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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DOUGLAS BARRON,)	NO. EDCV 10-00042 SS
)	
Plaintiff,)	
)	
v.)	MEMORANDUM DECISION AND ORDER
)	
MICHAEL J. ASTRUE,)	
Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	
_____)	

**I.
INTRODUCTION**

Douglas Barron ("Plaintiff") brings this action seeking to overturn the decision of the Commissioner of the Social Security Administration (hereinafter the "Commissioner" or the "Agency") denying his application for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI"). The parties consented, pursuant to 28 U.S.C. § 636, to the jurisdiction of the undersigned United States Magistrate Judge. For the reasons stated below, the decision of the Commissioner is AFFIRMED.

II.

1 **PROCEDURAL HISTORY**
2

3 Plaintiff filed an application for DIB and SSI on July 17, 2007.
4 (Administrative Record ("AR") at 12). He alleged a disability onset
5 date of June 17, 2003 due to lumbar sadiculopathy. (AR 60). The Agency
6 initially denied Plaintiff's claim for DIB and SSI on September 3, 2007.
7 (AR 28). This denial was upheld upon reconsideration. (AR 34). On
8 February 27, 2009, Administrative Law Judge ("ALJ") Jesse Pease
9 conducted a hearing to review Plaintiff's claim. (AR 203). The ALJ
10 denied benefits on August 11, 2009. (AR 21). Plaintiff sought review
11 of the ALJ's decision before the Appeals Council, which denied his
12 request on December 2, 2009. (AR 4). Therefore, the ALJ's decision
13 became the final decision of the Commissioner. (Id.). Plaintiff
14 commenced the instant action on January 8, 2010.
15

16 **III.**

17 **FACTUAL BACKGROUND**
18

19 Plaintiff was born on March 11, 1960. (AR 55). He received a GED
20 in 1980 and had no formal or vocational job training. (AR 65). He
21 worked as a warehouse worker from January 1985 until June 17, 2003. (AR
22 61).
23

24 **A. Plaintiff's Medical History**
25

26 Plaintiff's alleged injury began in 2001 while working in a
27 warehouse. (See AR 60, 208). Plaintiff alleged "constant pain and
28 discomfort in [his] lower back." (AR 67). As the alleged injury

1 developed, Plaintiff "missed time from work." (AR 60). In September
2 of 2003, Plaintiff sought medical treatment from Dr. Morris Platt. (AR
3 117-18). In his report, Dr. Platt indicated Plaintiff received medical
4 treatment from Dr. John Prekezes beginning in February of 2003. (AR
5 118). Dr. Prekezes diagnosed Plaintiff with disc prolapse and arthritis
6 and placed Plaintiff on temporary total disability. (AR 91, 118). Dr.
7 Prekezes treated Plaintiff with physical therapy and Darvocet. (AR 91).

8
9 Dr. Platt ordered an EMG examination of Plaintiff which yielded
10 normal results. (AR 119). Dr. Platt noted that Plaintiff continued
11 with physical therapy and experienced positive results. (Id.). During
12 this time, Dr. Platt referred Plaintiff to Dr. Dikran Torian, a pain
13 management specialist. (AR 114). Dr. Torian diagnosed Plaintiff with
14 degenerative disc disease, lumbar disk bulges, and lumbar radiculopathy.
15 (Id.). Dr. Platt reported that Dr. Torian treated Plaintiff with two
16 separate epidural steroid injections. (AR 120). Despite some temporary
17 relief, Plaintiff reported persistent pain following the injections.
18 (AR 100, 120). Dr. Platt then referred Plaintiff to Dr. Lokesh
19 Tantuwaya, a neurosurgeon, who found that Plaintiff did not require
20 surgery. (AR 120). Ultimately, Dr. Platt found that Plaintiff had a
21 disability which precluded heavy work. (AR 122). Specifically, Dr.
22 Platt found Plaintiff had lost fifty percent of his pre-injury capacity
23 to perform the work required of a warehouse manager. (Id.). As a
24 result, Plaintiff qualified for workers' compensation benefits. (See
25 AR 146).

26
27 In December of 2004, Plaintiff underwent an "Agreed Medical
28 Evaluation." (AR 158). Dr. V. Parabhu Dhalla performed the evaluation

1 and confirmed Dr. Platt's opinion that Plaintiff could not perform tasks
2 required by his warehouse position. (See AR 163). Plaintiff relied on
3 Dr. Dhalla and Dr. Platt's reports in his initial application and
4 subsequent requests for SSI and DBI benefits. (AR 28, 33, 38).

5
6 In September of 2008, Plaintiff sought medical treatment from Dr.
7 Robert Robbins. (AR 191). Dr. Robbins diagnosed Plaintiff with a back
8 injury and depression. He prescribed Welbutrin and Paxil. (Id.). At
9 Plaintiff's first appointment, Dr. Robbins assessed Plaintiff's physical
10 condition. (AR 183-184). Dr. Robbins found that Plaintiff was unable
11 to stand, walk, or sit for more than two hours in an eight-hour workday.
12 (AR 183). Dr. Robbins found that Plaintiff had no restrictions
13 concerning his ability to use his hands or feet for repetitive motions.
14 (Id.). Further, Dr. Robbins restricted Plaintiff's ability to lift
15 more than ten pounds, as well as climb, stoop, kneel, crouch, and
16 crawl. (AR 184). However, Dr. Robbins also found Plaintiff was capable
17 of frequent reaching from waist to chest, chest to shoulders and above
18 the shoulders. (Id.). Dr. Robbins found that Plaintiff's treatment or
19 medications would not interfere with his ability to work. (Id.).

20
21 **B. Consultative Examinations**

22
23 On August 24, 2007, Dr. Zaven Bilezikjian, an orthopaedic
24 specialist, examined Plaintiff. (AR 171). Dr. Bilezikjian found
25 Plaintiff possessed medium exertional capabilities. (See AR 171).
26 Specifically, Dr. Bilezikjian found Plaintiff able to walk, stand, sit,
27 climb ladders, kneel and stoop frequently and without restriction.
28 (Id.). Dr. Bilezikjian reported Plaintiff did not "appear to be in

1 acute or chronic distress" and observed Plaintiff "mov[ing] around the
2 exam room with a fair amount of ease." (AR 170). Further, Dr.
3 Bilezikjian reported Plaintiff was able to rise onto his toes and heels
4 without difficulty. (Id.). Also, Dr. Bilezikjian reported Plaintiff
5 had a normal range of motion that lacked evidence of a discernable
6 limitation on Plaintiff's flexibility. (Id.).
7

8 Dr. Robin Campbell performed Plaintiff's complete psychological
9 evaluation on April 16, 2009. (AR 192). Dr. Campbell reported that
10 though Plaintiff appeared sad and depressed at times, he had a pleasant
11 manner and good hygiene. (AR 194). Dr. Campbell reported Plaintiff
12 took Welbutrin, Abilify, and Peroxetine to treat his depression and
13 admitted improvement with the medication. (AR 193). Dr. Campbell noted
14 Plaintiff had never been psychiatrically hospitalized, had never been
15 in mental health treatment, and did not see a psychiatrist or therapist.
16 (Id.).
17

18 Dr. Campbell found Plaintiff had linear thought processes, was
19 alert and oriented to time, and had concentration that was "adequate for
20 conversation and time-limited assessment tasks." (AR 194-95). Further,
21 Dr. Campbell found Plaintiff did not suffer from hallucinations,
22 delusions, obsessions, or compulsions nor did Plaintiff show signs of
23 paranoia or memory impairment. (AR 195). Dr. Campbell reported
24 Plaintiff's judgment and insight were adequate and he "did not present
25 with obvious cognitive delays." (Id.). Dr. Campbell stated,
26 "[Plaintiff] is able to do household chores, run errands, shop, drive,
27 cook, and dress and bathe himself." (AR 194). Dr. Campbell also stated
28 that Plaintiff "gets along very well with those people he comes into

1 contact with daily." (Id.). Dr. Campbell reported Plaintiff possessed
2 the ability to "care for the horses and dogs" and "pay his own bills,"
3 as well as walk his daughter to and from the bus stop. (Id.). Notably,
4 Dr. Campbell stated Plaintiff was able to "get about without physical
5 assistance." (Id.). In concluding his summary of Plaintiff's
6 activities, Dr. Campbell wrote: "In the morning, he gets up and feeds
7 the horses. He will take his daughter to the bus stop. In the
8 afternoon, he will take a nap and pick up his daughter. In the evening,
9 he will feed the horses and doges and watch TV." (Id.).

10
11 Based on these reports, Dr. Campbell "rule[d] out major depressive
12 disorder" and diagnosed Plaintiff with bereavement. (AR 196).
13 Specifically, Dr. Campbell stated Plaintiff's abilities to "understand,
14 remember, and carry out complex instructions," to "make judgments on
15 complex work decisions," and to "respond appropriately to usual work
16 situations and changes in a routine setting" were moderately impaired.
17 (Id.). Dr. Campbell further stated Plaintiff's ability to "interact
18 appropriately with the public, supervisors, and coworkers" was mildly
19 impaired. (Id.). However, Dr. Campbell found Plaintiff's ability to
20 "make judgments on simple, work-related decisions" was unimpaired.
21 (Id.). Further, Dr. Campbell found Plaintiff had the ability to
22 understand, remember and carry out short, simple instructions. (Id.).

23 24 **C. Plaintiff's Subjective Complaints**

25
26 In his "Disability Report," Plaintiff claimed he suffered from
27 lumbar sadiculopathy that precluded lifting, bending, driving, or
28 performing his job as a warehouse worker. (AR 60). Plaintiff stated

1 he stopped working on June 17, 2003 because his employer would only
2 allow him to work at full capacity even though his doctor restricted
3 this ability. (See AR 60). Plaintiff reported his work duties included
4 lifting and carrying supplies that frequently weighed fifty pounds and
5 occasionally weighed one hundred pounds. (See AR 61).

6
7 On August 15, 2007, Plaintiff completed an "Exertional Daily
8 Activities Questionnaire." (AR 67, 69). In the questionnaire,
9 Plaintiff claimed he suffered constant lower back pain that some days
10 it was "difficult for him to get out of bed." (AR 67). Plaintiff
11 treated his pain with Extra Strength Tylenol. (AR 69). Plaintiff
12 admitted he could walk several hundred yards to check his mail or go to
13 his doctors' appointments. (AR 67). Plaintiff further admitted that,
14 though he generally avoided stairs, he could climb the three stairs at
15 his home. (AR 68). Additionally, Plaintiff stated that he shopped for
16 groceries if assisted by his fourteen-year-old daughter and that he
17 carried groceries and trash every other day. (Id.). Plaintiff does
18 minor work on his car and in his yard even though overextending himself
19 in these activities increased his pain. (Id.). In addition to his back
20 pain, Plaintiff reported feelings of depression allegedly caused by his
21 wife's illness and his inability to perform his daily chores without
22 tiring. (See AR 67, 69). Plaintiff stated that he slept approximately
23 eight to ten hours at night and one to two hours during the day. (AR
24 69). Plaintiff stated on "bad days" his chores went undone. (Id.).

25
26 At the February 27, 2009 hearing, Plaintiff again claimed he
27 suffered from lower back pain and depression as well as neck pain and
28 numb extremities. (See AR 206-07). Plaintiff stated that his back pain

1 had remained constant since it first developed, but the severity of his
2 mental condition was cyclical. (See AR 209, 212). Plaintiff speculated
3 it was his physical rather than his mental condition that kept him from
4 working. (AR 207). Plaintiff again claimed he was unable to work
5 because his employer would not permit him to return to his warehouse job
6 unless he was capable of performing his full duties. (AR 208).
7 Plaintiff claimed the recent death of his wife had increased his
8 depression. (AR 206). Plaintiff speculated his depression would cause
9 difficulty working with other people in close proximity and completing
10 tasks in a timely manner. (See AR 209-10). Plaintiff stated he
11 sometimes neglected his personal hygiene and medical regimen. (AR 217-
12 18). However, Plaintiff cares for his pets, does minor chores, and
13 takes his daughter to the bus stop. (AR 210-11).

14
15 **D. Vocational Expert's Testimony**

16
17 _____At the February 27, 2009 hearing, Gregory Jones, a vocational
18 expert ("VE"), testified as to Plaintiff's ability to work. (AR 218).
19 Answering a hypothetical the ALJ posed, Jones stated an individual with
20 Plaintiff's education, skills, work history, and residual functional
21 capacity ("RFC"),¹ could not perform the duties of a warehouse worker.
22 (AR 219). However, Jones stated that such an individual would be able
23 to work as a housekeeper, cafeteria attendant, or bench assembler as
24 defined in the Dictionary of Occupational Title. (AR 220). Further,
25

26 _____
27 ¹ Residual functional capacity is "the most [one] can still do
28 despite [one's] limitations" and represents an assessment "based on all
the relevant evidence in [one's] case record." 20 C.F.R. §§
404.1545(a), 416.945(a).

1 Jones stated that such jobs were available in the national economy as
2 well as Plaintiff's regional economy. (Id.).

3
4 **IV.**

5 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

6
7 To qualify for disability benefits, a claimant must demonstrate
8 a medically determinable physical or mental impairment that prevents him
9 from engaging in substantial gainful activity² and that is expected to
10 result in death or to last for a continuous period of at least twelve
11 months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing
12 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant
13 incapable of performing the work he previously performed and incapable
14 of performing any other substantial gainful employment that exists in
15 the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir.
16 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

17
18 To decide if a claimant is entitled to benefits, an ALJ conducts
19 a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are as
20 follows:

- 21
22 (1) Is the claimant presently engaged in substantial gainful
23 activity? If so, the claimant is found not disabled.
24 If not, proceed to step two.

25
26 _____
27 ² Substantial gainful activity means work that involves doing
28 significant and productive physical or mental duties and is done for pay
or profit. 20 C.F.R. §§ 404.1510, 416.910.

1 (2) Is the claimant's impairment severe? If not, the
2 claimant is found not disabled. If so, proceed to step
3 three.

4
5 (3) Does the claimant's impairment meet or equal one of a
6 list of specific impairments described in 20 C.F.R. Part
7 404, Subpart P, Appendix 1? If so, the claimant is
8 found disabled. If not, proceed to step four.

9
10 (4) Is the claimant capable of performing her past work? If
11 so, the claimant is found not disabled. If not, proceed
12 to step five.

13
14 (5) Is the claimant able to do any other work? If not, the
15 claimant is found disabled. If so, the claimant is
16 found not disabled.

17
18 Tackett, 180 F.3d at 1098-99; see also 20 C.F.R. §§ 404.1520(b)-(g)(1),
19 416.920(b)-(g)(1); Bustamante v. Massanari, 262 F.3d 949, 953-54 (9th
20 Cir. 2001) (citations omitted).

21
22 The claimant has the burden of proof at steps one through four, and
23 the Commissioner has the burden of proof at step five. Bustamante, 262
24 F.3d at 953-54. If, at step four, the claimant meets his burden of
25 establishing an inability to perform past work, the Commissioner must
26 show that the claimant can perform some other work that exists in
27 "significant numbers" in the national economy, taking into account the
28 claimant's RFC, age, education, and work experience. Tackett, 180 F.3d

1 at 1098, 1100; Reddick, 157 F.3d at 721; 20 C.F.R. §§ 404.1520(g)(1),
2 416.920(g)(1). The Commissioner may do so by the testimony of a VE or
3 by reference to the Medical-Vocational Guidelines appearing in 20 C.F.R.
4 Part 404, Subpart P, Appendix 2 (commonly known as "the Grids").
5 Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). When a
6 claimant has both exertional (strength-related) and nonexertional
7 limitations, the Grids are inapplicable and the ALJ must take the
8 testimony of a VE. Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000).

9
10 **V.**

11 **THE ALJ'S DECISION**

12
13 On August 11, 2009, the ALJ issued a decision denying Plaintiff's
14 application for SSI and DIB. (AR 12, 21). The ALJ employed the five-
15 step sequential evaluation process, (See AR 13), and concluded that
16 Plaintiff was not disabled within the meaning of the Social Security
17 Act. (AR 21). At the first step, the ALJ observed Plaintiff had not
18 engaged in substantial gainful activity since the alleged onset of
19 Plaintiff's injury. (AR 14). Next, the ALJ found Plaintiff suffered
20 from multilevel degenerative disc disease, lumbar spine sprain/strain,
21 and depressive disorder secondary to bereavement. (Id.). Further, the
22 ALJ found these impairments were severe because they affected Plaintiff
23 more than minimally. (Id.). At step three, the ALJ found the severe
24 impairments at step two did not meet or medically equal a listed
25 impairment. (AR 15).

26
27 At step four, the ALJ found Plaintiff could no longer perform his
28 past work and possessed the RFC to perform less than a full range of

1 light work as defined in 20 CFR 404.1567(b) and 416.967(b). (AR 15,
2 19). Specifically, the ALJ found Plaintiff could stand, sit, and walk
3 for six hours in an eight-hour work day, perform occasional postural
4 activities, and carry and lift twenty pounds occasionally and ten pounds
5 frequently. (AR 15). Additionally, the ALJ found Plaintiff could do
6 non-public tasks that were limited to superficial contact with others.
7 (AR 16). However, the ALJ held Plaintiff could not climb ladders,
8 ropes, or scaffolds. (AR 15). Notably, the ALJ found that Plaintiff
9 could do "non-public, complex tasks, limited to superficial contact with
10 others" in his decision.³ (AR 16). However, when questioning the VE
11 during the hearing about Plaintiff's ability to work, the ALJ qualified
12 a hypothetical by limiting Plaintiff to performing "no complex tasks."
13 (See AR 219), and the Court finds that the jobs the ALJ ultimately found
14 Plaintiff capable of were jobs involving "non-complex tasks". The ALJ
15 used the VE's answer to his hypothetical, using non-complex tasks, in
16 the ALJ's evaluation of Plaintiff's RFC. (See AR 16, 20). Plaintiff
17 admits that the ALJ's error in his written decision, stating Plaintiff
18 could perform "complex tasks", was harmless. (See Pl. Compl. Br. at 3).

19
20 The ALJ followed an additional two-step process to consider
21 Plaintiff's alleged symptoms pursuant to step four. (AR 16). First,
22 the ALJ considered all available medical testimony and determined
23 Plaintiff's impairments could reasonably be expected to cause his
24 alleged symptoms. (Id.). However, pursuant to the second step, the ALJ

25
26 ³ The Court finds that this was likely an inadvertent error on the
27 part of the ALJ and that the ALJ intended to find that Plaintiff could
28 perform "non-complex tasks," consistent with the ALJ's hypothetical and
the ALJ's ultimate findings regarding the jobs Plaintiff could perform.

1 held Plaintiff's testimony regarding the intensity and limiting effects
2 of his impairments was inconsistent with his RFC and medical findings.
3 (AR 16-17). Specifically, the ALJ stated Plaintiff's, "self-reported
4 physical functional ability is inconsistent with his claim of physical
5 disability." (AR 16). The ALJ relied on benign medical evidence and
6 a minimal treatment regimen to support his position. (AR 17).
7 Specifically, the ALJ cited MRI results showing "no significant
8 impingement," normal EMG and nerve conduction study results, and
9 Plaintiff's ability to move around with ease. (Id.). Also, the ALJ
10 noted Plaintiff's pain rating suggested Plaintiff's "pain was manageable
11 and not severe." (Id.). However, the ALJ gave "great weight" to Dr.
12 Campbell's opinion that Plaintiff had moderate difficulties regarding
13 concentration, persistence, and pace and mild difficulties in social
14 functioning. (AR 19). As a result, and taking into consideration the
15 psychological effects caused by Plaintiff's wife's passing, the ALJ
16 found Plaintiff's RFC to be less than the RFC found by the consultative
17 orthopedist, Dr. Bilezikjian. (See id.).
18

19 Finally, at step five, the ALJ concluded that, based on Plaintiff's
20 RFC and the VE's testimony, Plaintiff could work as a housekeeper,
21 cafeteria attendant, or bench assembler. (AR 20). Accordingly, the ALJ
22 found that Plaintiff was not disabled at any time through the date of
23 the decision. (AR 20).
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VI.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), a district court may review the Commissioner's decision to deny benefits. The court may set aside the Commissioner's decision when the ALJ's findings are based on legal error or are not supported by substantial evidence in the record as a whole. Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996).

"Substantial evidence is more than a scintilla, but less than a preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence which a reasonable person might accept as adequate to support a conclusion." (Id.). To determine whether substantial evidence supports a finding, the court must "'consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [Commissioner's] conclusion.'" Aukland, 257 F.3d at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming or reversing that conclusion, the court may not substitute its judgment for that of the Commissioner. Reddick, 157 F.3d at 720-21.

VII.

DISCUSSION

Plaintiff contends the ALJ erred for two reasons. First, Plaintiff argues the ALJ failed to include a component of Dr. Campbell's opinion in his decision. (Plaintiff's Complaint Brief ("Pl. Compl. Br.") at 3-

1 4). Second, Plaintiff argues the ALJ erred by finding Plaintiff's
2 testimony was not credible. (Id. at 6). For the reasons discussed
3 below, the Court disagrees with Plaintiff's contentions.

4
5 **A. No Remand Is Required For Further Consideration Of The**
6 **Consultative Examiner's Opinion As The ALJ's Residual Functional**
7 **Capacity Determination Is Supported By Substantial Evidence**
8

9 Plaintiff argues the ALJ rejected portions of Dr. Campbell's
10 opinion regarding Plaintiff's mental limitations when assessing
11 Plaintiff's RFC. (Pl. Compl. Br. at 3). Specifically, Plaintiff
12 contends the ALJ did not consider Dr. Campbell's opinion that Plaintiff
13 suffered moderate impairments in his "ability to respond appropriately
14 to usual work situations and changes in a routine setting." (Id. at 3-
15 4). Plaintiff maintains the rejected limitations would further limit
16 Plaintiff's ability to work and must therefore be factored into the
17 ALJ's assessment of Plaintiff's RFC. (Plaintiff's Reply Brief ("Pl.
18 Reply Br.") at 2). The Court disagrees.

19
20 Consultative physicians are nontreating sources. Implementing
21 regulations define a "nontreating source" to mean "a physician,
22 psychologist, or other acceptable medical source who has examined [the
23 claimant] but does not have, or did not have, an ongoing treatment
24 relationship with [the claimant]." 20 C.F.R. § 416.902. This term
25 "includes an acceptable medical source who is a consultative examiner
26 for [the Agency] when the consultative examiner is not [the claimant's]
27 treating source." Id. The uncontradicted opinion of a consultative
28 examiner can only be rejected for "clear and convincing" reasons.

1 Lester v. Chater, 81 F.3d 831, 830 (9th Cir., as amended April 9, 1996).
2 Further, the opinion of the consultative examiner, even if contradicted
3 by another doctor, can only be rejected for specific and legitimate
4 reasons that are supported by substantial evidence in the record.
5 Andrews v. Shalala, 53 F.3d 1035, 1043 (9th Cir. 1995).
6

7 Dr. Campbell examined Plaintiff on April 16, 2009 and diagnosed him
8 with bereavement "rul[ing] out major depressive disorder." (AR 196).
9 Dr. Campbell found Plaintiff had moderate impairments regarding his
10 ability to "understand, remember, and carry out complex instructions,"
11 "to make judgements on complex work decisions," and "to respond
12 appropriately to usual work situations and changes in a routine
13 setting." (AR 196). Dr. Campbell further found Plaintiff had mild
14 impairments regarding his "ability to interact appropriately with the
15 public, supervisors, and coworkers." (Id.). Dr. Campbell stated
16 Plaintiff was dysphoric and pessimistic but was "able to get along
17 without physical assistance," and could get along "very well with those
18 people he comes into contact with daily." (AR 194, 196). Dr. Campbell
19 reported Plaintiff was alert and well oriented, possessed adequate
20 judgement, insight, and concentration, and "did not present with obvious
21 cognitive delays," or memory impairment. (AR 194-95). Dr. Campbell
22 noted Plaintiff did not see a psychiatrist or therapist, and
23 acknowledged some improvement from the medication he took. (AR 193).
24

25 The ALJ gave "great weight" to Dr. Campbell's findings. (AR 19).
26 The ALJ found the results of Plaintiff's psychological examination
27 "mostly benign." (Id.). The ALJ did not expressly reference Dr.
28 Campbell's opinions regarding Plaintiff's mental impairments in his

1 decision. (See id.). Instead, the ALJ characterized them as "moderate
2 difficulties with regard to concentration, persistence, and pace" and
3 "mild difficulties in social functioning." (Id.). The ALJ merely
4 restated Dr. Campbell's findings, but did not ignore them when the ALJ
5 described Plaintiff's RFC. Based in part on Dr. Campbell's opinions and
6 Plaintiff's testimony, the ALJ determined Plaintiff could perform non-
7 public, non-complex tasks⁴ limited to superficial contact with others.
8 (See AR 16, 19, 219).

9
10 Here, Plaintiff's RFC is consistent with Dr. Campbell's opinion
11 because the ALJ incorporated all of it into his decision rather than
12 rejecting some of it as Plaintiff contends. Because the ALJ adopted Dr.
13 Campbell's opinion with "great weight," (AR 19), he was not required to
14 provide "specific, legitimate reasons for rejecting" it. (Pl. Compl.
15 Br. at 3). Dr. Campbell reported that Plaintiff had moderate
16 impairments in his "ability to respond appropriately to usual work
17 situations and changes in a routine setting." (AR 196). Plaintiff
18 argues the ALJ rejected this specific component of Dr. Campbell's
19 opinion when determining Plaintiff's RFC because he did not state it in
20 his decision. (See Pl. Compl. Br. at 3-4) ("Rather than take into
21 account any of the functional limitations cited by Dr. Campbell, the ALJ
22 instead merely described Dr. Campbell's opinions"). However,
23 the ALJ explicitly stated he gave "great weight" to Dr. Campbell's
24 opinion and characterized it in his report as "moderate difficulties
25

26 ⁴ As discussed in footnote 3, above, the Court finds that the ALJ
27 intended to use the term "non-complex" tasks when describing Plaintiff's
28 RFC, as reflected in the ALJ's hypothetical, and inadvertently used the
term "complex tasks" in his written decision.

1 with regard to concentration, persistence, and pace.” (AR 19). The ALJ
2 reasoned Plaintiff “could perform no complex tasks,” (See AR 219), and
3 thus restricted Plaintiff to jobs that were “non-public” and “limited
4 to superficial contact with others.” (AR 16). The ALJ incorporated Dr.
5 Campbell’s opinion by making these restrictions. The restrictions
6 precluded Plaintiff from working jobs that required rapid judgement and
7 adaptability and thus addressed Plaintiff’s moderate inability to
8 respond appropriately to usual work situations and changes. Therefore,
9 the ALJ fully incorporated Dr. Campbell’s opinion into Plaintiff’s RFC.
10

11 Furthermore, substantial evidence supports the ALJ’s RFC. Dr.
12 Bilezikjian reported Plaintiff possessed medium exertional capabilities,
13 (See AR 171), based on Plaintiff’s normal range of motion and ability
14 to move with ease. (AR 170). Dr. Bilezikjian’s opinion is consistent
15 with Plaintiff’s own reported ability to care for his pets, grocery
16 shop, and do minor household chores. (AR 67-68, 211). However,
17 Plaintiff testified the effects of his wife’s death exacerbated his
18 depression and caused limitations on his mental capacities. (See AR
19 206, 209, 217). Based on these statements, the ALJ lowered Plaintiff’s
20 RFC from medium to light work and added further restrictions to address
21 Plaintiff’s mental impairments. (See AR 19). The ALJ noted that his
22 RFC assessment was lower than any of Plaintiff’s doctors’ assessments,
23 including those who placed Plaintiff on temporary total disability for
24 workers’ compensation purposes. (Id.). Any benefit derived from
25 explicitly addressing Dr. Campbell’s allegedly rejected opinion was
26 therefore already incorporated into the ALJ’s RFC. Thus, it is unlikely
27 that the ALJ would have lowered the RFC any further had he listed Dr.
28 Campbell’s statements verbatim in his decision. To the extent the ALJ

1 did not address Dr. Campbell's opinion verbatim, any failure to do so
2 was harmless error. See Carmickle v. Comm'r, 533 F.3d 1155, 1162 (9th
3 Cir. 2008) ("So long as there remains 'substantial evidence supporting
4 the ALJ's conclusions' and the error 'does not negate the validity of
5 the ALJ's ultimate conclusion,' such is deemed harmless and does not
6 warrant reversal) (quoting Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d
7 1190, 1197 (9th Cir. 2004)); Burch v. Barnhart, 400 F.3d 676, 679 (9th
8 Cir. 2005) ("A decision of the ALJ will not be reversed for errors that
9 are harmless.").

10
11 Thus, the Court concludes the ALJ properly incorporated Dr.
12 Campbell's opinion into his assessment of Plaintiff's RFC. Further, any
13 error the ALJ made by not addressing Dr. Campbell's opinion verbatim is
14 harmless. Therefore, remand is unwarranted and the Commissioner's
15 decision is affirmed.

16
17 **B. The ALJ Provided Clear And Convincing Reasons For Rejecting**
18 **Plaintiff's Subjective Testimony**

19
20 _____Plaintiff argues the ALJ improperly rejected Plaintiff's testimony.
21 (See Pl. Compl. Br. at 6). Plaintiff maintains the ALJ failed to
22 provide clear and convincing reasons for finding Plaintiff's testimony
23 inconsistent with the medical evidence. (See Pl. Reply Br. at 4).
24 Plaintiff asserts the ALJ's findings are not supported by substantial
25 evidence. (Id.). The Court disagrees.

26
27 Whenever an ALJ's disbelief of a claimant's testimony is a critical
28 factor in a decision to deny benefits, as it is here, the ALJ must make

1 explicit credibility findings. Rashad v. Sullivan, 903 F.2d 1229, 1231
2 (9th Cir. 1990); see Albalos v. Sullivan, 907 F.2d 871, 874 (9th Cir.
3 1990) (holding an implicit finding that claimant was not credible is
4 insufficient). Unless there is affirmative evidence showing that the
5 claimant is malingering, the ALJ's reasons for rejecting the claimant's
6 testimony must be "clear and convincing." Lester, 81 F.3d at 834. As
7 long as plaintiff offers evidence of a medical impairment that could
8 reasonably be expected to produce pain, the ALJ may not require the
9 degree of pain to be corroborated by objective medical evidence.
10 Bunnell v. Sullivan, 947 F.2d 341, 346-47 (9th Cir. 1991) (en banc);
11 Smolen, 80 F.3d at 1282.

12
13 An ALJ can, however, reject a claimant's testimony regarding the
14 severity of his symptoms if the ALJ points to clear and convincing
15 reasons for doing so. See Smolen, 80 F.3d at 1283-84. To determine
16 whether testimony regarding the severity of symptoms is credible, the
17 ALJ may consider, among other things, the following evidence: (1)
18 ordinary techniques of credibility evaluation, such as the claimant's
19 reputation for lying, prior inconsistent statements concerning the
20 symptoms, and other testimony by the claimant that appears less than
21 candid; (2) unexplained or inadequately explained failure to seek
22 treatment or to follow a prescribed course of treatment; and (3) the
23 claimant's daily activities. Id. at 1284. If the ALJ's credibility
24 finding is supported by substantial evidence in the record, the Court
25 may not engage in second-guessing. Thomas v. Barnhart, 278 F.3d 947,
26 959 (9th Cir. 2002).

1 At the February 27, 2009 hearing, Plaintiff claimed the severity
2 of his pain had remained constant since its onset. (AR 212).
3 Specifically, Plaintiff stated he suffered from "stiffness in [his]
4 neck," "lower, middle back pain," a "numb or tingly" right leg, and
5 "problems with [his] right arm and shoulder." (Id.). Plaintiff stated
6 he was "pretty much taking it easy and not doing a lot of physical
7 work." (AR 212). Plaintiff also claimed he suffered from depression
8 brought on in part by his wife's death. (See AR 206). Plaintiff
9 suggested his depression would make it difficult for him to work with
10 other people and complete tasks in a timely manner. (See AR 209-10).
11 However, Plaintiff admitted he could take his daughter "to and from the
12 bus stop," (Id.), "feed [his] dogs and cats," and "try to do a little
13 around the house." (AR 211).

14
15 The ALJ provided clear and convincing reasons for rejecting
16 Plaintiff's subjective testimony regarding the severity of his pain.
17 The ALJ compared Plaintiff's testimony, medical history, and prior
18 statements. The ALJ then based his decision on three factors: (1)
19 Plaintiff's daily activities; (2) the benign medical evidence; and (3)
20 Plaintiff's conservative treatment regimen.

21
22 First, in regard to Plaintiff's daily activities, the ALJ stated,
23 "[Plaintiff's] self-reported physical functional ability is inconsistent
24 with his claim of physical disability." (AR 16). To support this
25 finding, the ALJ cited Plaintiff's admission that he could "climb
26 stairs, carry groceries, take out the trash, shop, do laundry, drive,
27 and do yard work." (AR 16) (citing AR 68). The ALJ also cited
28 Plaintiff's admission to Dr. Campbell that Plaintiff could "care for his

1 horses and dogs, as well as dress and bathe himself.” (Id.) (citing AR
2 194). This Court agrees with the ALJ that Plaintiff’s daily activities
3 of caring for horses and dogs, various household chores, driving and
4 doing yard work are inconsistent with the degree of pain described by
5 Plaintiff.

6
7 Second, the ALJ cited benign medical evidence to support his
8 rejection of Plaintiff’s testimony. The ALJ held, “[T]he medical
9 evidence suggests [Plaintiff’s] impairment was not as severe as
10 [Plaintiff] alleges.” (AR 17). Specifically, the ALJ cited to
11 Plaintiff’s MRI results that showed “no significant impingement” and his
12 EMG and nerve conduction study results that were normal. (Id.) (citing
13 AR 97, 99, 140). The ALJ also reasoned that Plaintiff’s pain rating
14 suggested Plaintiff’s “pain was manageable and not severe.” (Id.)
15 (citing AR 159). The ALJ noted that his treating physician found that
16 Plaintiff could work part-time at the warehouse if his employer allowed
17 it. (AR 17). Further, the ALJ noted that Dr. Bilezikjian observed
18 Plaintiff “moving about the examination room with a fair amount of
19 ease.” (Id.) (citing AR 170). The Court agrees that the medical
20 evidence is not consistent with the degree of pain asserted by
21 Plaintiff.

22
23 Third, the ALJ cited Plaintiff’s conservative treatment to support
24 rejection of Plaintiff’s testimony. The ALJ found that Plaintiff’s back
25 pain treatment was “minimal.” (AR 17). Further, the ALJ noted
26 Plaintiff took only Tylenol to relieve his pain, though he had received
27 epidural injections in the past. (Id.). Finally, the ALJ observed that
28 Plaintiff was not a candidate for surgical intervention. The ALJ’s

1 conclusion that Plaintiff's treatment was "minimal" and conservative is
2 supported by the record. This evidence supports the rejection of
3 Plaintiff's testimony.

4 Thus, the Court concludes the ALJ provided clear and convincing
5 reasons for rejecting Plaintiff's testimony regarding his claim of
6 complete disability. Therefore, the Commissioner's decision is
7 affirmed.

8
9 **VIII.**
10 **CONCLUSION**

11
12 Consistent with the foregoing, and pursuant to sentence four of 42
13 U.S.C. § 405(g),⁵ IT IS ORDERED that judgment be entered AFFIRMING the
14 decision of the Commissioner and dismissing this action with prejudice.
15 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
16 Order and the Judgment on counsel for both parties.

17
18 DATED: September 20, 2010.

19 /s/
20 SUZANNE H. SEGAL
21 UNITED STATES MAGISTRATE JUDGE

22
23
24
25
26

27 ⁵ This sentence provides: "The [district] court shall have power
28 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."