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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TOMMY G. BISHOP,)	CASE NO. ED CV 13-00210 RZ
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND
vs.)	ORDER
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social Security,)	
)	
Defendant.)	

Plaintiff Tommy G. Bishop claims that the Social Security Commissioner wrongly denied disability benefits. He presents two arguments. First, he asserts that the Administrative Law Judge (ALJ) improperly discredited, in part, Plaintiff’s testimony about his subjective symptoms. Second, Plaintiff claims that the ALJ improperly discounted the third-party statement of his (Plaintiff’s) wife. The Court disagrees on both counts and will affirm.

Plaintiff complained that he was unable to work due to a combination of impairments, most of which the second of two ALJs – after an initial 2010 decision was remanded by the Appeals Council – agreed met the minimal test for being “severe.” These included morbid obesity with treated sleep apnea; degeneration of the lumbosacral spine and left knee; mood disorder; and abuse of multiple drugs. *See* Administrative Record (AR) 14. The second ALJ agreed with Plaintiff that he was unable to return to his prior

1 work as a janitor. AR 18. Based in part on a partial discrediting of Plaintiff's subjective
2 complaints, however, the ALJ went on to find that Plaintiff's residual function capacity
3 (RFC) left him able to perform work for which jobs existed. AR15-20. Plaintiff argues
4 that the ALJ erred in discrediting Plaintiff's subjective testimony. The ALJ based her
5 credibility decision on a relative lack of evidence to support the Plaintiff's reported degree
6 of limitation, in addition to other factors.

7 An ALJ may consider whether the objective medical evidence supports the
8 degree of limitation alleged by a claimant, but the lack of such objective evidence "cannot
9 form the sole basis for discounting [subjective] testimony." *Burch v. Barnhart*, 400 F.3d
10 676, 681 (9th Cir. 2005). Here, the ALJ incorporated the prior ALJ's opinion, AR 12,
11 which cited several ways in which the objective medical evidence did not fully support
12 limitations jibing with Plaintiff's subjective account. AR 93-94. For example, Plaintiff
13 claimed to suffer one- to three-minute-long seizures bi-monthly, during which he lost
14 consciousness. AR 215. But the objective medical evidence, including a 2005 brain CT
15 study and 2009 cranial MRI, failed to support such a diagnosis. AR 93, 292 (2005
16 emergency room treatment record) ("CT Brain - Neg."), 355 (2009 MRI report suggesting
17 only a referral to otolaryngologist). (The initial ALJ noted later in his opinion that, even
18 if he granted Plaintiff the benefit of the doubt by assuming that a seizure disorder existed,
19 there were no indications that any "seizures cannot be completely controlled with"
20 medications. AR 94. On the contrary, Plaintiff "indicates he *always* takes prescribed
21 Dilantin which controls his seizures," yet "the record shows that he has been noncompliant
22 with prescribed care on at least one occasion[,] and there is no evidence to show that the
23 dosage is a therapeutic concentration[.]" AR 94, *citing* AR 290-302; *see also* AR 74
24 (testimony at first hearing). Finally, Plaintiff admitted at the first hearing, in June 2009,
25 that he had not had a seizure in 2009 and could not even remember the last time he had
26 suffered one. AR 94, 69-70.) Similarly lacking were objective medical findings to support
27 Plaintiff's reported degree of suffering from back pain and sleep apnea. AR 93 (noting that
28 "diagnosis" of "chronic back pain" at AR 352 was unsupported by medical evidence).

1 Substantial evidence thus supports the ALJ’s finding that the objective findings did not
2 fully support Plaintiff’s subjective complaints about the extent of his symptoms and
3 limitations. As *Burch* explained, however, another factor is required, also supported by
4 substantial evidence.

5 Here, several additional factors, relevant in “ordinary techniques of credibility
6 evaluation,” see *Thomas v. Barnhart*, 278 F3d 947, 958-60 (9th Cir. 2002), enjoy
7 evidentiary support in the record and were cited by one or both ALJs. For example, as
8 noted immediately above, Plaintiff not only had been noncompliant in his medical regimen,
9 but he also falsely stated that he had been compliant. Perhaps worse, Plaintiff repeatedly
10 avoided direct answers to routine questions during the 2009 hearing and during his field-
11 office interview. AR 94 (decision), 63-79 (first ALJ’s examination of Plaintiff), 206 (field
12 office agent’s interview notes) (Plaintiff was “very, very, very evasive” in response to even
13 “simple questions”). Finally, the first ALJ noted that Plaintiff’s reports of “lost”
14 prescriptions suggested drug-seeking behavior. AR 94, 321 (2006 treatment notes stating,
15 “Pt. told we won’t refill meds if lost again”); see also AR 300 (emergency room treatment
16 notes stating flatly, “Drug seeker”).

17 Plaintiff’s second and final argument is that the ALJ improperly discounted
18 Plaintiff’s wife’s third-party statement (AR 278-85). The ALJ must base such third-party
19 credibility findings on “reasons that are germane to [the specific] witness.” *Dodrill v.*
20 *Shalala*, 12 F.3d 915, 919 (9th Cir. 1993). Here, as the ALJ tacitly noted, AR 18,
21 Plaintiff’s wife essentially parroted Plaintiff’s own subjective account. In many parts of
22 her statement, she supplies conclusory labels instead of describing the background facts
23 supporting the label. For example, in response to the question on the form statement asking
24 *how* the claimant’s ailments “affect his/her sleep,” she answered in question-begging
25 fashion simply that “He has [a] sleeping disorder” – instead of stating something like, “He
26 snores loudly and, at times, stops breathing entirely and will repeatedly wake up.” AR
27 279.) Because the ALJ already gave sound reasons for discounting Plaintiff’s own account,
28 it was proper for her to discount a third party statement apparently based on that account.

1 *Valentine v. Commissioner*, 574 F.3d 685, 694 (9th Cir. 2009). (In contrast, it was error
2 – albeit a harmless error, in light of the foregoing – for the ALJ to cite Plaintiff’s wife’s
3 financial interest in his receiving benefits. *Id.*)

4 In sum, the underlying opinion was free of material legal error and supported
5 by substantial evidence. *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992). In
6 accordance with the foregoing, the decision of the Commissioner is affirmed.

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8 DATED: November 19, 2013

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12 RALPH ZAREFSKY
13 UNITED STATES MAGISTRATE JUDGE
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