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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ERNEST MANRIQUEZ,  
Plaintiff,  
v.  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
Defendant.

Case No. CV 15-7341-KES

**MEMORANDUM OPINION AND  
ORDER**

Plaintiff Ernest Maniquez (“Plaintiff”) appeals the final decision of the Administrative Law Judge (“ALJ”) denying his application for Social Security Disability Insurance benefits (“DIB”). For the reasons discussed below, the ALJ’s decision is AFFIRMED.

**I.  
BACKGROUND**

Plaintiff applied for DIB on February 24, 2014, alleging disability commencing August 6, 2013. Administrative Record (“AR”) 102-105. An ALJ conducted a hearing on August 18, 2014, at which Plaintiff, who was represented by an attorney, appeared and testified. AR 35-67.



1 the Commissioner’s conclusion.” Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.  
2 1998). “If the evidence can reasonably support either affirming or reversing,” the  
3 reviewing court “may not substitute its judgment” for that of the Commissioner. Id.  
4 at 720-21.

5 In determining a claimant’s RFC, the ALJ should consider those limitations  
6 for which there is support in the record, but the ALJ need not consider properly  
7 rejected evidence of subjective complaints. Bayliss v. Barnhart, 427 F.3d 1211,  
8 1217 (9th Cir. 2005) (“Preparing a function-by-function analysis for medical  
9 conditions or impairments that the ALJ found neither credible nor supported by the  
10 record is unnecessary.”); Batson v. Comm’r of SSA, 359 F.3d 1190, 1197 (9th Cir.  
11 2004) (“The ALJ was not required to incorporate evidence from the opinions of  
12 Batson’s treating physicians, which were permissibly discounted.”).

13 “A decision of the ALJ will not be reversed for errors that are harmless.”  
14 Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). Generally, an error is  
15 harmless if it either “occurred during a procedure or step the ALJ was not required  
16 to perform,” or if it “was inconsequential to the ultimate non-disability  
17 determination.” Stout v. Comm’r of SSA, 454 F.3d 1050, 1055 (9th Cir. 2006).

### 18 III.

#### 19 ISSUES PRESENTED

20 Plaintiff raises one claim of error: that the ALJ did not properly consider  
21 Plaintiff’s testimony. Joint Stipulation (“JS”) at 4.

### 22 IV.

#### 23 DISCUSSION

#### 24 A. The ALJ properly discounted Plaintiff’s subjective pain testimony.

##### 25 1. **Applicable Law.**

26 An ALJ’s assessment of symptom severity and claimant credibility is  
27 entitled to “great weight.” See Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir.  
28 1989); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1986). “[T]he ALJ is not

1 required to believe every allegation of disabling pain, or else disability benefits  
2 would be available for the asking, a result plainly contrary to 42 U.S.C.  
3 § 423(d)(5)(A).” Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012) (internal  
4 quotation marks omitted).

5 In evaluating a claimant’s subjective symptom testimony, the ALJ engages in  
6 a two-step analysis. Lingerfelter, 504 F.3d at 1035-36. “First, the ALJ must  
7 determine whether the claimant has presented objective medical evidence of an  
8 underlying impairment [that] could reasonably be expected to produce the pain or  
9 other symptoms alleged.” Id. at 1036. If so, the ALJ may not reject claimant’s  
10 testimony “simply because there is no showing that the impairment can reasonably  
11 produce the degree of symptom alleged.” Smolen v. Chater, 80 F.3d 1273, 1282  
12 (9th Cir. 1996).

13 Second, if the claimant meets the first test, the ALJ may discredit the  
14 claimant’s subjective symptom testimony only if he makes specific findings that  
15 support the conclusion. Berry v. Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010).  
16 Absent a finding or affirmative evidence of malingering, the ALJ must provide  
17 “clear and convincing” reasons for rejecting the claimant’s testimony. Lester, 81  
18 F.3d at 834; Ghanim v. Colvin, 763 F.3d 1154, 1163 & n.9 (9th Cir. 2014). The  
19 ALJ must consider a claimant’s work record, observations of medical providers and  
20 third parties with knowledge of claimant’s limitations, aggravating factors,  
21 functional restrictions caused by symptoms, effects of medication, and the  
22 claimant’s daily activities. Smolen, 80 F.3d at 1283-84 & n.8. “Although lack of  
23 medical evidence cannot form the sole basis for discounting pain testimony, it is a  
24 factor that the ALJ can consider in his credibility analysis.” Burch v. Barnhart, 400  
25 F.3d 676, 681 (9th Cir. 2005).

26 The ALJ may also use ordinary techniques of credibility evaluation, such as  
27 considering the claimant’s reputation for lying and inconsistencies in his statements  
28 or between his statements and his conduct. Smolen, 80 F.3d at 1284; Thomas, 278

1 F.3d at 958-59.<sup>1</sup>

2 **2. Plaintiff's Testimony.**

3 Plaintiff testified that he was diagnosed with cancer in approximately August  
4 2013. AR 34-35. He was also diagnosed with vein thrombosis (blood clots) in both  
5 legs, and he still has a blood clot in his right leg. AR 34-35, 39. Because of pain and  
6 cramping in his legs, Plaintiff testified that he can sit for only 20 minutes. AR 43.  
7 He gets leg cramps after sitting for extended periods of time, and occasionally  
8 experiences swelling in his thighs and knees. AR 44. He testified that he can stand  
9 approximately 10-15 minutes at a time, and can walk about 20 yards before getting  
10 leg cramps or pain, but he cannot walk up stairs without assistance. AR 44. Plaintiff  
11 testified that his leg pain is on average a 7 or 8 out of 10. AR 47. He experiences  
12 major episodes of immobilizing leg cramps and pain three to four times per day,  
13 and to alleviate pain, he has to lay down and stretch his legs to prevent cramping  
14 and soreness. AR 47. These major episodes last anywhere from 20 minutes to an  
15 hour. AR 48. Plaintiff testified that he uses a cane to move around and walk up the  
16 stairs. AR 49. The cane was not prescribed, but Plaintiff testified that a doctor may  
17 have suggested that he get one. AR 49.

18 Plaintiff also testified that he experiences rectal and abdominal pain he  
19 attributes to surgeries that removed cancerous tumor and lymph nodes in February  
20 2014. AR 41. Plaintiff's surgery causes pain associated with his irregular bowel

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22 <sup>1</sup> The Social Security Administration ("SSA") recently published SSR 16-3p,  
23 2016 SSR LEXIS 4, Policy Interpretation Ruling Titles II and XVI: Evaluation of  
24 Symptoms in Disability Claims. SSR 16-3p eliminates use of the term "credibility"  
25 from SSA policy, as the SSA's regulations do not use this term, and clarifies that  
26 subjective symptom evaluation is not an examination of a claimant's character.  
27 Murphy v. Comm'r of SSA, 2016 U.S. Dist. LEXIS 65189, at \*25-26 n.6 (E.D.  
28 Tenn. May 18, 2016). SSR 16-3p took effect on March 16, 2016, approximately a  
year after the ALJ issued his decision on March 27, 2015, and therefore is not  
applicable to the ALJ's decision in this case. Id.

1 movements. AR 42. The rectal pain he experiences prevents him from sitting for  
2 long periods of time. His irregular bowel movements make him get up to use the  
3 restroom approximately 20 times a day, 10 of those times between the period of  
4 9:00 am and 5:00 pm. He can spend 15-20 minutes at a time in the bathroom. AR  
5 43. Plaintiff was also diagnosed with a pulmonary embolism (blood clot in the  
6 lung), which he testified causes fatigue and shortness of breath. AR 46.

7 On a typical day, Plaintiff wakes up, showers, and occasionally does some  
8 unpaid consultant work on his computer, although he cannot sit in front of his  
9 computer for long periods of time due to rectal pain. AR 40. He gets fatigued and  
10 develops leg cramps if he walks too much, and has to lay down and stretch. AR 40.  
11 He may go to the grocery store with his wife but usually sits in the car or in the  
12 store and waits for her. He does not help carry bags due to his abdominal pain. AR  
13 41. Plaintiff testified that he cannot cook, clean, or do laundry. AR 47. He may  
14 occasionally help fold laundry. AR 47. Plaintiff testified that moving things such as  
15 mop causes abdominal pain, and standing to cook or clean hurts his legs. AR 47.  
16 Plaintiff testified that he can lift approximately 5 pounds, but anything heavier  
17 causes abdominal pain. AR 45. Plaintiff sleeps only two to three hours per night  
18 and is fatigued all of the time. AR 37, 46.

19 Plaintiff takes a number of medications, including blood thinners for his  
20 blood clots, insulin for his diabetes, tramadol for pain, blood pressure medications,  
21 Xanax for anxiety, and Prozac for depression. AR 36. Plaintiff testified that his  
22 medications make him unable to focus and cause lack of concentration, dizziness,  
23 and blurred vision. AR 35. He cannot drive due to the side effects of his  
24 medications. AR 35.

25 Plaintiff testified that his medications for anxiety and depression are  
26 ineffective. AR 37. His anxiety symptoms include fidgeting, anxiousness,  
27 restlessness, and inability to concentrate. AR 38. He testified that his depression  
28 makes him “not able to function.” AR 38. Plaintiff’s general practitioner prescribed

1 his psychiatric medication; Plaintiff has not received any counseling for his anxiety  
2 or depression. AR 39.

3 **3. The ALJ's Treatment of Plaintiff's Testimony.**

4 The ALJ found that Plaintiff's "medically determinable impairments could  
5 reasonably be expected to cause some of the alleged symptoms; however,  
6 [Plaintiff's] statements concerning the intensity, persistence, and limiting effects of  
7 these symptoms are not entirely credible ...." AR 17. The ALJ gave four reasons  
8 for discounting Plaintiff's credibility: (1) lack of objective evidence to support  
9 Plaintiff's allegations; (2) very little treatment inconsistent with Plaintiff's  
10 allegations of disabling pain; (3) inconsistent statements regarding Plaintiff's ability  
11 to walk unassisted; and (4) that Plaintiff showed "little propensity to work" during  
12 the several years in which he was admittedly not disabled. AR 17-18.

13 **4. Analysis.**

14 Plaintiff contends that the ALJ failed to articulate any clear and convincing  
15 reasons for finding Plaintiff not credible. JS at 6. The Court disagrees.

16 a. Little treatment for mental impairments.

17 Plaintiff alleged that he had quite significant mental symptoms, including  
18 an allegedly debilitating lack of focus and concentration, as well as a lack of  
19 mental energy to complete tasks. AR 38. He did not, however, obtain or  
20 request treatment that would be commensurate with his allegations. He testified  
21 that he did not go to counseling, failed to seek treatment from a psychiatrist or  
22 psychologist, and only received some medication from his treating physician  
23 which he considered ineffective. AR 39. The ALJ reasonably inferred that if  
24 Plaintiff's symptoms were as significant as he alleged, then he would have  
25 sought out additional mental health care.

26 That Plaintiff sought little treatment for his mental impairments was a  
27 clear and convincing reason to discount his allegations of disabling pain. See  
28 Burch, 400 F.3d at 681 (ALJ properly considered lack of treatment in

1 discounting plaintiff's testimony regarding depression and fatigue); Fair v.  
2 Bowen, 885 F.2d 597, 603 (9th Cir. 1989) (in assessing credibility, ALJ may  
3 consider unexplained or inadequately explained failure to seek treatment);  
4 Smolen, 80 F.3d at 1284 (same).

5 b. Inconsistent statements.

6 The ALJ determined that Plaintiff made inconsistent statements concerning  
7 the ability to walk and the use of his cane. AR 17. During a 2014 consultative  
8 examination with Dr. Sohail K. Afra, Plaintiff stated that he has extreme pain  
9 walking up and down the stairs and he is unable to drive because of dizziness and  
10 lack of focus. AR 1570. He also stated that the cane comes in handy because he has  
11 fallen before and gets dizzy at times. Dr. Afra's examination revealed that Plaintiff  
12 is able to walk without difficulties. AR 1573. The ALJ contrasted this with  
13 Plaintiff's hearing testimony, in which Plaintiff stated that he uses his cane when he  
14 walks to alleviate leg pain and fatigue, and that he is able to walk up and down the  
15 stairs with his cane, with someone's help, or with the help of a wall. AR 49.

16 The ALJ's determination that Plaintiff gave inconsistent statements regarding  
17 his need for a cane and his ability to walk is supported by substantial evidence. In  
18 his examination with Dr. Afra, Plaintiff indicated that he used a cane to assist him  
19 because he sometimes falls down and gets dizzy. AR 1570. In his hearing  
20 testimony, Plaintiff stated that he used his cane often due to leg pain and fatigue.  
21 AR 48-49. While this inconsistency may appear slight, it tends to discredit  
22 Plaintiff's testimony that his leg pain is so severe that he relies on a cane to walk.  
23 By citing these inconsistent statements regarding Plaintiff's ability to walk  
24 unassisted, the ALJ provided a clear and convincing reason for discounting  
25 Plaintiff's credibility.

26 c. Inconsistency with the objective medical evidence.

27 The ALJ found that Plaintiff's credibility "is reduced by the lack of objective  
28 medical evidence to substantiate his claims." AR 17. The ALJ noted that several

1 examining and reviewing physicians found Plaintiff “to be much more capable than  
2 he claims.”

3 The ALJ’s determination is supported by substantial evidence. The record  
4 demonstrates a relatively short period of treatment for a colorectal tumor and  
5 diverticulosis, but recovery after successful treatment. Plaintiff was diagnosed with  
6 diabetes, peripheral edema<sup>2</sup>, and bilateral deep venous thrombosis (blood clots) in  
7 August 2013. AR 15, citing AR 211-13, 216-17. In October 2013, Plaintiff was  
8 diagnosed with adenocarcinoma<sup>3</sup>. *Id.*, citing AR 498-586. In November 2013, a CT  
9 scan of the chest revealed a pulmonary embolism (clot in the lungs). *Id.*, citing AR  
10 588-697.

11 In December 2013, Plaintiff underwent a laparoscopic-assisted low anterior  
12 resection with coloanal anastomosis and temporary diverting ileostomy (surgery to  
13 remove cancerous tumors). *Id.*, citing AR 962. At that time, Plaintiff’s doctor noted  
14 that his diabetes, hypertension, and pulmonary embolism were all stable. *Id.*, citing  
15 AR 725-27. By late December, Plaintiff reported that he was doing well and  
16 declined additional resources for increased support. AR 16, citing AR 733-34.

17 In January 2014, Plaintiff reported no complaints. *Id.*, citing AR 908-910.  
18 On February 7, 2014, a rigid proctoscopy was performed with normal results and  
19 Plaintiff’s proximal mucosa appeared normal. The doctor assessed Plaintiff with  
20 status post coloanal procedure with no residual carcinoma, anastomosis healed well,  
21 and ileostomy reversal as planned. *Id.*, citing AR 1314. On February 9, 2014,  
22 Plaintiff’s doctor indicated that Plaintiff could walk two blocks or up a flight of  
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24 <sup>2</sup> Peripheral edema is an accumulation of fluid causing swelling in the lower  
25 limbs. See [https://en.wikipedia.org/wiki/Peripheral\\_edema](https://en.wikipedia.org/wiki/Peripheral_edema).

26 <sup>3</sup> Adenocarcinoma is a type of cancerous tumor that forms in mucus-  
27 secreting glands throughout the body. See <http://www.cancercenter.com/terms/adenocarcinoma/>.

1 stairs without chest pain, and found that Plaintiff had no complications, was  
2 tolerating a regular diet, and was ambulating well. AR 1321, 1350. In March 2014,  
3 Plaintiff reported he was doing well and no longer needed pain medications. *Id.*,  
4 citing AR 1450-51. In May 2014, Plaintiff was controlling his bowel movements  
5 although they had been somewhat irregular. At that time, Plaintiff denied any  
6 abdominal pain or weight loss. *Id.*, citing AR 1516. In June 2014, Plaintiff  
7 presented with weakness but results were otherwise normal. *Id.*, citing AR 1542-44.  
8 After a blood pressure profile in July 2014, Plaintiff was encouraged to aim for 30  
9 to 60 minutes of exercise most days. *Id.*, citing AR 1563.

10 Dr. Afra examined Plaintiff on December 10, 2014, revealing little objective  
11 evidence of his limitations. Plaintiff's range of motion was within normal limits, he  
12 had full muscle strength, normal sensation, normal reflexes, and was able to walk  
13 without difficulty. AR 1571-73. Dr. Afra opined that Plaintiff could work with  
14 some limitations. AR 1575-80. As the ALJ pointed out, no physician in the record  
15 has opined that Plaintiff has functional limitations as severe as he alleged. The ALJ  
16 properly noted the lack of objective medical support for Plaintiff's subjective  
17 allegations as one factor among several in his credibility analysis.

18 Further, the ALJ did not rely solely on the lack of supporting medical  
19 evidence to discount Plaintiff's credibility. As discussed above, the ALJ gave two  
20 other clear and convincing reasons to discount Plaintiff's credibility concerning the  
21 severity and limiting effects of his impairments. The ALJ was permitted to consider  
22 the lack of supporting medical evidence as a factor confirming his other reasons.  
23 See Burch, 400 F.3d at 681; Rollins, 261 F.3d at 857 ("While subjective pain  
24 testimony cannot be rejected on the sole ground that it is not fully corroborated by  
25 objective medical evidence, the medical evidence is still a relevant factor in  
26 determining the severity of the claimant's pain and its disabling effects.") (citation  
27 omitted); Social Security Ruling 96-7p (same).

