered non-severe if it “does not significantly
8 limit your physical or mental ability to do basic work activities.” 20 C.F.R. §§
9 404.1521, 416.921.

10 Step two is “a de minimis screening device [used] to dispose of groundless
11 claims,” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996), and an ALJ may
12 find that a claimant lacks a medically severe impairment or combination of
13 impairments only when this conclusion is “clearly established by medical
14 evidence.” S.S.R. 85-28; *Webb v. Barnhart*, 433 F.3d 683, 686-687 (9th Cir.
15 2005). Applying the normal standard of review to the requirements of step two,
16 the Court must determine whether the ALJ had substantial evidence to find the
17 medical evidence clearly established Plaintiff did not have a medically severe
18 impairment. *Yuckert v. Bowen*, 841 F.2d 303, 306 (9th Cir. 1988) (“[d]espite the
19 deference usually accorded to the Secretary’s application of regulations, numerous
20 appellate courts have imposed a narrow construction upon the severity regulation
21 applied here.”); *Webb*, 433 F.3d at 687.

22 **1. Fibromyalgia**

23 The ALJ evaluated the evidence of record, considered the hearing testimony,
24 and concluded Plaintiff did not have a severe, medically determinable impairment
25 of fibromyalgia. Tr. 74-75.

26 The ALJ noted that although reference was made to fibromyalgia in the
27 record, the record did not reveal a diagnosis of fibromyalgia. Tr. 74. In fact, as
28 indicated by the ALJ, Douglas Duncan, PA-C, stated “[r]eported diagnosis of

1 fibromyalgia not supported on exam,” Tr. 74-75, 405, and the medical record
2 indicated Plaintiff’s tender point calculation was always either 1 or 0, Tr. 74, 382,
3 385, 405, 408. In claims in which there are no medical signs or laboratory findings
4 to substantiate the existence of a medically determinable impairment, the
5 individual must be found not disabled at step two of the sequential evaluation
6 process. *Ukolov v. Barnhart*, 420 F.3d 1002, 1005 (9th Cir. 2005). In this case,
7 the medical evidence of record is devoid of medical signs or laboratory findings to
8 substantiate the existence of fibromyalgia. Accordingly, the ALJ reasonably
9 concluded Plaintiff’s alleged fibromyalgia was not a severe, medically
10 determinable impairment.

11 **2. Myofascial Pain**

12 The ALJ did not find myofascial pain syndrome to be a severe, medically
13 determinable impairment in this case. Tr. 74-75.

14 As with Plaintiff’s alleged fibromyalgia, there is no definitive diagnosis of
15 myofascial pain syndrome in the record. Although Ethan Angell, M.D., noted
16 myofascial pain syndrome in the “Assessment/Plan” portion of his March 28,
17 2012, medical report, Tr. 455, it is not apparent Dr. Angell intended to offer
18 myofascial pain syndrome as a diagnosis and no other medical provider of record
19 mentions myofascial pain syndrome. In any event, medical expert Dr. Belzer
20 testified that myofascial pain syndrome would refer to a complex symptomatology
21 where people have pain in certain muscles groups, often associated with previous
22 surgery or trauma, Tr. 44-45, and the ALJ’s RFC determination accounts for
23 Plaintiff’s limitations as a result of pain by limiting him to a restricted range of
24 light exertion level work, Tr. 76-77.

25 The ALJ did not err at step two of the sequential evaluation process by
26 finding Plaintiff did not have severe impairments of fibromyalgia and myofascial
27 pain syndrome.

28 ///

1 **C. Lay Witness Testimony**

2 Plaintiff also complains that the ALJ discredited the testimony of his wife,
3 Linda Lemley, and mother, Maureen Anderson. Tr. 33 at 3, 37 at 2.

4 The ALJ shall “consider observations by non-medical sources as to how an
5 impairment affects a claimant’s ability to work.” *Sprague v. Bowen*, 812 F.2d
6 1226, 1232 (9th Cir. 1987), *citing* 20 C.F.R. § 404.1513(e)(2). The ALJ may not
7 ignore or improperly reject the **probative** testimony of a lay witness without
8 giving reasons that are germane to each witness. *Dodrill v. Shalala*, 12 F.3d 915,
9 919 (9th Cir. 1993) (emphasis added).

10 Plaintiff’s attorney indicated at the administrative hearing that Plaintiff’s
11 wife was available to testify, but would merely testify about what Plaintiff had
12 already said about his limitations and what Plaintiff had told her about his pain.
13 Tr. 60. In a letter dated November 1, 2010, Mrs. Lemley wrote that Plaintiff had
14 constant pain in his joints and muscles and experienced extreme exhaustion. Tr.
15 196. The information in this November 2010 letter parallels Plaintiff’s testimony.

16 The ALJ indicated at the administrative hearing that if Mrs. Lemley was just
17 going to reiterate what Plaintiff had said, her testimony would not be useful. Tr.
18 60. At that point, the ALJ asked Plaintiff if he had anything to add. Tr. 60.
19 Plaintiff did not, at that time, state concern that the ALJ chose to not solicit
20 testimony from Mrs. Lemley. Tr. 61.

21 Ms. Anderson provided a letter on Plaintiff’s behalf on November 2, 2010.
22 Tr. 195. She stated Plaintiff “has been in extreme pain and fatigued to the point of
23 being unable to do things he would normally do, such as work, keep his home in
24 shape and doing activities with friends and family.” Tr. 195. Again, this letter
25 merely echoes Plaintiff’s testimony of fatigue and pain.

26 The ALJ considered the written statements of Mrs. Lemley and Ms.
27 Anderson and gave them little weight because “these individuals [would not] know
28 if the claimant is in pain or how long he is in pain. Their statements simply reflect

1 what the claimant told them.” Tr. 80. Because the statements did not expound
2 upon Plaintiff’s testimony, the lay witness statements contained little probative
3 value. Accordingly, the ALJ did not err by giving little weight to the statements of
4 the lay witnesses in this case. Tr. 80.

5 **D. Physical RFC Determination**

6 Plaintiff contends the ALJ erred with respect to the physical RFC
7 determination in this case. Plaintiff specifically asserts the ALJ erred by according
8 weight to the opinions of Dr. Belzer, Dr. Scottolini, Dr. Weir and Dr. Awbery.
9 ECF No. 33 at 3, 37 at 6-7.

10 The ALJ noted that an August 24, 2010, examination by A. Peter Weir,
11 M.D., found that Plaintiff had no muscle weakness or atrophy and no areas of
12 decreased sensation. Tr. 78, 367. The ALJ noted Plaintiff “was observed
13 ambulating at a brisk pace without difficulty or apparent discomfort” both before
14 and after the examination. Tr. 78, 367. Dr. Weir opined Plaintiff had “no
15 functional limitations.” Tr. 367.

16 On September 14, 2010, Kaylee Awbery filled out a physical residual
17 functional capacity assessment form which opined Plaintiff could occasionally lift
18 and/or carry 50 pounds, frequently lift and/or carry 25 pounds, stand and/or walk
19 and sit about six hours in an eight-hour workday and had an unlimited ability to
20 push and/or pull. Tr. 369. On February 8, 2011, Alfred Scottolini, M.D., affirmed
21 the September 2010 physical assessment finding it was “substantially and
22 technically correct.” Tr. 400. The ALJ, however, accorded the opinion of Dr.
23 Scottolini only “some weight,” noting that greater restrictions in accord with the
24 ALJ’s RFC determination, Tr. 76-77, reflected a more accurate assessment of
25 Plaintiff’s physical RFC, Tr. 79.

26 Plaintiff was treated by Ethan M. Angell, M.D., during the course of his
27 treatment for hepatitis C in 2011-2012. Tr. 415-455. On January 18, 2011, Dr.
28 Angell reported Plaintiff’s musculature was normal with no joint deformities or

1 abnormalities, and he had normal range of motion for his age for all extremities.
2 Tr. 78, 390-393. Dr. Angell reported Plaintiff tolerated the treatment for hepatitis
3 C well throughout the majority of the time under his care. Tr. 78, 415-455. While
4 Plaintiff's complaints of pain and fatigue are noted in Dr. Angell's 2012 reports,
5 Tr. 445-455, Dr. Angell never identified any functional limitations or assessed
6 Plaintiff's physical capacity.

7 Dr. Belzer testified at the administrative hearing on April 24, 2012, that
8 Plaintiff had persistent hepatitis C, mild disc disease of the lumbar spine, a history
9 of obstructive airways disease, and a history of gout, Tr. 36-37, but concluded that
10 Plaintiff's impairments did not meet or equal a listings impairment. Tr. 79. Dr.
11 Belzer stated the medical evidence indicated Plaintiff had the ability to lift and/or
12 carry 20 to 25 pounds on an occasional basis. Tr. 42-43, 46, 79.

13 The ALJ determined Plaintiff was limited to a restricted range of light
14 exertion level work. Tr. 76-77. Light level work involves lifting no more than 20
15 pounds at a time with frequent lifting or carrying of objects weighting up to 10
16 pounds. 20 C.F.R. §§ 404.1567(b), 416.967(b). No medical professional of
17 record, including those referenced above, has opined that Plaintiff has greater
18 restrictions than those assessed by the ALJ in this case. Since the ALJ's physical
19 RFC determination is consistent with or more restrictive than the limitations
20 assessed by all other medical professionals of record, the ALJ's assessment of
21 Plaintiff's physical functioning ability is supported by substantial record evidence
22 and free of error.

23 **E. Plaintiff's Credibility**

24 Plaintiff appears to also contest the ALJ's determination that he lacked
25 credibility. ECF No. 33 at 3, 37 at 3, 5-6.

26 It is the province of the ALJ to make credibility determinations. *Andrews v.*
27 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). However, the ALJ's findings must be
28 supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231

1 (9th Cir. 1990). Once the claimant produces medical evidence of an underlying
2 medical impairment, the ALJ may not discredit testimony as to the severity of an
3 impairment because it is unsupported by medical evidence. *Reddick v. Chater*, 157
4 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence of malingering, the
5 ALJ’s reasons for rejecting the claimant’s testimony must be “clear and
6 convincing.” *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). “General
7 findings are insufficient: rather the ALJ must identify what testimony is not
8 credible and what evidence undermines the claimant’s complaints.” *Lester*, 81
9 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

10 In this case, the ALJ found Plaintiff’s medically determinable impairments
11 could reasonably be expected to cause the alleged symptoms; however, the ALJ
12 did not find all of Plaintiff’s alleged symptoms to be credible. Tr. 78. The ALJ
13 concluded Plaintiff’s allegations and testimony concerning his subjective
14 complaints and limitations were not convincing. Tr. 79.

15 The ALJ first indicated the medical evidence of record did not support the
16 level of limitation alleged by Plaintiff. Tr. 78. A lack of supporting objective
17 medical evidence is a factor which may be considered in evaluating a claimant’s
18 credibility, provided it is not the sole factor. *Bunnell v. Sullivan*, 347 F.2d 341,
19 345 (9th Cir. 1991). The ALJ noted that, with regard to Plaintiff’s physical
20 complaints, Dr. Weir found in August 2010 that Plaintiff had no muscle weakness
21 or atrophy and no areas of decreased sensation. Tr. 78, 367. The ALJ noted
22 Plaintiff “was observed ambulating at a brisk pace without difficulty or apparent
23 discomfort” both before and after the examination with Dr. Weir. Tr. 78, 367. Dr.
24 Angell reported on January 18, 2011, that Plaintiff’s musculature was normal with
25 no joint deformities or abnormalities, and he had normal range of motion for his
26 age for all extremities. Tr. 78, 390-393. With regard to Plaintiff’s mental
27 impairment allegations, Samantha Chandler, Psy.D., reported following a July 9,
28 2010, psychological evaluation that a host of findings were normal and Plaintiff

1 was able to interact appropriately with a supervisor, coworkers and the public,
2 although depression could cause an adverse effect. Tr. 78, 340-344. Dr. Chandler
3 found Plaintiff's memory, concentration, ability to follow short and simple
4 instructions, abstract reasoning, and executive functioning were all within normal
5 limits and his judgment and insight were good. *Id.* On January 18, 2011, Dr.
6 Angell reported Plaintiff had no unusual anxiety or evidence of depression. Tr. 78,
7 392. It was thus appropriate for the ALJ to conclude the objective medical
8 evidence did not support Plaintiff's allegations of disabling physical and mental
9 limitations.

10 The ALJ also indicated the record suggested Plaintiff had engaged in drug-
11 seeking behavior. Tr. 78. An ALJ may properly consider evidence of a claimant's
12 drug use and drug-seeking behavior in assessing credibility. *Edlund v. Massanari*,
13 253 F.3d 1152, 1157 (9th Cir. 2001). The ALJ indicated a May 10, 2010, doctor
14 note from Michael J. Metcalf, M.D., reported Plaintiff requested narcotics the day
15 after he had been given 30 pain pills. Tr. 78, 315. Plaintiff explained at oral
16 argument on April 14, 2014, that he was not attempting to get more pills the day he
17 called Dr. Metcalf, but had merely called to inquire about the medication. Plaintiff
18 indicated he did not know Dr. Metcalf had already written a prescription the day
19 before. This explanation, however, was never presented to the ALJ. In any event,
20 as stated by the ALJ, Plaintiff also had a loud disagreement with the doctor over
21 narcotic medication within a month, stating he did not feel he was receiving
22 appropriate care, Tr. 78, 308, and other evidence showed doctors referred to
23 Plaintiff taking Vicodin chronically and had encouraged him to taper off this
24 opioid medication as it was not indicated, Tr. 78, 387, 409.

25 Lastly, the ALJ noted inconsistencies in Plaintiff's complaints. Tr. 78.
26 Inconsistencies in a disability claimant's testimony support a decision by the ALJ
27 that a claimant lacks credibility with respect to her claim of disabling pain. *Nyman*
28 *v. Heckler*, 779 F.2d 528, 531 (9th Cir. 1986). The ALJ noted Plaintiff informed

1 Dr. Chandler he only used the computer a few minutes a day, two or three days a
2 month, due to pain, Tr. 343, but reported on January 18, 2011, that he was on the
3 computer for four to eight hours a day, Tr. 387. Tr. 79. The ALJ also noted
4 Plaintiff's statement to health care providers that he had no history of depression,
5 Tr. 390, conflicts with his current complaint of depression, and his admitted use of
6 the computer for four to eight hours a day conflicted with his allegation that all he
7 does is sleep. Tr. 79. The ALJ additionally found Plaintiff's "act of continuing to
8 use tobacco suggests that his breathing problem was less troublesome than he
9 indicated." Tr. 78-79. The ALJ appropriately considered inconsistencies in
10 Plaintiff's complaints to discount his allegations of symptoms.

11 The ALJ is responsible for reviewing the evidence and resolving conflicts or
12 ambiguities in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.
13 1989). It is the role of the trier of fact, not this Court, to resolve conflicts in
14 evidence. *Richardson*, 402 U.S. at 400. The Court has a limited role in
15 determining whether the ALJ's decision is supported by substantial evidence and
16 may not substitute its own judgment for that of the ALJ even if it might justifiably
17 have reached a different result upon de novo review. 42 U.S.C. § 405(g). After
18 reviewing the record, the undersigned finds the reasons provided by the ALJ for
19 discounting Plaintiff's subjective complaints are clear, convincing, and fully
20 supported by the record. Accordingly, the ALJ did not err by concluding
21 Plaintiff's subjective complaints regarding the extent of his symptoms and
22 limitations were not fully credible in this case.

23 **F. Additional Evidence Submitted to the Court**

24 Plaintiff's second Motion for Summary Judgment attaches new evidence that
25 is not part of the administrative record and was provided for the first time to this
26 Court.

27 The Court is required to remand a matter for additional proceedings pursuant
28 to sentence six of 42 U.S.C. § 405(g) if Plaintiff demonstrates new evidence "is

1 **IT IS ORDERED:**

2 1. Defendant's Motion for Summary Judgment, **ECF No. 38**, is
3 **GRANTED.**

4 2. Plaintiff's Motions for Summary Judgment, **ECF No. 33, 37**, are
5 **DENIED.**

6 The District Court Executive is directed to file this Order and provide a copy
7 to *pro se* Plaintiff and counsel for Defendant. Judgment shall be entered for
8 **DEFENDANT** and the file shall be **CLOSED.**

9 DATED April 15, 2014.



A handwritten signature in black ink, appearing to be "JR" or similar initials, written over a horizontal line.

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JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE