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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CRAIG N. SAPP,	}	Case No. CV 15-02052-DFM
Plaintiff,		MEMORANDUM OPINION AND ORDER
v.		
CAROLYN W. COLVIN, Acting Commissioner of Social Security,		}
Defendant.		

Plaintiff Craig N. Sapp (“Plaintiff”) appeals from the final decision of the Administrative Law Judge (“ALJ”) denying his application for disability benefits. On appeal, the Court concludes that the ALJ properly considered the medical evidence of record. The ALJ also gave specific, clear, and convincing reasons for discrediting Plaintiff’s testimony. Therefore, the ALJ’s decision is affirmed and the matter is dismissed with prejudice.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed applications for Disability Insurance and Supplemental Security Income benefits on February 14, 2012, alleging disability beginning

1 July 10, 2010. Administrative Record (“AR”) 133-146. After Plaintiff’s
2 applications were denied, he requested a hearing in front of an ALJ. AR 87-88.
3 Following the hearing at which Plaintiff testified, the ALJ found that Plaintiff
4 had the severe impairments of diabetes mellitus, peripheral neuropathy, status
5 post bladder tumor surgery times two, status post 2009 cerebrovascular
6 accident, aortic valve disease, and arthritis of the hip. AR 21. The ALJ found
7 that the claimant did not have an impairment or combination of impairments
8 that met or medically equaled the severity of one of the listed impairments. AR
9 21. After discounting Plaintiff’s credibility about the severity of his symptoms,
10 the ALJ determined that Plaintiff retained the residual functional capacity
11 (“RFC”) to lift and carry 10 pounds frequently and 20 pounds occasionally; to
12 stand and walk up to 6 hours out of an 8-hour day; and to sit up to 6 hours out
13 of an 8-hour day. AR 22-26. Based on the testimony of a vocational expert, the
14 ALJ then concluded that Plaintiff was not disabled because there was work
15 available in significant numbers in the national and regional economy that he
16 could perform despite his impairments. AR 26-27.

17 II.

18 ISSUES PRESENTED

19 The parties dispute whether the ALJ: (1) correctly evaluated the opinion
20 of the examining physician; and (2) properly assessed Plaintiff’s credibility. See
21 Joint Stipulation (“JS”) at 4-28.

22 III.

23 DISCUSSION

24 A. The ALJ Properly Weighed the Opinion of the Examining Physician

25 Plaintiff first contends that the ALJ improperly evaluated the opinion of
26 the consulting examiner, Dr. Soheila Benrazavi. See JS at 4-10, 13-14.

27 Three types of physicians may offer opinions in Social Security cases:
28 those who directly treated the plaintiff, those who examined but did not treat

1 the plaintiff, and those who did not treat or examine the plaintiff. See 20
2 C.F.R. §§ 404.1527(c), 416.927(c); Lester v. Chater, 81 F.3d 821, 830 (9th Cir.
3 1995) (as amended). A treating physician’s opinion is generally entitled to
4 more weight than that of an examining physician, which is generally entitled to
5 more weight than that of a non-examining physician. Lester, 81 F.3d at 830.
6 Thus, the ALJ must give specific and legitimate reasons for rejecting a treating
7 physician’s opinion in favor of a non-treating physician’s contradictory
8 opinion or an examining physician’s opinion in favor of a non-examining
9 physician’s opinion. Orn v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007); Lester,
10 81 F.3d at 830-31. If the treating physician’s opinion is uncontroverted by
11 another doctor, it may be rejected only for “clear and convincing” reasons. See
12 Lester, 81 F.3d 821, 830 (9th Cir. 1996) (citing Baxter v. Sullivan, 923 F.3d
13 1391, 1396 (9th Cir. 1991)). The ALJ can accomplish this by “setting out a
14 detailed and thorough summary of the facts and conflicting clinical evidence,
15 stating his interpretation thereof, and making findings.” Reddick, 157 F.3d at
16 725 (citing Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). Further,
17 “[t]he ALJ need not accept the opinion of any physician, including a treating
18 physician, if that opinion is brief, conclusory, and inadequately supported by
19 clinical findings.” Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002);
20 accord Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001).

21 The Court finds that the ALJ properly rejected Dr. Benrazavi’s opinion
22 because it was inconsistent with Dr. Benrazavi’s own clinical findings. In her
23 evaluation, Dr. Benrazavi stated that Plaintiff had a normal range of motion in
24 both arms. AR 237. In Plaintiff’s legs, Dr. Benrazavi found some sensory
25 impairment in the right lower leg and very mild weakness without atrophy. AR
26 238. She concluded that Plaintiff’s cervical spine and right hip impairments
27 were mild and Plaintiff did not require an assistive device to ambulate. AR
28 238. Despite her limited clinical findings, Dr. Benrazavi opined that Plaintiff

1 was only able to lift and carry 10 pounds occasionally and less than 10 pounds
2 frequently. AR 238.

3 As the ALJ noted, Dr. Benrazavi's evaluation included no findings of
4 any medical impairment that would prevent Plaintiff from occasionally lifting
5 20 pounds. AR 25. Consequently, the ALJ assigned Dr. Benrazavi's opinion
6 "partial weight." AR 25. An ALJ may reject an examining physician's
7 conclusions that are inconsistent with the physician's own medical findings.
8 Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005); Tonapetyan, 242
9 F.3d at 1149; see Chavez v. Astrue, No. 09-352, 2010 WL 5173190, at *6
10 (E.D. Wash. Dec. 13, 2010) (finding that ALJ properly rejected treatment
11 provider's opinion that was contradicted by provider's own assessment of mild
12 to moderate limitations). Thus, the ALJ properly rejected Dr. Benrazavi's
13 opinion.

14 Moreover, the ALJ relied on the objective evidence in the record,¹
15 including the opinion of a state agency medical consultant, Dr. B. Harris, in
16 finding that Plaintiff could lift and carry 10 pounds frequently and 20 pounds
17 occasionally. AR 25 (citing AR 83). Additionally, Plaintiff said at the hearing
18 that his doctors advised him not to lift more than 20 pounds. AR 55. While
19 generally an examining physician's opinion is entitled to more weight than a
20 non-examining physician's opinion, the ALJ assigned Dr. Harris's opinion

21
22 ¹ In making her findings, the ALJ reviewed the evidence and noted a
23 March 2013 examination revealing Plaintiff's complaints of right hip and low
24 back pain, abnormal gait, and walking with a cane. AR 23. She also referenced
25 Plaintiff's testimony that he was unable to work due to pain on his right side,
26 fatigue, side effects from his medications for hypertension, and pain. AR 23.
27 The ALJ referred to a CT scan showing hydrocephalus, and a report
28 diagnosing right hemiparesis. AR 22-23. Another examination that the ALJ
discussed concluded that Plaintiff did not suffer from right hemiparesis, and
instead had "very mild weakness in an L4-L5 distribution[.]" AR 23.

1 “significant weight” because it was more consistent with the record as a
2 whole.² AR 25; see Lester, 81 F.3d at 830-31; Pitzer v. Sullivan, 908 F.2d 502,
3 506 & n.4 (9th Cir. 1990); see also Nelson v. Astrue, No. 08-2924, 2009 WL
4 1699660, at *3 (N.D. Cal. June 17, 2009) (finding that ALJ properly rejected
5 physician’s opinion that was contradicted by other opinions in the medical
6 record, including those of state agency reviewing physicians). “The opinions of
7 non-treating or non-examining physicians may also serve as substantial
8 evidence when the opinions are consistent with independent clinical findings
9 or other evidence in the record.” Thomas, 278 F.3d at 957.

10 It is the ALJ’s province to synthesize the medical evidence, including
11 resolving conflicts between and within medical opinions. See Andrews v.
12 Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (“Where the opinion of the
13 claimant's treating physician is contradicted, and the opinion of a nontreating
14 source is based on independent clinical findings that differ from those of the
15 treating physician . . . it is then solely the province of the ALJ to resolve the
16 conflict.”); Morgan v. Comm’r of Soc. Sec. Admin., 169 F.3d 595, 603 (9th
17 Cir. 1999) (holding that ALJ was “responsible for resolving conflicts” and
18 “internal inconsistencies” within doctor’s reports). Where the evidence is
19 susceptible to more than one rational interpretation, the ALJ’s decision must
20 be upheld. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). Accordingly,
21 here, the ALJ did not err in considering the examining physician’s opinion,

22 ² Plaintiff’s contention that the ALJ improperly considered Dr. Harris’s
23 opinion because it was based on a nurse practitioner’s “cursory non-narrative
24 record” is without merit. See JS at 9. In fact, Dr. Harris reviewed and
25 considered several medical reports, including reports from the Long Beach
26 Comprehensive Health Center, the California Department of Health Care
27 Services, and Dr. Benrazavi. AR 78-86. Dr. Harris also reviewed non-medical
28 evidence, including Plaintiff’s pain questionnaire and testimony, in making his
findings about the severity of Plaintiff’s impairments. AR 79-80.

1 and Plaintiff is therefore not entitled to relief on this claim of error.

2 **B. The ALJ Properly Assessed Plaintiff's Credibility**

3 Plaintiff also contends that the ALJ erred by failing to provide clear and
4 convincing reasons for discounting his subjective symptom testimony. See JS
5 at 14-24, 26-28. Plaintiff testified that he suffered from mild to shooting pain in
6 his right leg and degenerative hip problems. AR 45-56, 183, 252. He felt
7 burning, numbness, and tingling in his feet and hands. AR 53-54. Plaintiff was
8 diagnosed with bladder cancer for which he underwent surgery. AR 303. In
9 May 2009, he suffered from a right cerebellar stroke with symptoms of
10 headache, ataxia, nausea, vomiting and vertigo. AR 318. Plaintiff also had a
11 history of high blood pressure and diabetes. AR 53, 160.

12 To determine whether a claimant's testimony about subjective pain or
13 symptoms is credible, an ALJ must engage in a two-step analysis. Vasquez v.
14 Astrue, 572 F.3d 586, 591 (9th Cir. 2008) (as amended) (citing Lingenfelter v.
15 Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2006)). First, the ALJ must determine
16 whether the claimant has presented objective medical evidence of an
17 underlying impairment which could reasonably be expected to produce the
18 alleged pain or other symptoms. Lingenfelter, 504 F.3d at 1036. "[O]nce the
19 claimant produces objective medical evidence of an underlying impairment, an
20 adjudicator may not reject a claimant's subjective complaints based solely on a
21 lack of objective medical evidence to fully corroborate the alleged severity of
22 pain." Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991) (en banc). To the
23 extent that an individual's claims of functional limitations and restrictions due
24 to alleged pain are reasonably consistent with the objective medical evidence
25 and other evidence, the claimant's allegations will be credited. SSR 96-7p,
26 1996 WL 374186 at *2 (explaining 20 C.F.R. § 404.1529(c)(4)).

27 If the claimant meets the first step and there is no affirmative evidence of
28 malingering, the ALJ must provide specific, clear and convincing reasons for

1 discrediting a claimant's complaints. Robbins v. Soc. Sec. Admin., 466 F.3d
2 880, 883 (9th Cir. 2006). "General findings are insufficient; rather, the ALJ
3 must identify what testimony is not credible and what evidence undermines
4 the claimant's complaints." Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th
5 Cir. 2015) (quoting Reddick, 157 F.3d at 722). The ALJ must consider a
6 claimant's work record, observations of medical providers and third parties
7 with knowledge of claimant's limitations, aggravating factors, functional
8 restrictions caused by symptoms, effects of medication, and the claimant's
9 daily activities. Smolen v. Chater, 80 F.3d 1273, 1283-84 & n.8 (9th Cir. 1996).
10 The ALJ may also consider an unexplained failure to seek treatment or follow
11 a prescribed course of treatment and employ other ordinary techniques of
12 credibility evaluation. Id.

13 The Court finds that the ALJ gave specific reasons for finding that
14 Plaintiff's subjective testimony was not entirely credible, each of which is fully
15 supported by the record. First, the ALJ noted the lack of objective verification,
16 such as physician notes, third-party function reports, or witness testimony at
17 the administrative hearing, corroborating Plaintiff's complaints of disabling
18 pain. AR 24. In particular, physician examination notes in the record generally
19 showed that Plaintiff did not make any subjective complaints of pain. AR 217,
20 219, 221, 226, 311, 353-54, 389, 393, 399, 405. In one instance where Plaintiff
21 did report abdominal pain, his assessment on the pain scale was only 3 out of
22 10. AR 330; see Wyatt v. Colvin, No. C14-5003, 2014 WL 5605050, at *3
23 (W.D. Wash. Nov. 4, 2014) (finding that ALJ properly rejected claimant's
24 credibility in part because claimant's assessment of 3 out of 10 on the pain
25 scale did not amount to severe or disabling pain).

26 Second, the ALJ considered that Plaintiff's allegations of disabling pain
27 were unsupported by the medical evidence. After extensively reviewing the
28 record, the ALJ reasonably concluded that the medical evidence showed only

1 mild findings. AR 21-24. For example, the ALJ noted that Plaintiff
2 demonstrated a normal gait, normal reflexes, and grossly normal sensation,
3 and only mild weakness in the right leg. AR 21, 23-24. A March 2013
4 examination did not include any abnormal neurological findings. AR 25
5 (citing AR 330-31). At the administrative hearing, Plaintiff testified that he
6 received x-rays of his neck, hip, and back showing degenerative impairments.
7 AR 45-47. The ALJ asked Plaintiff to provide the medical evidence, and left
8 the record open, but none were received. AR 24, 48-49. “Although lack of
9 medical evidence cannot form the sole basis for discounting pain testimony, it
10 is a factor that the ALJ can consider in his credibility analysis.” Burch, 400
11 F.3d at 681.

12 Third, the ALJ noted that Plaintiff did not report severely constrained
13 daily activities to his physicians and even if he had, the degree of limitation
14 was disproportionate to Plaintiff’s medical conditions. AR 24. In fact, despite
15 Plaintiff’s complaints of debilitating pain, he was able to drive his own car,
16 complete light housekeeping chores without assistance, and complete errands
17 such as grocery shopping without assistance. AR 170. While it is true that “one
18 does not need to be ‘utterly incapacitated’ in order to be disabled,” Vertigan v.
19 Halter, 260 F.3d 1044, 1050 (9th Cir. 2001), the extent of Plaintiff’s activity
20 here, together with the lack of objective evidence to verify his alleged
21 symptoms, support the ALJ’s finding that Plaintiff’s reports of his impairments
22 were not fully credible. See Bray v. Comm’r of Soc. Sec. Admin., 554 F.3d
23 1219, 1227 (9th Cir. 2009); Curry v. Sullivan, 925 F.2d 1127, 1130 (9th Cir.
24 1990) (as amended) (finding that the claimant’s ability to “take care of her
25 personal needs, prepare easy meals, do light housework and shop for some
26 groceries ... may be seen as inconsistent with the presence of a condition which
27 would preclude all work activity”) (citing Fair, 885 F.2d at 604).

28 Finally, the ALJ properly considered the fact that Plaintiff collected

1 unemployment benefits during the period of alleged disability and searched for
2 a job during this time. AR 25 (citing AR 153-54). In order to collect
3 unemployment benefits, Plaintiff had to certify that he was ready, willing, and
4 able to work. See Carmickle v. Comm’r, 533 F.3d 1155, 1161-62 (9th Cir.
5 2008) (noting that where the claimant holds himself out as ready and able to
6 work, the “receipt of unemployment benefits can undermine a claimant’s
7 alleged inability to work fulltime”) (citing Copeland v. Bowen, 861 F.2d 536,
8 542 (9th Cir. 1988)). Accordingly, the ALJ properly discounted Plaintiff’s
9 subjective symptom testimony.

10 On appellate review, this Court does not reweigh the hearing evidence
11 regarding Plaintiff’s credibility. Rather, this Court is limited to determining
12 whether the ALJ properly identified specific, clear, and convincing reasons for
13 discrediting Plaintiff’s credibility. Smolen, 80 F.3d at 1284. The written record
14 reflects that the ALJ did just that. As previously noted, it is the responsibility of
15 the ALJ to determine credibility and resolve conflicts or ambiguities in the
16 evidence. Magallanes, 881 F.2d at 750. If the ALJ’s findings are supported by
17 substantial evidence, this Court may not engage in second-guessing. See
18 Thomas, 278 F.3d at 959 (citing Morgan, 169 F.3d at 600); Fair, 885 F.2d at
19 604.

20 IV.

21 CONCLUSION

22 For the reasons stated above, the decision of the Social Security
23 Commissioner is AFFIRMED and the action is DISMISSED with prejudice.

24
25 Dated: January 6, 2016



26
27 DOUGLAS F. McCORMICK
28 United States Magistrate Judge