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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JIMMY WOOD,	Plaintiff,) Case No. EDCV 11-01799-OP)) MEMORANDUM OPINION AND) ORDER)))
v.		
MICHAEL J. ASTRUE, Commissioner of Social Security,	Defendant.	

The Court¹ now rules as follows with respect to the two disputed issues listed in the Joint Stipulation (“JS”).²

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¹ Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the United States Magistrate Judge in the current action. (ECF Nos. 5, 7.)

² As the Court advised the parties in its Case Management Order, the decision in this case is being made on the basis of the pleadings, the Administrative Record and the Joint Stipulation filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g). (ECF No. 4 at 3.)

1 I.

2 **DISPUTED ISSUES**

3 As reflected in the Joint Stipulation, the disputed issues raised by
4 Plaintiff as the grounds for reversal and/or remand are as follows:

- 5 (1) Whether the Administrative Law Judge (“ALJ”) properly
6 considered Plaintiff’s credibility; and
7 (2) Whether the ALJ properly considered the testimony of Plaintiff’s
8 wife.

9 (JS at 3.)

10 II.

11 **STANDARD OF REVIEW**

12 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s
13 decision to determine whether the Commissioner’s findings are supported by
14 substantial evidence and whether the proper legal standards were applied.
15 DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence
16 means “more than a mere scintilla” but less than a preponderance. Richardson
17 v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971);
18 Desrosiers v. Sec’y of Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir.
19 1988). Substantial evidence is “such relevant evidence as a reasonable mind
20 might accept as adequate to support a conclusion.” Perales, 402 U.S. at 401
21 (citation omitted). The Court must review the record as a whole and consider
22 adverse as well as supporting evidence. Green v. Heckler, 803 F.2d 528, 529-
23 30 (9th Cir. 1986). Where evidence is susceptible of more than one rational
24 interpretation, the Commissioner’s decision must be upheld. Gallant v.
25 Heckler, 753 F.2d 1450, 1452 (9th Cir. 1984).

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1 III.

2 **DISCUSSION**

3 **A. The ALJ’s Findings.**

4 The ALJ found that Plaintiff has the following severe impairments:
5 morbid obesity, sleep apnea, diabetes mellitus, affective mood disorder,
6 obsessive compulsive disorder, and edema. (Administrative Record (“AR”) at
7 15.) The ALJ concluded that Plaintiff retains the residual functional capacity
8 (“RFC”) to perform medium work with the following limitations: lift and/or
9 carry twenty-five pounds frequently and fifty pounds occasionally; stand and/or
10 walk for four hours in an eight-hour workday; sit for six hours in an eight-hour
11 workday; must be close to a bathroom; and can do simple and repetitive tasks
12 but cannot have contact with the public and can only have non-intense contact
13 with co-workers and supervisors. (Id. at 16.)

14 To determine the extent to which Plaintiff’s limitations eroded his ability
15 to perform the full range of medium work, the ALJ asked the vocational expert
16 (“VE”) whether jobs exist in the national economy for an individual with
17 Plaintiff’s age, education, work experience, and RFC. (Id. at 21.) Based on the
18 testimony of the VE, the ALJ determined Plaintiff could make a successful
19 adjustment to other work that exists in significant numbers in the national
20 economy. (Id.) Thus, the ALJ determined that Plaintiff has not been under a
21 disability as defined by the Social Security Act. (Id.)

22 **B. The ALJ Properly Evaluated Plaintiff’s Credibility.**

23 Plaintiff asserts that the ALJ failed to provide clear and convincing
24 reasons for rejecting his excess pain testimony. (JS at 26.) The Court
25 disagrees.

26 In her decision, the ALJ rejected Plaintiff’s credibility as follows:

27 The claimant’s testimony does not establish any different
28 conclusions than found herein. The claimant testified he was not

1 currently working and last worked in October 27, 2008 as a caregiver
2 for his mother; the job ended when she passed away. The claimant
3 has no other sources of income besides relying on support from his
4 spouse. The claimant lives in a two-story house with his spouse and
5 a dog. He said he does not go upstairs. The claimant has applied for
6 two housekeeping jobs at hospitals, but was denied.

7 The claimant said he does not believe he could do the job if he
8 was offered the job. The claimant explained he has slept for 3 weeks
9 prior to the hearing, he has slept for 2 weeks straight and only got out
10 of bed to go to the bathroom. The claimant said he could not work
11 because he has a bipolar disorder, depression, and attention deficit
12 hyperactivity disorder (“ADHD”).

13 The claimant uses a CPPAP [sic] machine to alleviate his sleep
14 apnea for 12 years. The claimant explained he is fatigue [sic] and
15 lays down 4 to 6 hours. He feels constantly exhausted. He stated he
16 has diabetes mellitus and has neuropathic pain in his feet; the
17 claimant takes medication for his diabetes. He is on a diabetic diet
18 and walks a block once a week. He also takes medication for his
19 depression.

20 The claimant admitted he has a valid California driver’s
21 license and is able to drive. He also admitted he drinks alcohol. He
22 explained he binge drinks once a week.³ He admitted he drank three
23 beers the night before the hearing. The claimant also admitted he
24 could do the following activities of daily living: take his medication
25 as prescribed, go shopping, watch television, walk to the mailbox to
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27 ³ At the hearing, Plaintiff explained he binge drank once a week prior
28 to 2008 and about once a month after 2008. (AR at 37.)

1 get the mail, prepare his own meals, maintain his personal care, help
2 his wife with the household chores, attend church every Sunday, and
3 use a computer.

4 In addition to the claimant's testimony, the undersigned has
5 also read and considered the claimant's fatigue questionnaire, dated
6 March 22, 2009, and statements of records and finds the claimant
7 only credible to the extent that he can do the work described herein.
8 The claimant stated he could do the following activities of daily
9 living, such as: take care of his dog, make coffee, use a computer to
10 check his emails and current events, prepare his own meals, do
11 household chores (e.g. doing the dishes), run errands (e.g. shopping
12 for groceries, getting gas for the car), walk to the mailbox to pick up
13 mail, do yard work (e.g. mow the lawn), and watch television.
14 Despite is [sic] abilities to do various activities of daily living, the
15 claimant stated he has fatigue.

16 The undersigned notes some of the physical and mental
17 abilities and social interactions required in order to perform the
18 above-described activities of daily living are the same as those
19 necessary for obtaining and maintaining employment. The
20 claimant's ability to participate in the activities of daily living, stated
21 above, undermined the credibility of the claimant's allegations of
22 functional limitations.

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24 The medical records indicate the claimant has been treated at
25 the Beaver Medical Group from October 3, 2008 to February 24,
26 2010. The claimant has been diagnosed with obstructive sleep
27 apnea, hypertension, hyperlipidemia diabetes, morbid obesity, gout,
28 insomnia, depression, chronic ankle edema, history of 'tumor' right

1 adrenal gland, and a history of steatohepatitis. A medical report,
2 dated October 29, 2009 notes the claimant has bronchitis (probably
3 influenza), diabetes mellitus, hypertension, sleep apnea, edema, and
4 depression and insomnia, all of which are stable. He has been
5 conservatively treated with medication and advised to go on a diet
6 and lose weight. However, the treatment records show the claimant
7 declined to follow treatment recommendations. The claimant 'did
8 not want to deal with' dieting and weight loss. This demonstrates a
9 possible unwillingness to do what is necessary to improve his
10 condition. It may also be an indication that his symptoms are not as
11 severe as he purports.

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13 Regarding to the claimant's mental impairment, the
14 undersigned has read the checklist-style progress notes, dating from
15 June 3, 2009 to July 13, 2010. These checklist-style medical forms
16 appear to have been completed as an accommodation to the claimant
17 and include only conclusions regarding functional limitations
18 without any rationale for those conclusions. The undersigned finds
19 these medical forms have very little probative value because they are
20 not supported by any objective evidence. Further, the recent progress
21 notes show the claimant was complaint [sic] with treatment, had no
22 medication side effects, and had a normal mental status examination.

23 The undersigned has also read and considered all of the State
24 agency physicians' reports and consultative examiners' reports and
25 agrees with them. However, the undersigned took into consideration
26 the claimant's subjective complaints and gave the claimant a more
27 restrictive residual functional capacity herein than assessed by the
28 State agency physicians reports and consultative examiners.

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2 In sum, the above residual functional capacity assessment is
3 supported by the evidence as a whole. The claimant's subjective
4 complaints are less than fully credible and the objective medical
5 evidence does not support the alleged severity of symptoms.

6 (Id. at 17-20 (internal citations omitted).)

7 An ALJ's assessment of pain severity and claimant credibility is entitled
8 to "great weight." Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989);
9 Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1986). When, as here, an ALJ's
10 disbelief of a claimant's testimony is a critical factor in a decision to deny
11 benefits, the ALJ must make explicit credibility findings. Rashad v. Sullivan,
12 903 F.2d 1229, 1231 (9th Cir. 1990); Lewin v. Schweiker, 654 F.2d 631, 635
13 (9th Cir. 1981); see also Albalos v. Sullivan, 907 F.2d 871, 874 (9th Cir. 1990)
14 (holding insufficient an implicit finding that claimant was not credible).

15 Under the "Cotton test," where the claimant has produced objective
16 medical evidence of an impairment which could reasonably be expected to
17 produce some degree of pain and/or other symptoms, and the record is devoid
18 of any affirmative evidence of malingering, the ALJ may reject the claimant's
19 testimony regarding the severity of the claimant's pain and/or other symptoms
20 only if the ALJ makes specific findings stating clear and convincing reasons
21 for doing so. See Cotton v. Bowen, 799 F.2d 1403, 1407 (9th Cir. 1986); see
22 also Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir. 1996); Dodrill v. Shalala,
23 12 F.3d 915, 918 (9th Cir. 1993); Bunnell v. Sullivan, 947 F.2d 341, 343 (9th
24 Cir. 1991).

25 To determine whether a claimant's testimony regarding the severity of
26 her symptoms is credible, the ALJ may consider, among other things, the
27 following evidence: (1) ordinary techniques of credibility evaluation, such as
28 the claimant's reputation for lying, prior inconsistent statements concerning the

1 symptoms, and other testimony by the claimant that appears less than candid;
2 (2) unexplained or inadequately explained failure to seek treatment or to follow
3 a prescribed course of treatment; (3) the claimant's daily activities; and (4)
4 testimony from physicians and third parties concerning the nature, severity, and
5 effect of the claimant's symptoms. Thomas v. Barnhart, 278 F.3d 947, 958-59
6 (9th Cir. 2002); see also Smolen, 80 F.3d at 1284.

7 Here, the ALJ provided clear and convincing reasons for finding
8 Plaintiff's subjective complaints of impairment less than credible.

9 The ALJ cited Plaintiff's ability to engage in activities of daily living
10 that require the same physical and mental abilities as those necessary to obtain
11 and maintain employment. (AR at 18.) The ALJ noted that Plaintiff's ability
12 to perform these activities is inconsistent with an incapacitating or debilitating
13 condition. (Id.) Daily activities may be grounds for an adverse credibility
14 finding "if a claimant is able to spend a substantial part of his day engaged in
15 pursuits involving the performance of physical functions that are transferable to
16 a work setting." Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989); see also
17 Burch v. Barnhart, 400 F.3d 676, at 681 (9th Cir. 2005) (finding adverse
18 credibility based on daily activities may be proper "if a claimant engaged in
19 numerous daily activities involving skills that could be transferred to the
20 workplace"). In a fatigue questionnaire dated March 22, 2009, Plaintiff stated
21 that on a daily basis he takes care of his dog, makes coffee, uses a computer,
22 prepares his own meals, does household chores, run errands, goes grocery
23 shopping, walks to the mailbox to pick up mail, and watches television. (AR at
24 17-18, 162-67.) Although Plaintiff did complain of getting tired and needing
25 rest, substantial evidence supports the ALJ's conclusion that Plaintiff's ability
26 to engage in such daily activities undermines his credibility as to functional
27 limitations.

28 Furthermore, the ALJ noted that the objective medical evidence does not

1 support Plaintiff's alleged severity of symptoms. (AR at 20.) The ALJ pointed
2 to the internal medicine evaluation conducted by consultative examiner and
3 Board certified internist, Sandra M. Eriks, M.D., who found Plaintiff to be
4 generally normal and capable of heavy work. (AR at 19-20, 252-56.) She
5 further cited the psychiatric evaluation conducted by consultative examiner and
6 Board eligible psychiatrist, Linda M. Smith, M.D., who assessed Plaintiff's
7 ability to interact with the public as only mildly impaired. (AR at 20, 196-202.)
8 Although a lack of objective medical evidence may not be the sole reason for
9 discounting a plaintiff's credibility, it is nonetheless a legitimate and relevant
10 factor to be considered. Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir.
11 2001). Moreover, the ALJ's RFC determination gave Plaintiff the benefit of
12 the doubt and was more restrictive than that found by these consultative
13 examiners.

14 Plaintiff argues the ALJ erroneously considered his obesity in rejecting
15 his credibility insofar as she concluded that Plaintiff declined to follow
16 treatment recommendations and that Plaintiff was possibly unwilling to do
17 what is necessary to improve his condition. (JS at 29-31.) The ALJ found that
18 Plaintiff had been advised to go on a diet and lose weight to help with his
19 impairments but failed to follow these treatment recommendations, thus
20 demonstrating a possible unwillingness to do what is necessary to improve his
21 condition and an indication that his symptoms were not as severe as he
22 purported. (AR at 19.) An ALJ may find that a claimant's refusal of a
23 recommended course of treatment supports a finding that he is not credible.
24 See Orn v. Astrue, 495 F.3d 625, 638 (9th Cir. 2007) ("Our case law is clear
25 that if a claimant complains about disabling pain but fails to seek treatment, or
26 fails to follow prescribed treatment, for the pain, an ALJ may use such failure
27 as a basis for finding the complaint unjustified or exaggerated."); 20 CFR §
28 404.1530(a) and 416.930(a) ("In order to get benefits, you must follow

1 treatment prescribed by your physician if this treatment can restore your ability
2 to work.”); 20 CFR 404.1530(b) and 416.930(b) (“If you do not follow the
3 prescribed treatment without a good reason, we will not find you disabled.”).
4 However, “failure to follow treatment for obesity tells us little or nothing about
5 a claimant’s credibility.” Orn, 495 F.3d at 638. Thus, the ALJ improperly cited
6 Plaintiff’s failure to lose weight as a reason for rejecting his credibility.

7 However, because the ALJ provided other valid reasons for discounting
8 Plaintiff’s credibility, any error was harmless. See Carmickle v. Comm’r, Soc.
9 Sec. Admin., 533 F.3d 1155, 1162, 1163 (9th Cir. 2008) (finding an error by
10 the ALJ with respect to one or more factors in a credibility determination may
11 be harmless if there “remains substantial evidence supporting the ALJ’s
12 conclusions” in that regard); Batson v. Comm’r of Soc. Sec. Admin., 359 F.3d
13 1190, 1197 (9th Cir. 2004) (upholding the ALJ’s reasons for discounting
14 claimant’s credibility where one reason was invalid but other reasons supported
15 the ALJ’s analysis).

16 Based on the foregoing, the Court finds that relief is not warranted on
17 this claim.

18 **C. The ALJ Properly Considered the Testimony of Plaintiff’s Wife.**

19 Plaintiff claims that the ALJ failed to properly consider the testimony of
20 Plaintiff’s wife, Stella Wood. (JS at 3.) Specifically, Plaintiff notes the ALJ
21 improperly rejected Ms. Wood’s testimony on the grounds that (1) Ms. Wood
22 “asserts the [Plaintiff] has minimal limitations”; (2) Ms. Wood’s testimony
23 mirrors Plaintiff’s function report and allegations; (3) Ms. Wood’s assertions
24 are not supported by any objective medical evidence; (4) Ms. Wood has filial
25 and pecuniary motivation to be helpful to Plaintiff; and (5) Ms. Wood “is not
26 knowledgeable in the medical and/or vocational fields and thus is unable to
27 render opinions on how the [Plaintiff’s] impairments impact his overall abilities
28 to perform basic work activities”. (Id. at 4-13.) Again, the Court disagrees.

1 Title 20 C.F.R. §§ 404.1513(d) and 416.913(d) provide that, in addition
2 to medical evidence, the Commissioner “may also use evidence from other
3 sources to show the severity of [an individual’s] impairment(s) and how it
4 affects [his] ability to work,” and the Ninth Circuit has repeatedly held that
5 “[d]escriptions by friends and family members in a position to observe a
6 claimant’s symptoms and daily activities have routinely been treated as
7 competent evidence.” Sprague v. Bowen, 812 F.2d 1226, 1232 (9th Cir. 1987).
8 This applies equally to the sworn hearing testimony of witnesses (see Nguyen
9 v. Chater, 100 F.3d 1462, 1467 (9th Cir. 1996)), as well as to unsworn
10 statements and letters of friends and relatives. See Schneider v. Comm’r of
11 Soc. Sec. Admin., 223 F.3d 968, 975 (9th Cir. 2000). If the ALJ chooses to
12 reject such evidence from “other sources,” he may not do so without comment.
13 Nguyen, 100 F.3d at 1467. The ALJ must provide “reasons that are germane to
14 each witness.” Dodrill, 12 F.3d at 919.

15 Here, the ALJ provided sufficient reasons germane to Plaintiff’s wife for
16 rejecting her testimony.

17 **1. Minimal Limitations.**

18 Plaintiff asserts that the ALJ misstated the evidence when he stated
19 Plaintiff’s wife had asserted that Plaintiff’s limitations were minimal. (JS at 5.)
20 However, the ALJ noted Plaintiff’s wife testimony: Plaintiff’s sleep apnea is
21 better when using the CPAP machine; he does not sleep through the night; he
22 seems always sleepy and lethargic; he is irritable, cranky, angry, confused, and
23 overwhelmed; he is unable to complete tasks; and he has poor circulation in his
24 legs. (AR at 18.) Whether or not the ALJ properly described this testimony as
25 asserting “minimal limitations,” any error was harmless, as the ALJ still took
26 these issues into account when she limited Plaintiff to medium exertion work,
27 with simple and repetitive tasks, no contact with the public, and only
28 non-intense contact with co-workers and supervisors. (Id. at 19 (stating that

1 the ALJ “took into consideration the claimant’s subjective complaints and gave
2 the claimant a more restrictive residual functional capacity herein than assessed
3 by the State agency physicians[’] reports and consultative examiners.”).

4 **2. Mirrors Plaintiff’s Testimony.**

5 The ALJ found that the testimony of Plaintiff’s wife “mirrors the
6 claimant’s function report and allegations.” (*Id.* at 18.) Where, as here, the lay
7 witness testimony mirrors the claimant’s testimony, and the claimant is found
8 to be not credible, the ALJ may reject the lay witness testimony for that reason
9 alone. See Valentine v. Comm’r of Soc. Sec. Admin., 574 F.3d 685, 694 (9th
10 Cir. 2009) (holding that ALJ gave a germane reason for rejecting claimant’s
11 wife’s testimony where it was similar to claimant’s own complaints that were
12 properly rejected).

13 **3. Unsupported by the Medical Record.**

14 The ALJ rejected Plaintiff’s wife’s assertions as not credible because
15 they were not supported by any medically determined impairment. (AR at 18.)
16 While lay testimony cannot be rejected merely because it is irrelevant to
17 medical conclusions or not supported by medical evidence, Bruce v. Astrue,
18 557 F.3d 1113, 1116 (9th Cir. 2009), inconsistency with medical evidence is a
19 germane reason to discredit lay testimony. See Bayliss v. Barnhart, 427 F. 3d
20 1211, 1218 (9th Cir. 2005); Lewis v. Apfel, 236 F.3d 503, 511 (9th Cir. 2001)
21 (“One reason for which an ALJ may discount lay testimony is that it conflicts
22 with medical evidence.”); Vincent ex rel. Vincent v. Heckler, 739 F.2d 1393,
23 1395 (9th Cir. 1984) (per curiam) (“The ALJ properly discounted lay testimony
24 that conflicted with the available medical evidence.”). Because the ALJ here
25 cites only a lack of support from the medical record, rather than an
26 inconsistency, such lack of support is insufficient to discredit Plaintiff’s wife’s
27 testimony.

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1 **4. Bias.**

2 The ALJ also referred to Plaintiff’s wife’s filial and pecuniary
3 motivation to be helpful so Plaintiff could receive benefits. (AR at 18.) An
4 ALJ may reject a lay witness’ testimony if the ALJ finds the witness to be
5 biased. See, e.g., Greger v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006)
6 (finding the ALJ’s consideration of the claimant’s prior girlfriend’s close
7 relationship with the plaintiff and desire to help him as a possible reason for
8 bias was a reason germane to that witness). However, “[t]he fact that a lay
9 witness is a family member cannot be a ground for rejecting his or her
10 testimony.” Smolen, 80 F.3d at 1289; see also Valentine, 574 F.3d at 694
11 (finding that being an interested party in the abstract was insufficient to reject a
12 spouse’s testimony). Thus, the fact that Plaintiff’s wife has a motivation as
13 Plaintiff’s wife to help him is not a sufficient reason germane to her for
14 discrediting her testimony.

15 **5. Competence of Testimony.**

16 Furthermore, the ALJ rejected Plaintiff’s wife’s testimony because she is
17 not competent to make a diagnosis or argue the severity of Plaintiff’s symptoms
18 in relationship to his ability to work. (AR at 18.) An ALJ need not discuss
19 “medical diagnoses” made by lay witnesses because they “are beyond the
20 competence of lay witnesses and therefore do not constitute competent
21 evidence.” Nguyen, 100 F.3d at 1467 (citing 20 C.F.R. § 404.1513(a)).
22 “However, lay witness testimony as to a claimant’s symptoms or how an
23 impairment affects ability to work is competent evidence, and therefore cannot
24 be disregarded without comment.” Id. (citations omitted). Thus, the ALJ erred
25 in finding Plaintiff’s wife incompetent to testify regarding the effect of
26 Plaintiff’s symptoms on his ability to work.

27 **6. Conclusion.**

28 Nonetheless, because the ALJ provided significant reasons for rejecting

1 Plaintiff's wife's testimony that were germane to her, any error was harmless.
2 See Carmickle, 533 F.3d at 1162-63 (finding an error by the ALJ with respect
3 to one or more factors in a credibility determination may be harmless if there
4 "remains substantial evidence supporting the ALJ's conclusions" in that
5 regard).

6 Based on the foregoing, the Court finds that relief is not warranted on
7 Plaintiff's claim.

8 **IV.**

9 **ORDER**

10 Based on the foregoing, IT THEREFORE IS ORDERED that Judgment
11 be entered affirming the decision of the Commissioner, and dismissing this
12 action with prejudice.

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14 Dated: June 26, 2012



15 HONORABLE OSWALD PARADA
16 United States Magistrate Judge
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