



## BACKGROUND

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2 In a decision dated May 14, 2012, Plaintiff, who is a 44 year-old male, was found  
3 disabled beginning on December 16, 2008. (AR 85-91.) On May 5, 2015, it was determined  
4 that Plaintiff was no longer disabled since May 1, 2015. (AR 99-102.) This determination was  
5 upheld upon reconsideration on March 8, 2016 after a disability hearing by a State Agency  
6 Disability Hearing Officer. (AR 98.) Thereafter, Plaintiff filed a timely request for a hearing,  
7 which was held before Administrative Law Judge (“ALJ”) Alexander Weir III on June 11, 2018,  
8 in Los Angeles. Plaintiff appeared and testified at the hearing and was represented by  
9 counsel. (AR 21.) Vocational expert (“VE”) Jeanine Metildi also appeared and testified at the  
10 hearing. (AR 21.)

11 The ALJ issued an unfavorable decision on July 13, 2018. (AR 21-30.) The Appeals  
12 Council denied review on January 31, 2019. (AR 1-3.)

## DISPUTED ISSUES

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14 As reflected in the Joint Stipulation, Plaintiff only raises the following disputed issue as  
15 ground for reversal and remand:

- 16 1. Whether the ALJ properly considered Plaintiff’s testimony.

## STANDARD OF REVIEW

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18 Under 42 U.S.C. § 405(g), this Court reviews the ALJ’s decision to determine whether  
19 the ALJ’s findings are supported by substantial evidence and free of legal error. Smolen v.  
20 Chater, 80 F.3d 1273 , 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846  
21 (9th Cir. 1991) (ALJ’s disability determination must be supported by substantial evidence and  
22 based on the proper legal standards).

23 Substantial evidence means “‘more than a mere scintilla,’ but less than a  
24 preponderance.” Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v.  
25 Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is “such relevant evidence as a  
26 reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at  
27 401 (internal quotation marks and citation omitted).

1 This Court must review the record as a whole and consider adverse as well as  
2 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). Where  
3 evidence is susceptible to more than one rational interpretation, the ALJ's decision must be  
4 upheld. Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).  
5 "However, a reviewing court must consider the entire record as a whole and may not affirm  
6 simply by isolating a 'specific quantum of supporting evidence.'" Robbins, 466 F.3d at 882  
7 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495  
8 F.3d 625, 630 (9th Cir. 2007).

### 9 THE SEQUENTIAL EVALUATION

10 The Social Security Act defines disability as the "inability to engage in any substantial  
11 gainful activity by reason of any medically determinable physical or mental impairment which  
12 can be expected to result in death or . . . can be expected to last for a continuous period of not  
13 less than 12 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner has  
14 established a five-step sequential process to determine whether a claimant is disabled. 20  
15 C.F.R. §§ 404.1520, 416.920.

16 The first step is to determine whether the claimant is presently engaging in substantial  
17 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging  
18 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,  
19 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or  
20 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not  
21 significantly limit the claimant's ability to work. Smolen, 80 F.3d at 1290. Third, the ALJ must  
22 determine whether the impairment is listed, or equivalent to an impairment listed, in 20 C.F.R.  
23 Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d at 746. If the impairment  
24 meets or equals one of the listed impairments, the claimant is presumptively disabled. Bowen,  
25 482 U.S. at 141. Fourth, the ALJ must determine whether the impairment prevents the  
26 claimant from doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir.  
27 2001). Before making the step four determination, the ALJ first must determine the claimant's  
28 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). The RFC is "the most [one] can

1 still do despite [his or her] limitations” and represents an assessment “based on all the relevant  
2 evidence.” 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The RFC must consider all of the  
3 claimant’s impairments, including those that are not severe. 20 C.F.R. §§ 416.920(e),  
4 416.945(a)(2); Social Security Ruling (“SSR”) 96-8p.

5 If the claimant cannot perform his or her past relevant work or has no past relevant work,  
6 the ALJ proceeds to the fifth step and must determine whether the impairment prevents the  
7 claimant from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864,  
8 869 (9th Cir. 2000). The claimant bears the burden of proving steps one through four,  
9 consistent with the general rule that at all times the burden is on the claimant to establish his or  
10 her entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established  
11 by the claimant, the burden shifts to the Commissioner to show that the claimant may perform  
12 other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support  
13 a finding that a claimant is not disabled at step five, the Commissioner must provide evidence  
14 demonstrating that other work exists in significant numbers in the national economy that the  
15 claimant can do, given his or her RFC, age, education, and work experience. 20 C.F.R.  
16 § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is disabled and  
17 entitled to benefits. Id.

## 18 THE ALJ DECISION

19 After careful consideration of the entire record, the ALJ made the following findings:

20 1. The most recent favorable medical decision finding that Plaintiff was disabled is the  
21 decision dated May 14, 2012. This is known as the “comparison point decision” or CPD. (AR  
22 23, 85-91.)

23 2. At the time of the CPD, Plaintiff had the following medically determinable severe  
24 impairments: (1) hypothyroidism with multinodule goiter; (2) a history of rhabdomyolysis and  
25 Hashimoto’s thyroiditis; (3) a history of acute renal failure; (4) reactive airway disease; (5)  
26 chronic bilateral conjunctivitis and blepharitis and chalazion; (6) gastritis; (7) a back disorder  
27 (lumbosacral spine disc bulges with low back pain); (8) a neck disorder (cervical radiculopathy  
28

1 with chronic neck pain); and (9) depressive disorder and adjustment disorder with mixed  
2 anxiety and depressed mood. (AR 23.)

3 3. At the time of the CPD, the ALJ determined that Plaintiff did not have an impairment  
4 or combination of impairments that met or medically equaled the severity of one of the listed  
5 impairments. (AR 23.)

6 4. At the time of the CPD, the ALJ found that Plaintiff had the RFC to perform light work  
7 with the following limitations:

8 Claimant could lift and/or carry 20 pounds occasionally and 10 pounds frequently.  
9 He could stand and/or walk on an unlimited basis and could sit on an unlimited  
10 basis. Claimant must have been able to alternate between sitting and standing at  
11 will. Claimant could not perform work that involves exposure to hazardous  
12 conditions of pulmonary irritants including dust, fumes, odors, gas, and other  
13 chemicals. Claimant could understand and remember simple, routine tasks, carry  
14 out short and simple instructions (which may be detailed but not complex), make  
15 judgments and decisions consistent with simple routine duties. Claimant would  
16 be unable to perform work with high production quotas or rapid assembly line  
17 work.

18 (AR 23.)

19 5. At the time of the CPD, the ALJ found that Plaintiff was unable to perform his past  
20 relevant work as a construction worker II, painter, and carpenter. (AR 23.)

21 6. At the time of the CPD, the ALJ found that Plaintiff was a younger individual who was  
22 illiterate and unable to communicate in English. He had no transferable work skills. (AR 23.)

23 7. At the time of the CPD, the ALJ found that Plaintiff was unable to perform work that  
24 existed in a significant number of jobs in the national economy. (AR 23.)

25 8. The ALJ found that through the date of the ALJ's decision dated May 14, 2012,  
26 Plaintiff had not been engaged in substantial gainful activity since December 16, 2008, the  
27 alleged onset date. (AR 23, 87.)

28

1 9. The ALJ found that the medical evidence establishes that Plaintiff did not develop  
2 any additional impairments after the CPD through the date of the ALJ's decision. (AR 24.)

3 10. The ALJ found that the medical evidence establishes that Plaintiff's mental  
4 impairment of depressive disorder and adjustment disorder is no longer a severe impairment.  
5 (AR 24.)

6 11. As of May 1, 2015, the ALJ found that Plaintiff has the following severe physical  
7 impairments: (1) a history of hypothyroidism, on replacement hormone therapy; (2) a history of  
8 rhabdomyolysis and Hashimoto's thyroiditis; (3) a history of renal failure; (4) a history of  
9 asthma; (5) a mild back disorder; and (6) mild neck disorder. (AR 25-26.)

10 12. The ALJ found that since May 1, 2015, Plaintiff has not had an impairment or  
11 combination of impairments which met or medically equaled the severity of one of the listed  
12 impairments. (AR 26.)

13 13. The ALJ found that medical improvement occurred on May 1, 2015. (AR 26.)

14 14. The ALJ found that Plaintiff's medical improvement is related to the ability to work  
15 because it resulted in an increase in Plaintiff's RFC. (AR 26.)

16 15. After careful consideration of the entire record, the ALJ found that, since May 1,  
17 2015, Plaintiff has had the RFC to perform medium work as defined in 20 C.F.R. § 404.1567(c)  
18 with additional limitations.

19 Plaintiff can lift and/or carry 50 pounds occasionally and 25 pounds  
20 frequently. He can stand and/or walk six hours of an eight-hour workday,  
21 and can sit for six hours of an eight-hour workday. He can reach overhead  
22 frequently, and can push and pull frequently. He cannot be exposed to  
23 extreme temperatures or excessive dust and fumes.

24 (AR 26-28.)

25 16. The ALJ found that since May 1, 2015, Plaintiff has been unable to perform past  
26 relevant work as a construction laborer. (AR 28.)

27 17. The ALJ found that on May 1, 2015, Plaintiff was a younger individual age 18-49.  
28 (AR 29.)

1 18. The ALJ found that Plaintiff is not able to communicate in English and is considered  
2 in the same way as an individual who is illiterate in English. (AR 29.)

3 19. The ALJ found that since May 1, 2015, transferability of job skills is not material to  
4 the determination of disability because using the Medical-Vocational Rules as a framework  
5 supports a finding that Plaintiff is “not disabled,” whether or not Plaintiff has transferable job  
6 skills. (AR 29.)

7 20. The ALJ found that since May 1, 2015, considering Plaintiff’s age, education, work  
8 experience, and RFC, there are jobs that exist in significant number in the national economy  
9 that Plaintiff can perform, including the jobs of conveyor tender, small parts assembler, and  
10 routing clerk. (AR 29-30.)

11 21. The ALJ found that Plaintiff’s disability ended on May 1, 2015, and Plaintiff has not  
12 become disabled since that date. (AR 30.)

### 13 **DISCUSSION**

14 The ALJ decision must be affirmed. The ALJ properly discounted Plaintiff’s subjective  
15 symptoms for clear and convincing reasons supported by substantial evidence. The ALJ’s  
16 RFC is supported by substantial evidence.

#### 17 **A. Relevant Federal Law**

18 The ALJ’s RFC is not a medical determination but an administrative finding or legal  
19 decision reserved to the Commissioner based on consideration of all the relevant evidence,  
20 including medical evidence, lay witnesses, and subjective symptoms. See SSR 96-5p; 20  
21 C.F.R. § 1527(e). In determining a claimant’s RFC, an ALJ must consider all relevant evidence  
22 in the record, including medical records, lay evidence, and the effects of symptoms, including  
23 pain reasonably attributable to the medical condition. *Robbins*, 446 F.3d at 883.

24 The test for deciding whether to accept a claimant’s subjective symptom testimony turns  
25 on whether the claimant produces medical evidence of an impairment that reasonably could be  
26 expected to produce the pain or other symptoms alleged. *Bunnell v. Sullivan*, 947 F.2d 341,  
27 346 (9th Cir. 1991); see also *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998); *Smolen*, 80  
28 F.3d at 1281-82 esp. n.2. The Commissioner may not discredit a claimant’s testimony on the

1 severity of symptoms merely because they are unsupported by objective medical evidence.  
2 Reddick, 157 F.3d at 722; Bunnell, 947 F.2d at 343, 345. If the ALJ finds the claimant's pain  
3 testimony not credible, the ALJ "must specifically make findings which support this conclusion."  
4 Bunnell, 947 F.2d at 345. The ALJ must set forth "findings sufficiently specific to permit the  
5 court to conclude that the ALJ did not arbitrarily discredit claimant's testimony." Thomas v.  
6 Barnhart, 278 F.3d at 958; see also Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001);  
7 Bunnell, 947 F.2d at 345-46. Unless there is evidence of malingering, the ALJ can reject the  
8 claimant's testimony about the severity of a claimant's symptoms only by offering "specific,  
9 clear and convincing reasons for doing so." Smolen, 80 F.3d at 1283-84; see also Reddick,  
10 157 F.3d at 722. The ALJ must identify what testimony is not credible and what evidence  
11 discredits the testimony. Reddick, 157 F.3d at 722; Smolen, 80 F.3d at 1284.

#### 12 **B. The ALJ's RFC Is Supported By Substantial Evidence**

13 Plaintiff alleges he is unable to work because, even though he has no problems sitting  
14 and standing, he has constant pain in his back and neck. (AR 27.) The ALJ did find that  
15 Plaintiff has the medically determinable severe impairments of a mild back disorder and a mild  
16 neck disorder as of May 1, 2015. (AR 25-26.) The ALJ assessed Plaintiff with a reduced range  
17 of medium work RFC. (AR 26-27.) Thus, the ALJ concluded that Plaintiff was not disabled  
18 since May 1, 2015. (AR 30.)

19 In determining Plaintiff's RFC, the ALJ considered Plaintiff's subjective symptom  
20 allegations. (AR 27.) Because the ALJ made no finding of malingering, he was required to  
21 provide clear and convincing reasons supported by substantial evidence for discounting  
22 Plaintiff's subjective symptom allegations. Smolen, 80 F.3d at 1283-84; Tommasetti v. Astrue,  
23 533 F.3d at 1035, 1039-40 (9th Cir. 2008). The ALJ did so.

24 First, the ALJ made clear that there were no symptoms consistent with the objective  
25 medical evidence. (AR 27.) An ALJ is permitted to consider whether there is a lack of medical  
26 evidence to corroborate a claimant's alleged symptoms so long as it is not the only reason for  
27 discounting a claimant's subjective symptom allegations. Burch v. Barnhart, 400 F.3d 676,  
28 680-81 (9th Cir. 2005). On February 11, 2015, consulting internist Dr. Concepcion Enriquez



1 examined Plaintiff. (AR 25, 383-387.) Plaintiff exhibited tenderness of the cervical spine, but  
2 range of motion was grossly within normal limits. (AR 25, 385). He also had tenderness of the  
3 lumbosacral spine with reduced range of motion. (AR 25, 385.) There was no muscle spasm,  
4 and a straight leg raising test was negative bilaterally. (AR 25.) Plaintiff's gait and balance  
5 were normal, and he was able to walk without assistance. (AR 25.) There were no signs of  
6 radiculopathy. (AR 26, 386.) Dr. Enriquez assessed Plaintiff with a reduced range of heavy  
7 work RFC. (AR 27, 386.) On May 4, 2015, State Agency reviewer Dr. H. M. Estrin assessed  
8 Plaintiff with a reduced range of medium work RFC. (AR 27.) On July 30, 2015, State Agency  
9 reviewer Dr. E. Cooper also assessed a reduced range of medium work RFC. (AR 28.) There  
10 is no contrary medical evidence or medical opinion evidence. Plaintiff does not challenge the  
11 medical evidence, which is inconsistent with Plaintiff's subjective symptom allegations.

12 Second, the ALJ noted that Plaintiff has not sought or obtained mental health treatment  
13 of any kind since the approval of his original claim in 2012. (AR 24.) Similarly, the ALJ  
14 contains virtually no evidence of treatment for Plaintiff's severe physical impairments following  
15 the date of adjudication at the CPD. (AR 25.) The ALJ found that there is a lack of evidence  
16 that Plaintiff received treatment for any of the medically severe impairments listed in the CPD  
17 decision. (AR 26.) The ALJ further found that there is no record of medical treatment since the  
18 CPD. (AR 28.) Based on the lack of evidence of medical treatment and the medical opinions  
19 discussed above, the ALJ assessed Plaintiff with a reduced range of medium work RFC. (AR  
20 28.) An ALJ may consider conservative treatment (in this case, none) in evaluating subjective  
21 symptom allegations. Tommasetti, 533 F.3d at 1039. An ALJ also may consider an  
22 unexplained or inadequately explained failure to seek treatment. Id.

23 Plaintiff may disagree with the ALJ's evaluation of the evidence, but it is the ALJ's  
24 responsibility to resolve conflicts in the medical evidence and ambiguities in the record.  
25 Andrews, 53 F.3d at 1039. Where the ALJ's interpretation of the record is reasonable, as it is  
26 here, it should not be second-guessed. Rollins, 261 F.3d at 857; Thomas, 278 F.3d at 954  
27 ("Where the evidence is susceptible to more than rational interpretation, one of which supports  
28 the ALJ's decision, the ALJ's conclusion must be upheld.").

1 The ALJ discounted Plaintiff's subjective symptom allegations for clear and convincing  
2 reasons supported by substantial evidence.<sup>1</sup>

3 \* \* \*

4 The ALJ's nondisability determination is supported by substantial evidence and free of  
5 legal error.

6 **ORDER**

7 IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the  
8 Commissioner of Social Security and dismissing this case with prejudice.

9  
10 DATED: March 18, 2020

/s/ John E. McDermott  
JOHN E. MCDERMOTT  
UNITED STATES MAGISTRATE JUDGE

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26 <sup>1</sup> To the extent that the ALJ was not more explicit in labeling his reasons for discounting  
27 Plaintiff's subjective symptom allegations, any error was harmless. See Tommasetti, 533 F.3d  
28 at 1038 (error is harmless when it is "inconsequential to the ultimate nondisability determination"),  
quoting Stout v. Comm'r, 454 F.3d 1050, 1055-56 (9th Cir. 2006). The ALJ's reasons are fully  
apparent from the decision and thoroughly discussed as noted above.