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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 James Chateauf,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin, Acting Commissioner
of Social Security,

13 Defendant.

No. CV-12-08246-PCT-DGC

ORDER

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15 On April 26, 2013, James Chateauf (“Plaintiff” or “the claimant”) filed an
16 opening brief challenging the Commissioner’s denial of his application for Social
17 Security benefits. Doc. 14. The Commissioner filed a response on May 15, 2013.
18 Doc. 15. Plaintiff has not filed a reply brief. For the reasons that follow the Court will
19 deny Plaintiff’s appeal of the Commissioner’s determination.

20 **I. Background.**

21 Plaintiff filed an application for disability insurance benefits and supplemental
22 security income in July 2009, alleging a disability onset date of May 30, 2007. On
23 December 20, 2011, Plaintiff amended his disability onset date to November 2, 2009.
24 Tr. at 250. After his initial claims were denied a hearing was held before an
25 Administrative Law Judge (“ALJ”) on January 9, 2012. On February 7, 2012, the ALJ
26 issued a decision in which he concluded that Plaintiff was not disabled within the
27 meaning of the Act prior to December 1, 2011, but became disabled on that date. The
28 ALJ’s decision became the Commissioner’s final decision when Plaintiff’s request for

1 review was denied by the Social Security Administration Appeals Council.

2 **II. Legal Standard.**

3 Defendant's decision to deny benefits will be vacated "only if it is not supported
4 by substantial evidence or is based on legal error." *Robbins v. Soc. Sec. Admin.*, 466 F.3d
5 880, 882 (9th Cir. 2006). "'Substantial evidence' means more than a mere scintilla, but
6 less than a preponderance, i.e., such relevant evidence as a reasonable mind might accept
7 as adequate to support a conclusion." *Id.* In determining whether the decision is
8 supported by substantial evidence, the Court must consider the record as a whole,
9 weighing both the evidence that supports the decision and the evidence that detracts from
10 it. *Reddick v. Charter*, 157 F.3d 715, 720 (9th Cir. 1998). If there is sufficient evidence
11 to support the Commissioner's determination, the Court cannot substitute its own
12 determination. *See Young v. Sullivan*, 911 F.2d 180, 184 (9th Cir. 1990).

13 **III. Analysis.**

14 For purposes of Social Security benefits determinations, a disability is

15 the inability to do any substantial gainful activity by reason of
16 any medically determinable physical or mental impairment
17 which can be expected to result in death or which has lasted
or can be expected to last for a continuous period of not less
than 12 months.

18 20 C.F.R. § 404.1505.

19 Determining whether a claimant is disabled involves a sequential five-step
20 evaluation. The claimant must show (1) he is not currently engaged in substantial gainful
21 employment, (2) he has a severe physical or mental impairment, and (3) the impairment
22 meets or equals a listed impairment or (4) his residual functional capacity ("RFC")
23 precludes him from performing his past work. If at any step the Commission determines
24 that a claimant is or is not disabled, the analysis ends; otherwise it proceeds to the next
25 step. If the claimant establishes his burden through step four, the Commissioner bears the
26 burden at step five of showing that the claimant has the RFC to perform other work that
27 exists in substantial numbers in the national economy. *See* 20 C.F.R. § 404.1520(a)(4)(i)-
28 (v).

1 At step one, the ALJ found that Plaintiff has not engaged in substantial gainful
2 employment since the amended disability onset date of November 2, 2009. Tr. at 15. In
3 satisfaction of step two, the ALJ found that the Plaintiff suffers from the following severe
4 impairments: cervical and lumbar degenerative disc disease, neuropathy, hypertension,
5 and thrombosis of the lower extremity. Tr. at 15. At step three, the ALJ considered the
6 record evidence and concluded that the claimant does not have an impairment or
7 combination of impairments that meets or equals the severity of one of the impairments
8 listed in the regulations. Tr. at 16. The ALJ then considered the relevant evidence and
9 determined that before December 1, 2011, Plaintiff had the RFC to perform light work as
10 defined in 20 C.F.R. § 404.1567(b) and 416.967(b). Tr. at 16. After December 1, 2011,
11 the ALJ concluded, Plaintiff's condition had worsened and he had the RFC to perform
12 only sedentary work as defined in 20 C.F.R. § 404.1567(a) and 416.967(a) with several
13 additional limitations. At step five, the ALJ concluded that prior to December 1, 2011,
14 Plaintiff had an RFC that would have permitted him to perform his past relevant work as
15 a deli clerk, cashier, and dining room manager as actually performed, but Plaintiff's RFC
16 prevented him from performing his past relevant work after December 1, 2011. Tr. at 20-
17 21. Finally, the ALJ concluded that after December 1, 2011, there were no jobs that exist
18 in significant numbers in the national economy that Plaintiff could perform. Tr. at 21.

19 Plaintiff contends that the ALJ misinterpreted evidence and improperly discounted
20 the opinion of a treating physician, and that he improperly discounted Plaintiff's
21 subjective complaints. Doc. 14 at 2.

22 **A. Medical Source Opinion.**

23 Plaintiff takes exception to the ALJ's statement that the opinion of his treating
24 nurse practitioner, Michele Peters, "remain[ed] without support." Doc. 14 at 4 (citing
25 Tr. at 20). Plaintiff believes that the objective tests performed on his back in 2009
26 provide adequate support for Peters' conclusion that he was disabled prior to
27 December 1, 2011. He also claims that the conservative course of treatment was a result
28 of his indigence and should not be used as evidence that his condition was not severe.

1 The opinion of a nurse practitioner is not an “acceptable medical source,” but it
2 can be considered as an opinion from “other sources.” *Gomez v. Chater*, 74 F. 3d 967,
3 970-71 (9th Cir. 1996); 20 C.F.R. §§ 404.1513(a) and (d). The regulations permit the
4 Commissioner to “accord opinions from other sources less weight than opinions from
5 acceptable medical sources.” *Gomez*, 74 F.3d at 970-71.

6 The ALJ did not ignore or misinterpret the objective evidence from the tests
7 performed in 2009. The ALJ detailed the results of the tests and concluded that while
8 they might suggest functional limitations, they were not sufficient evidence to conclude
9 that Plaintiff could not perform light work. Tr. at 17 (citing Exs. 1F, 4F). Furthermore,
10 the ALJ’s rejection of Peters’ assessment was based on more than a mere lack of
11 objective support. The ALJ reviewed and cited treatment notes that suggested few if any
12 limitations (Exs. 2F, 5F, 8F), a report from Plaintiff that his pain was under control
13 (Ex. 8F), and a report of successful physical therapy (Ex. 7F). Tr. at 17-18. He also cited
14 the opinions of an examining physician, Dr. Robert Baker, and two reviewing physicians
15 whose opinions uniformly contradicted Peters’. Tr. at 18. Finally, the ALJ noted that
16 Peters’ opinions were “rather extreme and without support from her treatment notes.”
17 Tr. at 19. While the ALJ noted the conservative course of treatment, it is clear that there
18 was substantial evidence to discount Peters’ assessment even without that factor.

19 **B. Plaintiff’s Subjective Testimony.**

20 The ALJ must engage in a two-step analysis to evaluate the credibility of a
21 claimant’s subjective testimony. “First, the ALJ must determine whether the claimant
22 has presented objective medical evidence of an underlying impairment ‘which could
23 reasonably be expected to produce the pain or other symptoms alleged.’” *Lingenfelter v.*
24 *Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (quoting *Bunnell v. Sullivan*, 947 F.2d 341,
25 344 (9th Cir. 1991) (en banc)). If the claimant meets this first test, and there is no
26 evidence of malingering, then the ALJ “can reject the claimant’s testimony about the
27 severity of her symptoms only by offering specific, clear and convincing reasons for
28 doing so.” *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996). “The ALJ may

1 consider at least the following factors when weighing the claimant's credibility:
2 claimant's reputation for truthfulness, inconsistencies either in claimant's testimony or
3 between her testimony and her conduct, claimant's daily activities, her work record, and
4 testimony from physicians and third parties concerning the nature, severity, and effect of
5 the symptoms of which claimant complains." *Thomas*, 278 F.3d at 958-59 (citing *Light*
6 *v. Soc. Sec. Admin.*, 119 F.3d 789,792 (9th Cir. 1997)).

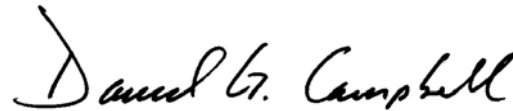
7 Here, the ALJ considered the evidence and found that "the claimant's medically
8 determinable impairments could reasonably be expected to cause the alleged symptoms;
9 however, the claimant's statements concerning the intensity, persistence and limiting
10 effects of these symptoms are not credible prior to December 1, 2011, to the extent they
11 are not inconsistent with the residual functional capacity assessment." Tr. at 17. In
12 support of this finding, the ALJ reviewed the results from objective tests, including the
13 November 2009 CT scan, and concluded that there was "no objective evidence to support
14 the claimant's allegations of debilitating symptoms and limitations." Tr. at 17.
15 Additionally, the same evidence that was used to discount Peters' opinion is also
16 applicable to an assessment of Plaintiff's credibility, particularly the report from Plaintiff
17 that his pain was under control (Ex. 8F) and the report of a successful stint in physical
18 therapy (Ex. 7F). Although he did not credit them in full, the ALJ also found the
19 opinions of the examining physician and two consulting physicians undermined
20 Plaintiff's subjective complaints because the "treating professionals consistently observed
21 that he appears in no acute distress." Tr. at 18-19 (citing Exs. 2F, 5F, 8F).

22 Finally, the ALJ noted inconsistencies in Plaintiff's testimony. Tr. at 19.
23 Particularly, he stated that Plaintiff claimed to have stopped working as a result of his
24 disability when records indicated that he had been laid off, and that Plaintiff claimed that
25 he was unable to drive, but later admitted that he could. Tr. at 19 (citing Exs. 2F, 3F).
26 Plaintiff argues that these inconsistencies do not undermine his credibility because he
27 amended his disability onset date to several months after he left his place of employment
28 and because he had not driven for several years. Doc. 14 at 7-8. Despite Plaintiff's

1 attempt to resolve the issues, the ALJ may consider “inconsistencies either in claimant’s
2 testimony or between [his] testimony and [his] conduct” when evaluating Plaintiff’s
3 credibility. *Thomas*, 278 F.3d at 958-59 (citing *Light v. Soc. Sec. Admin.*, 119 F.3d
4 789,792 (9th Cir. 1997)). Furthermore, even without these inconsistencies the ALJ has
5 offered other “specific, clear and convincing reasons” for discounting Plaintiff’s
6 subjective testimony. *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996).

7 **IT IS ORDERED** that Plaintiff’s appeal of the Commissioner’s decision
8 (Doc. 14) is **denied**.

9 Dated this 17th day of June, 2013.

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David G. Campbell
United States District Judge