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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD G. SPROLING,)	Case No. EDCV 16-00099-JEM
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
v.)	AFFIRMING DECISION OF THE
)	COMMISSIONER OF SOCIAL SECURITY
NANCY A. BERRYHILL,)	
Acting Commissioner of Social Security,)	
)	
Defendant.)	

PROCEEDINGS

On January 19, 2016, Ronald G. Sproling (“Plaintiff” or “Claimant”) filed a complaint seeking review of the decision by the Commissioner of Social Security (“Commissioner”) denying Plaintiff’s application for Social Security Disability Insurance benefits. The Commissioner filed an Answer on May 9, 2016. On March 30, 2017, the parties filed a Joint Stipulation (“JS”). The matter is now ready for decision.

Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before this Magistrate Judge. After reviewing the pleadings, transcripts, and administrative record (“AR”), the Court concludes that the Commissioner’s decision must be affirmed and this case dismissed with prejudice.

BACKGROUND

1
2 Plaintiff is a 61-year-old male who applied for Social Security Disability Insurance
3 benefits on April 18, 2013, alleging disability beginning November 19, 2012. (AR 19.) The ALJ
4 determined that Plaintiff had not engaged in substantial gainful activity since November 19,
5 2012, the alleged onset date. (AR 21.)

6 Plaintiff's claim was denied initially on August 19, 2013, and on reconsideration on
7 December 2, 2013. (AR 19.) Plaintiff filed a timely request for hearing, which was held before
8 Administrative Law Judge ("ALJ") Kyle E. Andeer on October 23, 2014, in Orange, California.
9 (AR 19.) Plaintiff appeared and testified at the hearing and was represented by counsel. (AR
10 19.) Vocational expert ("VE") Alan L. Ey also appeared and testified at the hearing. (AR 19.)

11 The ALJ issued an unfavorable decision on December 2, 2014. (AR 19-26.) The
12 Appeals Council denied review on November 24, 2015. (AR 3-5.)

DISPUTED ISSUES

13
14 As reflected in the Joint Stipulation, Plaintiff only raises the following disputed issue as
15 ground for reversal and remand:

- 16 1. Whether the ALJ properly considered Ronald Sproling's testimony.

STANDARD OF REVIEW

17
18 Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether
19 the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v.
20 Chater, 80 F.3d 1273 , 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846
21 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and
22 based on the proper legal standards).

23 Substantial evidence means "more than a mere scintilla,' but less than a
24 preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v.
25 Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is "such relevant evidence as a
26 reasonable mind might accept as adequate to support a conclusion." Richardson, 402 U.S. at
27 401 (internal quotation marks and citation omitted).

1 This Court must review the record as a whole and consider adverse as well as
2 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). Where
3 evidence is susceptible to more than one rational interpretation, the ALJ's decision must be
4 upheld. Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).
5 "However, a reviewing court must consider the entire record as a whole and may not affirm
6 simply by isolating a 'specific quantum of supporting evidence.'" Robbins, 466 F.3d at 882
7 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495
8 F.3d 625, 630 (9th Cir. 2007).

9 THE SEQUENTIAL EVALUATION

10 The Social Security Act defines disability as the "inability to engage in any substantial
11 gainful activity by reason of any medically determinable physical or mental impairment which
12 can be expected to result in death or . . . can be expected to last for a continuous period of not
13 less than 12 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner has
14 established a five-step sequential process to determine whether a claimant is disabled. 20
15 C.F.R. §§ 404.1520, 416.920.

16 The first step is to determine whether the claimant is presently engaging in substantial
17 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging
18 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,
19 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or
20 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not
21 significantly limit the claimant's ability to work. Smolen, 80 F.3d at 1290. Third, the ALJ must
22 determine whether the impairment is listed, or equivalent to an impairment listed, in 20 C.F.R.
23 Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d at 746. If the impairment
24 meets or equals one of the listed impairments, the claimant is presumptively disabled. Bowen,
25 482 U.S. at 141. Fourth, the ALJ must determine whether the impairment prevents the
26 claimant from doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir.
27 2001). Before making the step four determination, the ALJ first must determine the claimant's
28 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). The RFC is "the most [one] can

1 still do despite [his or her] limitations” and represents an assessment “based on all the relevant
2 evidence.” 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The RFC must consider all of the
3 claimant’s impairments, including those that are not severe. 20 C.F.R. §§ 416.920(e),
4 416.945(a)(2); Social Security Ruling (“SSR”) 96-8p.

5 If the claimant cannot perform his or her past relevant work or has no past relevant work,
6 the ALJ proceeds to the fifth step and must determine whether the impairment prevents the
7 claimant from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864,
8 869 (9th Cir. 2000). The claimant bears the burden of proving steps one through four,
9 consistent with the general rule that at all times the burden is on the claimant to establish his or
10 her entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established
11 by the claimant, the burden shifts to the Commissioner to show that the claimant may perform
12 other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support
13 a finding that a claimant is not disabled at step five, the Commissioner must provide evidence
14 demonstrating that other work exists in significant numbers in the national economy that the
15 claimant can do, given his or her RFC, age, education, and work experience. 20 C.F.R.
16 § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is disabled and
17 entitled to benefits. Id.

18 THE ALJ DECISION

19 In this case, the ALJ determined at step one of the sequential process that Plaintiff has
20 not engaged in substantial gainful activity since November 19, 2012, the alleged onset date.
21 (AR 21.)

22 At step two, the ALJ determined that Plaintiff has the following medically determinable
23 severe impairment: seizure disorder. (AR 21-22.)

24 At step three, the ALJ determined that Plaintiff does not have an impairment or
25 combination of impairments that meets or medically equals the severity of one of the listed
26 impairments. (AR 22.)

27 The ALJ then found that Plaintiff has the RFC to perform a full range of work at all
28 exertional levels but with the following nonexertional limitations: avoid hazardous machinery

1 and unprotected heights; or using moving machinery. (AR 22-24.) In determining the above
2 RFC, the ALJ made an adverse credibility determination. (AR 23-24.)

3 At step four, the ALJ found that Plaintiff is unable to perform his past relevant work as a
4 diesel mechanic and a construction worker. (AR 24.) The ALJ, however, also found that,
5 considering Claimant's age, education, work experience, and RFC, there are jobs that exist in
6 significant numbers in the national economy that Claimant can perform, including the jobs of
7 dining room attendant and kitchen helper. (AR 25.)

8 Consequently, the ALJ found that Claimant is not disabled within the meaning of the
9 Social Security Act. (AR 25-26.)

10 DISCUSSION

11 The ALJ decision must be affirmed. The ALJ properly discounted Plaintiff's subjective
12 symptom testimony.

13 A. Relevant Federal Law

14 The ALJ's RFC is not a medical determination but an administrative finding or legal
15 decision reserved to the Commissioner based on consideration of all the relevant evidence,
16 including medical evidence, lay witnesses, and subjective symptoms. See SSR 96-5p; 20
17 C.F.R. § 1527(e). In determining a claimant's RFC, an ALJ must consider all relevant evidence
18 in the record, including medical records, lay evidence, and the effects of symptoms, including
19 pain reasonably attributable to the medical condition. *Robbins*, 446 F.3d at 883.

20 The test for deciding whether to accept a claimant's subjective symptom testimony turns
21 on whether the claimant produces medical evidence of an impairment that reasonably could be
22 expected to produce the pain or other symptoms alleged. *Bunnell v. Sullivan*, 947 F.2d 341,
23 346 (9th Cir. 1991); see also *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998); *Smolen*, 80
24 F.3d at 1281-82 esp. n.2. The Commissioner may not discredit a claimant's testimony on the
25 severity of symptoms merely because they are unsupported by objective medical evidence.
26 *Reddick*, 157 F.3d at 722; *Bunnell*, 947 F.2d at 343, 345. If the ALJ finds the claimant's pain
27 testimony not credible, the ALJ "must specifically make findings which support this conclusion."
28 *Bunnell*, 947 F.2d at 345. The ALJ must set forth "findings sufficiently specific to permit the

1 court to conclude that the ALJ did not arbitrarily discredit claimant's testimony." Thomas v.
2 Barnhart, 278 F.3d 947, 958 (9th Cir. 2002); see also Rollins v, Massanari, 261 F.3d 853, 856-
3 57 (9th Cir. 2001); Bunnell, 947 F.2d at 345-46. Unless there is evidence of malingering, the
4 ALJ can reject the claimant's testimony about the severity of a claimant's symptoms only by
5 offering "specific, clear and convincing reasons for doing so." Smolen, 80 F.3d at 1283-84; see
6 also Reddick, 157 F.3d at 722. The ALJ must identify what testimony is not credible and what
7 evidence discredits the testimony. Reddick, 157 F.3d at 722; Smolen, 80 F.3d at 1284.

8 **B. Analysis**

9 Plaintiff was determined to have the medically determinable impairment of seizure
10 disorder. (AR 21.) The ALJ assessed a light work RFC with limitations to avoid hazardous
11 machinery and unprotected heights, and using moving machinery. (AR 22.) Plaintiff alleges
12 disability due to pinched nerve in neck, stroke, sore legs, depression, and high cholesterol.
13 (AR 21.) He also alleged difficulties hearing and seeing. (AR 23.)

14 In determining Plaintiff's RFC, the ALJ concluded that Plaintiff's medically determinable
15 impairments reasonably could be expected to cause the alleged symptoms. (AR 23.) The ALJ,
16 however, also found that Plaintiff's statements regarding the intensity, persistence and limiting
17 effects of these symptoms are "not entirely credible."¹ (AR 23.) Because the ALJ did not make
18 any finding of malingering, he was required to provide clear and convincing reasons supported
19 by substantial evidence for discounting Plaintiff's credibility. Smolen, 80 F.3d at 1283-84;
20 Tommasetti v. Astrue, 533 F.3d at 1035, 1039-40. (9th Cir. 2008). The ALJ did so.

21 First, the ALJ found that Plaintiff's subjective symptom allegations were inconsistent with
22 the objective evidence. (AR 23-24.) An ALJ is permitted to consider whether there is a lack of
23 medical evidence to corroborate a claimant's alleged symptoms so long as it is not the only
24 reason for discounting a claimant's credibility. Burch v. Barnhart, 400 F.3d 676, 680-81 (9th
25 Cir. 2005). Here, the ALJ found the longitudinal medical evidence failed to reflect persistent

26 ¹ Plaintiff asserts that this boilerplate adverse credibility determination is insufficient to
27 discount his credibility. Were this all the ALJ had to say, Plaintiff would be right but the ALJ
28 proceeded to give clear and convincing reasons supported by substantial evidence that were the
basis for the ALJ's initial conclusory statement.

1 seizures. The medical evidence indicated no intracranial abnormality and Plaintiff was put on
2 Keppra without any more seizures. (AR 23.) Impairments and limitations that can be
3 effectively controlled by medication are not disabling. Warre v. Comm'r of Soc. Sec., 439 F.3d
4 1001, 1006 (9th Cir. 2006). Physical examination findings were unremarkable. There was no
5 medical evidence supporting Plaintiff's claims of stroke, sore legs, depression, high cholesterol,
6 or trouble seeing or hearing, and none of these alleged conditions were considered severe.
7 (AR 22, 24.)

8 Second, the ALJ found that Plaintiff was not compliant with his medications and with
9 medical advice to abstain from using drugs and alcohol and from smoking. (AR 23-24.) An
10 ALJ may consider unexplained or inadequately explained failure to follow a treatment regimen.
11 Tommasetti, 533 F.3d at 1039. Plaintiff contends he was unable to afford treatment but even
12 so that would not explain his failure to follow medical advice to stop using drugs and alcohol,
13 and to stop smoking.

14 Third, the ALJ noted inconsistencies in Plaintiff's testimony, statements and conduct,
15 which an ALJ may consider in evaluating a claimant's credibility. Light v. Soc. Sec. Adm., 119
16 F.3d 789, 792 (9th Cir. 1997); Thomas, 278 F.3d at 958-59. Despite Plaintiff's complaints of
17 pain in his neck and legs, he was only taking Motrin. (AR 24.) Also, Claimant stated he had no
18 problem taking care of personal needs washing dishes, going out daily, and socializing weekly.
19 (AR 24.) Daily activities inconsistent with disabling limitations are not disabling. Bunnell, 947
20 F.2d at 345-46.

21 Plaintiff disputes the ALJ's adverse credibility finding but it is the ALJ who has the
22 responsibility to resolve ambiguities in the record. Andrews v. Shalala, 53 F.3d 1035, 1039 (9th
23 Cir. 1995). Where the ALJ's interpretation of the record is reasonable as it is here, it should not
24 be second-guessed. Rollins, 261 F.3d at 857.

25 The ALJ rejected Plaintiff's subjective symptom testimony for clear and convincing
26 reasons supported by substantial evidence. The ALJ's RFC is supported by substantial
27 evidence.

28

ORDER

IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the Commissioner of Social Security and dismissing this case with prejudice.

DATED: August 21, 2017

/s/ John E. McDermott
JOHN E. MCDERMOTT
UNITED STATES MAGISTRATE JUDGE

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