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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SAMUEL EDMOND,	) NO. EDCV 13-1108-AS
	)
Plaintiff,	) <b>MEMORANDUM OPINION AND ORDER</b>
	)
v.	)
	)
CAROLYN W. COLVIN, Acting	)
Commissioner of Social	)
Security,	)
	)
Defendant.	)

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PROCEEDINGS

On July 1, 2013, Plaintiff filed a Complaint seeking review of the Commissioner's denial of Plaintiff's application for a period of disability, and disability insurance benefits ("DIB"), and supplemental security income ("SSI"). (Docket Entry No. 3). On August 27, 2013, the matter was transferred and referred to the current Magistrate Judge. (Docket Entry No. 14). On December 30, 2013, Defendant filed an Answer and the Administrative Record ("A.R."). (Docket Entry Nos. 19, 20). The parties have consented

1 to proceed before a United States Magistrate Judge. (Docket Entry  
2 Nos. 15, 16). On March 3, 2014, the parties filed a Joint  
3 Stipulation ("Joint Stip.") setting forth their respective  
4 positions regarding Plaintiff's claim. (Docket Entry No. 21). The  
5 Court has taken this matter under submission without oral argument.  
6 See C.D. Local R. 7-15; "Case Management Order," filed August 7,  
7 2013 (Docket Entry No. 6).

8  
9 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

10 Plaintiff, a former medical technician, phlebotomist, and  
11 medical receptionist (A.R. 16), asserts disability beginning May  
12 13, 2009, based on the alleged physical impairments of degenerative  
13 disk disease of the lumbar spine; colon cancer, status post  
14 resection; hypertension; gastroesophageal reflux disease; and  
15 history of coronary artery disease, status post single coronary  
16 artery bypass and recent history of a borderline electrocardiogram.  
17 (Id. 9; Joint Stip. 2). On February 29, 2012, the Administrative  
18 Law Judge, Paula J. Goodrich ("ALJ"), examined the record and heard  
19 testimony from Plaintiff and a vocational expert ("VE"), Troy L.  
20 Scott. (A.R. 24-63).

21  
22 On April 6, 2012, the ALJ issued a decision denying  
23 Plaintiff's applications for DIB and SSI. (Id. 9-17). The ALJ  
24 found that Plaintiff has the severe impairment of degenerative disc  
25 disease of the lumbar spine. (Id. 11). She also determined that  
26 Plaintiff has the nonsevere conditions of colon cancer, status post  
27 resection; hypertension; gastroesophageal reflux disease; and  
28 history of coronary artery disease, status post single coronary

1 artery bypass graft, and recent history of a borderline  
2 electrocardiogram. (Id. 11-12). She determined that Plaintiff's  
3 alleged depression is not medically determinable. (Id. 12).

4  
5 The ALJ determined that Plaintiff has the residual functional  
6 capacity ("RFC") to perform the full range of medium work. (Id.  
7 13).

8  
9 Relying on the testimony of the VE, the ALJ determined that  
10 Plaintiff was able to perform his past relevant work, as actually  
11 and generally performed, as a medical technician (Dictionary of  
12 Occupational Titles ("DOT") No. 078.381-014); phlebotomist (DOT No.  
13 079.364-022); and medical receptionist (DOT No. 237.367-038). (Id.  
14 16).

15 Accordingly, the ALJ found that Plaintiff was not disabled at  
16 any time from the alleged disability onset date of May 13, 2009,  
17 through April 6, 2012, the date of the decision. (Id. 17).

18  
19 **PLAINTIFF'S CONTENTIONS**

20  
21 Plaintiff contends that the ALJ erred (1) in rejecting the  
22 opinions of his treating physician; and (2) in discounting  
23 Plaintiff's credibility. (Joint Stip. 3).

24  
25 **STANDARD OF REVIEW**

26  
27 This Court reviews the Commissioner's decision to determine  
28 if: (1) the Commissioner's findings are supported by substantial

1 evidence; and (2) the Commissioner used proper legal standards. 42  
2 U.S.C. § 405(g); see Carmickle v. Comm'r, 533 F.3d 1155, 1159 (9th  
3 Cir. 2008); Hoopai v. Astrue, 499 F.3d 1071, 1074 (9th Cir. 2007).  
4 "Substantial evidence is more than a scintilla, but less than a  
5 preponderance." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.  
6 1998) (citing Jamerson v. Chater, 112 F.3d 1064, 1066 (9th Cir.  
7 1997)). It is relevant evidence "which a reasonable person might  
8 accept as adequate to support a conclusion." Hoopai, 499 F.3d at  
9 1074; Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996)). To  
10 determine whether substantial evidence supports a finding, "a court  
11 must 'consider the record as a whole, weighing both evidence that  
12 supports and evidence that detracts from the [Commissioner's]  
13 conclusion.'" Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir.  
14 1997) (citation omitted); see Widmark v. Barnhart, 454 F.3d 1063,  
15 1066 (9th Cir. 2006) (inferences "reasonably drawn from the record"  
16 can constitute substantial evidence).

17 This Court "may not affirm [the Commissioner's] decision  
18 simply by isolating a specific quantum of supporting evidence, but  
19 must also consider evidence that detracts from [the Commissioner's]  
20 conclusion." Ray v. Bowen, 813 F.2d 914, 915 (9th Cir. 1987)  
21 (citation and internal quotation marks omitted); Lingenfelter v.  
22 Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007) (same). However, the  
23 Court cannot disturb findings supported by substantial evidence,  
24 even though there may exist other evidence supporting Plaintiff's  
25 claim. See Torske v. Richardson, 484 F.2d 59, 60 (9th Cir. 1973).  
26 "If the evidence can reasonably support either affirming or  
27 reversing the [Commissioner's] conclusion, [a] court may not  
28 substitute its judgment for that of the [Commissioner]." Reddick,

1 157 F.3d 715, 720-21 (9th Cir. 1998) (citation omitted).  
2

3 **DISCUSSION**

4  
5 After consideration of the record as a whole, the Court finds  
6 that the Commissioner's findings are supported by substantial  
7 evidence and are free from material<sup>1</sup> legal error.

8  
9 **A. Applicable Law**

10 "The Social Security Act defines disability as the 'inability  
11 to engage in any substantial gainful activity by reason of any  
12 medically determinable physical or mental impairment which can be  
13 expected to result in death or which has lasted or can be expected  
14 to last for a continuous period of not less than 12 months.'" Webb  
15 v. Barnhart, 433 F.3d 683, 686 (9th Cir. 2005) (quoting 42 U.S.C.  
16 § 423 (d)(1)(A)). The ALJ follows a five-step, sequential analysis  
17 to determine whether a claimant has established disability. 20  
18 C.F.R. § 404.1520.

19  
20 At step one, the ALJ determines whether the claimant is  
21 engaged in substantial gainful employment activity. Id. §  
22 404.1520(a)(4)(i). "Substantial gainful activity" is defined as  
23 "work that . . . [i]nvolves doing significant and productive  
24 physical or mental duties[] and . . . [i]s done (or intended) for

25  
26 <sup>1</sup> The harmless error rule applies to the review of  
27 administrative decisions regarding disability. See McLeod v.  
28 Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart,  
400 F.3d 676, 679 (9th Cir. 2005) (stating that an ALJ's decision  
will not be reversed for errors that are harmless).

1 pay or profit." Id. §§ 404.1510, 404.1572. If the ALJ determines  
2 that the claimant is not engaged in substantial gainful activity,  
3 the ALJ proceeds to step two which requires the ALJ to determine  
4 whether the claimant has a medically severe impairment or  
5 combination of impairments that significantly limits his ability to  
6 do basic work activities. See id. § 404.1520(a)(4)(ii); see also  
7 Webb, 433 F.3d at 686. The "ability to do basic work activities"  
8 is defined as "the abilities and aptitudes necessary to do most  
9 jobs." 20 C.F.R. § 404.1521(b); Webb, 433 F.3d at 686. An  
10 impairment is not severe if it is merely "a slight abnormality (or  
11 combination of slight abnormalities) that has no more than a  
12 minimal effect on the ability to do basic work activities." Webb,  
13 433 F.3d at 686.

14 If the ALJ concludes that a claimant lacks a medically severe  
15 impairment, the ALJ must find the claimant not disabled. Id.; 20  
16 C.F.R. § 1520(a)(ii); Ukolov v. Barnhart, 420 F.3d 1002, 1003 (9th  
17 Cir. 2005) (ALJ need not consider subsequent steps if there is a  
18 finding of "disabled" or "not disabled" at any step).

19  
20 However, if the ALJ finds that a claimant's impairment is  
21 severe, then step three requires the ALJ to evaluate whether the  
22 claimant's impairment satisfies certain statutory requirements  
23 entitling him to a disability finding. Webb, 433 F.3d at 686. If  
24 the impairment does not satisfy the statutory requirements  
25 entitling the claimant to a disability finding, the ALJ must  
26 determine the claimant's RFC, that is, the ability to do physical  
27 and mental work activities on a sustained basis despite limitations  
28 from all his impairments. 20 C.F.R. § 416.920(e).

1           Once the RFC is determined, the ALJ proceeds to step four to  
2 assess whether the claimant is able to do any work that he or she  
3 has done in the past, defined as work performed in the last fifteen  
4 years prior to the disability onset date. If the ALJ finds that  
5 the claimant is not able to do the type of work that he or she has  
6 done in the past or does not have any past relevant work, the ALJ  
7 proceeds to step five to determine whether - taking into account  
8 the claimant's age, education, work experience and RFC - there is  
9 any other work that the claimant can do and if so, whether there  
10 are a significant number of such jobs in the national economy.  
11 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999); 20 C.F.R. §  
12 404.1520(a)(4)(iii)-(v). The claimant has the burden of proof at  
13 steps one through four, and the Commissioner has the burden of  
14 proof at step five. Tackett, 180 F.3d at 1098.

15 **B. The ALJ Properly Discounted the Opinions of Plaintiff's**  
16 **Treating Physician**

17  
18 **1. Legal Standard**

19  
20           In evaluating medical opinions, the case law and regulations  
21 distinguish among the opinions of three types of physicians: (1)  
22 those who treat the claimant (treating physicians); (2) those who  
23 examine but do not treat the claimant (examining physicians); and  
24 (3) those who neither examine nor treat the claimant (nonexamining  
25 or reviewing physicians). See 20 C.F.R. §§ 404.1502, 404.1527,  
26 416.902, 416.927; see also Lester v. Chater, 81 F.3d 821, 830 (9th  
27 Cir. 1995). Generally, the opinions of treating physicians are  
28 given greater weight than those of other physicians, because

1 treating physicians are employed to cure and therefore have a  
2 greater opportunity to know and observe the claimant. Orn v.  
3 Astrue, 495 F.3d 625, 631 (9th Cir. 2007); Smolen, 80 F.3d at 1285.  
4 Where, as here, a treating physician's opinion is contradicted by  
5 another doctor, the ALJ must provide specific and legitimate  
6 reasons supported by substantial evidence to properly reject it.  
7 Lester, 81 F.3d at 830-31 (citing Andrews v. Shalala, 53 F.3d 1035,  
8 1043 (9th Cir. 1995)); see also Orn, 495 F.3d at 632-33; Soc. Sec.  
9 Ruling 96-2p.

10  
11 **2. The ALJ Properly Discounted the Opinions of Dr. Lee**

12  
13 On April 13, 2011, plaintiff's treating physician, Jonathan  
14 Lee, MD, completed a "Primary Treating Physician's Progress  
15 Report," for Plaintiff's Worker's Compensation Claim. (A.R. 492-  
16 95). In that report, Dr. Lee opined that Plaintiff was temporarily  
17 restricted to "modified duty," limiting him to sedentary work.  
18 (Id. 494). One month later, on May 11, 2013, Dr. Lee opined in  
19 another progress report that Plaintiff was "permanent and  
20 stationary with restrictions of no prolonged standing, walking,  
21 sitting, stooping and bending and no repetitive lifting." (Id.  
22 490).

23 With respect to Dr. Lee's opinions, the ALJ stated the  
24 following:

25  
26 Dr. Lee treated the claimant over a lengthy period, was  
27 reporting within the bounds of his professional  
28 certifications, and had access to the claimant's medical



1 records; however, he did not cite to the records in  
2 support of his conclusions, there is no indication that  
3 he bears even a passing familiarity with the disability  
4 process, his opinion altered in the space of [a] single  
5 month with no changes in his objective findings to  
6 explain such a shift, his opinion reported degrees of  
7 functional limitation that finds no foundation in his  
8 objective findings and his opinion was offered to a  
9 different government program, with different objectives.  
10 Accordingly, little weight was accorded either of his  
11 opinions.

12 (Id. 15-16).

14 Plaintiff argues that the ALJ improperly rejected the April  
15 13, 2011, and May 11, 2011, opinions of Dr. Lee. (Joint Stip. 3-  
16 9). He contends that the ALJ failed to state whether she accepted  
17 or rejected Dr. Lee's opinions, and did not provide specific and  
18 legitimate reasons supported by substantial evidence for rejecting  
19 his opinions. (Id. 4). Specifically, he argues that the ALJ  
20 failed to articulate with any degree of specificity any evidence to  
21 support her conclusory findings regarding Dr. Lee's opinions;  
22 failed to credit Dr. Lee's longitudinal relationship with  
23 Plaintiff; improperly relied on a finding that Dr. Lee is not  
24 familiar with the disability process; and erred in concluding that  
25 Dr. Lee's opinions had no foundation in his objective findings.  
26 (Id. 6-7). The Court disagrees.

1                   a.     Dr. Lee's Changed Opinion

2  
3           As discussed, one reason the ALJ discounted Dr. Lee's opinions  
4 was that those opinions changed in the space of a month from  
5 "[m]odified duty, sedentary work only," to "permanent and  
6 stationary with restrictions of no prolonged standing, walking,  
7 sitting, stooping and bending and no repetitive lifting," which  
8 would preclude even sedentary work. (Compare A.R. 494 with id.  
9 409). The ALJ also found that Dr. Lee's opinions were unsupported  
10 by Dr. Lee's objective findings. (Id. 15-16).

11  
12           A review of Dr. Lee's April and May 2011 reports shows that  
13 despite Dr. Lee's change in opinion in May 2011, he stated in that  
14 later report that Plaintiff's "[c]urrent complaints are unchanged  
15 from his previous visit," and that since Plaintiff's last visit  
16 "there have not been any new injuries." (Id. 488.) Moreover, the  
17 Court notes that Dr. Lee had also assessed "Modified duty,  
18 sedentary work only,"<sup>2</sup> in all of his prior reports, dated October  
19 20, 2010, November 17, 2010, December 15, 2010, January 19, 2011,  
20 February 16, 2011, and March 16, 2011. (Id. 501-29).

21           Dr. Lee provided no explanation for this sudden change in  
22 opinion after nine months of treating Plaintiff and finding him  
23 capable of modified sedentary work throughout that time. This  
24 inconsistency is a basis for rejecting Dr. Lee's opinion. See

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25  
26           <sup>2</sup>     An August 24, 2010 "Initial Orthopedic/Neurologic  
27 Consultation and Request for Authorization of Medical Treatment for  
28 Utilization Review Purposes" completed by Gail Hopkins, II, MD,  
also noted that Plaintiff should continue "on the same modified  
duties at sedentary work . . . ." (A.R. 529).

1 Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995) (ALJ  
2 properly rejected physician's determination where it was  
3 "conclusory and unsubstantiated by relevant medical  
4 documentation"); Rollins v. Massanari, 261 F.3d 853, 856 (9th Cir.  
5 2001) (ALJ properly discounted treating doctor's opinions for being  
6 "so extreme as to be implausible," and "not supported by any  
7 findings," where there was "no indication in the record what the  
8 basis for these restrictions might be").

9  
10 **b. Lack of Objective Findings**

11  
12 An ALJ "need not accept the opinion of any physician,  
13 including a treating physician, if that opinion is brief,  
14 conclusory and inadequately supported by clinical findings."  
15 Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002); 20 C.F.R. §  
16 404.1527(d)(2) ("If we find that a treating source's opinion . . .  
17 is well-supported . . . and not inconsistent with the other  
18 substantial evidence in your case record, we will give it  
19 controlling weight"). Additionally, an ALJ may properly discount  
20 a treating physician's limitations as "not supported by any  
21 findings" where there is "no indication in the record what the  
22 basis for these restrictions might be." Rollins, 261 F.3d at 856;  
23 see also 20 C.F.R. § 404.1527(c)(2); Valentine v. Comm'r Soc. Sec.  
24 Admin., 574 F.3d 685, 692-93 (9th Cir. 2009) (contradiction between  
25 a treating physician's opinion and his treatment notes constitutes  
26 a specific and legitimate reason for rejecting the treating  
27 physician's opinion); Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th  
28 Cir. 2005) (contradiction between treating physician's assessment  
and clinical notes justifies rejection of assessment); see also

1 Johnson, 60 F.3d at 1432 (ALJ properly rejected physician's  
2 determination where it was "conclusory and unsubstantiated by  
3 relevant medical documentation").

4  
5 Here, Dr. Lee's objective findings fail to support his May  
6 2011 opinions. In the examination on that date, Dr. Lee observed  
7 that Plaintiff was a "well-developed, well-nourished male who  
8 ambulates into the examination room with a normal heel to toe gait,  
9 independently, without assistive device." (A.R. 489). He also  
10 noted the following: areas of tenderness on palpation of  
11 plaintiff's lumbar area; Plaintiff's lumbar range of motion was 70%  
12 of normal in flexion and extension; straight leg raising was  
13 negative; motor functioning was 5/5 bilaterally; Plaintiff's  
14 reflexes were normal; and there was no atrophy, gross deformity, or  
15 edema in Plaintiff's upper and lower extremities. (Id.). These  
16 findings were identical to Dr. Lee's April 2011 findings; indeed,  
17 they were identical to all of Dr. Lee's previous findings in his  
18 reports dated October 20, 2010, November 17, 2010, December 15,  
19 2010, January 19, 2011, February 16, 2011, and March 16, 2011, and  
20 in the August 24, 2010, initial consultation report completed by  
21 Dr. Hopkins, who also took x-rays in her office on that date.<sup>3</sup>

22 (Id. 501-23, 524-29). Dr. Hopkins also stated that Plaintiff was  
23 not a surgical candidate, and noted that although epidural steroid  
24 injections had been recommended to Plaintiff after his 2002 MRI,  
25 they were never performed because Plaintiff stated "that he opted

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26 <sup>3</sup> See also supra note 2. Dr. Hopkins noted that the x-rays  
27 of Plaintiff's lumbar spine showed "degenerative disc disease at L5-S1 of  
28 moderate degree," and x-rays of the thoracic spine showed "evidence of very mild  
degenerative changes consistent with age." (A.R. 529).

1 not to undergo the injections." (Id. 522, 525, 529).

2  
3        Additionally, the only diagnostic studies referred to by Dr.  
4 Lee in his records were a "repeat MRI of the lumbar spine"  
5 performed on July 11, 2008, "which revealed mild degenerative disc  
6 disease and facet osteoarthritis at L4-5 and L5-S1 with no evidence  
7 of abnormal contrast enhancement or spinal stenosis"<sup>4</sup> (id. 521),  
8 and a March 24, 2011, MRI of the thoracic spine, which showed a  
9 "[n]ormal thoracic spine" (id. 490, 494, 496). Dr. Lee did not  
10 take any of his own x-rays, nor did he mention or appear to rely in  
11 any way on Dr. Hopkins' x-rays. (Id.; see also supra note 3). Dr.  
12 Lee treated Plaintiff conservatively with medication (id. 490, 499,  
13 503, 507, 511, 515, 522), and it was not until his May 11, 2011,  
14 report that he recommended Plaintiff receive "ten sessions of  
15 physical therapy for the next five years." (id. 490).

16                    **c.    Worker's Compensation Context**

17  
18        The ALJ also noted that Dr. Lee's opinion, prepared in the  
19 worker's compensation context, contains no indication that "he  
20 bears even a passing familiarity with the disability process."  
21 (A.R. 16). Although Plaintiff contends this is irrelevant, the  
22 regulations provide that "the amount of understanding of our  
23 disability programs and their evidentiary requirements that an  
24 acceptable medical source has . . . are relevant factors that we  
25 will consider in deciding the weight to give to a medical opinion."

26 \_\_\_\_\_  
27                    <sup>4</sup> These findings were consistent with Plaintiff's prior MRI  
28 on October 3, 2002. (See, e.g., A.R. 525).

1 20 C.F.R. § 404.1527(c)(6).

2  
3 **3. Conclusion**

4  
5 Based on the foregoing, the ALJ provided specific and  
6 legitimate reasons for discounting the opinions of Dr. Lee.  
7 Therefore, there was no error.

8  
9 **C. The ALJ Did Not Arbitrarily Discredit Plaintiff's Testimony**

10  
11 Plaintiff contends that the ALJ erred in discounting  
12 Plaintiff's credibility. (Joint Stip. at 12-15).

13  
14 **1. Legal Standard**

15  
16 Where, as here, the ALJ finds that a claimant suffers from a  
17 medically determinable impairment that could reasonably be expected  
18 to produce his or her alleged symptoms, the ALJ must evaluate "the  
19 intensity, persistence, and functionally limiting effects of the  
20 individual's symptoms . . . to determine the extent to which the  
21 symptoms affect the individual's ability to do basic work  
22 activities. This requires the [ALJ] to make a finding about the  
23 credibility of the individual's statements about the symptom(s) and  
24 its functional effect." Soc. Sec. Ruling 96-7p.

25  
26 An ALJ's assessment of a claimant's credibility is entitled to  
27 "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th  
28 Cir. 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985).

1 The ALJ may not discount the claimant's testimony regarding the  
2 severity of the symptoms without making "specific, cogent"  
3 findings. Lester, 81 F.3d at 834; see also Berry v. Astrue, 622  
4 F.3d 1228, 1234 (9th Cir. 2010) (reaffirming same); but see Smolen,  
5 80 F.3d at 1283-84 (indicating that ALJ must provide "specific,  
6 clear and convincing reasons to reject a claimant's testimony where  
7 there is no evidence of malingering); see Rashad v. Sullivan, 903  
8 F.2d 1229, 1231 (9th Cir. 1990).<sup>5</sup> Generalized, conclusory findings  
9 do not suffice. See Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir.  
10 2004) (the ALJ's credibility findings "must be sufficiently  
11 specific to allow a reviewing court to conclude the [ALJ] rejected  
12 [the] claimant's testimony on permissible grounds and did not  
13 arbitrarily discredit the claimant's testimony") (citation and  
14 internal quotation marks omitted); Holohan v. Massanari, 246 F.3d  
15 1195, 1208 (9th Cir. 2001) (the ALJ must "specifically identify the  
16 testimony [the ALJ] finds not to be credible and must explain what  
17 evidence undermines the testimony"); Smolen, 80 F.3d at 1284 ("The  
18 ALJ must state specifically which symptom testimony is not credible  
19 and what facts in the record lead to that conclusion."); see also  
20 Soc. Sec. Ruling 96-7p.

---

21 <sup>5</sup> In the absence of evidence of "malingering," most recent  
22 Ninth Circuit cases have applied the "clear and convincing"  
23 standard. See, e.g., Chaudhry v. Astrue, 688 F.3d 661, 670, 672  
24 n.10 (9th Cir. 2012); Molina v. Astrue, 674 F.3d 1104, 1112 (9th  
25 Cir. 2012); Taylor v. Comm'r of Soc. Sec. Admin., 659 F.3d 1228,  
26 1234 (9th Cir. 2011); Valentine, 574 F.3d at 693; Ballard v. Apfel,  
27 2000 WL 1899797, at \*2 n.1 (C.D. Cal. Dec. 19, 2000) (collecting  
28 cases). As set forth infra, the ALJ's findings in this case are  
sufficient under either the "clear and convincing" standard, or the  
requirement that the ALJ make "specific findings" supported by the  
record in making the credibility evaluation, so the distinction  
between the two standards (if any) is academic.

1 An ALJ may consider a range of factors in assessing  
2 credibility, including "(1) ordinary techniques of credibility  
3 evaluation, such as the claimant's reputation for lying, prior  
4 inconsistent statements concerning the symptoms, and other  
5 testimony by the claimant that appears less than candid; (2)  
6 unexplained or inadequately explained failure to seek treatment or  
7 to follow a prescribed course of treatment; and (3) the claimant's  
8 daily activities." Smolen, 80 F.3d at 1284.

9  
10 **2. The ALJ's Credibility Finding**

11  
12 The ALJ stated that Plaintiff "alleges chronic, severe back  
13 pain with muscle spasms and numbness in his legs." (A.R. 13). She  
14 stated the following with respect to Plaintiff's credibility:

15  
16 After careful consideration of the evidence, the  
17 undersigned finds that the claimant's medically  
18 determinable impairments could reasonably be expected to  
19 cause the alleged symptoms; however, the claimant's  
20 statements concerning the intensity, persistence and  
21 limiting effects of these symptoms are not credible to  
22 the extent they are inconsistent with the above residual  
23 functional capacity assessment.

24 (Id.)

25  
26 The Court's review of the ALJ's decision shows that she  
27 discounted Plaintiff's testimony for the following specific  
28



1 reasons: (1) diagnostic testing, and the record when viewed as a  
2 whole, is not supportive of Plaintiff's contention that his  
3 impairment is "preclusive of all types of work"; (2) Plaintiff's  
4 prescription medication are effective, and without side effects;  
5 (3) Plaintiff's treatment has been conservative and routine in  
6 nature; (4) Plaintiff declined to follow up on therapies somewhat  
7 more invasive than physical therapy, including epidural steroid  
8 injections, and a discogram; (5) Plaintiff described daily  
9 activities which are not limited to the extent that would be  
10 expected given his complaints of disabling symptoms and  
11 limitations; and (6) Plaintiff made inconsistent statements  
12 regarding his medication side effects. (Id. 14-15).

13  
14 **a. Objective Medical Evidence**

15 Although a claimant's credibility "cannot be rejected on the  
16 sole ground that it is not fully corroborated by objective medical  
17 evidence, the medical evidence is still a relevant factor . . ."  
18 Rollins, 261 F.3d at 857. Lack of supporting objective medical  
19 evidence is a key consideration for the ALJ in evaluating  
20 credibility. See 20 C.F.R. §§ 404.1529(c)(4); 416.929(c)(4) (in  
21 determining disability, an ALJ must evaluate a claimant's  
22 statements about the intensity, persistence and limiting effects of  
23 her symptoms "in relation to the objective medical evidence and  
24 other evidence").

25  
26 Here, the ALJ reviewed the July 11, 2008, diagnostic imaging  
27 of Plaintiff's lumbar spine, which reported only mild degenerative  
28

1 disc disease and osteoarthritic changes "from the L4 through L1  
2 vertebral bodies." (A.R. 14 (citing id. 525)). The ALJ also noted  
3 that the imaging showed no evidence of canal or foraminal stenosis,  
4 or nerve root involvement. (Id.).

5  
6 Furthermore, Plaintiff's physical examinations "consistently,  
7 albeit not universally, reported either minimal or normal  
8 findings." (Id.). For instance, various examination reports  
9 reflected normal posture when sitting and standing, rising without  
10 difficulty from a sitting position or the examining table, a normal  
11 gait, no tenderness of the lumbar spine (although one report noted  
12 "areas of tenderness to palpation"), mildly reduced or full range  
13 of lumbar motion, negative straight leg raising, normal muscle  
14 strength, normal reflexes, normal sensation, and lack of an  
15 assistive device for ambulation. (Id. (citing id. 367-69, 472-73,  
16 502)). These are valid reasons for discounting Plaintiff's  
17 subjective complaints. Morgan v. Comm'r of Soc. Sec., 169 F.3d  
18 595, 600 (9th Cir. 1999) (conflict between subjective complaints  
19 and the objective medical evidence in the record is a sufficient  
20 reason that undermines a claimant's credibility; Osenbrock v.  
21 Apfel, 240 F.3d 1157-1165-66 (9th Cir. 2001) (affirming ALJ's  
22 decision that relied in part on finding that neurological and  
23 orthopedic evaluations revealed "very little evidence" of any  
24 significant disabling abnormality of the claimant's upper or lower  
25 extremities, or spine).

26 Accordingly, substantial evidence supports the ALJ's  
27 credibility analysis with respect to the objective medical evidence  
28

1 and this was a clear and convincing reason for discounting  
2 Plaintiff's credibility.

3  
4 More importantly, as discussed below, this was not the sole  
5 legally sufficient reason for discounting Plaintiff's credibility.

6  
7 **b. Effective Medication Without Side Effects**

8  
9 The ALJ also discredited Plaintiff's testimony because the  
10 treatment notes reflected that Plaintiff follows "a regimen of  
11 prescription medications," which, according to Dr. Lee are  
12 effective, and without side effects. (A.R. 14).

13  
14 The ALJ also reported that Plaintiff made inconsistent  
15 statements regarding the side effects of his medications, noting  
16 that in his disability report he reported side effects, but then  
17 reported to his treating source that there are no side effects from  
18 the same medications. (Id. 15 (citing id. 247 (claiming his  
19 medications may cause ringing in his ears), 429 (Plaintiff reported  
20 no side effects from the medication he "has been on regularly"))).

21 The record supports these findings. Plaintiff's health  
22 records do not indicate any complaints of side effects, and there  
23 is no indication that any medications were discontinued or modified  
24 as a result of such complaints. Indeed, Dr. Lee routinely  
25 continued prescribing Plaintiff the same medications. (Id. 247,  
26 427-29, 480, 482, 484, 486, 488, 490, 492, 494, 497, 499, 501,  
27 503, 505, 507, 509, 511, 513, 515)). On March 16, 2011, Dr. Lee

1 noted that he was renewing Plaintiff's medication "as it allows  
2 [Plaintiff] to function." (Id. 499; see also id. 482 (Plaintiff  
3 told Dr. Lee he needs medication for his pain "which allows him to  
4 function")). Dr. Lee also repeatedly noted that Plaintiff's  
5 symptoms are "alleviated with massage, heat and medications,"  
6 and/or therapy (Id. 488, 492, 497, 501, 505, 509, 513). At the  
7 hearing, although Plaintiff noted that he sometimes feels dizzy, or  
8 needs to take a nap during the day, he was not sure if it was  
9 because of his medications or for other reasons. (Id. 41-42, 44).  
10 He did not mention ringing in his ears.

11  
12 In assessing a claimant's credibility about his symptoms, an  
13 ALJ may consider "the type, dosage, effectiveness, and side effects  
14 of any medication." 20 C.F.R. § 404.1529(c). An ALJ may also rely  
15 on "ordinary techniques of credibility evaluation," in assessing  
16 the credibility of the allegedly disabling symptoms. Bunnell v.  
17 Sullivan, 947 F.2d 341, 346-47 (9th Cir. 1991). In this case,  
18 Plaintiff's statements in his disability report regarding possible  
19 medication side effects were inconsistent with the medical record  
20 and his testimony at the hearing.

21 Accordingly, these were valid reasons supported by substantial  
22 evidence of record for discounting Plaintiff's credibility.

23  
24 **c. Conservative and Routine Treatment**

25  
26 The ALJ's credibility assessment also relies on the fact that  
27 Plaintiff's treatment for his "'allegedly disabling impairment" has  
28

1 been "essentially routine and/or conservative in nature." (A.R.  
2 14). She noted that Plaintiff had received physical therapy, and  
3 was "discharged" from that practice on June 10, 2010, "having met  
4 all of his goals." (Id. (citing id. 405)).

5  
6 A review of the record supports the ALJ's conclusion. For  
7 instance, Plaintiff's Worker's Compensation reports indicated that  
8 he had been treated conservatively for "the past four years," with  
9 medications and physical therapy. (Id. 518, 525). On July 27,  
10 2010, Plaintiff was "instructed to finish his [physical] therapy  
11 and medications as well as his home exercise program." (Id.).

12  
13 The ALJ was entitled to discount Plaintiff's credibility based  
14 on his positive response to conservative treatment. See Tommasetti  
15 v. Astrue, 533 F.3d 1035, 1040 (9th Cir. 2008) (ALJ may infer that  
16 claimant's "response to conservative treatment undermines  
17 [claimant's] reports regarding the disabling nature of his pain");  
18 Johnson, 60 F.3d at 1432 (ALJ may properly rely on the fact that  
19 only conservative treatment has been prescribed).

20  
21 The ALJ also relied on the fact that Plaintiff had refused  
22 "somewhat more invasive" therapies than physical therapy, including  
23 epidural steroid injections, and a discogram. (A.R. 14 (citing id.  
24 522, 525)). An ALJ may consider many factors in weighing a  
25 claimant's credibility, including "unexplained or inadequately  
26 explained failure to seek treatment or to follow a prescribed  
27 course of treatment. Tommasetti, 533 F.3d at 1039.

1           Accordingly, these were clear and convincing reasons to  
2 discount Plaintiff's credibility.

3  
4           **d.   Activities of Daily Living**

5  
6           The ALJ also discounted Plaintiff's credibility to the extent  
7 his complaints were inconsistent with his reported activities,  
8 including the ability to attend to his own hygiene and grooming,  
9 drive a car, attend to light yard work, attend to light mechanical  
10 maintenance, prepare his own meals, shop in stores, and watch  
11 television for pleasure. (A.R. 15 (citing id. 248)). The ALJ  
12 concluded:

13           In short, the claimant has described daily activities,  
14 which are not limited to the extent one would expect,  
15 given the complaints of disabling symptoms and  
16 limitations. It is noted that the scope of these  
17 activities is not consistent with the degree of  
18 functional limitation allegedly the claimant, and  
19 although none of these activities, considered alone,  
20 would warrant or direct a finding of not disabled, when  
21 considered in combination, they strongly suggest that the  
22 claimant would be capable of engaging in the work  
23 activity contemplated by the residual functional  
24 capacity.

25  
26           (Id.). The ALJ also noted that although Plaintiff alleges he  
27 performs "few house chores," he lives alone and does not report  
28

1 that he gets any sort of help in maintaining his residence. (Id.).  
2 Daily activities that are inconsistent with alleged symptoms are a  
3 relevant credibility determination. Rollins, 261 F.3d at 857.  
4

5 Accordingly, the Court finds that this was a legally  
6 sufficient reason for the ALJ's adverse credibility finding.  
7

### 8 **3. Conclusion**

9  
10 The legally valid reasons given by the ALJ for discounting  
11 Plaintiff's credibility sufficiently allow the Court to conclude  
12 that the ALJ credibility finding was based on permissible grounds.  
13 The Court therefore defers to the ALJ's credibility determination.  
14 See Lasich v. Astrue, 252 Fed. App'x 823, 825 (9th Cir. 2007)  
15 (court will defer to ALJ's credibility determination when the  
16 proper process is used and proper reasons for the decision are  
17 provided); accord Flaten v. Sec'y of Health and Human Serv., 44  
18 F.3d 1453, 1464 (9th Cir. 1995). Where the ALJ has made specific  
19 findings justifying a decision to disbelieve Plaintiff's symptom  
20 allegations and those findings are supported by substantial  
21 evidence in the record, "we may not engage in second guessing."  
22 Thomas, 278 F.3d at 958-59.

### 23 **ORDER**

24  
25 For all of the foregoing reasons, the decision of the  
26 Administrative Law Judge is affirmed.  
27  
28

1 LET JUDGMENT BE ENTERED ACCORDINGLY.

2  
3 DATED: December 3, 2014.

4 /s/  
5 ALKA SAGAR  
6 UNITED STATES MAGISTRATE JUDGE  
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