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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARIAN TRULIK, <sup>1</sup>	)	Case No. CV 13-5666-JPR
	)	
Plaintiff,	)	
	)	<b>MEMORANDUM OPINION AND ORDER</b>
vs.	)	<b>AFFIRMING THE COMMISSIONER</b>
	)	
CAROLYN W. COLVIN,	)	
Acting Commissioner of	)	
Social Security,	)	
	)	
Defendant.	)	
	)	

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**I. PROCEEDINGS**

Plaintiff seeks review of the Commissioner's final decision denying his application for Social Security disability insurance benefits ("DIB") and supplemental security income benefits ("SSI"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). This matter is before the Court on the parties' Joint Stipulation, filed August 22, 2014, which the Court has taken under submission without oral argument. For the reasons discussed below, the

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<sup>1</sup> The Complaint was filed under the name Marian Turlick, but on August 20, 2014, Plaintiff filed notice that his last name is actually "Trulik."

1 Commissioner's decision is affirmed and judgment is entered in  
2 her favor.

3 **II. BACKGROUND**

4 Plaintiff was born on September 27, 1950. (Administrative  
5 Record ("AR") 179.) He completed four or more years of college.  
6 (AR 221.) He worked full time from 1996 to 2007 doing body work  
7 and repair on automobiles. (AR 22-23, 218-19.)

8 On August 15, 2008, Plaintiff filed applications for DIB and  
9 SSI. (AR 179-86.) In disability reports submitted the same day,  
10 he alleged that he had been unable to work since January 30,  
11 2007, because of right-eye blindness, left-eye double vision, and  
12 a hernia in his lower abdomen. (AR 218.) After Plaintiff's  
13 applications were denied initially and on reconsideration, he  
14 requested a hearing before an Administrative Law Judge. (AR  
15 112.)

16 A hearing was held on April 14, 2010. (See AR 68.)  
17 Plaintiff did not appear, however, and the ALJ subsequently  
18 dismissed Plaintiff's request for another hearing. (AR 68-69.)  
19 On May 3, 2010, Plaintiff requested Appeals Council review. (AR  
20 136.) On April 28, 2011, the Appeals Council granted review,  
21 vacated the dismissal, and ordered that the case be remanded for  
22 a hearing. (AR 62-64.) That hearing was held on January 30,  
23 2012. (AR 17.) This time, Plaintiff appeared and was  
24 represented by counsel. (AR 17-18.) Plaintiff testified, as did  
25 a vocational expert. (AR 15-48.) In a written decision issued  
26 March 9, 2012, the ALJ determined that Plaintiff was not  
27 disabled. (AR 73-81.) On March 22, 2012, Plaintiff requested  
28 Appeals Council review. (AR 13-14.) On May 7, 2013, the council

1 denied the request. (AR 86-91.) This action followed.

2 **III. STANDARD OF REVIEW**

3 Under 42 U.S.C. § 405(g), a district court may review the  
4 Commissioner's decision to deny benefits. The ALJ's findings and  
5 decision should be upheld if they are free of legal error and  
6 supported by substantial evidence based on the record as a whole.  
7 Id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v.  
8 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence  
9 means such evidence as a reasonable person might accept as  
10 adequate to support a conclusion. Richardson, 402 U.S. at 401;  
11 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It  
12 is more than a scintilla but less than a preponderance.  
13 Lingenfelter, 504 F.3d at 1035. To determine whether substantial  
14 evidence supports a finding, the reviewing court "must review the  
15 administrative record as a whole, weighing both the evidence that  
16 supports and the evidence that detracts from the Commissioner's  
17 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.  
18 1996). "If the evidence can reasonably support either affirming  
19 or reversing," the reviewing court "may not substitute its  
20 judgment" for that of the Commissioner. Id. at 720-21.

21 **IV. THE EVALUATION OF DISABILITY**

22 People are "disabled" for purposes of receiving Social  
23 Security benefits if they are unable to engage in any substantial  
24 gainful activity owing to a physical or mental impairment that is  
25 expected to result in death or has lasted, or is expected to  
26 last, for a continuous period of at least 12 months.  
27 42 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257  
28 (9th Cir. 1992).

1           A.    The Five-Step Evaluation Process

2           The ALJ follows a five-step sequential evaluation process in  
3 assessing whether a claimant is disabled. 20 C.F.R.  
4 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,  
5 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first  
6 step, the Commissioner must determine whether the claimant is  
7 currently engaged in substantial gainful activity; if so, the  
8 claimant is not disabled and the claim must be denied.  
9 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

10           If the claimant is not engaged in substantial gainful  
11 activity, the second step requires the Commissioner to determine  
12 whether the claimant has a "severe" impairment or combination of  
13 impairments significantly limiting his ability to do basic work  
14 activities; if not, a finding of not disabled is made and the  
15 claim must be denied. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

16           If the claimant has a "severe" impairment or combination of  
17 impairments, the third step requires the Commissioner to  
18 determine whether the impairment or combination of impairments  
19 meets or equals an impairment in the Listing of Impairments  
20 ("Listing") set forth at 20 C.F.R., Part 404, Subpart P, Appendix  
21 1; if so, disability is conclusively presumed and benefits are  
22 awarded. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

23           If the claimant's impairment or combination of impairments  
24 does not meet or equal an impairment in the Listing, the fourth  
25 step requires the Commissioner to determine whether the claimant  
26 has sufficient residual functional capacity ("RFC")<sup>2</sup> to perform  
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28           <sup>2</sup>       RFC is what a claimant can do despite existing exertional

1 his past work; if so, the claimant is not disabled and the claim  
2 must be denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The  
3 claimant has the burden of proving he is unable to perform past  
4 relevant work. Drouin, 966 F.2d at 1257. If the claimant meets  
5 that burden, a prima facie case of disability is established.  
6 Id.

7 If that happens or if the claimant has no past relevant  
8 work, the Commissioner then bears the burden of establishing that  
9 the claimant is not disabled because he can perform other  
10 substantial gainful work available in the national economy.  
11 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). That determination  
12 comprises the fifth and final step in the sequential analysis.  
13 §§ 404.1520, 416.920; Lester, 81 F.3d at 828 n.5; Drouin, 966  
14 F.2d at 1257.

15 B. The ALJ's Application of the Five-Step Process

16 At step one, the ALJ found that Plaintiff had not engaged in  
17 any substantial gainful activity since January 30, 2007, his  
18 alleged onset date. (AR 76.) At step two, he found that  
19 Plaintiff had the severe impairments of right-eye blindness and  
20 hernia. (Id.) At step three, he determined that Plaintiff's  
21 impairments did not meet or equal any of the impairments in the  
22 Listing. (AR 77.) At step four, the ALJ found that Plaintiff  
23 had the RFC to perform medium work "with additional non-  
24 exertional limitations due to his vision loss." (AR 79.)  
25 Specifically, Plaintiff had "reduced depth perception and no  
26 peripheral vision on the right side." (AR 77.) Based on the  
27 \_\_\_\_\_  
28 and nonexertional limitations. 20 C.F.R. §§ 404.1545, 416.945; see  
Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 VE's testimony, the ALJ concluded that Plaintiff was unable to  
2 perform his past relevant work as an automotive body repairer.  
3 (AR 79.) At step five, the ALJ determined that Plaintiff could  
4 perform jobs that existed in significant numbers in the national  
5 economy. (AR 80.) Accordingly, he found Plaintiff not disabled.  
6 (AR 81.)

7 **V. DISCUSSION**

8 Plaintiff claims that the ALJ erred in assessing his  
9 credibility. (J. Stip. at 4-5.) Remand is not warranted because  
10 the ALJ made specific findings and gave clear and convincing  
11 reasons for rejecting Plaintiff's testimony.

12 A. Applicable Law

13 An ALJ's assessment of symptom severity and claimant  
14 credibility is entitled to "great weight." See Weetman v.  
15 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779  
16 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is not required to  
17 believe every allegation of disabling pain, or else disability  
18 benefits would be available for the asking, a result plainly  
19 contrary to 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674  
20 F.3d 1104, 1112 (9th Cir. 2012) (internal quotation marks  
21 omitted).

22 In evaluating a claimant's subjective symptom testimony, the  
23 ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d  
24 at 1035-36. "First, the ALJ must determine whether the claimant  
25 has presented objective medical evidence of an underlying  
26 impairment [that] could reasonably be expected to produce the  
27 pain or other symptoms alleged." Id. at 1036 (internal quotation  
28 marks omitted). If such objective medical evidence exists, the

1 ALJ may not reject a claimant's testimony "simply because there  
2 is no showing that the impairment can reasonably produce the  
3 degree of symptom alleged." Smolen v. Chater, 80 F.3d 1273, 1282  
4 (9th Cir. 1996) (emphasis in original).

5 Second, if the claimant meets the first test, the ALJ may  
6 discredit the claimant's subjective symptom testimony only if he  
7 makes specific findings that support the conclusion. See Berry  
8 v. Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent a finding  
9 or affirmative evidence of malingering, the ALJ must provide  
10 "clear and convincing" reasons for rejecting the claimant's  
11 testimony.<sup>3</sup> Lingenfelter, 504 F.3d at 1036; Lester, 81 F.3d at  
12 834.<sup>4</sup>

13 In assessing a claimant's credibility, the ALJ may consider  
14 (1) ordinary techniques of credibility evaluation, such as the  
15 claimant's reputation for lying, prior inconsistent statements,  
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17 <sup>3</sup> Defendant objects to the clear-and-convincing standard  
18 (J. Stip. at 16-17 & n.5), but it is clearly the law in the Ninth  
19 Circuit. See Garrison v. Colvin, 759 F.3d 995, 1014-15 & n.18 (9th  
20 Cir. 2014).

21 <sup>4</sup> In Ghanim v. Colvin, the Ninth Circuit noted that its  
22 precedent was inconsistent on whether the "clear and convincing"  
23 standard does not apply only when an ALJ makes an "actual finding  
24 of malingering" or also when the record merely contains "evidence  
25 of malingering." 763 F.3d 1154, 1163 n.9 (9th Cir. 2014). The  
26 Ninth Circuit declined to decide the issue, however. Id. Here,  
27 Plaintiff alleges that there is no evidence of malingering in the  
28 record. (J. Stip. at 13.) In fact, a consultative eye examiner  
found that Plaintiff's "pathology" did not "account for the  
patient's constricted visual field nor visual acuity at 20/70 in  
the patient's left eye" and that he would "expect [Plaintiff's]  
vision to be 20/40 or better in that eye and for him to have normal  
visual field." (AR 258.) Nonetheless, as discussed below, the ALJ  
gave clear and convincing reasons for rejecting Plaintiff's  
credibility.

1 and other testimony by the claimant that appears less than  
2 candid; (2) unexplained or inadequately explained failure to seek  
3 treatment or to follow a prescribed course of treatment; (3) the  
4 claimant's daily activities; (4) the claimant's work record; and  
5 (5) testimony from physicians and third parties. Thomas v.  
6 Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002); Smolen, 80 F.3d  
7 at 1284. If the ALJ's credibility finding is supported by  
8 substantial evidence in the record, the reviewing court "may not  
9 engage in second-guessing." Thomas, 278 F.3d at 959.

10 B. Relevant Background

11 Plaintiff testified that he lost all vision in his right eye  
12 15 years before the hearing. (AR 32.) He continued working as  
13 an automotive body repairer while his left-eye vision  
14 deteriorated but shifted from fabricating metal to managing and  
15 restocking. (AR 23.) He continued to work until "three years"  
16 before the hearing.<sup>5</sup> (AR 23-24.) The last time he saw an eye  
17 doctor was a year before the hearing. (AR 32.) The doctor told  
18 him to be careful and prescribed glasses for reading. (AR 32-  
19 33.) Plaintiff had a driver's license with a restriction for  
20 corrective lenses. (AR 33.)

21 Plaintiff testified that he had knee problems that made it  
22 difficult to walk or stand. (AR 24-25.) He could walk only two  
23 blocks before needing to stop and sit,<sup>6</sup> and he could stand for a  
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25 <sup>5</sup> Three years before the hearing was mid-2009; Plaintiff's  
26 alleged onset date was more than two years before that.

27 <sup>6</sup> In an August 2008 "Exertion Questionnaire," Plaintiff  
28 stated that he could walk "1.Mil" to the store and other places and  
that he felt "God. OK" afterward. (AR 223.)



1 maximum of 15 to 30 minutes at a time. (Id.) Plaintiff  
2 testified that he occasionally had back pain and suffered from  
3 cramps in his hands and legs during cold weather. (AR 25.)

4 Plaintiff testified that his room and board were provided by  
5 a family he knew, at no cost to him. (AR 25, 28.) He cooked for  
6 himself and drove to the store. (AR 29.) Plaintiff took care of  
7 the 85-year-old father and went grocery shopping for him. (AR  
8 26.) He also took care of the son, who weighed 500 pounds. (AR  
9 28-29.) Plaintiff could not lift the son but watched him and  
10 cooked meals for him. (AR 34.)

11 About once or twice a week, Plaintiff worked at a local  
12 motorcycle and "hotrod" repair shop by answering phones, giving  
13 advice, and cleaning oil. (AR 30-31, 38-39.) He had helped the  
14 shop owner modify hotrods until about a year before the hearing.  
15 (AR 30-31.) At times, the owner compensated Plaintiff by giving  
16 him "pocket money" or paying for his car insurance, which cost  
17 about \$300 a year. (AR 35-36.)

18 C. Analysis

19 The ALJ discredited Plaintiff's symptom testimony because he  
20 found that the objective medical evidence, Plaintiff's daily  
21 activities, and his work record did not support the alleged  
22 intensity, persistence, and limiting effects of Plaintiff's  
23 symptoms. (AR 77-79.) Plaintiff contends that the ALJ erred by  
24 improperly applying Lingenfelter's two-step analysis and failing  
25 to provide legally sufficient reasons for rejecting his  
26 testimony. (J. Stip. at 7.) On the contrary, as discussed  
27 below, the ALJ's findings were specific, his reasons were clear  
28 and convincing, and substantial evidence in the record supported

1 his determination.

2 As an initial matter, the ALJ noted the required two-step  
3 analysis (AR 77) and properly applied it, finding at step one  
4 that Plaintiff had two severe impairments (AR 76) but concluding  
5 at step two that Plaintiff's symptom testimony was not credible  
6 for various reasons. (AR 77-78.) Thus, the ALJ did not err in  
7 applying the law.

8 The ALJ began his factual assessment with the objective  
9 medical evidence, finding that it did not support Plaintiff's  
10 testimony of disabling vision and knee problems. He first noted  
11 that Plaintiff's treatment history was "sparse and conservative"  
12 and that "there appear[ed] to be no complications from a history  
13 of hernia repair." (AR 78.) Indeed, Plaintiff acknowledged that  
14 he had not sought any kind of medical treatment for his allegedly  
15 disabling conditions. (Id.) Although Plaintiff claimed that was  
16 because he couldn't afford it (AR 25), the ALJ properly rejected  
17 that excuse given that Plaintiff's living expenses were paid for  
18 and he acknowledged that he was occasionally compensated for his  
19 work. (AR 78); see Fair v. Bowen, 885 F.2d 597, 603 (9th Cir.  
20 1989) (ALJ's finding that claimant's proffered reason for failing  
21 to seek treatment was not believable sufficient to discredit  
22 claimant's testimony). Similarly, the ALJ noted that Plaintiff  
23 "was not taking medication when he was examined by the  
24 consultative examining physician." (AR 78; see AR 260 (Plaintiff  
25 could relieve joint pain with medication yet was not currently  
26 taking medication); see Molina, 674 F.3d at 1112 (ALJ may  
27 properly rely on unexplained or inadequately explained failure to  
28 seek treatment or to follow prescribed course of treatment);

1 Parra, 481 F.3d at 751 (“[E]vidence of ‘conservative treatment’  
2 is sufficient to discount a claimant’s testimony regarding  
3 severity of an impairment.”); cf. Fair, 885 F.2d at 602 (ALJ may  
4 not rely on claimant’s failure to take pain medication when  
5 evidence suggests that claimant had good reason for not taking  
6 it). Although Plaintiff had “some cervical, lumbar, knee, and  
7 right foot tenderness” during the consultative physician’s  
8 examination, his “[r]ange of motion [was] grossly within normal  
9 limits in his upper and lower extremities and he walked  
10 normally.” (AR 78; see AR 262.) This evidence, the ALJ properly  
11 found, “undermine[d] [Plaintiff’s] allegations.” (Id.)

12 The ALJ also found inconsistencies between Plaintiff’s  
13 testimony and the clinical opinion evidence, quoting extensively  
14 from the report prepared by consultative physician Concepcion  
15 Enriquez, who specialized in internal medicine. (AR 78; see AR  
16 260-63.) On September 11, 2008, Dr. Enriquez completed an  
17 internal-medicine examination of Plaintiff. (AR 260.) She  
18 readily observed Plaintiff’s right-eye visual impairment as well  
19 as tenderness in his knees and right foot. (AR 261, 263.) She  
20 did not, however, observe any limitations in the range of motion  
21 of Plaintiff’s joints. (See AR 260-63.) In her functional  
22 assessment, she opined that

23 [Plaintiff] can occasionally lift and/or carry 50 pounds  
24 and frequently lift and/or carry 25 pounds. [Plaintiff]  
25 can stand and/or walk with normal breaks for six hours in  
26 an eight-hour workday. [Plaintiff] can sit with normal  
27 breaks for six hours in an eight-hour workday. He can  
28 still do frequent squatting, crouching and kneeling.

1 (AR 263; see AR 78 (quoting Dr. Enriquez).) About one month  
2 later, Dr. C. Scott, the state agency's consultative physician,<sup>7</sup>  
3 reached the same conclusions regarding Plaintiff's ability to  
4 stand, walk, and lift and carry loads. (AR 266-67; see AR 78.)  
5 The ALJ properly relied on these opinions in rejecting  
6 Plaintiff's testimony. Thompson v. Astrue, 458 F. App'x 632, 634  
7 (9th Cir. 2011) (affirming ALJ's discrediting of claimant's  
8 testimony because it was "out of proportion to the objective  
9 clinical findings of limited functional restrictions"). Indeed,  
10 Plaintiff presented no medical or other evidence in support of  
11 his claims of disability besides his own testimony and  
12 allegations. Even had the ALJ found him credible, an award of  
13 benefits would not be appropriate. See 42 U.S.C. § 423(d)(5)(A)  
14 ("An individual's statement as to pain or other symptoms shall  
15 not alone be conclusive evidence of disability . . . ."); see  
16 also 20 C.F.R. §§ 404.1529(a), 416.929(a).

17 It is true, as Plaintiff notes, that an ALJ may not  
18 disregard a claimant's subjective symptom testimony solely  
19 because it is not substantiated by objective medical evidence.  
20 (See J. Stip. at 8-9 (citing Bunnell v. Sullivan, 947 F.2d 341,  
21 346-47 (9th Cir. 1991)).) The ALJ may, however, use  
22 inconsistencies with the medical evidence in the record as one  
23 factor in the evaluation. See Burch v. Barnhart, 400 F.3d 676,  
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25 <sup>7</sup> Dr. Scott's electronic signature includes a medical  
26 specialty code of 15, indicating gynecology. (AR 270); see Program  
27 Operations Manual System (POMS) DI 26510.089, U.S. Soc. Sec. Admin.  
28 (Oct. 25, 2011), <http://policy.ssa.gov/poms.nsf/lnx/0426510089>;  
POMS DI 26510.090, U.S. Soc. Sec. Admin. (Aug. 29, 2012),  
<http://policy.ssa.gov/poms.nsf/lnx/0426510090>.

1 681 (9th Cir. 2005) ("Although lack of medical evidence cannot  
2 form the sole basis for discounting pain testimony, it is a  
3 factor that the ALJ can consider in his credibility analysis.").  
4 In Plaintiff's case, the ALJ based his determination on more than  
5 just the inconsistencies between Plaintiff's testimony and the  
6 objective medical evidence. He also based it on inconsistencies  
7 between Plaintiff's allegations and his daily activities and work  
8 record.

9 In particular, the ALJ noted that Plaintiff's recent  
10 international travel to Austria was "inconsistent with  
11 [Plaintiff's] claimed pain and limitations." (AR 78; see AR 198  
12 (stating that Plaintiff was unable to attend hearing because he  
13 "had to leave the country" "due to family emergency".) The ALJ  
14 also noted that Plaintiff "worked after his alleged onset of  
15 disability for cash 'under the table.'" (AR 78.) The Ninth  
16 Circuit has consistently held that an ALJ properly rejects a  
17 claimant's testimony when the claimant is able to travel or work  
18 after the alleged onset of disability. See Tommasetti v. Astrue,  
19 533 F.3d 1035, 1040 (9th Cir. 2008) (claimant traveled to  
20 Venezuela for extended time); Greger v. Barnhart, 464 F.3d 968,  
21 972 (9th Cir. 2006) (claimant did carpentry work "under the  
22 table" after date last insured); Carter v. Astrue, 472 F. App'x  
23 550, 552 (9th Cir. 2012) (claimant worked part time for "nearly  
24 another year" after onset of disability); Beck v. Astrue, 303 F.  
25 App'x 455, 458 (9th Cir. 2008) (claimant traveled out of state).  
26 Plaintiff's case is no different.

27 Finally, the ALJ also based his assessment of Plaintiff's  
28 credibility on Plaintiff's "criminal history," noting "a history

1 of incarceration for his involvement in drugs" and his parole  
2 violations. (AR 77-78.) Although this reason is clear, it is  
3 not convincing because it is not supported by any evidence in the  
4 record. (See AR 26-28 (claimant's only prior criminal conviction  
5 was one DUI).)<sup>8</sup> Nevertheless, transcription or similar errors  
6 are harmless if, notwithstanding the error, the ALJ gave adequate  
7 explanation of his findings elsewhere in his decision. See,  
8 e.g., Wright v. Comm'r of Soc. Sec., 386 F. App'x 105, 109 (3d  
9 Cir. 2010) (Tashima, J., sitting by designation) (ALJ's  
10 misstatements in written decision harmless error when regardless  
11 of them "ALJ gave an adequate explanation supported by  
12 substantial evidence in the record"); Castel v. Comm'r of Soc.  
13 Sec., 355 F. App'x 260, 265-66 (11th Cir. 2009) (ALJ's erroneous  
14 reference to wrong medical reports harmless when he referred to  
15 reports "in two sentences" but "dedicate[d] two paragraphs" to  
16 correct reports, and decision conformed to medical evidence);  
17 Taylor v. Astrue, No. 4:07-CV-160-FL, 2009 WL 50156, at \*10  
18 (E.D.N.C. Jan. 7, 2009) (ALJ's misstatement of claimant's RFC in  
19 one sentence of decision "akin to a typographical error and  
20 constitutes harmless error" given that ALJ correctly stated RFC  
21 elsewhere in opinion and it was "overwhelmingly supported by  
22 substantial evidence").

23 On appellate review, this Court is limited to determining  
24 whether the ALJ properly identified reasons for discrediting  
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27 <sup>8</sup> It appears that the ALJ mistakenly inserted one paragraph  
28 concerning another claimant altogether into his decision, which was  
otherwise properly focused on Plaintiff's background and  
circumstances.

1 Plaintiff's credibility. Smolen, 80 F.3d at 1284. The  
2 inconsistencies between Plaintiff's allegations and the medical  
3 evidence, his daily activities, and his work record were  
4 sufficiently specific bases for discounting his testimony, and  
5 the ALJ's reasoning was clear and convincing. See Tommasetti,  
6 533 F.3d at 1039-40; Houghton v. Comm'r Soc. Sec. Admin., 493 F.  
7 App'x 843, 845 (9th Cir. 2012). Because the ALJ's findings were  
8 supported by substantial evidence, this Court may not engage in  
9 second-guessing. See Thomas, 278 F.3d at 959.

10 Accordingly, Plaintiff is not entitled to remand.

11 **VI. CONCLUSION**

12 Consistent with the foregoing, and pursuant to sentence four  
13 of 42 U.S.C. § 405(g),<sup>9</sup> IT IS ORDERED that judgment be entered  
14 AFFIRMING the decision of the Commissioner and dismissing this  
15 action with prejudice. IT IS FURTHER ORDERED that the Clerk  
16 serve copies of this Order and the Judgment on counsel for both  
17 parties.

18  
19  
20 DATED: November 17, 2014

**JEAN ROSENBLUTH**

JEAN ROSENBLUTH  
U.S. Magistrate Judge

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26 \_\_\_\_\_  
27 <sup>9</sup> This sentence provides: "The [district] court shall have  
28 power to enter, upon the pleadings and transcript of the record, a  
judgment affirming, modifying, or reversing the decision of the  
Commissioner of Social Security, with or without remanding the  
cause for a rehearing."