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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Leonard Yazzie,

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CIV 08-8059-PCT-MHB

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Plaintiff,

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**ORDER**

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vs.

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Michael J. Astrue, Commissioner of Social Security,

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Defendant.

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Pending before the Court is Plaintiff Leonard Yazzie’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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On April 16, 2004, Plaintiff filed applications for Disability Insurance Benefits and Supplemental Security Income pursuant to Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401-433, 1381-1383(d), alleging disability since July 1, 2002. (Transcript of Administrative Record (“Tr.”) at 51-53, 176-78.) His applications were denied both initially and on reconsideration. (Tr. at 37-39, 41-43, 180-87.) Following a timely request from Plaintiff, a hearing was held before Administrative Law Judge (“ALJ”) Donald R. Jensen, on July 25, 2006. (Tr. at 262-303.) After taking the matter under advisement, the ALJ denied Plaintiff’s claims on December 15, 2006, finding Plaintiff not disabled. (Tr. at 17-26.) Plaintiff subsequently requested review of the ALJ’s decision by the Appeals Council.

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1 (Tr. at 11-16.) On March 14, 2008, the Appeals Council denied Plaintiff's request for  
2 review, thereby rendering the ALJ's decision the final decision of the Commissioner. (Tr.  
3 at 5-7.)

4 Plaintiff then commenced the instant action for judicial review pursuant to 42 U.S.C.  
5 §§ 405(g), 1383(c)(3). On October 31, 2008, Plaintiff moved for summary judgment. (Doc.  
6 #22.) Defendant filed a Cross-Motion for Summary Judgment and Response to Plaintiff's  
7 Motion for Summary Judgment on November 25, 2008. (Doc. #24.)

## 8 **II. STANDARD OF REVIEW**

9 The Court must affirm the ALJ's findings if the findings are supported by substantial  
10 evidence and are free from reversible legal error. See Reddick v. Chater, 157 F.3d 715, 720  
11 (9<sup>th</sup> Cir. 1998); Marcia v. Sullivan, 900 F.2d 172, 174 (9<sup>th</sup> Cir. 1990). Substantial evidence  
12 means "more than a mere scintilla" and "such relevant evidence as a reasonable mind might  
13 accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401  
14 (1971); see Reddick, 157 F.3d at 720.

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

## 23 **III. THE ALJ'S FINDINGS**

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

3 (1) determine whether the applicant is engaged in “substantial gainful  
4 activity”;

5 (2) determine whether the applicant has a medically severe impairment or  
6 combination of impairments;

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

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

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

16 See Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987) (citing 20 C.F.R. § 404.1520). At the  
17 fifth stage, the burden of proof shifts to the Commissioner to show that the claimant can  
18 perform other substantial gainful work. See Penny v. Sullivan, 2 F.3d 953, 956 (9<sup>th</sup> Cir.  
19 1993).

20 The ALJ found that Plaintiff had not engaged in “substantial gainful activity” since  
21 his alleged onset date. (Tr. at 22.) The ALJ determined that Plaintiff had the following  
22 impairments: disorders of the back including degenerative disc disease of the lumbar spine.  
23 (Tr. at 22-23.) He considered these impairments severe, but not severe enough to meet or  
24 medically equal any of the impairments listed in 20 C.F.R. Part 404, Subpart P, Appendix  
25 1 of the Commissioner’s regulations. (Tr. at 23.) After careful consideration of the entire  
26 record, the ALJ found that Plaintiff has the residual functional capacity to perform a limited  
27 range of light and sedentary work.<sup>1</sup> (Tr. at 23.) Plaintiff is able to lift 20 pounds on an  
28 occasional basis and lift 10 pounds frequently. (Tr. at 23.) Plaintiff is able to stand and/or  
walk for a total of six hours in an eight-hour workday and for up to 30 minutes at a time. (Tr.

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<sup>1</sup> “Residual functional capacity” is defined as the most a claimant can do after considering the effects of physical and/or mental limitations that affect the ability to perform work-related tasks. See 20 C.F.R. § 404.1545(a).

1 at 23.) Plaintiff is able to sit for about six hours during an eight-hour workday and for up to  
2 one hour at a time. (Tr. at 23.) Plaintiff should climb, balance, kneel, crouch, and crawl on  
3 no more than an occasional basis. (Tr. at 23.) Plaintiff has a limited education and is able  
4 to communicate in English. (Tr. at 24.) The ALJ determined that Plaintiff was unable to  
5 perform any of his past relevant work, but concluded that, notwithstanding his impairments  
6 and considering Plaintiff's age, education, work experience, and residual functional capacity,  
7 there are jobs that exist in significant numbers in the national economy that Plaintiff can  
8 perform. (Tr. at 24-25.) Accordingly, the ALJ found that Plaintiff was not disabled. (Tr.  
9 at 25-26.)

#### 10 **IV. DISCUSSION**

11 Plaintiff moves for summary judgment contending that the ALJ erred by: (1) failing  
12 to specify a significant number of jobs in the national economy that Plaintiff could perform;  
13 (2) noting only numbers of jobs available in the national economy; (3) failing to include  
14 Plaintiff's limited ability to communicate in English in the hypothetical questions posed to  
15 the vocational expert; (4) failing to make a specific residual functional capacity finding  
16 regarding Plaintiff's ability to sit, walk, and or stand for prolonged periods of time; and (5)  
17 determining that Plaintiff's statements regarding the intensity, persistence, and limiting  
18 effects of his symptoms were not entirely credible.

##### 19 **A. The ALJ's Finding Regarding the Significant Number of Jobs**

20 Plaintiff first argues that the ALJ erred by failing to specify a significant number of  
21 jobs in the national economy that Plaintiff could perform. Specifically, Plaintiff claims that  
22 the ALJ did not determine whether the number of jobs available was a substantial number  
23 and appeared to only use the numbers provided by the vocational expert. Plaintiff states that  
24 there is no indication how the ALJ arrived at his conclusion regarding a significant number  
25 of jobs.

26 There are two ways for the Commissioner "to meet the burden of showing that there  
27 is other work in 'significant numbers' in the national economy that claimant can perform: (a)  
28 by the testimony of a vocational expert, or (b) by reference to the Medical-Vocational

1 Guidelines [“Grids”] at 20 C.F.R. pt. 404, subpt. P, app. 2.” Tackett v. Apfel, 180 F.3d 1094,  
2 1100-01 (9<sup>th</sup> Cir. 1999); see Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9<sup>th</sup> Cir. 2001).  
3 However, the Commissioner cannot rely on the Grids when the Grids fail to adequately take  
4 into account claimant’s abilities and limitations; rather, the Commissioner must rely on the  
5 testimony of a vocational expert. See Thomas v. Barnhart, 278 F.3d 947, 960 (9<sup>th</sup> Cir. 2002);  
6 Osenbrock, 240 F.3d at 1162. Furthermore, hypothetical questions posed to a vocational  
7 expert must consider all of the claimant’s limitations, see Thomas, 278 F.3d at 956; Lewis  
8 v. Apfel, 236 F.3d 503, 517 (9<sup>th</sup> Cir. 2001), and “[t]he ALJ’s depiction of the claimant’s  
9 disability must be accurate, detailed, and supported by the medical record.” Tackett, 180  
10 F.3d at 1101. “If a vocational expert’s hypothetical does not reflect all the claimant’s  
11 limitations, then the ‘expert’s testimony has no evidentiary value to support a finding that the  
12 claimant can perform jobs in the national economy.’” Matthews v. Shalala, 10 F.3d 678, 681  
13 (9<sup>th</sup> Cir. 1993) (quoting DeLorme v. Sullivan, 924 F.2d 841, 850 (9<sup>th</sup> Cir. 1991)); Lewis, 236  
14 F.3d at 517.

15 In determining that there are jobs that exist in significant numbers in the national  
16 economy that Plaintiff can perform, the ALJ found that Plaintiff’s “ability to perform all or  
17 substantially all of the requirements of [a limited range of light and sedentary] work has been  
18 impeded by additional limitations.” (Tr. at 25.) Thus, “[t]o determine the extent to which  
19 these limitations erode the unskilled light occupational base, the [ALJ] asked the vocational  
20 expert whether jobs exist in the national economy for an individual with [Plaintiff’s] age,  
21 education, work experience, and residual functional capacity.” (Tr. at 25.)

22 The ALJ, specifically, asked the vocational expert what jobs an individual could  
23 perform if the individual was 45 years old; with a 10<sup>th</sup> grade education; had Plaintiff’s work  
24 history; could perform a range of light work; could lift 20 pounds occasionally and 10 pounds  
25 frequently; could stand or walk six hours of an eight-hour day; sit for six hours of an eight-  
26 hour day but must alternate sitting and standing; could only occasionally use lower  
27 extremities for foot controls; could only climb ramps, stairs, ladders, or scaffolds  
28 occasionally; could occasionally stoop, kneel, crouch, or crawl; and could balance frequently.

1 (Tr. at 298-99.) The expert responded that an individual with such limitations could perform  
2 60 percent of the unskilled sedentary and light work jobs found in the Dictionary of  
3 Occupational Titles. (Tr. at 299.) Three examples given by the vocational expert of light or  
4 sedentary occupations within this 60 percent included: call-out operator (unskilled sedentary  
5 – 218,000 jobs in the national economy); surveillance systems monitor (unskilled sedentary  
6 – 150,000 jobs in the national economy); and telephone quotation clerk (unskilled sedentary  
7 – 150,000 jobs in the national economy). (Tr. at 299-300.) The ALJ then asked the expert  
8 how these jobs might be reduced if the individual was also limited to 30 minutes of standing  
9 at a time and 1 hour of sitting at a time. (Tr. at 300.) The expert responded that there would  
10 be a 30 percent reduction in the number of jobs previously cited. (Tr. at 300.)

11 Based on the vocational expert’s testimony, the ALJ concluded that, considering  
12 Plaintiff’s age, education, work experience, and residual functional capacity, Plaintiff “has  
13 been capable of making a successful adjustment to other work that exists in significant  
14 numbers in the national economy.” (Tr. at 25.) Therefore, the ALJ stated that a finding of  
15 “not disabled” is appropriate. (Tr. at 25.)

16 Although the Ninth Circuit has never clearly established the minimum number of jobs  
17 necessary to constitute a “significant number” of jobs within the meaning of Step Five, see  
18 Barker v. Secretary of Health & Human Serv., 882 F.2d 1474, 1478-79 (9<sup>th</sup> Cir. 1989), the  
19 vocational expert testified that an individual with Plaintiff’s same limitations could perform  
20 60 percent of the unskilled sedentary and light work jobs found in the Dictionary of  
21 Occupational Titles. The vocational expert identified three examples of light or sedentary  
22 occupations within this 60 percent, which alone totaled 518,000 jobs nationally that Plaintiff  
23 can perform. Such numbers clearly constitute a significant number of jobs. See id.;  
24 Tommasetti v. Astrue, 533 F.3d 1035, 1042-43 (9<sup>th</sup> Cir. 2008). The Court finds the same  
25 result even considering a 30 percent reduction in the number of occupations in accordance  
26 with the vocational expert’s testimony regarding Plaintiff’s ability to work if further limited  
27 to 30 minutes of standing at a time and one hour of sitting at a time.

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1           Thus, the Court finds that substantial evidence supports the ALJ's Step Five  
2 determination that Plaintiff is not disabled.

3 **B.     The ALJ's Reliance on the Number of Jobs Available in the National Economy**

4           Plaintiff contends that the ALJ erred by noting only numbers of jobs available in the  
5 national economy. Plaintiff argues that the ALJ should have considered the number of jobs  
6 available for both the region and nation since he resides in an extremely remote area of the  
7 Navajo Reservation.

8           The Social Security Act does not require the ALJ to find that significant numbers of  
9 jobs exist in both the regional and national economies. See 42 U.S.C. §§ 423(d)(2)(A),  
10 1382c(a)(3)(B); 20 C.F.R. §§ 404.1566(a), 416.966(a). The Act defines work that exists in  
11 the national economy as that which exists in *either* the region where such individual lives or  
12 in several other regions of the country. See id.

13           Further, a finding that a significant number of jobs exist in the national economy may  
14 be found regardless of whether such work exists in the immediate area where the Plaintiff  
15 lives. See id.; Martinez v. Heckler, 807 F.2d 771, 775 (9<sup>th</sup> Cir. 1986). The Commissioner  
16 need not consider the geographical area where a plaintiff lives in making the determination  
17 of whether a significant number of jobs exist, as it is the number of jobs in the national  
18 economy and not their geographic location which is ultimately at issue. See Barker, 882 F.2d  
19 at 1479-80; Martinez, 807 F.2d at 775; see also Harmon v. Apfel, 168 F.3d 289, 292 (6<sup>th</sup> Cir.  
20 1999).

21           Thus, Plaintiff's argument that the ALJ had a burden to elicit the number of local jobs  
22 is unpersuasive. The Court, therefore, finds that the ALJ's decision that a significant number  
23 of jobs exist in the national economy is supported by substantial evidence.

24 **C.     The ALJ's Consideration of Plaintiff's Ability to Speak English**

25           Plaintiff alleges that his ability to communicate in English is impaired and that the  
26 ALJ failed to include this limitation in the hypothetical questions posed to the vocational  
27 expert.

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1           The ability to speak English is a vocational factor to be considered in determining  
2 Plaintiff's ability to perform a significant number of jobs in the national economy. See 20  
3 C.F.R. §§ 404.1564(b)(5), 416.964(b)(5). In his decision, the ALJ made an express finding  
4 that Plaintiff could communicate in English. (Tr. at 24.) Plaintiff, however, argues that his  
5 "ability to communicate clearly and effectively is somewhat impaired."

6           The Commissioner considers whether an individual is *unable* to speak, read, or  
7 understand English, not whether they have difficulty in doing so. See 20 C.F.R. §§  
8 404.1564(b)(5), 416.964(b)(5); 20 C.F.R. Part 404, Subpart P, Appendix 2, 201.00(h), (i).  
9 The record in this case supports neither conclusion.

10           Plaintiff circled "Yes" in response to the question of whether he could read and write  
11 English on May 20, 2004. (Tr. at 68.) Plaintiff chose "Yes" even though the other options  
12 of "No" and "A Little Bit" were available on the form. (Tr. at 68.) Further, Plaintiff testified  
13 on July 25, 2006, that he started speaking English when he went to boarding school. (Tr. at  
14 274.) While Plaintiff testified that English was his second language, he also stated that he  
15 could read and understand newspaper articles, and write letters. (Tr. at 273-74.) Moreover,  
16 the record demonstrates that Plaintiff testified in English at the hearing for almost an hour  
17 without an interpreter. (Tr. at 262-303.) Although the ALJ noted that Plaintiff spoke with  
18 an accent, neither the ALJ nor any of the parties present at the hearing requested clarification  
19 of a question or an answer due to any language barrier. (Tr. at 274, 262-303.)

20           Accordingly, based on the record supporting Plaintiff's ability to speak English, the  
21 Court finds that the ALJ's decision not to include Plaintiff's ability to speak English as a  
22 limitation on Plaintiff's ability to perform other work was proper. The ALJ's finding that  
23 Plaintiff could communicate in English is supported by substantial evidence.

24 **D.    The ALJ's Consideration of Plaintiff's Ability to Sit, Stand, and Walk**

25           Plaintiff asserts that the ALJ erred by failing to make a specific residual functional  
26 capacity finding regarding his ability to sit, walk, and or stand for prolonged periods of time.  
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1           The ALJ, after consideration of the entire record, concluded that Plaintiff retained the  
2 residual functional capacity to perform a limited range of light and sedentary work. (Tr. at  
3 23.) Specifically, he found that Plaintiff is able to lift 20 pounds on an occasional basis and  
4 lift 10 pounds frequently. (Tr. at 23.) Plaintiff is able to stand and/or walk for a total of six  
5 hours in an eight-hour workday and for up to 30 minutes at a time; and, Plaintiff is able to  
6 sit for about six hours during an eight-hour workday and for up to one hour at a time. (Tr.  
7 at 23.) The ALJ additionally determined that Plaintiff should climb, balance, kneel, crouch,  
8 and crawl on no more than an occasional basis. (Tr. at 23.)

9           In deciding Plaintiff's residual functional capacity, the ALJ first addressed Plaintiff's  
10 subjective allegations. (Tr. at 23.) During the course of the hearing, Plaintiff testified that  
11 he suffers from chronic, debilitating low back pain which radiates down his left leg to his  
12 thigh and knee. (Tr. at 23.) On a scale of 1 to 10, Plaintiff rated his pain as being an eight.  
13 (Tr. at 23.) Plaintiff testified that exertional activity aggravates his pain and claimed that he  
14 is not able to lift more than ten pounds occasionally, walk more than one block, stand more  
15 than 30 minutes at one time, or sit more than one hour at a time. (Tr. at 23.)

16           The ALJ found, however, that Plaintiff's allegations concerning the intensity,  
17 persistence, and limiting effects of his symptoms were not entirely credible and, as such, did  
18 not give full weight to Plaintiff's testimony with regard to his physical limitations. (Tr. at  
19 23-24.) The ALJ particularly noted the inconsistencies between Plaintiff's activities of daily  
20 living and Plaintiff's testimony as to his ability. (Tr. at 24.) For example, the ALJ identified  
21 that Plaintiff testified that during the day he is the primary caretaker of small children. (Tr.  
22 at 24.) Plaintiff testified that he is responsible for dressing, feeding, putting to bed, and  
23 picking up after these children. (Tr. at 24.) Plaintiff further stated that he takes the children  
24 to the park, vacuums and sweeps around the house, and waters the lawn by hand. (Tr. at 24.)  
25 The ALJ found this testimony consistent with Plaintiff's prior statements that he is able to  
26 perform light household work. (Tr. at 24.)

27           In his decision, the ALJ also found that Plaintiff testified that he is able to drive from  
28 his home in Sandy, Utah to Arizona to visit his brother, and that he is able to drive for "about

1 two hours before he must stop and walk around ... ." (Tr. at 24.) When in Arizona, Plaintiff  
2 helps take care of his brother's house and horses. (Tr. at 24.) The ALJ found this evidence  
3 consistent with a functional history report dated June 14, 2006, which demonstrated that  
4 Plaintiff is able to sit continuously for up to two hours, stand continuously for up to 30  
5 minutes, drive continuously for two hours, and walk continuously for 30 minutes. (Tr. at 24.)  
6 In that same report, Plaintiff stated that his lifting limit is 20 pounds. (Tr. at 24.)

7 The ALJ also considered the medical opinions of the State agency medical consultant,  
8 Dennis Taggart, M.D., and consultative physicians, Blair F. McGirk, M.D. and Gabriel L.  
9 Bonilla, M.D., in determining Plaintiff's residual functional capacity. (Tr. at 24.)

10 Dr. Taggart reviewed all relevant medical evidence and assessed Plaintiff's residual  
11 functional capacity on May 20, 2004. (Tr. at 104-113.) Dr. Taggart recorded that Plaintiff  
12 had a light residual functional capacity and stated that Plaintiff may need to "change  
13 positions to alleviate pain." (Tr. at 112.) Dr. Taggart further indicated that Plaintiff could  
14 lift 20 pounds occasionally, 10 pounds frequently, and stand and/or walk about six hours in  
15 an eight-hour workday. (Tr. at 105.) Dr. Taggart also found that Plaintiff could sit about six  
16 hours in an eight-hour workday with the requirement that he be allowed to periodically  
17 alternate sitting and standing to relieve pain or discomfort. (Tr. at 105.) Dr. Taggart stated  
18 that Plaintiff was limited in the amount he could push and/or pull with his lower extremities,  
19 but that Plaintiff could frequently balance and occasionally engage in "climbing, stooping,  
20 kneeling, crouching, and crawling." (Tr. at 105-106.) Dr. Taggart specifically noted  
21 inconsistencies between Plaintiff's allegations of disability and his "regular" travel "back &  
22 forth" from Arizona to Utah. (Tr. at 112.) The ALJ gave "great weight" to Dr. Taggart's  
23 opinion in formulating Plaintiff's residual functional capacity. (Tr. at 24.)

24 As the ALJ cited in his decision, on June 5, 2004, Dr. McGirk completed a  
25 consultative examination of Plaintiff by conducting a physical examination and testing  
26 Plaintiff's range of motion and strength. (Tr. at 83-86.) Plaintiff registered 5/5 in all strength  
27 categories except his knee, which registered 4/5 due to back pain. (Tr. at 85.) Plaintiff's  
28 range of motion was "intact," other than his limitation to only extend backwards "to vertical"

1 and rotate only 50 percent on his left. (Tr. at 85.) Plaintiff walked with “normal gait and  
2 speed without assistance,” could walk on his heels and toes without difficulty, could “bend  
3 90 degrees from vertical,” and could “squat fully.” (Tr. at 86.) Plaintiff stated that he daily  
4 “makes coffee,” “watches T.V.,” “eats breakfast,” “help[s] take care of his brother’s house  
5 and horses,” “can drive for about two hours,” and “can feed, bathe, and dress himself okay.”  
6 (Tr. at 84.) Dr. McGirk also noted that Plaintiff performed “light housework.” (Tr. at 84.)

7 In his decision, the ALJ also discussed a consultation evaluation of Plaintiff’s medical  
8 history performed by Dr. Bonilla on June 14, 2006, wherein Dr. Bonilla developed a pain  
9 management plan. (Tr. at 166-167.) Dr. Bonilla recommended more injections, pain  
10 medication management, and the future possibility of physical therapy and stretching. (Tr.  
11 at 166-167.) Dr. Bonilla also noted “radicular symptoms” of the left leg, such as a positive  
12 straight leg raise. (Tr. at 166.) Dr. Bonilla stated that Plaintiff should “get better hopefully”  
13 with treatment. (Tr. at 167.)

14 The residual functional capacity assessment must be based on all of the relevant  
15 evidence in the record, including the effects of symptoms that are reasonably attributed to  
16 a medically determinable impairment. See Social Security Ruling 96-8p. In addition, the  
17 ALJ “must consider limitations and restrictions imposed by all of an individual’s  
18 impairments, even those that are not ‘severe,’” because such limitations may be outcome  
19 determinative when considered in conjunction with limitations or restrictions resulting from  
20 other impairments. Id. SSR 96-8p provides a blueprint for what an residual functional  
21 capacity assessment must contain in all cases in which symptoms are alleged: (1) a thorough  
22 discussion and analysis of the objective medical and other evidence, including the  
23 individual’s complaints of pain and other symptoms and the ALJ’s personal observations, if  
24 appropriate; (2) a resolution of any inconsistencies in the evidence as a whole; and (3) a  
25 logical explanation of the effects of symptoms, including pain, on the individual’s ability to  
26 work.

27 Contrary to Plaintiff’s assertion that the ALJ erred by failing to make a specific  
28 residual functional capacity finding regarding his ability to sit, walk, and or stand for

1 prolonged periods of time, the Court finds that the ALJ provided: (1) a substantial and  
2 detailed discussion of the objective medical and other evidence; (2) a resolution of possible  
3 inconsistencies in the evidence; and (3) a logical explanation of the effects of symptoms on  
4 the individual's ability to work. The ALJ properly determined Plaintiff's residual functional  
5 capacity in relation to Plaintiff's limitations in sitting and standing. (Tr. at 23-24.) The ALJ  
6 included in Plaintiff's residual functional capacity that he was limited to 1 hour of sitting and  
7 30 minutes of standing at a time. (Tr. at 23-24.)

8 The Court, therefore, finds that the ALJ provided an adequate assessment of Plaintiff's  
9 limitations and a narrative discussion of how the medical evidence and other evidence of  
10 record supported his assessment of Plaintiff's residual functional capacity. The ALJ's  
11 residual functional capacity finding is supported by substantial evidence.

12 **E. The ALJ's Credibility Finding**

13 Plaintiff alleges that the ALJ failed to properly assess his credibility. Plaintiff  
14 contends that the ALJ failed to offer any legitimate reasons for rejecting his testimony  
15 regarding pain and his ability to work.

16 As the Court has noted, the ALJ is responsible for determining credibility. See  
17 Magallanes, 881 F.2d at 750. When deciding whether to accept the subjective testimony of  
18 a claimant, the ALJ must perform a two-part analysis. In the first part, the claimant must (1)  
19 produce objective medical evidence of one or more impairments; and (2) show that the  
20 impairment or combination of impairments could reasonably be expected to produce some  
21 degree of symptom. See Smolen v. Chater, 80 F.3d 1273, 1281-82 (9<sup>th</sup> Cir. 1996). The  
22 claimant is not required to produce objective medical evidence of the symptom itself, the  
23 severity of the symptom, or the causal relationship between the medically determinable  
24 impairment and the symptom. See id. at 1282. Rather, the claimant is only required to show  
25 that the impairment could reasonably have caused some degree of the symptom. See id.

26 In the second stage of the analysis, the ALJ must assess the credibility of the  
27 claimant's testimony regarding the severity of the symptoms. If there is no affirmative  
28 evidence of malingering, the ALJ may reject the claimant's testimony only if the ALJ makes

1 specific findings, stating clear and convincing reasons for the rejection. See id. at 1284. In  
2 evaluating the credibility of a claimant's testimony, evidence of claimant's daily activities,  
3 type and dosage of pain medication, treatment received, and the ALJ's own recorded  
4 observations of the claimant during the hearing are all relevant as part of the ALJ's overall  
5 assessment of the claimant. See Bunnell v. Sullivan, 947 F.2d 341, 346 (9<sup>th</sup> Cir. 1991).

6 The ALJ found objective evidence which demonstrated that Plaintiff had underlying  
7 medically determinable impairments that could reasonably cause the symptoms that Plaintiff  
8 alleged. (Tr. at 23.) The ALJ also found, however, that Plaintiff's statements regarding the  
9 intensity, persistence, and limiting effects of his symptoms were not entirely credible. (Tr.  
10 at 23.) In particular, the ALJ determined the following allegations to not be entirely credible:  
11 that Plaintiff experienced chronic and debilitating pain in his lower back which radiated to  
12 down his left leg and into his thigh; that Plaintiff experienced this pain at a level 8 out of 10;  
13 that exertional activity aggravated this pain; that Plaintiff was unable to lift more than 10  
14 pounds occasionally, walk more than one block, stand more than 30 minutes, or sit more than  
15 one hour. (Tr. at 23.)

16 The ALJ identified a number of clear and convincing reasons why he did not find  
17 Plaintiff's allegations of disabling pain to be entirely credible. (Tr. at 23-24.) First, the ALJ  
18 found that Plaintiff's testimony was inconsistent with the medical opinions of Drs. Taggart,  
19 McGirk, and Bonilla. (Tr. at 24.) While a lack of medical evidence cannot form the only  
20 basis for discounting complaints of subjective symptoms it is a factor available to the ALJ  
21 in making his credibility analysis. See Burch v. Barnhart, 400 F.3d 676, 681 (9<sup>th</sup> Cir. 2005).

22 Second, the ALJ noted that Plaintiff's allegations of physical limitations were in  
23 conflict with Plaintiff's extensive daily activities. (Tr. at 24.) Specifically, the ALJ found  
24 that Plaintiff's daily activities indicated a greater physical ability than that testified to by  
25 Plaintiff. (Tr. at 24.) Plaintiff testified that he was responsible for feeding, dressing,  
26 cleaning up after, and putting to bed small children. (Tr. at 24, 288-292.) Plaintiff also  
27 testified that he took his children to the park, (Tr. at 24, 290), and that he vacuumed and  
28 watered the lawn by hand (Tr. at 24, 288-89). The ALJ decided that this testimony was

1 consistent with a functional report completed in 2004 in which Plaintiff reported that he  
2 could perform light housework. (Tr. at 24, 69.) The ALJ also noted Plaintiff's testimony  
3 regarding his ability to drive two hours away to visit his brother and help take care of his  
4 brother's horses and house. (Tr. at 24, 84, 292.) This testimony is inconsistent with the  
5 information that Plaintiff provided at the hearing stating that he could only sit for one hour  
6 before needing to stand up. (Tr. at 286.) Furthermore, the ALJ found that Plaintiff's  
7 testimony was inconsistent with a functional limitation report from June 14, 2006, wherein  
8 Plaintiff stated that he is able to sit continuously for two hours, stand continuously for 30  
9 minutes, drive continuously for two hours, and walk continuously for 30 minutes. (Tr. at 24,  
10 170.)

11         The Ninth Circuit has held that the daily activities of cooking, house cleaning, doing  
12 laundry, and helping to manage finances supports a finding that the individual may be  
13 capable of performing "the basic demands of competitive, remunerative, unskilled work on  
14 a sustained basis." Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1175 (9<sup>th</sup> Cir. 2008). Similar  
15 to Stubbs-Danielson, the ALJ's analysis in this case reflects numerous clear and convincing  
16 reasons upon which the ALJ discredited Plaintiff's testimony of disabling symptoms  
17 including feeding his children, putting his children to bed, dressing his children, taking trips  
18 to visit his brother involving two-hour car drives, taking care of horses, doing housework,  
19 and watering the lawn.

20         In summary, the ALJ provided a sufficient basis to find Plaintiff's allegations not  
21 entirely credible, including: evidence of Plaintiff's daily activities and inconsistencies  
22 between Plaintiff's subjective complaints of disabling pain, his own testimony, and the  
23 greater objective medical record. While perhaps the individual factors, viewed in isolation,  
24 are not sufficient to uphold the ALJ's decision to discredit Plaintiff's allegations of disabling  
25 pain, each factor is relevant to the ALJ's overall analysis, and it was the cumulative effect  
26 of all the factors that led to the ALJ's decision. The Court concludes that the ALJ has  
27 supported his decision to discredit Plaintiff's allegations with specific, clear and convincing  
28 reasons and, therefore, the Court finds no error.

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**V. CONCLUSION**

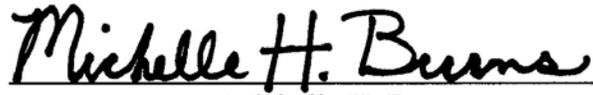
The Court finds that the ALJ properly concluded that Plaintiff is not disabled. Based upon the foregoing discussion,

**IT IS ORDERED** that Plaintiff's Motion for Summary Judgment (Doc. #22) is **DENIED**;

**IT IS FURTHER ORDERED** that Defendant's Cross-Motion for Summary Judgment (Doc. #24) is **GRANTED**;

**IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment accordingly.

DATED this 30th day of September, 2009.

  
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Michelle H. Burns  
United States Magistrate Judge