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

MICHAEL A. COHEN,)	No. EDCV 14-1544 FFM
)	
Plaintiff,)	MEMORANDUM OPINION
v.)	
)	
CAROLYN W. COLVIN,)	
Acting Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	

I. INTRODUCTION

Plaintiff Michael A. Cohen (“Plaintiff”) brings this action seeking to overturn the decision of the Commissioner of the Social Security Administration denying his application for Supplemental Security Income. Pursuant to 28 U.S.C. § 636(c), the parties consented to the jurisdiction of the undersigned United States Magistrate Judge. (Dkt. Nos. 7, 8). Pursuant to the July 30, 2014 Case Management Order, (Dkt. No. 5), on June 8, 2015, the parties filed a Joint Stipulation (“Joint Stip.”) detailing each party’s arguments and authorities, (Dkt. No. 20). The Court has reviewed the Joint Stipulation and the administrative record (“A.R.”), filed by defendant on February 25, 2015, (Dkt.

1 No. 16). For the reasons stated below, the decision of the Commissioner is affirmed.
2

3 **II. PRIOR PROCEEDINGS**

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5 On August 3, 2011, Plaintiff applied for Supplemental Security Income based on
6 alleged physical and mental impairments and asserting disability since October 31, 2007.
7 (A.R. 157–84). Plaintiff alleged the following disabling impairments: anxiety, kidney
8 transplant, heart valve replacement, gout, severe obesity, and high blood pressure. (A.R.
9 176). The Administrative Law Judge (“ALJ”), Charles E. Stevenson, examined the
10 records and heard testimony from Plaintiff, a medical expert (“ME”), and a vocational
11 expert (“VE”), on January 8, 2013. (A.R. at 43–68).

12 At the hearing, the ME, Dr. John A. Morse, summarized Plaintiff’s impairments
13 as: post-renal transplant, post-aortic valve replacement, obesity, and diffuse muscle and
14 joint pains. (A.R. 46–47). According to Dr. Morse, none of Plaintiff’s impairments met
15 or equaled a listing found in 20 C.F.R § 404, Subpart P, Appendix 1. (A.R. 47). Upon
16 examination by Plaintiff’s attorney, Dr. Morse testified that despite the indication that
17 Plaintiff has renal disease, his “renal function is essentially normal” and is “working
18 beautifully.” (A.R. 49). Furthermore, Dr. Morse stated that Plaintiff’s anti-rejection
19 medication “would have some side effects, maybe some fatigue.” (Id.) Dr. Morse also
20 testified that Plaintiff “did have some problems with his medication,” but that “he’s
21 stabilized on his current dose of medications as of October of ‘11.” (A.R. 51).

22 Plaintiff testified at the hearing that the following symptoms affect his abilities to
23 function normally: nausea, vomiting, diarrhea, constipation, blurry vision, and mood
24 swings, as well as general pain and fatigue in his muscles and joints. (A.R. 56).
25 According to Plaintiff, he began feeling fatigued about a month after his kidney
26 transplant. (Id.) Additionally, Plaintiff testified that his legs and feet hurt more after the
27 transplant than they did before it. (A.R. 59). He has also gained seventy pounds since
28 the surgery. (A.R. 56). Plaintiff testified that, based on his impairments, he is only able

1 to stand or walk for twenty minutes before needing to rest for thirty minutes. (A.R. 60).
2 Plaintiff also claimed that he could lift twenty pounds occasionally, but knows that he
3 could not keep lifting twenty pounds for two hours total in a normal day. (A.R. 62).
4 Plaintiff also claimed that he uses the bathroom thirty-five times per day. (A.R. 61).

5 The ALJ asked the VE, Jeanine Metildi, what work Plaintiff could perform if he
6 were limited to: light work lifting ten to twenty pounds; sitting, standing, and walking
7 six hours in a normal eight-hour workday; and avoiding ladders, unprotected heights,
8 and hazardous equipment. (A.R. 65). Based on this hypothetical, the VE testified that
9 Plaintiff would be able to work as a bench assembler or an office helper. (A.R. 65–66).
10 On examination by Plaintiff’s attorney, the VE testified that the inability to stand or walk
11 for more than two hours in an eight-hour workday and frequent absenteeism would
12 preclude any work. (A.R. 66).

13 On February 15, 2013, the ALJ granted Plaintiff benefits in a written decision.
14 (A.R. 21–32). The ALJ determined that Plaintiff was disabled from October 31, 2007,
15 through May 19, 2009, because Plaintiff’s renal disease met listing criteria found in 20
16 C.F.R. § 404, Subpart P, Appendix 1. (A.R. 26). However, the ALJ found that
17 beginning May 20, 2009, Plaintiff possessed the residual functional capacity (“RFC”) to
18 “lift and carry twenty pounds occasionally and ten pounds frequently; sit, stand, or walk
19 for six hours in an eight-hour work day; and no ladders, unprotected heights, or
20 hazardous equipment.” (A.R. 26–27). In making this finding, the ALJ found that
21 Plaintiff’s testimony and the statements of Plaintiff’s wife were less than fully credible.
22 (A.R. 29). Additionally, the ALJ rejected the September 26, 2010, medical opinions of
23 Plaintiff’s treating physician, Dr. Mohamed Simjee. (Id.) Based on the testimony of the
24 VE, the ALJ found that Plaintiff could perform work as a bench assembler or office
25 helper, and was therefore not disabled under the Social Security Act. (A.R. 31).

26 On May 28, 2014, the Appeals Council denied review of the ALJ’s decision.
27 (A.R. 1–3). Plaintiff initiated the instant proceedings on July 25, 2014. (Dkt. No. 1).

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1 **III. STANDARD OF REVIEW**

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3 Under 42 U.S.C. § 405(g), this court reviews the Administration’s decisions to
4 determine if: (1) the Administration’s findings are supported by substantial evidence; and
5 (2) the Administration used proper legal standards. *Smolen v. Chater*, 80 F.3d 1273,
6 1279 (9th Cir. 1996) (citations omitted). “Substantial evidence is more than a scintilla,
7 but less than a preponderance.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998)
8 (citation omitted). To determine whether substantial evidence supports a finding, “a
9 court must consider the record as a whole, weighing both evidence that supports and
10 evidence that detracts from the [Commissioner’s] conclusion.” *Auckland v. Massanari*,
11 257 F.3d 1033, 1035 (9th Cir. 2001) (internal quotation marks omitted).

12 If the evidence can reasonably support either affirming or reversing the ALJ’s
13 conclusion, the Court may not substitute its judgment for that of the ALJ. *Robbins v. Soc.*
14 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (citing *Flatten v. Sec’y of Health &*
15 *Human Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995)). However, even if substantial
16 evidence exists in the record to support the Commissioner’s decision, the decision must
17 be reversed if the proper legal standard was not applied. *Howard ex rel. Wolff v.*
18 *Barnhart*, 341 F.3d 1006, 1014–15 (9th Cir. 2003); see also *Smolen*, 80 F.3d at 1279.

19
20 **IV. PLAINTIFF’S CONTENTIONS**

21
22 Plaintiff raises the following issues:

- 23
24 1. Whether the ALJ properly considered the relevant medical evidence of
25 record as it pertain to 20 C.F.R. § 404, Subpart P, Appendix 1, Listing 6.02
26 (“Listing 6.02”);
27 2. Whether the ALJ properly considered the opinions of Plaintiff’s treating
28 physician, Dr. Mohamed Simjee; and

1 Plaintiff's testimony regarding the side effects of his medication. (A.R. 29). While the
2 ALJ did not explicitly discuss the factors listed above, the Court may infer that the
3 ALJ's discussion of Plaintiff's renal functioning after May 20, 2009, satisfies 6.00(E).¹
4 Accordingly, the ALJ properly considered the relevant medical evidence in determining
5 that Plaintiff's renal disease did not meet Listing 6.02.

6 Plaintiff further argues that the ALJ erred because he did not find several of
7 Plaintiff's impairments severe. To the extent that this was error, that error was harmless.
8 The ALJ's written decision indicates that he considered all of Plaintiff's impairments,
9 both severe and non-severe, in making the disability determination. (A.R. 26).

10 Accordingly, the Court is satisfied that any error does not call into question the ALJ's
11 ultimate determination. See *Molina*, 674 F.3d at 1115; see also *Gray v. Comm'r of Soc.*
12 *Sec. Admin.*, 365 F. App'x 60, 61–62 (9th Cir. 2010) (harmless error where ALJ
13 considered both severe and non-severe impairments in determining claimant's RFC).

14 B. The ALJ Properly Considered the Opinion of Plaintiff's Treating Physician, Dr.
15 Mohamed Simjee

16 1. Dr. Simjee's Opinion

17 On September 26, 2012, Dr. Mohamed Simjee, Plaintiff's treating physician,
18 completed a Physical Residual Functional Capacity Questionnaire regarding Plaintiff's
19 limitations. (A.R. 3530–36). According to Dr. Simjee, Plaintiff suffers from diabetes,
20 diabetic peripheral neuropathy, and chronic kidney disease. (A.R. 3531). Dr. Simjee
21 further opined that the corresponding symptoms are fatigue, pain, and numbness. (Id.)
22 Additionally, Dr. Simjee stated that Plaintiff suffered from depression and anxiety, and
23 that his pain or other symptoms constantly interfere with his ability to concentrate.

24
25 ¹ In any event, the ALJ's failure to explicitly discuss the factors is harmless, as it
26 appears from the record that, had he explicitly discussed the above factors, the outcome
27 would have remained the same. *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
28 (internal quotation marks omitted) (“[E]rror is harmless so long as there remains
substantial evidence supporting the ALJ's decision and the error does not negate the
validity of the ALJ's ultimate conclusion.”)

1 (A.R. 3532). Regarding Plaintiff's physical abilities, Dr. Simjee found that Plaintiff can
2 sit for ten minutes, stand for twenty minutes, walk two city blocks without rest or severe
3 pain, and lift twenty pounds occasionally. (Id.) He also stated that Plaintiff is capable of
4 low stress jobs, but would miss four days each month for treatment. (A.R. 3532, 3534).

5 2. Analysis

6 Ordinarily, a treating physician's opinion is entitled to great weight. *Lester v.*
7 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995); see also 20 C.F.R. § 404.1527. "However, the
8 opinion of the treating physician is not necessarily conclusive as to either the physical
9 condition or the ultimate issue of disability." *Morgan v. Comm'r of Soc. Sec. Admin.*,
10 169 F.3d 595, 600 (9th Cir. 1999) (citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th
11 Cir. 1989)). Thus, an ALJ may reject the opinion of a treating physician by "providing
12 'specific and legitimate reasons' supported by substantial evidence in the record for
13 doing so." *Lester*, 81 F.3d at 830 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th
14 Cir. 1983)). Accordingly, an ALJ may assign little or no weight to the opinion of a
15 treating physician that is "unsupported by the record as a whole . . . or by objective
16 medical findings." *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195
17 (citations omitted).

18 Here, the ALJ assigned little weight to Dr. Simjee's opinions after finding that Dr.
19 Simjee's "significant standing and walking restrictions were in conflict with the medical
20 record." (A.R. 29). Specifically, the ALJ pointed out that Plaintiff could walk on a
21 treadmill for two miles, ride a bicycle without any issues, and referee youth soccer
22 matches. (Id.) The ALJ also noted that Plaintiff's admitted daily activities are
23 inconsistent with Dr. Simjee's physical limitations. (Id.) The record supports the ALJ's
24 findings. Plaintiff did take part in a weekly exercise regimen that involved walking two
25 miles and biking four miles. (A.R. 1007, 1147, 1216). Additionally, Plaintiff admitted
26 that he referees at least one youth soccer game each week. (A.R. 214). Plaintiff's
27 statement that he shops twice a week for one to two hours at a time, (A.R. 213), also
28 weighs against Dr. Simjee's findings. Furthermore, as Dr. Morse noted, there is little

1 discussion of any diabetic neuropathy in the medical record.² As a result, the ALJ was
2 permitted to assign reject the opinion of Dr. Simjee because it was unsupported by the
3 objective medical evidence in the record. See Magallanes, 881 F.2d at 753–54.

4 C. The ALJ Properly Considered Plaintiff’s Subjective Complaints and Assessed His
5 Credibility

6 Once a claimant produces medical evidence of an underlying impairment that is
7 reasonably likely to cause the alleged symptoms, medical findings are not required to
8 support their claimed severity. Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991).
9 However, an ALJ may reject a claimant’s allegations upon: (1) finding affirmative
10 evidence of malingering; or (2) providing clear and convincing reasons for so doing.
11 Benton v. Barnhart, 331 F.3d 1030, 1040 (9th Cir. 2003). “General findings are
12 insufficient; rather, the ALJ must identify what testimony is not credible and what
13 evidence undermines the claimant's complaints.” Lester, 81 F.3d at 821 (citing Dodrill v.
14 Shalala, 12 F.3d 915, 918 (9th Cir. 1983)).

15 1. ALJ’s Decision

16 The ALJ found that Plaintiff’s statements “concerning the intensity, persistence,
17 and limiting effects of [his] symptoms are not entirely credible.” (A.R. 29). In making
18 this determination, the ALJ found that Plaintiff’s “allegations of generally disabling
19 symptoms and limitations are not corroborated by the record.” (Id.) That ALJ further
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21 ² The ALJ did not err in finding that Dr. Morse’s opinion constituted substantial
22 evidence that could rebut the opinions of Dr. Simjee. The opinion of a non-treating, non-
23 examining physician may constitute substantial evidence if it is supported by evidence
24 from the record. Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001). Here, Dr.
25 Morse’s opinions were based upon a review of the lengthy medical records, including the
26 reports of examining physicians. Moreover, Dr. Morse’s opinions were supported by
27 these records. Therefore, the ALJ was permitted to rely on Dr. Morse’s opinion in lieu of
28 the unsupported opinion of Dr. Simjee. See Saelee v. Chater, 94 F.3d 520, 522 (9th Cir.
1996) (ALJ did not err in disregarding the opinions of claimant’s treating physician
where the opposing opinions of the non-examining physician were corroborated by the
medical record)

1 found that Plaintiff’s activities “are inconsistent with the allegations of disability because
2 they indicate that the claimant is capable of performing appropriate work activities on an
3 ongoing daily basis.” (Id.) Additionally, the ALJ discussed the facts that Plaintiff’s
4 “complaints of nausea, vomiting, diarrhea, and constipation severe enough to result in
5 thirty-five daily trips to the bathroom are not supported by the treatment history.” (Id.)
6 Finally, the ALJ found evidence of “non-compliance with medication as well as with
7 exercise and diet recommendations.” (Id.)

8 2. Analysis

9 i. Daily Activities

10 An ALJ may permissibly discredit a claimant’s testimony “if the level of activity
11 [is] inconsistent with [the claimant’s] claimed limitations.” Reddick, 157 F.3d at 722.
12 Here, the ALJ found that Plaintiff’s daily activities were “inconsistent with the
13 allegations of disability.” (A.R. 29). To support this finding, the ALJ pointed to
14 Plaintiff’s ability to walk two miles on a treadmill and ride a bicycle without problems,
15 (A.R. 1007, 1147, 1219), and referee youth soccer, (A.R. 214). Walking two miles on a
16 treadmill likely took Plaintiff longer than twenty minutes. (A.R. 1219). Additionally,
17 soccer referees are required to remain standing for the duration of the match, and must
18 move around across the soccer field to follow the players. As a result, each of these
19 activities is inconsistent with Plaintiff’s claim that he cannot stand or walk for more than
20 twenty minutes at a time. Because the “level of [Plaintiff’s activities] is inconsistent with
21 [his] claimed limitations,” the ALJ did not err in relying on Plaintiff’s daily activities to
22 support the adverse credibility determination. See Reddick, 157 F.3d at 722.

23 ALJs must be “cautious in concluding that daily activities are inconsistent with
24 testimony about pain.” Garrison v. Colvin, 759 F.3d 995, 1016 (9th Cir. 2014).
25 However, the Court is satisfied with the ALJ’s findings in this instance. Here, the ALJ
26 discredited Plaintiff’s testimony because his claimed daily activities conflicted with his
27 asserted limitations. Indeed, the ALJ’s analysis could be alternatively characterized as
28 permissibly discrediting Plaintiff on the basis that he made inconsistent statements

1 concerning his limitations. See *Smolen*, 80 F.3d at 1284 (ALJs may rely on “ordinary
2 techniques of credibility evaluation, such as . . . prior inconsistent statements”). As a
3 result, the Court concludes that the ALJ permissibly found that evidence of Plaintiff’s
4 daily activities discredited his testimony. Additionally, even if the ALJ erred in finding
5 that Plaintiff’s daily activities “indicate that the claimant is capable of performing
6 appropriate work activities on an ongoing daily basis,” (A.R. 29), such an error was
7 harmless. See *Batson*, 359 F.3d at 1197 (finding harmless error where ALJ’s credibility
8 determination was supported by other permissible reasons and objective medical
9 evidence); see also *Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012) (“[R]eversal
10 on account of error is not automatic, but requires a determination of prejudice.”).

11 ii. Objective Medical Evidence

12 “While subjective pain testimony cannot be rejected on the sole ground that it is
13 not fully corroborated by objective medical evidence, the medical evidence is still a
14 relevant factor in determining the severity of the claimant’s pain and its disabling
15 effects.” *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (citing 20 C.F.R.
16 § 404.1529(c)(2)). Here, the ALJ permissibly reasoned that the absence of “complaints
17 of nausea, vomiting, diarrhea, and constipation severe enough to result in thirty-five daily
18 trips to the bathroom,” from the medical record weighed against Plaintiff’s credibility.
19 (A.R. 29). It does not require a doctor to determine that thirty-five daily trips the
20 bathroom is a noteworthy medical condition. Likewise, it is entirely reasonable to find
21 that the absence of such a symptom or condition from the medical records indicates that it
22 is not as serious as Plaintiff’s testimony suggests. Therefore, this reason constitutes a
23 clear and convincing reason to support the ALJ’s adverse credibility determination. See
24 *Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006) (finding that a claimant’s failure to
25 mention symptoms to doctors was a permissible reason for finding testimony less than
26 fully credible).

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