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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Phillip Daniel Hunt,

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CIV 12-1323-PHX-MHB

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Plaintiff,

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ORDER

11

vs.

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Carolyn W. Colvin, Commissioner of the
Social Security Administration,

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Defendant.

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Pending before the Court is Plaintiff Phillip Daniel Hunt’s appeal from the Social Security Administration’s final decision to deny his claim for disability insurance benefits and supplemental security income. After reviewing the administrative record and the arguments of the parties, the Court now issues the following ruling.

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I. PROCEDURAL HISTORY

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In January of 2010, Plaintiff filed applications for disability insurance benefits and supplemental security income pursuant to Titles II and XVI of the Social Security Act, alleging disability beginning May 12, 2009. (Transcript of Administrative Record (“Tr.”) at 169-76.) His applications were denied initially and on reconsideration. (Tr. at 111-18, 122-28.) On December 6, 2010, he requested a hearing before an Administrative Law Judge (“ALJ”). (Tr. at 129-30.) A hearing was held on June 3, 2011. (Tr. at 35-76.) On June 20, 2011, the ALJ issued a decision in which he found that Plaintiff was not disabled. (Tr. at 15-34.) Thereafter, Plaintiff requested review of the ALJ’s decision. (Tr. at 13-14.)

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1 The Appeals Council denied Plaintiff's request, (Tr. at 1-5), thereby rendering the
2 ALJ's decision the final decision of the Commissioner. Plaintiff then sought judicial review
3 of the ALJ's decision pursuant to 42 U.S.C. § 405(g).

4 II. STANDARD OF REVIEW

5 The Court must affirm the ALJ's findings if the findings are supported by substantial
6 evidence and are free from reversible legal error. See Reddick v. Chater, 157 F.3d 715, 720
7 (9th Cir. 1998); Marcia v. Sullivan, 900 F.2d 172, 174 (9th Cir. 1990). Substantial evidence
8 means "more than a mere scintilla" and "such relevant evidence as a reasonable mind might
9 accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401
10 (1971); see Reddick, 157 F.3d at 720.

11 In determining whether substantial evidence supports a decision, the Court considers
12 the administrative record as a whole, weighing both the evidence that supports and the
13 evidence that detracts from the ALJ's conclusion. See Reddick, 157 F.3d at 720. "The ALJ
14 is responsible for determining credibility, resolving conflicts in medical testimony, and for
15 resolving ambiguities." Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995); see
16 Magallanes v. Bowen, 881 F.2d 747, 750 (9th Cir. 1989). "If the evidence can reasonably
17 support either affirming or reversing the [Commissioner's] conclusion, the court may not
18 substitute its judgment for that of the [Commissioner]." Reddick, 157 F.3d at 720-21.

19 III. THE ALJ'S FINDINGS

20 In order to be eligible for disability or social security benefits, a claimant must
21 demonstrate an "inability to engage in any substantial gainful activity by reason of any
22 medically determinable physical or mental impairment which can be expected to result in
23 death or which has lasted or can be expected to last for a continuous period of not less than
24 12 months." 42 U.S.C. § 423(d)(1)(A). An ALJ determines a claimant's eligibility for
25 benefits by following a five-step sequential evaluation:

- 26 (1) determine whether the applicant is engaged in "substantial gainful activity";
- 27 (2) determine whether the applicant has a medically severe impairment or
28 combination of impairments;

1 (3) determine whether the applicant's impairment equals one of a number of listed
2 impairments that the Commissioner acknowledges as so severe as to preclude the
applicant from engaging in substantial gainful activity;

3 (4) if the applicant's impairment does not equal one of the listed impairments,
4 determine whether the applicant is capable of performing his or her past relevant
work;

5 (5) if the applicant is not capable of performing his or her past relevant work,
6 determine whether the applicant is able to perform other work in the national
economy in view of his age, education, and work experience.

7 See Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987) (citing 20 C.F.R. §§ 404.1520,
8 416.920). At the fifth stage, the burden of proof shifts to the Commissioner to show that the
9 claimant can perform other substantial gainful work. See Penny v. Sullivan, 2 F.3d 953, 956
10 (9th Cir. 1993).

11 At step one, the ALJ determined that Plaintiff had not engaged in substantial gainful
12 activity since May 12, 2009 – the alleged onset date. (Tr. at 20.) At step two, he found that
13 Plaintiff had the following severe impairment: spinal degenerative disc disease. (Tr. at 20-
14 22.) At step three, the ALJ stated that Plaintiff did not have an impairment or combination
15 of impairments that met or medically equaled an impairment listed in 20 C.F.R. Part 404,
16 Subpart P, Appendix 1 of the Commissioner's regulations. (Tr. at 22.) After consideration
17 of the entire record, the ALJ found that Plaintiff retained "the residual functional capacity
18 to perform sedentary work ... except that the claimant cannot climb ladders, ropes or
19 scaffolds; can occasionally climb ramps and stairs; can occasionally balance; cannot stoop,
20 crouch, kneel, and crawl; must have a sit/stand option that allows the claimant to sit or stand
21 alternatively at will provided he is not off-task more than 10% of the time; and must avoid
22 concentrated exposure to extreme heat and cold, all moving machinery, and unprotected
23 heights."¹ (Tr. at 22-27.)

24 The ALJ determined that Plaintiff was unable to perform any past relevant work, but
25 based on his age, education, work experience, and residual functional capacity, there are jobs

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27 ¹ "Residual functional capacity" is defined as the most a claimant can do after
28 considering the effects of physical and/or mental limitations that affect the ability to perform
work-related tasks.

1 that exist in significant numbers in the national economy that Plaintiff can perform. (Tr. at
2 27-29.) Therefore, the ALJ concluded that Plaintiff has not been under a disability from May
3 12, 2009, through the date of his decision. (Tr. at 29.)

4 IV. DISCUSSION

5 In his brief, Plaintiff contends that the ALJ's reliance on selective portions of Dr. Paul
6 Drinkwater's opinion is "unsupported by specific, legitimate rationales, and the addition of
7 his own limitations lacks medical foundation." Specifically, Plaintiff argues that the ALJ's
8 stated reasons for rejecting Dr. Drinkwater's assessed limitations in reaching, handling,
9 fingering, and feeling are not legitimate. Plaintiff additionally alleges that the ALJ
10 committed the "same error" with regard to his substitution of a sit/stand option for Dr.
11 Drinkwater's assessment of an overall limitation on the number of hours that Plaintiff could
12 sit or stand/walk in a day. Plaintiff requests that the Court remand for determination of
13 benefits.²

14 An ALJ must assess a claimant's residual functional capacity "based on all the
15 relevant medical and other evidence." 20 C.F.R. §§ 404.1520(e). Thus, the ALJ is not
16 required to adopt any one doctor's opinion in assessing a claimant's residual functional
17 capacity. Rather, the ALJ is charged with weighing all of the medical evidence and assessing
18 a residual functional capacity that is in line with the record as a whole. See Carmickle v.
19 Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008) (the ALJ is responsible for
20 resolving conflicts in the medical record). Further, an ALJ may reject an examining or
21 treating physician's opinion when it is inconsistent with the opinions of other treating or
22 examining physicians if the ALJ makes "findings setting forth specific, legitimate reasons
23 for doing so that are based on substantial evidence in the record." Thomas v. Barnhart, 278
24 F.3d 947, 957 (9th Cir. 2002) (quoting Magallanes, 881 F.2d at 751).

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27 ² Besides addressing discrete portions of Dr. Drinkwater's assessment that the ALJ
28 did not adopt, Plaintiff fails to point to any other error in the ALJ's opinion.

1 Historically, the courts have recognized the following as specific, legitimate reasons
2 for disregarding a physician's opinion: conflicting medical evidence; the absence of regular
3 medical treatment during the alleged period of disability; the lack of medical support for
4 doctors' reports based substantially on a claimant's subjective complaints of pain; and
5 medical opinions that are brief, conclusory, and inadequately supported by medical evidence.
6 See, e.g., Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005); Flaten v. Secretary of
7 Health and Human Servs., 44 F.3d 1453, 1463-64 (9th Cir. 1995); Fair v. Bowen, 885 F.2d
8 597, 604 (9th Cir. 1989). Here, the Court finds that the ALJ properly gave specific and
9 legitimate reasons, based on substantial evidence in the record, for discounting Dr.
10 Drinkwater's assessment regarding the manipulative and sitting, standing, and walking
11 limitations.

12 On June 1, 2010, Dr. Drinkwater reviewed Plaintiff's medical records and examined
13 him in connection with his disability application. (Tr. at 384-90.) Dr. Drinkwater found that
14 Plaintiff had tenderness and tightness in his lumbar back; had muscle spasms with
15 movement; was able to tandem walk a few steps; was able to squat only three-fourths of the
16 way; could grip 140 pounds with both hands; had normal leg muscle bulk but decreased
17 strength; had decreased range of motion in his hips, knees, and ankles; and had low back pain
18 with straight leg raises at 90 degrees. In his overall assessment of Plaintiff, Dr. Drinkwater
19 determined that Plaintiff had an exaggerated pain response and displayed exaggerated pain
20 behaviors with some decreased range of motion. (Tr. at 384-86.) He opined that Plaintiff
21 could lift and/or carry 10 pounds occasionally and less than 10 pounds frequently; sit, stand,
22 and/or walk for 4 hours each in an 8-hour workday; occasionally reach, handle, finger, feel,
23 and climb ramps and stairs; never stoop, kneel, crouch, crawl, or climb ladders, ropes, or
24 scaffolds; and should not work around heights, moving machinery, or extremes in
25 temperatures. (Tr. at 387-89.)

26 In his evaluation of Dr. Drinkwater's opinion, the ALJ stated,

27 I give great weight to the examination report and assessment of the
28 independent consultative rehabilitation physician (11F). That assessment also
evaluates the claimant as having a sedentary exertional capacity. However,

1 there are two material differences in the consultative psychiatrist's assessment.
2 There is only limited support in the record or in the examiner's own
3 observations for the recommended manipulative restrictions (11F/5). There
is also only limited support for the recommendation that the claimant can stand
and/or walk 4 hours in an 8-hour day (11F/4).

4 (Tr. at 26.)

5 With regard to the manipulative limitations set forth in Dr. Drinkwater's assessment
6 – that Plaintiff could only occasionally reach, handle, finger, or feel (Tr. at 388) – the ALJ
7 found contradictions in Dr. Drinkwater's own examination, which noted that Plaintiff had
8 a grip strength of 140 pounds with each hand as measured with a handheld dynamometer.
9 (Tr. at 26, 385.) Additionally, the record demonstrates a complete lack of objective medical
10 evidence regarding the manipulative limitations, and there is no indication of any subjective
11 complaints to any medical source regarding decreased strength or ability in his hands, nor
12 did Plaintiff testify that he had any such limitations.

13 In support of his position that Dr. Drinkwater's manipulative limitations should have
14 been adopted by the ALJ, Plaintiff points to Dr. Drinkwater's statement that Plaintiff
15 exhibited pain on shoulder testing, so he discontinued any additional upper extremity testing.
16 Plaintiff, however, ignores Dr. Drinkwater's conclusion that Plaintiff displayed "exaggerated
17 responses in pain and pain behaviors," which directly undermines Plaintiff's credibility as
18 to the exhibited pain in this instance. (Tr. at 26-27, 386.) Thus, the Court finds that the ALJ
19 reasonably discounted that portion of Dr. Drinkwater's opinion because it was inconsistent
20 with Dr. Drinkwater's own examination, and the extensive record fails to show any medical
21 evidence of said limitations or that Plaintiff ever complained of any such limitations.

22 Similarly, with regard to the sitting, standing, and walking limitations assessed by Dr.
23 Drinkwater – that Plaintiff was limited to sitting, standing, and/or walking 4 hours each in
24 an 8-hour workday (Tr. at 387-88) – the ALJ found that allowing Plaintiff the ability to
25 alternate between sitting and standing was more consistent with Plaintiff's limitations set
26 forth in the record as a whole. (Tr. at 26.) In reaching this conclusion, the ALJ noted that
27 Dr. Drinkwater's opinion was inconsistent with Plaintiff's own testimony stating that he sat
28 in front of the computer for an average six hours per day with breaks. (Tr. at 26, 46-47.)

