

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

7

8

9

Wade Wendelschafer,

)

CIV 12-1951-PHX-MHB

10

Plaintiff,

)

ORDER

11

vs.

)

12

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

)

13

Defendant.

)

14

Pending before the Court is Plaintiff Wade Wendelschafer’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.

15

16

17

18

19

I. PROCEDURAL HISTORY

20

21

22

23

24

25

26

27

28

In April 2007, Plaintiff filed applications for disability insurance benefits and supplemental security income alleging disability beginning May 30, 2007, due to neck and back impairments. (Tr. at 238-48.) An ALJ denied Plaintiff’s claims on October 8, 2009. (Tr. at 83-95.) Plaintiff subsequently requested review of the ALJ’s October 2009 decision and filed new applications for disability insurance benefits and supplemental security income. (Tr. at 167-68, 256-70.) In March 2010, the Appeals Council granted Plaintiff’s request for review, remanded the case to the ALJ for further proceedings, and instructed the ALJ to consolidate Plaintiff’s claims. (Tr. at 96-98.) On January 28, 2011, the ALJ issued a decision denying Plaintiff’s claims. (Tr. at 7-26.) The Appeals Council declined Plaintiff’s

1 request for review (Tr. at 1-6), making the ALJ's January 2011 decision the final decision
2 of the Commissioner. Plaintiff then sought judicial review of the ALJ's decision pursuant
3 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 30, 2007 – the alleged onset date. (Tr. at 12.) At step two, she found that
13 Plaintiff had the following severe impairments: spasmodic torticollis, cervical herniated
14 nucleus pulposus, cervical spine stenosis, nerve damage, cervical dystonia and lumbar
15 radiculopathy. (Tr. at 12.) At step three, the ALJ stated that Plaintiff did not have an
16 impairment or combination of impairments that met or medically equaled an impairment
17 listed in 20 C.F.R. Part 404, Subpart P, Appendix 1 of the Commissioner’s regulations. (Tr.
18 at 12-13.) After consideration of the entire record, the ALJ found that Plaintiff retained “the
19 residual functional capacity to perform light work ... except the claimant can never climb
20 ladders, ropes or scaffolds and occasionally climb ramps and stairs; frequently balance,
21 stoop, kneel, crouch and crawl; and should avoid concentrated exposure to hazards, including
22 heavy machinery and heights.”¹ (Tr. at 13-18.) The ALJ determined that Plaintiff was able
23 to perform past relevant work as a construction superintendent and truck driver. (Tr. at 18-
24 19.) Therefore, the ALJ concluded that Plaintiff has not been under a disability from May
25 30, 2007, through the date of her decision. (Tr. at 19.)

26
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 **IV. DISCUSSION**

2 In his brief, Plaintiff contends that the ALJ erred by: (1) failing to properly consider
3 his subjective complaints; (2) failing to properly consider lay witness or third-party
4 statements; and (3) failing to properly weigh medical source opinion evidence. Plaintiff
5 requests that the Court remand for determination of benefits.

6 **A. Plaintiff’s Subjective Complaints**

7 Plaintiff argues that the ALJ erred in rejecting his subjective complaints in the absence
8 of clear and convincing reasons for doing so.

9 To determine whether a claimant’s testimony regarding subjective pain or symptoms
10 is credible, the ALJ must engage in a two-step analysis. “First, the ALJ must determine
11 whether the claimant has presented objective medical evidence of an underlying impairment
12 ‘which could reasonably be expected to produce the pain or other symptoms alleged.’ The
13 claimant, however, ‘need not show that her impairment could reasonably be expected to
14 cause the severity of the symptom she has alleged; she need only show that it could
15 reasonably have caused some degree of the symptom.’” Lingenfelter v. Astrue, 504 F.3d
16 1028, 1036-37 (9th Cir. 2007) (citations omitted). “Second, if the claimant meets this first
17 test, and there is no evidence of malingering, ‘the ALJ can reject the claimant’s testimony
18 about the severity of her symptoms only by offering specific, clear and convincing reasons
19 for doing so.’” Id. at 1037 (citations omitted). General assertions that the claimant’s
20 testimony is not credible are insufficient. See Parra v. Astrue, 481 F.3d 742, 750 (9th Cir.
21 2007). The ALJ must identify “what testimony is not credible and what evidence undermines
22 the claimant’s complaints.” Id. (quoting Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995)).

23 In weighing a claimant’s credibility, the ALJ may consider many factors, including,
24 “(1) ordinary techniques of credibility evaluation, such as the claimant’s reputation for lying,
25 prior inconsistent statements concerning the symptoms, and other testimony by the claimant
26 that appears less than candid; (2) unexplained or inadequately explained failure to seek
27 treatment or to follow a prescribed course of treatment; and (3) the claimant’s daily
28 activities.” Smolen v. Chater, 80 F.3d 1273, 1284 (9th Cir. 1996); see Orn v. Astrue, 495

1 F.3d 624, 637-39 (9th Cir. 2007).² The ALJ also considers “the claimant’s work record and
2 observations of treating and examining physicians and other third parties regarding, among
3 other matters, the nature, onset, duration, and frequency of the claimant’s symptom;
4 precipitating and aggravating factors; [and] functional restrictions caused by the symptoms
5” Smolen, 80 F.3d at 1284 (citation omitted).

6 At the October 2010 administrative hearing, Plaintiff appeared with both a walker and
7 a cane and testified that he had been using these assistive devices for the previous eight or
8 nine months. (Tr. at 61.) He said that his wife had gotten him the walker because she
9 thought it would be easier for him to get around outside the house. Plaintiff reported he
10 could walk for 15 minutes at a time with his walker. (Tr. at 62.) He estimated that he could
11 sit for 15 to 30 minutes at a time and stand for around 10 to 20 minutes at a time. (Tr. at 68.)
12 Plaintiff reported he could lift about the weight of a gallon of milk. (Tr. at 69.) He stated
13 that he dozed between two and four hours per day, but less on the weekend when his
14 grandchildren were at his house. (Tr. at 63.) Plaintiff testified he had constant chronic pain
15 in his back and extremities. (Tr. at 64-65.) He said that his medications caused drowsiness.
16 (Tr. at 69.) Plaintiff reported that he did dishes and some laundry and he drove short
17 distances. (Tr. at 69-70.)

18 Having reviewed the record along with the ALJ’s credibility analysis, the Court finds
19 that the ALJ made extensive credibility findings and identified several clear and convincing
20 reasons supported by the record for discounting Plaintiff’s statements regarding his pain and
21 limitations. Although the ALJ recognized that Plaintiff’s medically determinable
22 impairments could reasonably be expected to cause the alleged symptoms, she also found that

24
25 ² With respect to the claimant’s daily activities, the ALJ may reject a claimant’s
26 symptom testimony if the claimant is able to spend a substantial part of her day performing
27 household chores or other activities that are transferable to a work setting. See Fair v.
28 Bowen, 885 F.2d 597, 603 (9th Cir. 1989). The Social Security Act, however, does not
require that claimants be utterly incapacitated to be eligible for benefits, and many home
activities may not be easily transferable to a work environment where it might be impossible
to rest periodically or take medication. See id.

1 Plaintiff's statements concerning the intensity, persistence, and limiting effects of the
2 symptoms were not fully credible. (Tr. at 13-16.)

3 In her evaluation of Plaintiff's testimony and other subjective statements of record,
4 the ALJ first referenced evidence of Plaintiff's daily activities finding that "claimant has
5 described daily activities which are not limited to the extent one would expect given the
6 complaints of disabling symptoms and limitations." (Tr. at 14.) "[I]f the claimant engages
7 in numerous daily activities involving skills that could be transferred to the workplace, an
8 adjudicator may discredit the claimant's allegations upon making specific findings relating
9 to the claimant's daily activities." Bunnell v. Sullivan, 947 F.2d 341, 346 (9th Cir. 1991)
10 (citing Fair, 885 F.2d at 603); see Berry v. Astrue, 622 F.3d 1228, 1234-35 (9th Cir. 2010)
11 (claimant's activities suggested a greater functional capacity than alleged).

12 The ALJ found that although Plaintiff had limitations "due to the residuals" of a
13 January 7, 2006 motor vehicle accident, he testified to being able to drive a car, and stated
14 that he does both the dishes and laundry. (Tr. at 14.) The ALJ determined that these are not
15 the activities of an individual as "severely debilitated as the claimant has alleged." (Tr. at
16 14.) The ALJ further noted that the ability to drive indicates the ability to use foot controls
17 and hands at the same time, suggesting more function than Plaintiff has alleged. (Tr. at 14.)
18 Moreover, citing to medical evidence from Jody Reiser, M.D., Plaintiff's treating provider,
19 the ALJ found that on January 1, 2009, Plaintiff reported that his pain was better with less
20 interference in all activities of daily living. (Tr. at 14, 510-24.) While not alone conclusive
21 on the issue of disability, an ALJ can reasonably consider a claimant's daily activities in
22 evaluating the credibility of his subjective complaints. See, e.g., Stubbs-Danielson v. Astrue,
23 539 F.3d 1169, 1175 (9th Cir. 2008) (upholding ALJ's credibility determination based in part
24 of the claimant's abilities to cook, clean, do laundry, and help her husband with the finances);
25 Burch v. Barnhart, 400 F.3d 676, 680-81 (9th Cir. 2005) (upholding ALJ's credibility
26 determination based in part on the claimant's abilities to cook, clean, shop, and handle
27 finances).

1 Next, in her credibility analysis, the ALJ addressed the type, dosage, effectiveness,
2 and side effects of medication taken to alleviate pain. (Tr. at 14.) The ALJ found that
3 Plaintiff has been prescribed and has taken the appropriate medications for the alleged
4 impairments. However, citing to medical records from 2007 to 2009, the ALJ noted that the
5 medications have been relatively effective in controlling Plaintiff's symptoms. The ALJ
6 specifically cited to a February 11, 2009 report wherein Plaintiff noted "significant
7 satisfaction with the current medication regime[n]." (Tr. at 14.) Turning to the side effects,
8 the ALJ found that the medical records "do not corroborate [Plaintiff's] allegations." (Tr.
9 at 14.) Specifically, the ALJ stated that the treatment records of Dr. Reiser consistently
10 indicate that Plaintiff has no side effects from his medications, including Fentanyl, Endocet,
11 Valium, Percocet, Cymbalta, and Amitriptyline. (Tr. at 14, 419-25, 463-82, 510-24, 598-
12 622.) The ALJ further recognized that the medical evidence indicated that Plaintiff has not
13 been entirely compliant in taking his prescribed medication – suggesting that his symptoms
14 may not be as limiting as alleged. (Tr. at 14, 510-24, 419-25.) And, similarly, the ALJ found
15 instances in the medical record wherein Plaintiff failed to follow-up on recommendations
16 made by his physician, which also suggests that his symptoms may not be as serious as
17 alleged. (Tr. at 14-15, 463-82.) The ALJ further documented that in February 2010, Plaintiff
18 was not willing to be referred to a pain management specialist. Dr. Reiser advised him that
19 she had no further treatment options to offer him. Later that year, Plaintiff declined to see
20 Dr. Reiser stating that there was nothing different to be found. (Tr. at 15, 672-77, 598-622.)

21 Lastly, in analyzing Plaintiff's subjective complaints, the ALJ discussed the objective
22 medical evidence finding that "[a]lthough the claimant has received treatment for the
23 allegedly disabling impairments, that treatment has been essentially routine and/or
24 conservative in nature." (Tr. at 15, 419-25, 463-82, 510-24, 545, 89, 598-622); see Johnson
25 v. Shalala, 60 F.3d 1428, 1434 (9th Cir. 1995) (evidence of "conservative treatment" is
26 sufficient to discount a claimant's testimony regarding severity of an impairment); Bray v.
27 Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 1227 (9th Cir. 2009) (upholding adverse
28 credibility finding where ALJ pointed out, in part, that claimant's statements at the hearing

1 did not comport with objective evidence in her medical record). Specifically, the ALJ
2 discussed Plaintiff's diagnostic studies and the findings of two neurosurgeons – both of
3 whom opined that Plaintiff's mild condition did not warrant invasive/surgical treat and
4 should be maintained with conservative treatment. (Tr. at 15, 463-82, 525-33.)

5 In summary, the Court finds that the ALJ provided a sufficient basis to find Plaintiff's
6 allegations not entirely credible. While perhaps the individual factors, viewed in isolation,
7 are not sufficient to uphold the ALJ's decision to discredit Plaintiff's allegations, each factor
8 is relevant to the ALJ's overall analysis, and it was the cumulative effect of all the factors
9 that led to the ALJ's decision. The Court concludes that the ALJ has supported his decision
10 to discredit Plaintiff's allegations with specific, clear and convincing reasons and, therefore,
11 the Court finds no error.

12 **B. Lay Witness/Third-Party Statements**

13 Plaintiff contends that the ALJ erred in failing to properly consider the statements of
14 his wife, who noted that his medical conditions cause pain, extremity numbness, memory
15 difficulty, and an inability to sustain an ordinary pace. Plaintiff asserts that the ALJ does not
16 recognize his wife's statements in the decision, which constitutes legal error.

17 In determining whether a claimant is disabled, an ALJ must consider lay witness
18 testimony regarding the claimant's inability to work. See Bruce v. Astrue, 557 F.3d 1113,
19 1115 (9th Cir. 2009) (citing Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050, 1053 (9th Cir.
20 2006)). An ALJ cannot disregard lay witness testimony without comment, see Bruce, 557
21 F.3d at 1115 (citing Nguyen v. Chater, 100 F.3d 1462, 1467 (9th Cir. 1996)), but may do so
22 only upon providing specific reasons that are "germane to each witness." Id. (quoting
23 Nyugen, 100 F.3d at 1467); Stout, 454 F.3d at 1054. When an ALJ errs in failing "to
24 properly discuss competent lay testimony favorable to the claimant, a reviewing court cannot
25 consider the error harmless unless it can confidently conclude that no reasonable ALJ, when
26 fully crediting the testimony, could have reached a different disability determination." Stout,
27 454 F.3d at 1056.

28

1 Here, the ALJ failed to properly discuss lay witness statements completed by
2 Plaintiff's wife. This was legal error. See Bruce, 557 F.3d at 1115 (lay testimony "is
3 competent evidence and 'cannot be disregarded without comment'") (citing Nguyen, 100
4 F.3d at 1467). However, the Court concludes that no reasonable ALJ, even if fully crediting
5 her statements, could have reached a different disability determination. The limitations and
6 symptoms contained in Plaintiff's wife's letter are entirely similar to and consistent with,
7 those which Plaintiff described in his own testimony. As a result, because this Court
8 concludes that the ALJ's decision to discredit Plaintiff's testimony was supported by
9 substantial evidence, and because Plaintiff's wife's statements were consistent with
10 Plaintiff's testimony, it was reasonable for an ALJ to disregard Plaintiff's wife's statements
11 as well. Therefore, the ALJ's error in disregarding Plaintiff's wife's statements was
12 harmless.

13 **C. Medical Source Opinion Evidence**

14 Plaintiff contends that the ALJ erred by failing to properly weigh medical source
15 opinion evidence. Specifically, Plaintiff argues that the ALJ improperly rejected the
16 assessments of Dr. Reiser and gave greater weight to the opinions of the examining and state
17 agency physician's opinions.

18 "The ALJ is responsible for resolving conflicts in the medical record." Carmickle v.
19 Comm'r, Soc. Sec. Admin., 533 F.3d at 1164. Such conflicts may arise between a treating
20 physician's medical opinion and other evidence in the claimant's record. In weighing
21 medical source opinions in Social Security cases, the Ninth Circuit distinguishes among three
22 types of physicians: (1) treating physicians, who actually treat the claimant; (2) examining
23 physicians, who examine but do not treat the claimant; and (3) non-examining physicians,
24 who neither treat nor examine the claimant. See Lester, 81 F.3d at 830. The Ninth Circuit
25 has held that a treating physician's opinion is entitled to "substantial weight." Bray v.
26 Comm'r, Soc. Sec. Admin., 554 F.3d 1219, 1228 (9th Cir. 2009) (quoting Embrey v. Bowen,
27 849 F.2d 418, 422 (9th Cir. 1988)). A treating physician's opinion is given controlling weight
28 when it is "well-supported by medically accepted clinical and laboratory diagnostic

1 techniques and is not inconsistent with the other substantial evidence in [the claimant's] case
2 record.” 20 C.F.R. § 404.1527(d)(2). On the other hand, if a treating physician's opinion
3 “is not well-supported” or “is inconsistent with other substantial evidence in the record,” then
4 it should not be given controlling weight. Orn, 495 F.3d at 631.

5 If a treating physician's opinion is not contradicted by the opinion of another
6 physician, then the ALJ may discount the treating physician's opinion only for “clear and
7 convincing” reasons. See Carmickle, 533 F.3d at 1164 (quoting Lester, 81 F.3d at 830). If
8 a treating physician's opinion is contradicted by another physician's opinion, then the ALJ
9 may reject the treating physician's opinion if there are “specific and legitimate reasons that
10 are supported by substantial evidence in the record.” Id. (quoting Lester, 81 F.3d at 830).
11 Since the opinion of Dr. Reiser was contradicted by examining and reviewing doctors'
12 opinions, as well as, other objective medical evidence, the specific and legitimate standard
13 applies.

14 Historically, the courts have recognized the following as specific, legitimate reasons
15 for disregarding a treating or examining physician's opinion: conflicting medical evidence;
16 the absence of regular medical treatment during the alleged period of disability; the lack of
17 medical support for doctors' reports based substantially on a claimant's subjective complaints
18 of pain; and medical opinions that are brief, conclusory, and inadequately supported by
19 medical evidence. See, e.g., Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005); Flaten
20 v. Secretary of Health and Human Servs., 44 F.3d 1453, 1463-64 (9th Cir. 1995); Fair, 885
21 F.2d at 604. The Court finds that the ALJ properly gave specific and legitimate reasons,
22 based on substantial evidence in the record, for discounting Dr. Reiser's opinion.

23 Following a motor vehicle accident in January 2006, Plaintiff began treatment with
24 his neurologist and treating physician Dr. Reiser in 2007, and continued treatment with her
25 through 2010. During this time period, Dr. Reiser completed multiple assessments of ability
26 to do work-related physical activities. Specifically, in July 2007, Dr. Reiser opined that, in
27 an eight-hour work day, Plaintiff can lift and/or carry 10 to 20 pounds; sit two to three hours;
28 stand less than one hour; walk one to two hours; can never crawl or climb, occasionally bend,

1 stoop, balance, crouch, and kneel; and has mild restrictions around unprotected heights and
2 moving machinery and moderate restrictions driving automotive equipment. (Tr. at 17, 498-
3 501.) In June 2008, Dr. Reiser assessed Plaintiff with the capacity to lift and/or carry 10 to
4 20 pounds; sit one to two hours; stand and/or walk one to two hours; occasionally bend,
5 crawl, climb, reach, stoop, balance, crouch, and kneel; and has moderate restrictions around
6 unprotected heights and total restrictions from being around moving machinery and driving
7 automotive equipment. (Tr. at 17, 535-40.) Dr. Reiser opined that Plaintiff is unable to
8 sustain work eight hours per day, five days per week on a regular basis. (Tr. at 17, 535-40.)
9 In December 2009, Dr. Reiser opined that Plaintiff has the capacity to lift and/or carry 10 to
10 15 pounds; sit less than two hours; stand and/or walk less than two hours; with the same
11 postural and environmental limitations as the previous assessment. (Tr. at 17, 592-93.) And,
12 in October 2010, Dr. Reiser assessed Plaintiff with the identical restrictions as the December
13 2009 assessment. (Tr. at 17, 681-82.) Dr. Reiser opined that Plaintiff is unable to sustain
14 work eight hours per day, five days per week, on a regular basis. (Tr. at 17, 681-82.)

15 In June 2008, State agency physician Thomas Glodek, M.D., assessed Plaintiff's
16 functional capacity and opined that in an eight-hour workday he has the capacity to lift
17 and/or carry 20 pounds occasionally and 10 pounds frequently; stand and/or walk about six
18 hours; sit about six hours; and perform unlimited pushing and/or pulling. (Tr. at 16, 454-61.)
19 Dr. Glodek further opined that Plaintiff is limited to never climbing ladders, ropes, and
20 scaffolds; occasionally climbing ramps and stairs; frequently balancing, stooping, kneeling,
21 crouching, and crawling; and avoid concentrated exposure to hazards. (Tr. at 16, 454-61.)

22 In February 2010, examining physician Robert Palmer, M.D., opined that Plaintiff
23 could lift and/or carry 20 pounds occasionally and 10 pounds frequently; stand and/or walk
24 six to eight hours; sit about six to eight hours; occasionally climb ramps and stairs; never
25 climb ladders, ropes, and scaffolds; occasionally kneel, crouch, and crawl; and frequently
26 stoop, reach, handle, finger, and feel. (Tr. at 16, 650-57.) He also stated Plaintiff was
27 restricted from working around heights, moving machinery, and temperature extremes. (Tr.
28 at 16, 650-57.)

1 In March 2010, Robert S. Hirsch, M.D., another state agency physician, reviewed the
2 record and assessed the same limitations of Plaintiff as Dr. Glodek – except that Dr. Hirsch
3 opined that Plaintiff could only occasionally crouch and crawl. (Tr. at 17, 658-65.)

4 In his evaluation of the objective medical evidence, the ALJ first addressed Dr.
5 Glodek’s medical assessment, noted above, and gave his opinion great weight. (Tr. at 16.)
6 The ALJ found that Dr. Glodek’s opinion was “consistent with the greater objective medical
7 evidence, including diagnostic studies, the claimant’s activities of daily living, and the record
8 as a whole.” (Tr. at 16.)

9 Next, the ALJ discussed the findings set forth in Dr. Palmer’s assessment. (Tr. at 16.)
10 The ALJ gave Dr. Palmer’s opinion “considerable weight” as is was consistent with the
11 doctor’s examination of Plaintiff, and it was generally consistent with the medical evidence
12 of record and the opinion of Dr. Glodek. (Tr. at 16.)

13 The ALJ then addressed the opinion of Dr. Hirsch finding that said opinion was
14 entitled to “considerable weight” since it was entirely consistent with the medical evidence
15 of record and the “controlling opinion of Dr. Glodek.” (Tr. at 17.)

16 Lastly, the ALJ spent the majority of her discussion of the objective medical evidence
17 examining Dr. Reiser’s treatment records and multiple assessments of ability to do work-
18 related physical activities from 2007 through 2010. (Tr. at 17-18.) In her analysis, the ALJ
19 stated, in pertinent part:

20 Dr. Reiser’s reports contain inconsistencies from form to form as to the extent
21 of the claimant’s limitations, and the doctor’s opinions are accordingly
22 rendered less persuasive. Further, the doctor’s own treatment records do not
23 support the extreme restrictions set forth [in] any of [the] opinions, nor do the
24 diagnostic studies []. In addition, the doctor’s own examination findings and
25 the findings of the claimant’s neurosurgeons that the degenerative changes of
26 the claimant’s spine were mild in nature and there was no significant foraminal
27 or spinal stenosis, no focal neurological deficits, and no structural
28 abnormalities (Exhibits 9F/9-10 and Exhibit 16F) do not support the
limitations opined by Dr. Reiser. Further, Dr. Reiser’s treatment records note
that the claimant had improvement from treatment. (Exhibit 15F/5, 10; Exhibit
25F/13). Moreover, as to the constant chronic pain that Dr. Reiser opined
renders the claimant unable to sustain work 8 hours a day, 5 days a week, Dr.
Reiser’s records note that the claimant reported that he was not taking
prescribed pain medications because he felt [that he] could deal with the pain.
(Exhibit 15F/12). This is inconsistent with an individual in such severe pain
that it keeps him from sustaining work activity. In addition, Dr. Reiser’s

1 opinion as to the claimant's functional limitations overall is inconsistent with
2 Dr. Reiser's own prior opinion in her treatment notes wherein she found only
3 that the claimant could not perform "heavy construction or operate heavy
4 machinery." (Exhibit 3F/7). That prior opinion comports with the residual
5 functional capacity described herein. Further, as to Dr. Reiser's opinion that
6 the claimant is totally restricted from driving automotive equipment (Exhibit
7 36F/2), this is inconsistent with the claimant's own testimony that he is able
8 to drive.

9 (Tr. at 17-18.)

10 The ALJ concluded stating that based on the above analysis, "the treating physician's
11 opinion is less supportable than that of the State agency's examining and reviewing
12 physicians (Exhibits 7F, 31F and 32F), which are consistent with the greater objective
13 medical evidence of record, and the record as a whole." (Tr. at 18.)

14 The Court finds that the ALJ did not err in her assessment of Dr. Reiser's opinion.
15 The ALJ discredited Dr. Reiser's opinion due to multiple inconsistencies contained in the
16 doctor's assessments of ability to do work-related physical activities, inconsistencies with
17 her own treatment record, inconsistencies with Plaintiff's own testimony, and inconsistencies
18 with the majority of medical opinions and the medical evidence as a whole. See, e.g.,
19 Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir. 2008) (finding the incongruity between
20 doctor's questionnaire responses and her medical records provides a specific and legitimate
21 reason for rejecting the opinion); Connett v. Barnhart, 340 F.3d 871, 875 (9th Cir. 2003) ("We
22 hold that the ALJ properly found that [the physician's] extensive conclusions regarding [the
23 claimant's] limitations are not supported by his own treatment notes. Nowhere do his notes
24 indicate reasons why [the physician would limit the claimant to a particular level of
25 exertion]."); Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001) (holding that the ALJ
26 properly rejected a physician's testimony because "it was unsupported by rationale or
27 treatment notes, and offered no objective medical findings to support the existence of [the
28 claimant's] alleged conditions"); Coley v. Astrue, 2010 WL 3220300, at * 14, 20 (D.Or.
Aug. 12, 2010) (holding that the claimant's daily activities were inconsistent with the treating
physician's marked limitations) (citing Rollins v. Massanari, 261 F.3d 853, 856 (9th Cir.

1 2001). Accordingly, the ALJ provided several specific and legitimate reasons, based on
2 substantial evidence in the record, for discounting Dr. Reiser's opinion.

3 **V. CONCLUSION**

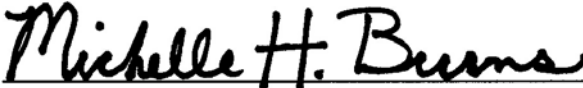
4 Substantial evidence supports the ALJ's decision to deny Plaintiff's claim for
5 disability insurance benefits and supplemental security income in this case. The ALJ
6 properly discredited Plaintiff's credibility providing clear and convincing reasons supported
7 by substantial evidence; the ALJ's error in disregarding Plaintiff's wife's statements was
8 harmless; and the ALJ properly discounted the opinion of Dr. Reiser, providing specific and
9 legitimate reasons, based on substantial evidence in the record. Consequently, the ALJ's
10 decision is affirmed.

11 Based upon the foregoing discussion,

12 **IT IS ORDERED** that the decision of the ALJ and the Commissioner of Social
13 Security be affirmed;

14 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment
15 accordingly. The judgment will serve as the mandate of this Court.

16 DATED this 28th day of February, 2014.

17 
18 _____

19 Michelle H. Burns
20 United States Magistrate Judge
21
22
23
24
25
26
27
28