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I.

DISPUTED ISSUE

As reflected in the Joint Stipulation, the sole disputed issue which Plaintiff raises as the ground for reversal and/or remand is whether the Administrative Law Judge (“ALJ”) properly rejected Plaintiff’s credibility regarding his subjective symptoms. (JS at 4.)

II.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to determine whether the Commissioner’s findings are supported by substantial evidence and whether the proper legal standards were applied. DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means “more than a mere scintilla” but less than a preponderance. Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Desrosiers v. Sec’y of Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir. 1988). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at 401 (citation omitted). The Court must review the record as a whole and consider adverse as well as supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30 (9th Cir. 1986). Where evidence is susceptible of more than one rational interpretation, the Commissioner’s decision must be upheld. Gallant v. Heckler, 753 F.2d 1450, 1452 (9th Cir. 1984).

III.

DISCUSSION

The ALJ Properly Considered Plaintiff’s Subjective Complaints and Properly Assessed Plaintiff’s Credibility.

Plaintiff contends that the ALJ improperly assessed his subjective symptoms in determining his residual functional capacity (“RFC”) and credibility. (JS at 7.)

1 Plaintiff also argues that the ALJ's rejection of Plaintiff's subjective symptoms
2 based on lack of objective evidence is legally insufficient. (Id. at 7, 17.) Further,
3 Plaintiff claims that the ALJ's adverse credibility determination based upon
4 Plaintiff's daily activities is erroneous; Plaintiff states, "In short, the ALJ's
5 obligation was not simply to point out [Plaintiff] can dress and feed himself or
6 perform some sporadic activities, but to demonstrate that those abilities are
7 consistent with his ability to perform work." (Id. at 10.) The Court disagrees.

8 **A. Applicable Law.**

9 An ALJ's assessment of pain severity and claimant credibility is entitled to
10 "great weight." Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v.
11 Heckler, 779 F.2d 528, 531 (9th Cir. 1986). When, as here, an ALJ's disbelief of a
12 claimant's testimony is a critical factor in a decision to deny benefits, the ALJ must
13 make explicit credibility findings. Rashad v. Sullivan, 903 F.2d 1229, 1231 (9th
14 Cir. 1990); Lewin v. Schweiker, 654 F.2d 631, 635 (9th Cir. 1981); see also
15 Albalos v. Sullivan, 907 F.2d 871, 874 (9th Cir. 1990) (an implicit finding that
16 claimant was not credible is insufficient).

17 Under the "Cotton test," where the claimant has produced objective medical
18 evidence of an impairment which could reasonably be expected to produce some
19 degree of pain and/or other symptoms, and the record is devoid of any affirmative
20 evidence of malingering, the ALJ may reject the claimant's testimony regarding
21 the severity of the claimant's pain and/or other symptoms only if the ALJ makes
22 specific findings stating clear and convincing reasons for doing so. See Cotton v.
23 Bowen, 799 F.2d 1403, 1407 (9th Cir. 1986); see also Smolen v. Chater, 80 F.3d
24 1273, 1281 (9th Cir. 1996); Dodrill v. Shalala, 12 F.3d 915, 918 (9th Cir. 1993);
25 Bunnell v. Sullivan, 947 F.2d 341, 343 (9th Cir. 1991).

26 To determine whether a claimant's testimony regarding the severity of his
27 symptoms is credible, the ALJ may consider, *inter alia*, the following evidence: (1)
28 ordinary techniques of credibility evaluation, such as the claimant's reputation for

1 lying, prior inconsistent statements concerning the symptoms, and other testimony
2 by the claimant that appears less than candid; (2) unexplained or inadequately
3 explained failure to seek treatment or to follow a prescribed course of treatment;
4 (3) the claimant's daily activities; and (4) testimony from physicians and third
5 parties concerning the nature, severity, and effect of the claimant's symptoms.
6 Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002); see also Smolen, 80
7 F.3d at 1284.

8 SSR 96-7p³ further provides factors that may be considered to determine a
9 claimant's credibility such as: 1) the individual's daily activities; 2) the location,
10 duration, frequency, and intensity of the individual's pain and other symptoms; 3)
11 factors that precipitate and aggravate the symptoms; 4) the type, dosage,
12 effectiveness, and side effects of any medication the individual takes or has taken
13 to alleviate pain or other symptoms; 5) treatment, other than medication, the
14 individual receives or has received for relief of pain or other symptoms; 6) any
15 measures other than treatment the individual uses or has used to relieve pain or
16 other symptoms (e.g., lying flat on his or her back, standing for 15 to 20 minutes
17 every hour, or sleeping on a board); and 7) any other factors concerning the
18 individual's functional limitations and restrictions due to pain or other symptoms.
19 SSR 96-7p.

20 **B. Analysis.**

21 Here, the ALJ discredited Plaintiff's credibility as to his subjective
22 symptoms for the following reasons: (i) Plaintiff's daily activities were
23 inconsistent with the allegations of disabling pain; and (ii) the disabling symptoms
24 are unsupported by the objective medical record. (Administrative Record ("AR")
25 at 13-16.)

26
27 ³ Social Security Rulings are binding on ALJs. See Terry v. Sullivan, 903
28 F.2d 1273, 1275 n.1 (9th Cir. 1990).

1 Relying upon Plaintiff's own description of his daily activities, the ALJ
2 found Plaintiff not be a credible witness and discredited the severity of his
3 subjective complaints. (Id. at 13.) According to Plaintiff's own statements and
4 testimony, he lived alone and was able to perform household chores including
5 cooking, dusting, and light-weight grocery shopping without assistance. (Id. at 36-
6 38, 118-19.) Plaintiff also stated that he can sit for approximately thirty minutes,
7 stand for fifteen minutes, walk for thirty minutes, and lift approximately ten
8 pounds. (Id. at 32-33, 119.) Plaintiff also socialized for about thirty minutes daily,
9 drove five to ten miles, and completed chores for up to thirty minutes. (Id. at 118.)
10 Despite these daily activities, Plaintiff testified that he suffers from neck and back
11 pain twenty-fours a day at a pain level of ten on a ten point scale, with no
12 alleviation from pain medications. (Id. at 36, 117.) The ALJ discredited Plaintiff's
13 testimony as to his subjective complaints as follows:

14 After considering the evidence of record, I find that the claimant's
15 medically determinable impairments could reasonably be expected to
16 produce the alleged symptoms but that the claimant's statements
17 concerning the intensity, persistence and limiting effects of these
18 symptoms are not entirely credible. The claimant's activities of daily
19 living such as driving his car, doing light housekeeping chores without
20 assistance, and shopping, and the fact that he has lived alone and takes
21 Aleve for pain are not consistent with allegations of disability and a pain
22 level of 10.

23 (Id. at 13.) The Court finds that the ALJ could properly rely on Plaintiff's daily
24 activities, such as, inter alia, completing household chores, cooking, driving, and
25 shopping, to support his adverse credibility determination. See, e.g., Thomas, 278
26 F.3d at 958-59 (ALJ may properly consider inconsistencies between claimant's
27 testimony and claimant's daily activities); Morgan v. Apfel, 169 F.3d 595, 599-600
28 (9th Cir. 1999) (ALJ may properly rely on contradictions between claimant's

1 reported limitations and claimant's daily activities); Tidwell v. Apfel, 161 F.3d
2 599, 602 (9th Cir. 1998) (daily activities inconsistent with total disability
3 undermined subjective testimony of disabling pain); Orteza v. Shalala, 50 F.3d
4 748, 750 (9th Cir. 1995) (ALJ may properly rely on claimant's daily activities,
5 including ability to drive); Fair v. Bowen, 885 F.2d 597, 604 (9th Cir. 1989) (ALJ
6 may properly rely on daily activities inconsistent with claim of disabling pain);
7 SSR 96-7p.

8 The ALJ also based his adverse credibility determination on the findings of
9 the medical sources and the lack of objective medical evidence to support
10 Plaintiff's disabling symptoms. (AR at 13-16.) The ALJ provided an extensive
11 summary of the medical findings, which Plaintiff does not dispute. (Id.; JS at 3.)
12 In his summary of the medical evidence, the ALJ indicated that Plaintiff had
13 received and responded positively to treatment and demonstrated a decrease in
14 disabling symptoms. (AR at 13-16, 193, 204, 219, 361-62, 447-48.) Moreover,
15 many objective medical tests, such as MRIs and electrodiagnostic studies, resulted
16 in normal findings. (Id. at 13-16, 166-78, 203, 275-80, 352-53.) Several
17 orthopedic and neurological doctors evaluated Plaintiff and assessed primarily
18 normal findings. (Id. at 13-16, 184-87, 214-20, 390-94.) Finally, the ALJ relied
19 upon several opinions from physicians, both consultative and treating, all
20 indicating that Plaintiff could perform work consistent with the ALJ's RFC
21 assessment. (Id. at 13-16, 384, 393, 395-402.) In finding Plaintiff's disabling
22 symptoms unsupported by the objective medical record, the ALJ stated:

23 The objective medical findings generally do not substantiate the extent
24 of the claimant's allegations All opinions in the record agree that
25 the claimant could perform a range of light work except for the
26 January 2008 opinion of Dr. Willis and the opinion of Dr. Kan. Dr.
27 Kan is not a medical expert doctor but is a chiropractor. Dr. Kan has
28 not had active contact with the claimant since the claimant's surgery.

1 Thus, his opinion does not merit significant weight. Dr. Willis's
2 January 2008 opinion is given less weight because she has not had
3 sufficient contact with the claimant since 2005. Moreover, Dr. Willis
4 does not show adequate support for her very restrictive limitations,
5 which contradict her own treatment notes. Dr. Jensen heard the
6 claimant's testimony, cited the record, and provided a cogent rationale
7 for his assessment. Furthermore, Dr. Jensen is an orthopedic
8 specialist. For these reasons, I give the most weight to and adopt Dr.
9 Jensen's opinion.⁴

10 (Id. at 13-16.) The record supports the ALJ's finding in that there was a lack of
11 objective medical evidence to support Plaintiff's claims. (Id. at 13-16, 166-78,
12 184-87, 193, 203-04, 214-20, 275-80, 352-53, 361-62, 384, 390-402, 447-48).
13 Accordingly, the ALJ properly discounted Plaintiff's credibility based upon the
14 findings from his treating and consultative physicians regarding the nature,
15 severity, and effect of Plaintiff's disabling complaints. See Thomas, 278 F.3d at
16 958-59; see also Smolen, 80 F.3d at 1284.

17 Plaintiff argues that the ALJ erred by relying solely upon the lack of
18 objective medical evidence to discredit Plaintiff's credibility. (JS at 7.) Plaintiff
19 cites Bunnell as support for his proposition. Plaintiff contends that the Bunnell
20 court rejected a prior credibility standard requiring both objective medical evidence
21 of the underlying impairment, and objective medical evidence to corroborate the
22 severity of the pain alleged. Bunnell, 947 F.2d at 343. The Bunnell court,
23 however, elaborated upon a standard, consistent with this Court's standard, for
24 adducing a plaintiff's credibility:

25 Once the claimant produces objective medical evidence of an underlying
26

27 ⁴ Notably, Plaintiff does not allege that the ALJ improperly weighed or
28 considered the medical evidence. Thus, the Court declines to discuss this issue.

1 impairment, an adjudicator may not reject a claimant's subjective
2 complaints based solely on a lack of objective medical evidence to fully
3 corroborate the alleged severity of pain. Further, although an adjudicator
4 may find the claimant's allegations of severity to be not credible, the
5 adjudicator must specifically make findings which support this
6 conclusion.

7 Id. at 345; Thomas, 278 F.3d at 958-59; see also Smolen, 80 F.3d at 1284. Here,
8 the ALJ discredited Plaintiff's credibility within the bounds of this standard. The
9 ALJ based his adverse credibility determination on Plaintiff's daily activities and
10 the lack of objective medical evidence to support the disabling contentions. Thus,
11 Plaintiff's argument that the ALJ relied solely upon the lack of objective medical
12 evidence is without merit.

13 Based on the foregoing, the Court finds that the ALJ provided clear and
14 convincing reasons, supported by substantial evidence, for rejecting Plaintiff's
15 subjective symptoms and discounting his credibility. Thus, there was no error.

16 **IV.**

17 **ORDER**

18 Based on the foregoing, IT THEREFORE IS ORDERED that Judgment be
19 entered affirming the decision of the Commissioner, and dismissing this action
20 with prejudice.

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22 Dated: November 24, 2009



23 **HONORABLE OSWALD PARADA**
24 United States Magistrate Judge
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