

1 **WO**

NOT FOR PUBLICATION

2

3

4

5

6

**IN THE UNITED STATES DISTRICT COURT**

7

**FOR THE DISTRICT OF ARIZONA**

8

9 Braden Victor Darkins,

No. CV-14-08246-PCT-JJT

10

Plaintiff,

**ORDER**

11

v.

12

Carolyn W. Colvin,

13

Defendant.

14

15

16

17

18

19

20

**I. BACKGROUND**

21

22

23

24

25

26

27

28

At issue is the denial of Plaintiff Braden Victor Darkins's Application for Disability Insurance Benefits by the Social Security Administration ("SSA") under the Social Security Act ("the Act"). Plaintiff filed a Complaint (Doc. 1) with this Court seeking judicial review of that denial, and the Court now considers Plaintiff's Opening Brief (Doc. 14, "Pl.'s Br."), Defendant Social Security Administration Commissioner's Opposition (Doc. 15, "Def.'s Br."), and Plaintiff's Reply (Doc. 16, "Pl.'s Reply").

Plaintiff filed an Application for a Period of Disability and Disability Insurance Benefits under Titles II and XVIII of the Act on November 10, 2009, for a Period of Disability beginning October 16, 2008. (Doc. 11, R. at 340.) The parties do not dispute that Plaintiff's Last Date Insured for purposes of determining benefits under the Act is March 31, 2011. (R. at 340.) Plaintiff's claim was initially denied on March 18, 2010. (R. at 146.) Plaintiff testified at a hearing held before an Administrative Law Judge ("ALJ") on June 15, 2011. (R. at 73-123.) On July 6, 2011, the ALJ issued a decision denying Plaintiff's claim. (R. at 128-40.) On review, the Appeals Council ("AC") remanded

1 Plaintiff's case to the ALJ for further findings on December 7, 2012. (R. at 142-44.)  
2 Specifically, the AC ordered the ALJ to address the treatment records of Dr. Robyn  
3 Chase, to pose a hypothetical to a Vocational Expert that is consistent with the residual  
4 functional capacity (RFC) assessment, and to address Plaintiff's obesity. (R. at 142-44.)  
5 Plaintiff testified at another hearing held before the same ALJ on April 26, 2013. (R. at  
6 38-72.) On June 6, 2013, the ALJ issued another decision denying Plaintiff's claims. (R.  
7 at 12-24.) The AC upheld the ALJ's second decision on October 24, 2014. (R. at 1-3.)  
8 The present appeal followed.

9         The Court has reviewed the medical evidence in its entirety and provides a short  
10 summary here. In 2008 and 2009, Plaintiff was under the care of a primary care  
11 physician, Dr. Luis Egelsee. (*E.g.*, R. at 754-78.) Dr. Egelsee found that Plaintiff had a  
12 fractured vertebra in his lower back, and Plaintiff underwent surgery on October 16,  
13 2008, the alleged onset date. (R. at 798.) Plaintiff continued to see Dr. Egelsee after the  
14 surgery and underwent other procedures in his lower back, including medial branch  
15 blocks. (*E.g.*, R. at 436, 438, 483, 485, 487.) Dr. Egelsee prescribed medication and  
16 physical therapy and observed that Plaintiff experienced some improvement but had  
17 some difficulty standing, ambulating and sitting. (*E.g.*, R. at 754.)

18         On February 13, 2010, about 16 months after the alleged onset date, psychiatrist  
19 Dr. Rupali Chadha of the Los Angeles Department of Social Services examined Plaintiff.  
20 (R. at 580-87.) She observed that no psychiatric records regarding Plaintiff were available  
21 but that Plaintiff reported having Post Traumatic Stress Disorder (PTSD). (R. at 580.)  
22 Plaintiff took medication for depression which helped his low mood, and after an  
23 extensive examination, Dr. Chadha concluded that Plaintiff had mild depressive  
24 symptoms that are most likely due to lower back pain but that he did not meet the  
25 diagnostic criteria for Major Depressive Disorder and had no symptoms of PTSD. (R. at  
26 586.)

27         At about the same time, on February 18, 2010, Dr. H. Harian Bleecker of the Los  
28 Angeles Department of Social Services examined Plaintiff. (R. at 590-94.) He reported

1 that Plaintiff had at least two accidents, on a motorcycle in 2004 and rollerblading in  
2 2007, that he had various surgical procedures on his lower back in 2008 and 2009, that he  
3 used a cane if he was required to walk more than ten minutes, and that he took  
4 medications for pain. (R. at 590.) After a review of x-rays and an extensive physical and  
5 functional examination, Dr. Bleecker concluded that, while Plaintiff had radicular pain  
6 and numbness in his feet from his lower back injuries, Plaintiff could sit for six hours and  
7 stand and walk with a cane up to four hours within an eight-hour period, and could lift 20  
8 pounds occasionally and ten pounds frequently. (R. at 593.)

9 Plaintiff first sought treatment for back pain from Dr. Robyn Chase beginning in  
10 September 2010, nearly two years after the alleged onset date. (R. at 710.) Dr. Chase  
11 referred Plaintiff to physical therapy for his back pain and prescribed medication for  
12 depression. (R. at 711.) Dr. Chase provided evaluations of Plaintiff’s functional capacity  
13 in May 2011, August 2011 and March 2013—all of which were after the Last Date  
14 Insured. (R. at 643, 1362-70.) In those evaluations, Dr. Chase opined that Plaintiff  
15 showed “objective signs of radiculopathy (nerve damage) and myelopathy (muscular  
16 function),” that “his lower back x-rays and MRI do not explain these current findings,”  
17 and that “his CT myelogram of the neck does reveal spinal cord impingement on  
18 numerous levels.” (R. at 643.) Dr. Chase also opined that Plaintiff “suffers from  
19 depression and anxiety from his condition which is moderately controlled at the present  
20 time,” though there is no record of a psychological examination of Plaintiff by Dr. Chase.  
21 (R. at 643.) She concluded that Plaintiff “is prohibited by his body’s inability to sit or  
22 stand for long periods of time, as well as the pain that accompanies this.” (R. at 643; *see*  
23 *also* R. at 1362-70.)

## 24 **II. ANALYSIS**

25 The district court reviews only those issues raised by the party challenging the  
26 ALJ’s decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The court  
27 may set aside the Commissioner’s disability determination only if the determination is  
28 not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d

1 625, 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, but less than a  
2 preponderance; it is relevant evidence that a reasonable person might accept as adequate  
3 to support a conclusion considering the record as a whole. *Id.* In determining whether  
4 substantial evidence supports a decision, the court must consider the record as a whole  
5 and may not affirm simply by isolating a “specific quantum of supporting evidence.” *Id.*  
6 As a general rule, “[w]here the evidence is susceptible to more than one rational  
7 interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be  
8 upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

9 To determine whether a claimant is disabled for purposes of the Act, the ALJ  
10 follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the burden of  
11 proof on the first four steps, but the burden shifts to the Commissioner at step five.  
12 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ  
13 determines whether the claimant is presently engaging in substantial gainful activity. 20  
14 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not disabled and the inquiry ends. *Id.* At  
15 step two, the ALJ determines whether the claimant has a “severe” medically determinable  
16 physical or mental impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If not, the claimant is not  
17 disabled and the inquiry ends. *Id.* At step three, the ALJ considers whether the claimant’s  
18 impairment or combination of impairments meets or medically equals an impairment  
19 listed in Appendix 1 to Subpart P of 20 C.F.R. Part 404. 20 C.F.R. § 404.1520(a)(4)(iii).  
20 If so, the claimant is automatically found to be disabled. *Id.* If not, the ALJ proceeds to  
21 step four. *Id.* At step four, the ALJ assesses the claimant’s RFC and determines whether  
22 the claimant is still capable of performing past relevant work. 20 C.F.R.  
23 § 404.1520(a)(4)(iv). If so, the claimant is not disabled and the inquiry ends. *Id.* If not,  
24 the ALJ proceeds to the fifth and final step, where he determines whether the claimant  
25 can perform any other work in the national economy based on the claimant’s RFC, age,  
26 education, and work experience. 20 C.F.R. § 404.1520(a)(4)(v). If so, the claimant is not  
27 disabled. *Id.* If not, the claimant is disabled. *Id.*

28

1           **A. The ALJ Assigned Proper Weight to the Assessments of Plaintiff's**  
2           **Treating Physicians and Properly Considered the Record as a Whole**

3           Plaintiff disputes the ALJ's finding at step four of the five-step process,  
4 specifically, that when considering the combination of Plaintiff's impairments, Plaintiff's  
5 RFC allowed him to perform his past relevant work. Plaintiff's first argument is that the  
6 ALJ committed reversible error by assigning inadequate weight to the assessments of  
7 Plaintiff's medical care providers related to his lower back pain.<sup>1</sup> (Pl.'s Br. at 6-9.)  
8 Defendant argues that the ALJ properly weighed the treating professionals' assessments,  
9 offering specific and legitimate reasons supported by substantial evidence in the record  
10 for giving little weight to certain assessments. (Def.'s Br. at 5-12.)

11           An ALJ "may only reject a treating or examining physician's uncontradicted  
12 medical opinion based on 'clear and convincing reasons.'" *Carmickle v. Comm'r of Soc.*  
13 *Sec.*, 533 F.3d 1155, 1164 (9th Cir. 2008) (citing *Lester v. Chater*, 81 F. 3d 821, 830-31  
14 (9th Cir. 1996)). "Where such an opinion is contradicted, however, it may be rejected for  
15 specific and legitimate reasons that are supported by substantial evidence in the record."  
16 *Id.*

17           In this instance, the ALJ found that the assessments of two of Plaintiff's treating  
18 physicians, Dr. Egelsee and Dr. Chase, were contradicted by the assessments of Dr.  
19 Bleecker. (R. at 18-23.) The Court must therefore examine whether the ALJ provided  
20 specific and legitimate reasons for discounting the assessments of Dr. Egelsee and Dr.  
21 Chase, supported by substantial evidence when examining the record as a whole. *See*  
22 *Carmickle*, 533 F.3d at 1164.

23           Dr. Egelsee's treatment notes are very difficult—nearly impossible—to read. For  
24 example, Plaintiff contends that Dr. Egelsee's January 13, 2009 notes state that Plaintiff  
25 was "unable to sit or stand long period of time" (Pl.'s Br. at 8 (citing R. at 754)), but the  
26 notes do not so state. They appear to say, "Able to walk. Unable to sit for long periods

---

27  
28           <sup>1</sup> Plaintiff does not contend that the ALJ erred in assessing Plaintiff's alleged  
PTSD and depression.

1 [illegible].” (R. at 754.) No methodical evaluation by Dr. Egelsee of Plaintiff’s functional  
2 capacity appears in the record, whether legible or not. But, in a letter to the ALJ dated  
3 June 15, 2011, Dr. Egelsee stated that Plaintiff “is clearly disabled as a result of his  
4 physical and emotional issues and is unable to work in any meaningful capacity.” (R. at  
5 1288.)

6 The ALJ found that Dr. Egelsee’s generalized assessment of Plaintiff’s functional  
7 capacity was both inconsistent with Dr. Egelsee’s treatment records and unsupported by  
8 objective evidence, and the Court agrees. Several somewhat legible treatment notes—for  
9 example from June 11, 2009—state that Plaintiff’s symptoms (both physical and  
10 emotional) were under control with medication. (R. at 756.) Most other treatment notes  
11 are illegible and therefore can neither lend support nor detract from Dr. Egelsee’s later  
12 letter to the ALJ.

13 But on February 18, 2010, Dr. Bleecker methodically examined Plaintiff and  
14 thoroughly reviewed Plaintiff’s treatment history. (R. at 590-94.) Dr. Bleecker concluded  
15 that, while Plaintiff experienced pain and numbness from his injuries, he could sit for six  
16 hours and stand and walk with a cane up to four hours within an eight-hour period, and  
17 could lift 20 pounds occasionally and ten pounds frequently. (R. at 593.) The ALJ  
18 provided specific and legitimate reasons for discounting Dr. Egelsee’s generalized  
19 assessment of Plaintiff’s functional capacity and favoring that of examining physician Dr.  
20 Bleecker. (*See* R. at 22.)

21 Likewise, the Court agrees with the ALJ’s decision to discount the evaluations of  
22 Dr. Chase. First, as the ALJ pointed out, Dr. Chase only began to see Plaintiff nearly two  
23 years after the alleged onset date (and near the Last Date Insured), and she conducted all  
24 of her evaluations of Plaintiff’s functional capacity after the Last Date Insured. (*See* R. at  
25 22.) The connection of her reported findings to Plaintiff’s actual functional capacity on or  
26 around the alleged onset date is thus tenuous. The ALJ also concluded that Dr. Chase’s  
27 conclusions were not fully consistent with her treatment records or her reports that  
28 Plaintiff’s symptoms were improved with pain medication. (*See, e.g.*, R. at 670 (April 6,

1 2011—one week after Last Date Insured—”Med change last visit. He is doing well with  
2 these.”.) Dr. Chase’s own notes indicate that x-rays and MRIs did not show a cause for  
3 Plaintiff’s pain or show any instability in back flexion or extension. (*See, e.g.*, R. at 672,  
4 679 (January 26, 2011—”Patient would like to have a second opinion on his MRI results  
5 because the first report stated that there was nothing wrong.”).) And, along with being  
6 inconsistent with Dr. Bleecker’s findings, the ALJ pointed out that Dr. Chase’s findings  
7 were inconsistent with those of other treating doctors. (*See, e.g.*, R. at 445 (May 4, 2009:  
8 “Gait is normal,” “range of motion is full with mild tenderness,” “motor examination 5/5  
9 throughout,” and “patient’s clinical examination does not reveal any obvious causes for  
10 his low back pain, although facet arthropathy may contribute.”).) The ALJ provided  
11 specific and legitimate reasons for discounting Dr. Chase’s assessments of Plaintiff’s  
12 functional capacity and favoring those of other examining physicians. (*See* R. at 22.)

13 **B. The ALJ’s Alleged Misstatement of Fact Did Not Change the Outcome**

14 Plaintiff contends that the ALJ erred when he stated, “I have found no evidence of  
15 any nerve root impingement or severe stenosis to cause the severity of pain or limitations  
16 [Plaintiff] has alleged.” (Pl.’s Br. at 9 (citing R. at 20).) In support of the ALJ’s findings,  
17 multiple examining doctors concluded that Plaintiff’s symptoms were not explained by  
18 physical examinations of Plaintiff’s spine and lower back. (*See, e.g.*, R. at 445, 672.)  
19 Plaintiff contends that other reports do provide an explanation of a potential physical  
20 cause for his pain. (Pl.’s Br. at 9 (citing R. at 443, 643).) To the extent there is  
21 contradictory evidence of the physical cause of Plaintiff’s reported pain, the ALJ also  
22 relied on the functional capacity examinations of multiple examining physicians. (*See,*  
23 *e.g.*, R. at 445, 590-94.) Thus, even if the Court disregards the ALJ’s statement regarding  
24 evidence of the source of Plaintiff’s pain, the ALJ’s conclusions were supported by  
25 substantial evidence.

26 **C. The ALJ Properly Weighed Plaintiff’s Testimony**

27 Plaintiff also argues that the ALJ erred in his consideration of Plaintiff’s symptom  
28 testimony. (Pl.’s Br. at 10-11.) In response, Defendant contends that the ALJ gave

1 Plaintiff's testimony the proper weight because some of his testimony was not supported  
2 by objective medical evidence, Plaintiff was somewhat successful in controlling his  
3 symptoms with medication and treatment and failed to follow certain treatment regimens,  
4 and Plaintiff engaged in physical activity despite his claimed limitations. (Def.'s Br. at  
5 13-20.)

6 While credibility is the province of the ALJ, an adverse credibility determination  
7 requires the ALJ to provide "specific, clear and convincing reasons for rejecting the  
8 claimant's testimony regarding the severity of the claimant's symptoms." *Treichler v.*  
9 *Comm'r of Soc. Sec.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (citing *Smolen v. Chater*, 80  
10 F.3d 1273, 1281 (9th Cir. 1996)). The ALJ disagreed with certain statements of Plaintiff  
11 regarding the intensity, persistence and limiting effects of his conditions and his  
12 conclusion that he is disabled. (R. at 27, 41.)

13 In the instances in which the ALJ assigned little value to Plaintiff's statements, the  
14 Court finds the ALJ gave specific, clear and convincing reasons for doing so. The ALJ  
15 pointed out that Plaintiff's reports of his functional limitations were not consistent with  
16 the findings of examining physicians (as detailed above); that Plaintiff's pain improved  
17 with medication and medial branch blocks and that he declined certain other treatment  
18 regimens, such as regular exercise (*see, e.g.*, R. at 446-47, 664, 701, 704, 741-42); and  
19 that Plaintiff engaged in physical activities inconsistent with his reports of pain, such as  
20 driving to California, fishing with his son, and lifting and moving objects (*see, e.g.*, R. at  
21 692, 696, 1294). The ALJ's credibility determination was thus supported by substantial  
22 evidence in the record and free from error. *See* 20 C.F.R. § 404.1529(c)(3); *Stubbs-*  
23 *Danielson v. Astrue*, 539 F.3d 1169, 1175 (9th Cir. 2008); *Warre ex rel. E.T. IV v.*  
24 *Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006).

### 25 **III. CONCLUSION**

26 Plaintiff raises no error on the part of the ALJ, and the SSA's decision denying  
27 Plaintiff's Application for a Period of Disability and Disability Insurance Benefits under  
28 the Act was supported by substantial evidence in the record.

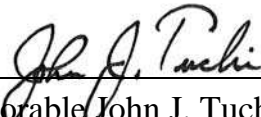


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS THEREFORE ORDERED affirming the June 6, 2013 decision of the Administrative Law Judge, (R. at 12-24), as upheld by the Appeals Council on October 24, 2014 (R. at 1-3).

IT IS FURTHER ORDERED directing the Clerk to enter final judgment consistent with this Order and close this case.

Dated this 15<sup>th</sup> day of March, 2016.

  
\_\_\_\_\_  
Honorable John J. Tuchi  
United States District Judge