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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DOWNYELL, J.,

Plaintiff,

v.

KILOLO KIJAZAKI, Acting  
Commissioner of Social Security  
Administration,

Defendant.

Case No. 2:20-cv-07312-SP

MEMORANDUM OPINION AND  
ORDER

**I.**

**INTRODUCTION**

On August 13, 2020, plaintiff Downyell J. filed a complaint against defendant, the Commissioner of the Social Security Administration (“Commissioner”), seeking a review of a denial of supplemental security income (“SSI”). The parties have fully briefed the issue in dispute, and the court deems the matter suitable for adjudication without oral argument.

Plaintiff presents one disputed issue for decision, whether the residual functional capacity (“RFC”) determination was supported by substantial evidence.

1 Memorandum in Support of Plaintiff’s Complaint (“P. Mem.”) at 2; *see*  
2 Defendant’s Memorandum in Support of Answer (“D. Mem.”) at 3.

3 Having carefully studied the parties’ memoranda, the Administrative Record  
4 (“AR”), and the decision of the administrative law judge (“ALJ”), the court  
5 concludes substantial evidence supported the ALJ’s RFC determination, and a  
6 misstatement of the evidence by the ALJ was harmless. Consequently, the court  
7 affirms the decision of the Commissioner denying benefits.

8 **II.**

9 **FACTUAL AND PROCEDURAL BACKGROUND**

10 Plaintiff was 30 years old on his alleged disability onset date, and appears to  
11 have attended at least some high school. AR at 45, 96. Plaintiff has past relevant  
12 work as a labeler. AR at 54.

13 On March 22, 2017, plaintiff filed an application for SSI, alleging a  
14 disability onset date of December 1, 2007. AR at 96. Plaintiff claimed he suffered  
15 from severe back problems, leg pain, shoulder pain, lower back pain, neck pain,  
16 seizures, and an irregular heart beat. AR at 96. The Commissioner denied  
17 plaintiff’s application, after which he requested a hearing.<sup>1</sup> AR at 115, 125.

18 On September 10, 2019, plaintiff, represented by counsel, appeared and  
19 testified at the hearing. AR at 40-53. Kentrell Pittman, a vocational expert, also  
20 testified. AR at 53-58. On October 8, 2019, the ALJ issued a decision denying  
21 plaintiff’s claim for benefits. AR 15-32.

22 Applying the well-known five-step sequential evaluation process, the ALJ  
23 found, at step one, that plaintiff had not engaged in substantial gainful activity  
24 since March 22, 2017, his application date. AR at 18.

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27 <sup>1</sup> Plaintiff also filed an application for disability insurance benefits on March  
28 claim. *See* AR at 77, 125, 150.

1 At step two, the ALJ determined plaintiff had the following severe  
2 impairments: seizure disorder; degenerative disc disease of the lumbar and thoracic  
3 spine with stable compression fractures; and a mental impairment variously  
4 diagnosed to include schizoaffective disorder, psychotic disorder, major depression  
5 with psychotic features, and post-traumatic stress disorder. *Id.*

6 At step three, the ALJ found plaintiff's impairments did not meet or  
7 medically equal one of the listed impairments set forth in 20 C.F.R. part 404,  
8 Subpart P, Appendix 1. *Id.*

9 The ALJ then assessed plaintiff's RFC,<sup>2</sup> and determined he had the RFC to  
10 perform light work with the following limitations: climbing of ramps and stairs  
11 must be limited to occasionally, while the climbing of ladders, ropes, or scaffolds  
12 must never be required; balancing, stooping (bending at the waist), kneeling,  
13 crouching (bending at the knees), and crawling must be limited to occasionally;  
14 noise must be limited to no greater than moderate level, such as the level of noise  
15 associated with a normal office setting; within the assigned work area there must  
16 be less than occasional (seldom to rare) exposure to fumes, odors, dust, gases, poor  
17 ventilation, and hazards such as machinery and heights; assigned work must be  
18 limited to simple, unskilled tasks with a specific vocational profile of one or two,  
19 learned in 30 days or less or by a brief demonstration, and with minimal change in  
20 the tasks assigned; tasks must be performed primarily independently with no more  
21 than occasional, brief, intermittent work related contact with co-workers and  
22 supervisors, and no contact with the public. AR at 21.

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25 <sup>2</sup> Residual functional capacity is what a claimant can do despite existing  
26 exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152, 1155-  
27 56 n.5-7 (9th Cir. 1989). "Between steps three and four of the five-step evaluation,  
28 the ALJ must proceed to an intermediate step in which the ALJ assesses the  
claimant's residual functional capacity." *Massachi v. Astrue*, 486 F.3d 1149, 1151  
n.2 (9th Cir. 2007).

1 The ALJ found, at step four, that plaintiff was capable of performing his past  
2 relevant work of a labeler. AR at 29.

3 At step five, the ALJ alternatively found plaintiff could perform other jobs  
4 that existed in significant numbers in the national economy such as marker, mail  
5 clerk, and router. AR at 30-31. The ALJ additionally found plaintiff could  
6 perform the jobs of addresser, charge account clerk, and document preparer if  
7 plaintiff's RFC exertional level were changed from light to sedentary with the  
8 same other limitations. AR at 31. Consequently, the ALJ concluded plaintiff did  
9 not suffer from a disability as defined by the Social Security Act. AR at 31-32.

10 Plaintiff filed a timely request for review of the ALJ's decision, which was  
11 denied by the Appeals Council. AR at 1-3. The ALJ's decision stands as the final  
12 decision of the Commissioner.

### 13 III.

#### 14 STANDARD OF REVIEW

15 This court is empowered to review decisions by the Commissioner to deny  
16 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security  
17 Administration must be upheld if they are free of legal error and supported by  
18 substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001)  
19 (as amended). But if the court determines the ALJ's findings are based on legal  
20 error or are not supported by substantial evidence in the record, the court may  
21 reject the findings and set aside the decision to deny benefits. *Aukland v.*  
22 *Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); *Tonapetyan v. Halter*, 242 F.3d  
23 1144, 1147 (9th Cir. 2001).

24 "Substantial evidence is more than a mere scintilla, but less than a  
25 preponderance." *Aukland*, 257 F.3d at 1035. Substantial evidence is such  
26 "relevant evidence which a reasonable person might accept as adequate to support  
27 a conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276  
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1 F.3d at 459. To determine whether substantial evidence supports the ALJ’s  
2 finding, the reviewing court must review the administrative record as a whole,  
3 “weighing both the evidence that supports and the evidence that detracts from the  
4 ALJ’s conclusion.” *Mayes*, 276 F.3d at 459. The ALJ’s decision “cannot be  
5 affirmed simply by isolating a specific quantum of supporting evidence.”  
6 *Aukland*, 257 F.3d at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th  
7 Cir. 1998)). If the evidence can reasonably support either affirming or reversing  
8 the ALJ’s decision, the reviewing court “may not substitute its judgment for that  
9 of the ALJ.” *Id.* (quoting *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir.  
10 1992)).

#### 11 IV.

#### 12 DISCUSSION

13 Plaintiff argues the ALJ’s RFC determination that plaintiff could perform  
14 light work with various limitations, including limiting plaintiff to only occasional  
15 postural activities, was erroneous because it failed to adequately address the  
16 evidence regarding plaintiff’s use of an assistive device. P. Mem. at 4-5.  
17 Specifically, plaintiff contends the ALJ failed to properly consider plaintiff’s  
18 medical records showing he used a cane, and his own testimony indicating his  
19 doctor prescribed him a walker. *Id.*

20 A claimant’s RFC is what one can “still do despite [his or her] limitations.”  
21 20 C.F.R. § 416.945(a)(1)-(2). The ALJ reaches an RFC determination by  
22 reviewing and considering all of the relevant evidence, including non-severe  
23 impairments. *Id.* It is an administrative finding, not a medical opinion. 20 C.F.R.  
24 § 404.1527(d)(1). The RFC takes into account both exertional limitations and  
25 non-exertional limitations. The RFC assessment must contain “a narrative  
26 discussion describing how the evidence supports each conclusion, citing specific  
27 medical facts (e.g., laboratory findings) and nonmedical evidence (e.g., daily  
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1 activities, observations).” *See* Social Security Ruling (“SSR”) 96-8P. The ALJ  
2 must also explain how he or she resolved material inconsistencies or ambiguities in  
3 the record. *Id.*

4 Plaintiff argues the ALJ’s RFC determination was erroneous because it  
5 failed to adequately address the evidence regarding plaintiff’s use of a cane.  
6 P. Mem. at 4-5. In pertinent part, the ALJ determined plaintiff had the RFC to  
7 perform light work, but limited to only occasional climbing of ramps and stairs,  
8 and no climbing of ladders, ropes, or scaffolds. AR at 21. In reaching this  
9 determination, the ALJ discussed plaintiff’s medical records, prior disability  
10 reports, and plaintiff’s own testimony. *See* AR at 21-23. The ALJ determined the  
11 objective physical examinations found greater functional capacity than alleged.  
12 AR at 23. The ALJ noted plaintiff was observed using a cane during an  
13 examination in July 2018, and “was observed using one by multiple sources  
14 throughout the period at issue.” *Id.* But the ALJ also found there was no evidence  
15 a doctor prescribed plaintiff a walker, and minimal evidence he was prescribed a  
16 cane as a medical necessity. *Id.* The ALJ noted plaintiff testified that his treating  
17 physician Dr. John Uyanne prescribed him a walker, but in completing a physical  
18 RFC questionnaire in September 2019, Dr. Uyanne noted plaintiff needed a cane to  
19 walk but did not mention a walker. *Id.* at 23 n.3; *see* AR at 50, 876.

20 Plaintiff cites the opinion of consultative examiner Dr. James Lin that  
21 plaintiff “has to use a cane for ambulation.” *See* AR at 565. Plaintiff also cites Dr.  
22 Uyanne’s observation that plaintiff needed a cane to walk. *See* AR at 876.  
23 Plaintiff argues the ALJ did not explain why she did not include the use of the cane  
24 in the RFC determination, and inaccurately concluded there was “no evidence the  
25 doctor actually recommended or prescribed the use of the cane.” *See* AR at 25.  
26 Additionally, according to plaintiff, the ALJ failed to consider plaintiff’s own  
27 testimony that his treating physician prescribed him a walker. *See* AR at 50.

1 Plaintiff also contends the ALJ’s findings were contradictory, since the ALJ first  
2 said there was only “minimal evidence” plaintiff was prescribed a cane, and later  
3 found there was “no evidence” a doctor recommended or prescribed a cane. *See*  
4 AR at 23, 25. In short, plaintiff argues “it is more than reasonable to assert that  
5 medical professionals concur an assistive device is medically indicated.” P. Mem.  
6 at 6.

7 The use of a hand-held assistive device such as a cane is a functional  
8 limitation only if it is medically required. *See* SSR 96-9p; *Quintero v. Colvin*,  
9 2014 WL 4968269, at \*10 (E.D. Cal. Sept. 29, 2014) (“The use of a cane or other  
10 ‘hand-held assistive device’ is probative of a claimant’s functional limitations only  
11 if it is medically required.”). The evidence in the record here does not satisfy  
12 plaintiff’s burden of showing an assistive device was medically required. Plaintiff  
13 points to his own testimony regarding Dr. Uyanne’s prescription of a walker, and  
14 argues the ALJ disregarded this. In fact, as noted, the ALJ discussed this  
15 testimony (*see* AR at 23 n.3), but this testimony is not enough by itself to show  
16 medical necessity. *See Schluter v. Berryhill*, No. 2020 WL 1557773, at \*5 (D.  
17 Ariz. Mar. 10, 2020) (plaintiff’s own testimony coupled with physician referencing  
18 plaintiff’s use of a cane insufficient to indicate cane was medically necessary).

19 “To find that a hand-held assistive device is medically required, there must  
20 be medical documentation establishing the need for a hand-held assistive device to  
21 aid in walking or standing, and describing the circumstances for which it is needed  
22 (i.e., whether all the time, periodically, or only in certain situations; distance and  
23 terrain; and any other relevant information).” SSR 96-9p. None of the evidence  
24 plaintiff cites describes the circumstances in which plaintiff needs a walker or cane.  
25 Dr. Lin stated only that plaintiff “has to use a cane for ambulation” (AR at 565),  
26 but it did not indicate duration, distance, terrain, or any other relevant information.  
27 This evidence does not satisfy SSR 96-9p. *See Sou v. Saul*, 799 Fed. Appx. 563,  
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1 564-65 (9th Cir. 2020) (holding claimant failed to show a cane was medically  
2 required where the evidence “did not describe the circumstances for which a cane  
3 was needed”).

4 Similarly, Dr. Uyanne’s statement in the September 2019 RFC questionnaire  
5 that plaintiff’s “difficulty with mobility necessitat[es] the use of a cane” (AR at  
6 876) is also insufficient. *See Dean N. v. Saul*, 2020 WL 430962, at \*2 (C.D. Cal.  
7 Jan. 28, 2020) (physician’s statement claimant “needs the cane for ambulation”  
8 was insufficient); *Quintero v. Colvin*, 2014 WL 4968269, at \*10 (E.D. Cal. Sept.  
9 29, 2014) (“Mentioning the use of a cane [in physicians’ notes] neither established  
10 plaintiff needed the cane to balance or walk, nor described the circumstances for  
11 which the cane would be needed.”). While Dr. Uyanne noted the use of a cane in  
12 his RFC questionnaire, plaintiff cites to nothing in Dr. Uyanne’s treatment records  
13 indicating he ever actually prescribed the use of a walker or a cane.

14 The court’s review of the record, however, revealed a single, December 13,  
15 2016 treatment note in which Dr. Uyanne stated he would prescribe plaintiff a  
16 walker given his mobility impairment. *See* AR at 397. Given that subsequent  
17 treatment notes by Dr. Uyanne only reflect use of a cane by plaintiff, with no  
18 reference to it being prescribed (*see* AR at 612, 627, 636, 645), and given that by  
19 the time of the September 2019 questionnaire Dr. Uyanne was no longer  
20 recommending a walker, it is unclear how long the walker prescription remained in  
21 effect. Moreover, although the record contains one reference to a walker  
22 prescription, even there, there is still no indication of the circumstances in which  
23 plaintiff would need to use the walker. *See Hughes v. Berryhill*, 2017 WL  
24 4854112, at \*14-15 (S.D. W. Va. Oct. 4, 2017) (device was not medically required  
25 where record contained prescription but no explanatory information describing  
26 when device was needed); *see also Dean N. v. Saul*, 2020 WL 430962, at \*2 (C.D.  
27 Cal. Jan. 28, 2020) (“Plaintiff was required to establish both need and the specific  
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1 circumstance in which he needs the cane before the ALJ could include the usage of  
2 a cane in his RFC.”).

3 Plaintiff’s testimony does not shed light on the frequency of his use of a  
4 walker or the circumstances for which he uses a walker. At the administrative  
5 hearing, the ALJ acknowledged plaintiff was using a cane, but plaintiff did not  
6 elaborate on whether he uses the cane for all ambulation, only prolonged  
7 ambulation, walking on uneven surfaces, or ascending and descending stairs or  
8 slopes – information necessary to determine medical necessity. *See* AR at 50.

9 As noted, the ALJ recognized plaintiff was repeatedly observed using a  
10 cane, but plaintiff’s mere use of a cane is insufficient to show medical necessity.  
11 Medical notes or observations regarding the use of a cane do not amount to  
12 medical necessity. *See Cashin v. Astrue*, No., 2010 WL 749884, at \*11 (C.D. Cal.  
13 Feb. 24, 2010) (doctor’s observation of claimant’s use of cane during examination  
14 not “an objective finding . . . [the] cane was medically required”); *Flores v. Colvin*,  
15 2016 WL 2743228, at \*14 (E.D. Cal. May 11, 2016) (mentions of claimant’s cane  
16 traceable to his own self-reports and to his medical source’s observations  
17 insufficient to demonstrate a medical need for a cane). Again, without a physician  
18 “describing the circumstances for which [the cane] is needed,” the ALJ could not  
19 find the cane medically necessary. SSR 96-9p.

20 In short, contrary to plaintiff’s contention, the ALJ did consider plaintiff’s  
21 own testimony and the evidence in the record regarding plaintiff’s use of a cane.  
22 Because the evidence in the record fails to demonstrate the cane was medically  
23 necessary, the ALJ was not required to account for plaintiff’s use of a cane in her  
24 RFC determination. Nonetheless, the ALJ statement that there was “no evidence”  
25 to support plaintiff’s claim he was prescribed a walker was erroneous. The  
26 question is whether this error warrants reversal.

27 An ALJ’s error is harmless where such error is inconsequential to the  
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1 ultimate non-disability determination. *Stout v. Comm’r, Soc. Sec. Admin.*, 454  
2 F.3d 1050, 1055 (9th Cir. 2006); *see also Burch v. Barnhart*, 400 F.3d 676, 679  
3 (9th Cir. 2005) (“A decision of the ALJ will not be reversed for errors that are  
4 harmless.”). Given the lack of evidence that a cane was a medical necessity, and  
5 given that the ALJ recognized the abundant evidence in the record that plaintiff  
6 used a cane, it would be a reach to suppose the ALJ would have formulated a  
7 different RFC had she known Dr. Uyanne prescribed a walker for plaintiff in  
8 December 2016.

9       But even assuming plaintiff’s RFC had included use of a cane in some  
10 fashion, it would not have changed the outcome here. The record only references  
11 use of a cane while ambulating, and plaintiff did not indicate whether he also uses  
12 a cane for balancing while standing. If an individual needs a cane for balance –  
13 and again, there is no indication of that here – that could affect the available jobs in  
14 some cases. *See* SSR 96-9p (“the occupational base for an individual who must  
15 use such a device for balance because of significant involvement of both lower  
16 extremities (e.g., because of a neurological impairment) may be significantly  
17 eroded.”). But even if plaintiff here needed a cane for balance, plaintiff could still  
18 do much of the work the ALJ found he could do. The ALJ found plaintiff could  
19 perform his past relevant work as a labeler (AR at 30), which plaintiff performed  
20 primarily while sitting. *See* AR at 253. Moreover, the ALJ further concluded  
21 plaintiff could perform the jobs of addresser, charge account clerk, and document  
22 preparer if plaintiff’s RFC exertional level were changed from light to sedentary.  
23 AR at 31; *see Leach v. Astrue* 2010 WL 2650696, at \*9 (E.D. Cal. July 1, 2010)  
24 (“Even when medically required, the use of a cane does not rule out the ability to  
25 perform sedentary work”) (citation omitted). As such, even with use of a cane in  
26 his RFC, plaintiff still would have been found not disabled.

27       In sum, while the ALJ plainly considered relevant evidence in her RFC  
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1 determination pertaining to plaintiff's use of a cane, she did incorrectly find there  
2 was no evidence plaintiff was prescribed a walker, when in fact there was. Such  
3 error was harmless because there still was no evidence that plaintiff's use of a cane  
4 was a medical necessity, and because even with the use of a cane plaintiff could  
5 still perform his past relevant work and other jobs that exist in significant numbers.

6 V.

7 **CONCLUSION**

8 IT IS THEREFORE ORDERED that Judgment shall be entered  
9 AFFIRMING the decision of the Commissioner denying benefits, and dismissing  
10 the complaint with prejudice.

11  
12 DATED: March 31, 2022



13  
14 SHERI PYM  
United States Magistrate Judge