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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DONALD LEE BRADLEY,)	NO. ED CV 13-1277-AS
)	
Plaintiff,)	MEMORANDUM OPINION
)	
v.)	
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
)	

PROCEEDINGS

On July 29, 2013, Plaintiff filed a Complaint seeking review of the Commissioner's denial of Plaintiff's application for supplemental security income ("SSI"). (Docket Entry No. 3). On August 22, 2013, the matter was transferred and referred to the current Magistrate Judge. (Docket Entry No. 12). The parties thereafter consented to proceed before a United States Magistrate Judge (Docket Entry Nos. 14-15). On December 9, 2013, Defendant filed an Answer and the Administrative Record ("A.R."). (Docket

1 Entry Nos. 17-20). On January 8, 2014, Plaintiff filed a
2 Memorandum of Points and Authorities in support of the Complaint
3 (Docket Entry No. 20). On March 12, 2014, Defendant filed a
4 Memorandum of Points and Authorities in support of the Answer
5 (Docket Entry No. 24). On March 27, 2014, Plaintiff filed a Reply
6 Memorandum (Docket Entry No. 25). The Court has taken this matter
7 under submission without oral argument. See C.D. Local R. 7-15;
8 "Case Management Order," filed July 31, 2013 (Docket Entry No. 7).

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

11 Plaintiff, a former restaurant and bar owner, asserts
12 disability since January 28, 2010, based on alleged chronic
13 arthritis in his neck, back, arms, and feet, depression, high blood
14 pressure, a sleeping disorder and an eating disorder. (A.R. 22).
15 The Administrative Law Judge ("ALJ") examined the record and held
16 a hearing on February 21, 2012. (A.R. 34-67). Plaintiff, who was
17 represented by counsel, testified by teleconference. (A.R. 36-58).
18 The ALJ also heard testimony from a vocational expert (A.R. 59-66).

19
20 On February 29, 2012, The ALJ issued a decision denying
21 Plaintiff's application for SSI. (A.R. 18-28). The ALJ made the
22 following findings: (1) Plaintiff has the severe medically
23 determinable impairments of cervical degenerative disc disease,
24 depressive disorder, and alcohol abuse (A.R. 20); (2) Plaintiff's
25 impairments do not meet or equal a listed impairment (A.R. 20-22);
26 (3) Plaintiff retains the residual functional capacity to perform
27 medium work, defined as follows: Plaintiff can "lift and carry 25
28 pounds frequently and 50 pounds occasionally, stand/walk for six

1 hours and sit for six hours in an eight-hour day;" frequently climb
2 ramps or stairs, balance, stoop, kneel, crouch, and crawl;
3 occasionally climb ladders, ropes or scaffolds; and is "limited to
4 simple, routine, and repetitive tasks, involving only simple work-
5 related decisions with few, if any, work place changes" (A.R. 22);
6 (4) Plaintiff lacks the residual functional capacity ("RFC") to
7 perform his past relevant work (A.R. 26); and (5) Plaintiff is
8 able to perform jobs that exist in significant numbers in the
9 national economy, including the occupations of hand packager and
10 janitor. (A.R. 27).

11 Accordingly, the ALJ found that Plaintiff was not disabled at
12 any time from the alleged disability onset date of January 28,
13 2010, through February 29, 2012, the date of the decision. (Id.
14 17). On May 21, 2013, the Appeals Council denied review. (A.R. 3-
15 5).

17 **PLAINTIFF'S CONTENTIONS**

18
19 Plaintiff contends that the ALJ erred in (1) failing to
20 articulate specific and legitimate reasons for rejecting his
21 treating physician's opinion that he was disabled (Plaintiff's Mem
22 3-9); and (2) failing to articulate specific and legitimate reasons
23 for rejecting the examining physician's opinion that he was capable
24 of performing work at the light exertional level. (Id. 9-13).

25 **STANDARD OF REVIEW**

26
27 This Court reviews the Commissioner's decision to determine
28

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

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

1 substitute its judgment for that of the [Commissioner]." Reddick,
2 157 F.3d 715, 720-21 (9th Cir. 1998) (citation omitted).

3
4 **DISCUSSION**

5
6 After consideration of the record as a whole, the Court finds
7 that the Commissioner's findings are supported by substantial
8 evidence and are free from material¹ legal error.

9
10 **A. Applicable Law**

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

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

25
26 ¹ 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 physical or mental duties[] and . . . [i]s done (or intended) for
2 pay or profit." Id. §§ 404.1510, 404.1572. If the ALJ determines
3 that the claimant is not engaged in substantial gainful activity,
4 the ALJ proceeds to step two which requires the ALJ to determine
5 whether the claimant has a medically severe impairment or
6 combination of impairments that significantly limits his ability to
7 do basic work activities. See id. § 404.1520(a)(4)(ii); see also
8 Webb, 433 F.3d at 686. The "ability to do basic work activities"
9 is defined as "the abilities and aptitudes necessary to do most
10 jobs." 20 C.F.R. § 404.1521(b); Webb, 433 F.3d at 686. An
11 impairment is not severe if it is merely "a slight abnormality (or
12 combination of slight abnormalities) that has no more than a
13 minimal effect on the ability to do basic work activities." Webb,
14 433 F.3d at 686.

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

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

1 from all his impairments. 20 C.F.R. § 416.920(e).

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

17 **B. The ALJ Provided Specific And Legitimate Reasons For Rejecting**
18 **The Opinion Of Plaintiff's Treating Physician**

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 On December 22, 2009, Plaintiff's treating physician, Bradley
12 Hope, opined that Plaintiff was unable to work due to neck pains,
13 noting that Plaintiff continued to experience neck pain and pain
14 with range of motion. (A.R. 245). X-rays of Plaintiff's cervical
15 spine revealed mild "C5-C6 spurring consistent with spondylosis,
16 but no mineralization, fracture, or vertebral wedge deformities, no
17 spondylolisthesis and no soft tissue swelling. (A.R. 245-47). On
18 January 28, 2010, Dr. Hope opined that Plaintiff was unable to work
19 due to neck pains and noted that Plaintiff had left arm pain due to
20 a fracture (A.R. 243). On February 24, 2011, Dr. Hope again
21 concluded that Plaintiff was unable to work, part time or full
22 time, due to severe neck arthritis. (A.R. 306). On August 18,
23 2011, Dr. Hope noted that Plaintiff had driven four hours to see
24 him and that he had been involved in a hit and run accident one
25 week prior for which he had received emergency treatment and had
26 tripped and fallen while gardening two days prior to the visit.
27 (A.R. 312). Dr. Hope saw Plaintiff on September 23, 2011 and
28 continued to believe that Plaintiff was unable to work, noting that
Plaintiff had been in jail due to a DUI conviction but resumed

1 drinking upon his release, and had suffered a right wrist deformity
2 due to a fracture after he was injured in a motorcycle accident on
3 August 7, 2011. (A.R. 318). X-rays revealed moderately severe
4 degenerative disc and facet joint changes but no evidence of acute
5 cervical spine, or head, wrist, or pelvis fracture. (A.R. 324-
6 327).

7
8 On November 15, 2011, Dr. Hope completed a "medical source
9 statement of ability to do work related activities (physical)" in
10 which he checked off boxes indicating that Plaintiff could "never"
11 lift or carry anything up to or greater than 10 pounds, Plaintiff
12 could not sit for more than fifteen minutes, stand for more than
13 six minutes and walk for more than fifteen minutes at any one time
14 without interruption, and that during an eight-hour day, Plaintiff
15 could only sit for two hours, stand for three hours, and walk for
16 thirty minutes. (A.R. 349-50). Dr. Hope also indicated that
17 Plaintiff required the use of a cane to ambulate, the use of the
18 cane was medically necessary but that Plaintiff could walk one mile
19 without the use of a cane. (A.R. 350). Dr. Hope's assessment was
20 based on the following: "Plaintiff has severe neck arthritis,"
21 "severe bilateral wrist sprains," "severe left knee [and] right
22 [first] toe pains," and pain walking, sitting, and using arms and
23 neck. (A.R. 350). Dr. Hope also found that Plaintiff could not
24 reach in any direction with either hand and could never use his
25 right lower extremity to operate foot controls, but could operate
26 a motor vehicle up to one-third of the workday. (A.R. 351-53).

27 With respect to Dr. Hope's opinions, the ALJ stated the
28

1 following:
2

3 I reject this opinion because it is not consistent with
4 Dr. Hope's own clinical findings, which were very
5 limited. In addition, it is not consistent with the fact
6 that the claimant was able to drive for long periods to
7 attend his appointments, far longer than the 15 minutes
8 of sitting opined by Dr. Hope, and use his upper
9 extremities for driving far in excess of Dr. Hope's
10 estimate . . . the record reveals that actual treatment
11 visits have been relatively infrequent.

12 (A.R. 24)
13

14 Plaintiff contends that the ALJ failed to provide specific and
15 legitimate reasons for rejecting Dr. Hope's opinion, by failing to
16 state why Dr. Hope's opinion regarding Plaintiff's disability was
17 inconsistent with his clinical findings. (Plaintiff's Mem. 6). In
18 particular, Plaintiff claims that the ALJ erred in (1) finding that
19 Plaintiff's ability to drive four hours to see Dr. Hope was
20 inconsistent with Dr. Hope's opinion that Plaintiff could not sit
21 for more than fifteen minutes at one time (Id.); (2) considering
22 Plaintiff's relatively infrequent visits to see Dr. Hope (Id. 7);
23 and (3) stating that "the possibility always exists that a doctor
24 may express an opinion in an effort to assist a patient with whom
25 he or she sympathizes." (Id. 8). The Court disagrees.

26
27 Plaintiff's reliance on Embrey v. Bowen, 849 F.2d 418 (9th
28 Cir. 1988) in support of his claim that the ALJ may not reject a

1 treating doctor's opinion because it is inconsistent with the
2 doctor's clinical findings (Plaintiff's Mem. 6) is misplaced. The
3 Ninth Circuit held, in Embrey, that it was insufficient for an ALJ
4 to merely conclude, without further explanation, that the treating
5 physician's opinion was not supported by sufficient objective
6 findings. Id. at 421. Here, the ALJ not only stated that he found
7 Dr. Hope's opinion regarding Plaintiff's disability to be
8 inconsistent with his clinical findings, but also specified the
9 inconsistencies. For example, the ALJ noted that Dr. Hope's
10 opinion that Plaintiff (1) could not sit for more than fifteen
11 minutes at any one time without interruption, (2) had limited use
12 of his arms and hands, and (3) could never use his right lower
13 extremity to operate foot controls, was inconsistent with Dr.
14 Hope's progress note - just three months prior - in which he
15 documented the fact that Plaintiff had driven four hours to make
16 his appointment. (A.R. 312, 350). Moreover, Plaintiff testified,
17 during the administrative hearing, that he drove four hours to see
18 Dr. Hope. (A.R. 38-39). The ALJ also noted that Dr. Hope's
19 clinical findings were limited. (A.R. 24). This noted
20 inconsistency is a valid basis for rejecting Dr. Hope's opinion.
21 See Valentine v. Comm'r Soc. Sec. Admin., 574 F.3d 685, 692-93 (9th
22 Cir. 2009) (contradiction between a treating physician's opinion
23 and his treatment notes constitutes a specific and legitimate
24 reason for rejecting the treating physician's opinion); Bayliss v.
25 Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005) (contradiction
26 between treating physician's assessment and clinical notes
27 justifies rejection of assessment); Johnson v. Shalala, 60 F.3d
28 1428, 1432 (9th Cir. 1995) (ALJ properly rejected physician's
determination where it was "conclusory and unsubstantiated by

1 relevant medical documentation"); see also Rollins v. Massanari,
2 261 F.3d 853, 856 (9th Cir. 2001) (ALJ properly discounted treating
3 doctor's opinions for being "so extreme as to be implausible," and
4 "not supported by any findings," where there was "no indication in
5 the record what the basis for these restrictions might be"). It
6 would be "error to give an opinion controlling weight simply
7 because it is the opinion of a treating source if it is not well-
8 supported . . . or if it is inconsistent with the other substantial
9 evidence." Social Security Ruling 96-2p. Thus, the Court finds
10 that the ALJ's reliance on conflicting medical evidence and
11 inconsistencies constitutes specific and legitimate reasons for
12 discounting Dr. Hope's opinion. See Thomas v. Barnhart, 278 F.3d
13 947, 957 (9th Cir. 2002); see also 20 C.F.R. § 404.1527(c)(3) ("The
14 more a medical source presents relevant evidence to support an
15 opinion, particularly medical signs and laboratory findings, the
16 more weight we will give the opinion.").

17 Plaintiff cites Ghokassian v. Shalala, 41 F.3d 1300 (9th Cir.
18 1994), a case in which the claimant saw his treating physician
19 twice during the fourteen month period prior to the hearing, in
20 support of his position that the ALJ improperly relied on
21 Plaintiff's "relatively infrequent" visits in discounting Dr.
22 Hope's opinion. (Plaintiff's Mem. 7). Plaintiff claims that his
23 limited visits were due to his lack of medical coverage. Id.
24 However, Ghokassian held that the ALJ erred by discounting the
25 treating doctor's opinion on the grounds that the claimant had
26 first seen the doctor a little more than a year before the hearing
27 and had only seen the doctor on two occasions and because the
28

1 doctor had failed to identify the interpreter who had accompanied
2 the claimant. Ghokassian, 41 F.3d at 1303. The Court found that,
3 under the circumstances presented, the doctor's opinion about the
4 claimant's disability was the opinion of a treating doctor. Here,
5 the ALJ properly noted that Plaintiff's "actual treatment visits"
6 to Dr. Hope were infrequent (A.R. 24). Indeed, the record supports
7 this finding and does not support Plaintiff's claim that he only
8 tried to see Dr. Hope in emergency situations because he lacked
9 medical coverage. (See A.R. 39; Plaintiff's Mem. 7). Plaintiff saw
10 Dr. Hope in February 2011 for a flu shot and in August 2011 for a
11 laceration on his nose and a "note for disability." (A.R. 313,
12 318). The Court finds that the ALJ properly considered Plaintiff's
13 relatively infrequent "actual" treatment visits with Dr. Hope as a
14 factor in conjunction with the lack of supporting objective medical
15 evidence for Plaintiff's claims regarding the severity and limiting
16 effects of his symptoms in rejecting Dr. Hope's opinion regarding
17 Plaintiff's disability.

18 Plaintiff also claims that the ALJ erred in stating that "the
19 possibility always exists that a doctor may express an opinion in
20 an effort to assist a patient with whom he or she sympathizes."
21 (Plaintiff's Mem. 8; A.R. 24). However, the ALJ followed this
22 observation with the statement that "[w]hile it is difficult to
23 confirm the presence of such motives, they are more likely in
24 situations where the opinion in question departs substantially from
25 the rest of the evidence of record, as in the current case. I am
26 not persuaded by Dr. Hope's opinions about the claimant's
27 capabilities when considered along with the other evidence of
28

1 record." (A.R. 24-25). Thus, the ALJ recognized that even if such
2 motives exist, they are difficult to confirm and therefore did not
3 base his decision on this factor. As set forth above, the ALJ
4 provided valid, specific and legitimate reasons for rejecting Dr.
5 Hope's opinion. Therefore, any error in making this statement is
6 harmless because it would not change the outcome of the case.
7 Molina v. Astrue, 674 F.3d 1104, 1115 (9th Cir. 2012) (errors are
8 harmless if the ALJ would have reached the same result absent the
9 error).

10
11 **C. The ALJ Provided Specific And Legitimate Reasons For Rejecting**
12 **The Opinion Of The Examining Doctor**

13
14 Dr. Song, a state agency doctor, examined Plaintiff on
15 September 25, 2010. (A.R. 252). Plaintiff reported that his many
16 bone fractures have prevented him from being able to ride a
17 motorcycle, drive a car, and turn his head, and Dr. Song noted that
18 Plaintiff was wearing a bandage on his right lower leg, a knee
19 brace on his left leg and a right wrist brace. (Id.). Plaintiff
20 indicated that he used a neck brace and a left wrist brace but did
21 not wear them to the examination. (Id.). Plaintiff claimed that
22 he had broken his fibula several months prior to the examination
23 but did not obtain medical treatment for the injury. (Id.). Dr.
24 Song's examination revealed that Plaintiff, who was not ambulating
25 with a cane, was able to bear weight on both legs without any
26 difficulty, and there was no tenderness to palpation of any of his
27 limbs including his right lower extremity which Plaintiff alleged
28 had been broken. (A.R. 252, 254). A straight leg test was negative

1 to eighty degrees without pain. (A.R. 254). Dr Song found
2 prominent bone spurs on Plaintiff's left foot and less prominent
3 bone spurs on his right foot and minor tenderness to palpation.
4 (Id.). There was no evidence of muscle atrophy. (Id.). Dr. Song
5 diagnosed Plaintiff as having multiple broken bones and limited
6 range of motion of the cervical and lumbar spines, secondary to
7 arthritis and found that Plaintiff could ambulate without a cane
8 and was able to bear weight on both of his legs. (A.R. 253, 255).
9 Based on these findings, Dr. Song assessed Plaintiff as having the
10 functional capacity to lift and carry twenty pounds occasionally
11 and ten pounds frequently, stand and walk two to four hours in an
12 eight-hour day with normal breaks, sit without restriction, but
13 with exertional limitations for climbing, stooping, kneeling,
14 balancing, crouching and crawling. (A.R. 254).

15 On October 19, 2010, state agency medical consultant, Dr.
16 Richard Betcher, reviewed Dr. Song's clinical findings and opinion
17 regarding Plaintiff's residual functional capacity and concluded
18 that, based on Dr. Song's objective findings, Plaintiff could stand
19 and walk for at least six hours in an eight-hour day and did not
20 require the use of a cane. (A.R. 283). Dr. Betcher also
21 questioned Plaintiff alleged homelessness, noting that Plaintiff
22 could afford expensive doctor's prescriptions including Viagra and
23 was able to shop and cook. Accordingly, Dr. Betcher opined that
24 Plaintiff was capable of medium exertion. On February 2, 2011,
25 another state agency medical consultant, Dr. Roger Fast, concurred
26 with Dr. Betcher's opinion after reviewing Dr. Song's clinical
27 findings and opinion. (A.R. 299). Dr. Fast concluded that
28

1 Plaintiff's allegations regarding the severity of his symptoms were
2 only partially credible. Id.

3
4 With respect to Dr. Song's opinions, the ALJ stated the
5 following:

6
7 I am not persuaded by Dr. Song's opinion and am
8 more persuaded by the opinions of the State agency
9 medical consultants who reviewed the evidence and
10 concluded that the claimant has not shown that he
11 is capable of less than a range of medium work, as
12 described in the residual functional capacity. . .
13 [] As pointed out by the medical consultants,
14 although he has cervical spine degeneration, his
15 allegations of severity and persistence of symptoms
16 is not well documented by the medical evidence.
17 The clinical findings by Dr. Song include a normal
18 gait, normal range of motion, intact strength,
19 intact reflexes, and no evidence of atrophy. He
20 could bear weight without a cane and there was no
21 evidence of tenderness, despite his allegations of
22 a broken leg bone. His statements that he sought
23 no treatment for a broken leg are not credible. The
24 claimant describes a difficult but fairly active
25 life style.

26 (A.R. 25).

27 Plaintiff contends that the ALJ failed to provide specific and
28

1 legitimate reasons for rejecting Dr. Song's opinion that Plaintiff
2 was only capable of light exertion, and erred in giving greater
3 weight to the opinions of the non-examining physicians who concluded
4 that Plaintiff was capable of performing work at the medium exertion
5 level. (Plaintiff's Mem. 9-10). In particular, Plaintiff challenges
6 the ALJ's consideration of Dr. Song's findings that Plaintiff
7 exhibited "normal gait, normal range of motion, intact strength,
8 intact reflexes and no evidence of muscle atrophy" and the ALJ's
9 observation that Plaintiff lived a fairly active life style. (Id.
10 11-12).

11
12 The ALJ noted that Dr. Song's assessment was inconsistent with
13 her own physical examination findings and plaintiff's statements,
14 and that despite these inconsistencies, Dr. Song found the
15 information Plaintiff provided regarding his symptoms to be "fairly
16 reliable." (A.R. 252-53). For example, Plaintiff claimed to have
17 fractured his right leg but did not receive any medical treatment
18 for this injury and Dr. Song's physical examination revealed no
19 tenderness upon palpation. In addition, although Plaintiff brought
20 a cane with him, Dr. Song noted that Plaintiff was able to ambulate
21 without the cane and could bear weight on both legs. (A.R. 25, 253-
22 53). The ALJ found Dr. Song's opinion with respect to the severity
23 and limiting effects of Plaintiff's symptoms to be based on
24 Plaintiff's subjective statements which the ALJ discounted.² "An

25 ² The Court finds that the ALJ's adverse credibility
26 determination, which Plaintiff does not challenge, is supported by
27 the record. Morgan v. Comm'r of Soc. Sec., 169 F.3d 595, 600 (9th
28 Cir. 1999) (conflict between subjective complaints and the
(continued...)

1 ALJ may reject a treating physician's if it is based 'to a large
2 extent' on a claimant's self-reports that have been properly
3 discounted as incredible." Tommasetti v. Astrue, 533 F.3d 1035,
4 1041 (9th Cir. 2008).

5
6 The ALJ found that Dr. Song's physical examination findings of
7 "normal gait, normal range of motion, intact strength, intact
8 reflexes, and no evidence of atrophy," (A.R. 25, 254-55) and
9 negative straight leg test (A.R. 25, 254) were inconsistent with her
10 opinion that Plaintiff was only capable of work at the light
11 exertional level. (A.R. 25, 255-56). See Batson v. Commissioner,
12 359 F.3d 1190, 1195 n.3 (9th Cir. 2004) (ALJ entitled to reject
13 doctor's report where "treatment notes do not provide objective
14 medical evidence of the limitations asserted in the report");
15 Connett v. Barnhart, 340 F.3d 871, 875 (9th Cir. 2003) (ALJ entitled
16 to reject doctor's report where "treatment notes provide no basis
17 for the functional restrictions he opined"). Thus, the ALJ was
18 entitled to rely on these factors, demonstrating the lack of

19
20 ²(...continued)
21 objective medical evidence in the record is a sufficient reason
22 that undermines a claimant's credibility; Osenbrock v. Apfel, 240
23 F.3d 1157-1165-66 (9th Cir. 2001) (affirming ALJ's decision that
24 relied in part on finding that neurological and orthopedic
25 evaluations revealed "very little evidence" of any significant
26 disabling abnormality of the claimant's upper or lower extremities,
27 or spine). Where the ALJ has made specific findings justifying a
28 decision to disbelieve Plaintiff's symptom allegations and those
findings are supported by substantial evidence in the record, "we
may not engage in second guessing." Thomas, 278 F.3d 947, 958-59
(9th Cir. 2002). Therefore, Dr. Song's reliance on Plaintiff's
subjective claims is a specific and legitimate reason for the ALJ
to reject Dr. Song's opinion about Plaintiff's ability to perform
light exertional work.

1 supporting objective evidence for Dr. Song's opinion, in finding Dr.
2 Song's opinion to be overly restrictive.

3
4 The ALJ properly considered Plaintiff's reported daily
5 activities in discounting Dr. Song's opinion that Plaintiff was only
6 capable of light exertional work, noting that Plaintiff lives a
7 difficult but active life style. (A.R. 25). Plaintiff admitted to
8 drinking a few beers a day, and was able to shop, cook, and take
9 care of his personal hygiene when facilities were available, and
10 testified that he was able to drive long distances and that his
11 daily activities included "looking through garbage dumpsters." (A.R.
12 25-26, 52). The ALJ properly found these daily activities to be
13 inconsistent with an RFC that was limited to light exertional work.
14 (A.R. 25).³ Daily activities that are inconsistent with alleged
15 symptoms are a relevant credibility determination. Rollins v.
16 Massanari, 261 F.3d 853, 857 (9th Cir. 2001).

17
18 Finally, the ALJ was also entitled to give greater weight to
19 the opinions of the reviewing doctors who both opined, after
20 reviewing the record, that Plaintiff was capable of medium exertion
21 work with limitations because their findings were more consistent
22 with the record. "The opinions of non-treating or non-examining
23 physicians may also serve as substantial evidence when the opinions
24 are consistent with independent and clinical findings or other
25 evidence in the record." Thomas, 278 F.3d at 957; See 20 C.F.R. §
26 416.927(d)(4) (providing that more weight is given to an opinion

27 ³ Dr. Betcher found Plaintiff's ability to shop and cook
28 was inconsistent with his alleged homelessness. (A.R. 283).

1 that is more consistent with the record as a whole); 20 C.F.R.
2 404.1527(c)(4) ("Generally, the more consistent an opinion is with
3 the record as a whole, the more weight we will give that opinion.").

4
5 **CONCLUSION**

6
7 The Court finds that the ALJ stated specific, legitimate
8 reasons for discrediting Dr. Hope's opinion regarding Plaintiff's
9 disability and Dr. Song's opinion about the limiting effects of
10 Plaintiff's symptoms. See Thomas, 278 F.3d at 957-58; Fair v.
11 Bowen, 885 F.2d 597, 605 (9th Cir. 1989). Thus, the ALJ's decision
12 that Plaintiff failed to establish disability was properly based
13 upon substantial evidence. There was no error.

14
15 **ORDER**

16
17 For all of the foregoing reasons, the decision of the
18 Administrative Law Judge is affirmed.

19
20 LET JUDGMENT BE ENTERED ACCORDINGLY.

21
22 DATED: January 2, 2015.

23
24 _____
25 /s/
26 ALKA SAGAR
27 UNITED STATES MAGISTRATE JUDGE
28