

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ESTEBAN C. HURTADO,)	No. CV 16-876-AS
)	
Plaintiff,)	MEMORANDUM OPINION
v.)	
)	
NANCY A. BERRYHILL, ¹)	
Acting Commissioner of Social)	
Security,)	
)	
Defendant.)	
)	

PROCEEDINGS

On April 30, 2016, Plaintiff Esteban C. Hurtado ("Plaintiff") filed a Complaint, seeking review of the Commissioner's denial of Plaintiff's application for a period of disability, disability insurance benefits ("DIB"), and supplemental security income ("SSI"). (Docket Entry No 1). On September 27, 2016, Defendant

¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security and is substituted for Acting Commissioner Carolyn W. Colvin in this case. See 42 U.S.C. § 205(g).

1 filed an Answer to the Complaint, (Docket Entry No. 17), and the
2 Certified Administrative Record ("AR"). (Docket Entry No. 18). The
3 parties have consented to proceed before a United States Magistrate
4 Judge. (Docket Entry Nos. 12-13). On February 13, 2017, the
5 parties filed a Joint Stipulation ("Joint Stip."), setting forth
6 their respective positions on Plaintiff's claims. (Docket Entry No.
7 21).

8
9 For the reasons discussed below, the decision of the
10 Administrative Law Judge is AFFIRMED.

11
12 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

13
14 Plaintiff asserts disability beginning July 28, 2008, based on
15 alleged physical and mental health impairments related to back pain
16 and testicular cancer. (AR 228, 232). On August 18, 2014, the
17 Administrative Law Judge ("ALJ"), Marti Kirby, examined the record
18 and heard testimony from Plaintiff and vocational expert ("VE"),
19 Howard Goldfarb. (AR 39-56). On October 8, 2014, the ALJ denied
20 Plaintiff benefits in a written decision. (AR 20-43).

21
22 The ALJ applied the five-step sequential process in evaluating
23 Plaintiff's case. (AR 26-35). At step one, the ALJ determined that
24 Plaintiff had not engaged in substantial gainful activity after the
25 alleged onset date. (AR 28). At step two, the ALJ found that
26 Plaintiff has the severe impairments of lumbago, disc protrusion
27 with mild bilateral foraminal stenosis at L3-4, and lumbosacral
28

1 neuritis or radiculitis. (AR 28). At step three, the ALJ found
2 that Plaintiff's impairments did not meet or equal a listing found
3 in 20 C.F.R. Part 404, Subpart P, Appendix 1. (AR 29). Before
4 proceeding to step four, the ALJ found that Plaintiff had the
5 residual functional capacity ("RFC")² to perform light work, but can
6 lift 20 pounds occasionally and 10 pounds frequently; stand, walk,
7 and sit for six hours in an eight-hour workday with regular breaks;
8 must change positions approximately every hour for five minutes;
9 climb ramps and stairs, balance, stoop, kneel, crouch, and crawl
10 occasionally; cannot climb ladders, ropes, or scaffolds; cannot work
11 around unprotected heights, machinery, or other hazards; cannot
12 perform jobs requiring hypervigilance or intense concentration on a
13 particular task; cannot perform fast paced, production, or assembly
14 line work; and would likely be off task up to 10 percent of the
15 workday or workweek due to chronic pain or side effects from
16 medication. (AR 29).

17
18 In making this finding, the ALJ determined that Plaintiff's
19 allegations concerning the intensity, persistence, and limiting
20 effects of his symptoms were less than fully credible for the
21 following reasons: (1) Plaintiff had significant gaps in treatment
22 from 2009 to 2011, and in 2013, Plaintiff admitted to "no longer
23 receiving any treatment" but still had medical insurance; (2) the
24 objective medical evidence did not support Plaintiff's allegations,

25
26 ² A Residual Functional Capacity is what a claimant can still
27 do despite existing exertional and non-exertional limitations. See
28 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

1 although recognizing that diagnostic imaging revealed moderate to
2 severe degenerative disc disease of the lumbar spine, physical
3 examinations showed no neurological deficits and there were no
4 surgeries; and (3) Plaintiff admitted to performing activities that
5 were inconsistent with his alleged symptoms, such as lifting 20
6 pounds repetitively "without pain" and wanting to return to work
7 because he was "pain free." (AR 31).

8
9 The ALJ also considered Plaintiff's medical record surmising
10 that it reflected a history of back pain, which was the product of
11 repetitive work injuries. (AR 31). Plaintiff did not seek any
12 treatment from 2009 to 2011, which suggested that his "symptoms were
13 not particularly troublesome." (Id.). The ALJ found Plaintiff had
14 a limited range of motion in the lumbar spine but physical
15 examinations otherwise showed normal results. (AR 32). On November
16 10, 2011, consultative examiner, Dr. Terrance Flanagan, M.D., noted
17 that Plaintiff was able to sit and stand with normal posture, rise
18 out of a chair without difficulty, had a normal gait, and no
19 paraspinal spasms. (AR 280-82). However, Plaintiff had pain with
20 axial rotation of the trunk, could not walk on his tiptoes, and had
21 somewhat irregular forward flexion and extension. (AR 281-82). On
22 April 20, 2012, an x-ray and MRI of Plaintiff's lumbar spine showed
23 moderate to severe degenerative disc disease at L5-S1, moderate disc
24 space narrowing at L4-5, and a 4 millimeter disc and osteophyte
25 protrusion with mild bilateral foraminal stenosis at L3-4. (AR 295-
26 97). On August 8, 2012, pain specialist, Dr. Jos Santz, M.D.,
27 examined Plaintiff. (AR 299). Plaintiff had tenderness to

1 palpation, a limited range of motion, positive Faber's testing,³ and
2 normal neurological limits. (AR 299-300). Plaintiff told Dr. Santz
3 that he was not in pain, could lift 20 pounds repetitively, and
4 wanted to return to work. Dr. Santz recommended more physical
5 therapy, but Plaintiff declined. (AR 300). On February 13, 2013,
6 consultative examiner, Dr. Vicente R. Bernabe, D.O., examined
7 Plaintiff. Dr. Bernarbe noted that Plaintiff was not receiving
8 treatment for his condition and had a normal gait, slight decrease
9 in range of motion, tenderness to palpation, and 5 out of 5 motor
10 strength. (AR 306-08). On July 12, 2013, Plaintiff's treating
11 physician, Dr. Pablo Sobero, M.D., examined Plaintiff finding normal
12 results, except Plaintiff had a slight limp and used a cane. (AR
13 317).

14
15 The ALJ then considered the opinions of treating and
16 nontreating physicians. The ALJ gave some weight to the opinion of
17 Plaintiff's pain management specialist, Dr. Santz, in adopting his
18 opinion that Plaintiff can lift and carry 20 pounds and perform
19 overhead lifting, but he rejected Dr. Santz's opinion that Plaintiff
20 can bend, twist, and engage in prolonged standing and kneeling. (AR
21 32). The ALJ gave little weight to the opinions of Plaintiff's
22 treating physician, Dr. Sobero, orthopedic consultative examiners,
23 Dr. Flanagan and Dr. Bernarbe, and state agency medical consultants.
24 (AR 33).

25
26 ³ The (Patrick's) FABER Test stands for Flexion, Abduction and
27 External Rotation. These three motions combined result in a clinical
28 pain provocation test to find pathologies at the hip, lumbar and
sacroiliac region. http://www.physio-pedia.com/FABER_Test.

1 At step four, the ALJ adopted the VE's testimony in finding
2 that Plaintiff could perform his past relevant work as file clerk
3 (Dictionary of Occupational Titles ("DOT") 206.387-034) as actually
4 and generally performed. (AR 33-34). At the hearing, the VE
5 testified that he took into account Plaintiff's exertional and
6 nonexertional limitations and reviewed Plaintiff's work history
7 reports in concluding that Plaintiff could perform the duties of
8 file clerk. (AR 49-53). Plaintiff made no objection to the VE's
9 characterization of Plaintiff's past work at the hearing. (See AR
10 54). As a result of these findings, the ALJ concluded that
11 Plaintiff was not disabled. (AR 34).

12
13 Plaintiff requested that the Appeals Council review the ALJ's
14 decision. (AR 18-19). The request was denied on March 14, 2016.
15 (AR 1-5). The ALJ's decision then became the final decision of the
16 Commissioner, allowing this Court to review the decision. See 42
17 U.S.C. §§ 405(g), 1383(c).

18
19 **STANDARD OF REVIEW**
20

21 This Court reviews the Administration's decision to determine
22 if it is free of legal error and supported by substantial evidence.
23 See Brewes v. Commissioner of Social Sec. Admin., 682 F.3d 1157,
24 1161 (9th Cir. 2012). "Substantial evidence" is more than a mere
25 scintilla, but less than a preponderance. Garrison v. Colvin, 759
26 F.3d 995, 1009 (9th Cir. 2014). To assess whether substantial
27 evidence supports a finding, "a court must consider the record as a
28

1 whole, weighing both evidence that supports and evidence that
2 detracts from the [Commissioner's] conclusion." Aukland v.
3 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001). As a result, "[i]f
4 the evidence can reasonably support either affirming or reversing
5 the ALJ's conclusion, [a court] may not substitute [its] judgment
6 for that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d 880,
7 882 (9th Cir. 2006).

8
9 **PLAINTIFF'S CONTENTIONS**

10
11 Plaintiff contends that (1) substantial evidence did not
12 support the ALJ's finding that Plaintiff could perform his past
13 relevant work as a file clerk; and (2) the ALJ failed to provide
14 clear and convincing reasons to reject Plaintiff's subjective pain
15 testimony. (Joint Stip. at 5-8, 11-15, 20-21).

16
17 **DISCUSSION**

18
19 **A. The ALJ Properly Found That Plaintiff Could Perform His Past**
20 **Relevant Work**

21
22 Plaintiff asserts that the ALJ improperly identified his past
23 work as a file clerk because in that job Plaintiff also performed
24 the duties of courier, making it a composite job with no counterpart
25 in the DOT. (Joint Stip. at 5-8). The ALJ identified the least
26 demanding duty of Plaintiff's past work and ignored his courier
27 driving duties, which Plaintiff can no longer perform given his
28

1 mental health limitations. Because Plaintiff performed a composite
2 job and the ALJ identified only his least demanding duties as file
3 clerk, the ALJ erred in finding that Plaintiff could perform his
4 past relevant work as actually and generally performed.

5
6 Defendant contends that the ALJ properly adopted the VE's
7 testimony that Plaintiff could perform his file clerk job as
8 actually and generally performed. Plaintiff characterized his past
9 job as a file clerk and did not, before the present appeal, assert
10 that Plaintiff performed a composite job. (Joint Stip. at 9). The
11 VE relied on Plaintiff's work history reports to identify
12 Plaintiff's file clerk job, which took into account his driving
13 duties. (Id. at 10). Because the VE properly characterized
14 Plaintiff's past work as a file clerk, the ALJ properly found that
15 Plaintiff could perform the file clerk job as generally performed.
16 (Id.).

17
18 **1. Legal Standard**

19
20 At step four, the claimant bears the burden of demonstrating
21 that he can no longer perform his past relevant work. 20 C.F.R. §§
22 404.1512(a), 404.1520(f); Barnhart v. Thomas, 540 U.S. 20, 25
23 (2003). A claimant may be found not disabled at step four based on
24 a determination that he can perform past relevant work as it was
25 actually performed or as it is generally performed in the national
26 economy. Social Security Ruling ("SSR") 82-61, 1982 WL 31387 (Jan.
27 1, 1982) (either perform duties of past job as claimant describes it
28

1 or "as ordinarily required by employers throughout the national
2 economy"). An ALJ may rely on two sources "to define a claimant's
3 past relevant work as actually performed: a properly completed
4 vocational report, SSR 82-61, and the claimant's own testimony, SSR
5 82-41." Pinto v. Massanari, 249 F.3d 840, 845 (9th Cir. 2001).

6
7 The DOT is the best source for determining how past relevant
8 work is generally performed. Id. at 845-46. A claimant "may
9 overcome the presumption that the [DOT's] entry for a given job
10 title applies to him by demonstrating that the duties in his
11 particular line of work were not those envisaged by the drafter of
12 the category." Villa v. Heckler, 797 F.2d 794, 798 (9th Cir. 1986)
13 (internal citations omitted). Where a claimant's past work as
14 actually performed has "significant elements of two or more
15 occupations," it is considered a composite job with no counterpart
16 in the DOT. SSR 82-61, 1982 WL 31387. When a job is composite,
17 "the ALJ considers only whether the claimant can perform his past
18 relevant work as actually performed." Cook v. Colvin, No. CV 13-
19 7704-JPR, 2015 WL 162953, at *7 (C.D. Cal. Jan. 13, 2015) (citing
20 Program Operations Manual System (POMS) DI 25005.020(B), available
21 at <http://policy.ssa.gov/poms.nsf/lnx/0425005020Z>). The ALJ may not
22 use a job's least demanding function when identifying a claimant's
23 past relevant work. See Valencia v. Heckler, 751 F.2d 1081, 1087
24 (9th Cir. 1985). However, with respect to such work that requires
25 varying duties and levels of exertion, SSR 82-61 also states the
26 following:

1 A former job performed by the claimant may have involved
2 functional demands and job duties significantly in excess
3 of those generally required for the job by other employers
4 throughout the national economy. Under this test, if the
5 claimant cannot perform the excessive functional demands
6 and/or job duties actually required in the former job but
7 can perform the functional demands and job duties as
8 generally required by employers throughout the economy,
9 the claimant should be found "not disabled."

10
11 SSR 82-61, 1982 WL 31387, at *2.

12
13 **2. The ALJ Properly Found That Plaintiff Could Perform The File**
14 **Clerk Job As Generally And Actually Performed**

15
16 In his work history and disability reports, Plaintiff stated
17 that he had past relevant work as a file clerk. (AR 220, 244, 252).
18 Plaintiff described his duties as file clerk to include "plac[ing]
19 all folders in numerical order" and "tak[ing] [files] to clients and
20 pick[ing] up from clients," which "often" required driving to
21 "different cities" in Riverside and Orange County. (AR 220).
22 Plaintiff's job as actually performed included driving duties that
23 were not mentioned in the DOT description for file clerk, see DOT
24 206.387-034,⁴ but there is no evidence that these duties constituted

25
26

⁴ According to the DOT, a file clerk "[f]iles records in
27 alphabetical or numerical order, or according to subject matter or
28 other system: Reads incoming material and sorts according to file
system. Places cards, forms, microfiche, or other material in

1 a "significant portion" of his work rendering the DOT's definition
2 inapplicable. Plaintiff's counsel had an opportunity to ask the VE
3 to address the purported inconsistency between Plaintiff's
4 description and the DOT, but did not do so. (See AR 54). Because
5 Plaintiff has not established that his file clerk job was a
6 composite job, he has not established that he cannot perform the
7 type of file clerk work that he performed in the past as it is
8 generally performed. See Villa, 797 F.2d at 798; Jack v. Colvin,
9 No. CV 14-08464 RAO, 2015 WL 5567748, at *3 (C.D. Cal. Sept. 22,
10 2015) (Plaintiff did not meet his burden of showing that he had done
11 work that was "separate and distinct" from his athletic director
12 position); Driskill v. Colvin, No. C13-1928-RAJ, 2014 WL 3734309, at
13 *8 (W.D. Wash. July 28, 2014) ("Plaintiff has not met her burden to
14 show that her waitress job included "significant elements of two or
15 more occupations" and was therefore a composite job.).

16
17 Plaintiff contends that the ALJ erred in finding that he could
18 perform the file clerk job as actually performed, because he
19 described the job to require driving, which entails being on task
20 for longer periods than his RFC permits. (Joint Stip. at 7-8).
21 Yet, there is no such limitation. Instead, Plaintiff's RFC
22 precludes him from doing jobs requiring "hypervigilance or intense

23 storage receptacle, such as file cabinet, drawer, or box. Locates
24 and removes files upon request. Keeps records of material removed,
25 stamps material received, traces missing files, and types indexing
26 information on folders. May verify accuracy of material to be filed.
27 May enter information on records. May examine microfilm and
28 microfiche for legibility, using microfilm and microfiche viewers.
May color-code material to be filed to reduce filing errors."

1 concentration on a particular task," because "[h]e would likely be
2 off task up to 10 percent of the workday or workweek due to chronic
3 pain or side effects of medication." (AR 29).

4
5 At the hearing, the VE considered Plaintiff's disability
6 reports and work history reports – which specified the duty to drive
7 – in opining that Plaintiff performed the occupation of file clerk
8 at the light level as actually performed. (AR 51). The ALJ then
9 asked the VE two hypotheticals. The ALJ first asked the VE whether,
10 considering Plaintiff's physical limitations, he would be able to
11 perform any of his past relevant work. (AR 52). The VE testified
12 that Plaintiff could perform the job of file clerk "both as
13 described in the DOT and as performed by claimant." (Id.). The ALJ
14 then gave a second hypothetical: "adding onto the first, that the
15 individual also would likely be off-task up to 10 percent of the
16 work day or work week . . . Would that preclude the job of file
17 clerk?" (AR 53). The VE testified, "Obviously we can't discuss
18 every employer or employee relationship. But typically, the red
19 line appears to be that 10 percent. Anything over that is
20 considered inappropriate. So at 10 percent, that would – that would
21 be acceptable." (Id.).

22
23 Here, Plaintiff's RFC did not expressly limit his ability to
24 drive, (AR 29), and the VE testified that Plaintiff's mental
25 limitations would not prevent him from performing the duties of file
26 clerk as actually performed. (AR 54). Thus, the ALJ properly
27 relied on the expertise of the VE to provide "the necessary
28

1 foundation" to conclude Plaintiff could perform the job of file
2 clerk as actually performed. Bayliss v. Barnhart, 427 F.3d 1211,
3 1218 (9th Cir. 2005) ("An ALJ may take administrative notice of any
4 reliable job information, including information provided by a
5 [vocational expert]."); see also Macri v. Chater, 93 F.3d 540, 544
6 (9th Cir. 1996) (an ALJ is entitled to draw inferences logically
7 flowing from the evidence to make his determination). Accordingly,
8 the ALJ's determination that Plaintiff was able to perform his past
9 relevant work as file clerk as actually performed is supported by
10 substantial evidence in the record.

11

12 Therefore, the ALJ properly found that Plaintiff could perform
13 his past relevant work as a file clerk as actually and generally
14 performed. The Court finds that Plaintiff did not meet his burden
15 to show that he is unable to perform his past relevant work.

16

17 **B. The ALJ Articulated Clear And Convincing Reasons To Find**
18 **Plaintiff Less Than Fully Credible**

19

20 Plaintiff asserts that the ALJ erred in finding him not fully
21 credible. (Joint Stip. at 12-15, 20-21). Plaintiff contends that
22 (1) he could not afford regular medical treatment, which is why
23 there are treatment gaps in Plaintiff's record; and (2), contrary to
24 the ALJ's findings, the objective medical evidence supports
25 Plaintiff's statements and any disconnect between Plaintiff's
26 statements and the objective record "cannot provide a standalone
27 basis" for rejecting Plaintiff's testimony. (Joint Stip. at 14-15).

28

1 Defendant contends that the ALJ provided the following three
2 clear and convincing reasons to find Plaintiff's statements less
3 than fully credible: (1) the ALJ correctly found that there were
4 significant gaps in Plaintiff's treatment from 2009 to 2011, and the
5 record does not support Plaintiff's assertion that he could not
6 afford treatment; (2) the ALJ's review of the record accurately
7 reflected normal examination findings and conservative treatment;
8 and (3) the ALJ appropriately considered Plaintiff's own
9 inconsistent statements regarding his physical condition. (Joint
10 Stip. at 15-20).

11
12 A claimant initially must produce objective medical evidence
13 establishing a medical impairment reasonably likely to be the cause
14 of his subjective symptoms. Smolen v. Chater, 80 F.3d 1273, 1281
15 (9th Cir. 1996); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir.
16 1991). Once a claimant produces objective medical evidence of an
17 underlying impairment that could reasonably be expected to produce
18 pain or other symptoms alleged, and there is no evidence of
19 malingering, the ALJ may reject the claimant's testimony regarding
20 the severity of his pain and symptoms only by articulating specific,
21 clear and convincing reasons for doing so. Brown-Hunter v. Colvin,
22 806 F.3d 487, 492-93 (9th Cir. 2015) (citing Lingenfelter v. Astrue,
23 504 F.3d 1028, 1036 (9th Cir. 2007)). Because there is no evidence
24 of malingering, the "clear and convincing reasons" standard applies.

25
26 At the hearing, Plaintiff testified that he could not lift,
27 carry, push, or pull for long periods of time, could stand, walk,
28

1 and sit without changing positions for an hour at a time, and could
2 no longer work because of his back condition. (AR 46-48). In
3 forming Plaintiff's RFC, the ALJ adopted Plaintiff's testimony that
4 "[h]e must change positions approximately every hour for five
5 minutes." (AR 29). However, the ALJ declined to adopt Plaintiff's
6 testimony that he could not lift or carry objects, instead finding
7 that Plaintiff could "lift and/or carry 20 pounds occasionally and
8 10 pounds frequently."

9
10 First, the ALJ properly rejected Plaintiff's testimony because
11 there were significant, unexplained gaps in Plaintiff's treatment
12 from 2009 to 2011. Also, at his hearing in 2013, Plaintiff admitted
13 to receiving treatment about "once a year" even though he had
14 medical insurance. (AR 30). An ALJ may consider a Plaintiff's
15 unexplained, significant gaps in treatment in determining whether a
16 Plaintiff is credible. Orn v. Astrue, 495 F.3d 625, 636 (9th Cir.
17 2007); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991) (en
18 banc). Plaintiff asserts that he did not seek regular treatment
19 because he could not afford it. (Joint Stip. at 14). There is no
20 support in the record for Plaintiff's assertion. The ALJ questioned
21 Plaintiff regarding his treatment history, and Plaintiff testified
22 that he has had the same doctor for four years, has insurance
23 through Medi-Cal, but only sees his doctor about once a year. (AR
24 47). Based on Plaintiff's testimony and the gaps in treatment, the
25 ALJ could reasonably infer that Plaintiff's statements regarding the
26 disabling nature of his symptoms were less than fully credible.

1 Second, there was substantial evidence in the record to support
2 the ALJ's finding that the medical evidence did not support
3 Plaintiff's statements. The ALJ noted that although diagnostic
4 imaging revealed moderate to severe degenerative disc disease of the
5 lumbar spine, examinations of Plaintiff showed no neurological
6 deficits or muscle atrophy and he was not referred for surgery. (AR
7 30). "Although lack of objective medical evidence cannot form the
8 sole basis for discounting pain testimony, it is a factor that the
9 ALJ can consider in his credibility analysis." Burch v. Barnhart,
10 400 F.3d 676, 680-81 (9th Cir. 2005); see also Rollins v. Massanari,
11 261 F.3d 853, 857 (9th Cir. 2001) (citing 20 C.F.R. §
12 404.1529(c)(2)).

13
14 The record supports the ALJ's credibility findings. Plaintiff
15 consistently showed a somewhat decreased range of motion in the
16 lumbar spine during appointments with Dr. Bernabe, Dr. Flanagan, and
17 Dr. Santz, (AR 281-82, 286, 299, 308), and he had lumbar stenosis
18 and moderate to severe degenerative disc disease. (AR 296-97). The
19 ALJ fully considered these medical findings in formulating
20 Plaintiff's RFC. (See AR 29-32). However, as the ALJ stated,
21 Plaintiff had no signs of muscle atrophy or neurological deficits
22 that would preclude him from lifting or carrying any weight.
23 Plaintiff was able to stand and sit without difficulty, appeared
24 with a normal gait,⁵ and had 5 out of 5 muscle strength. (AR 282,
25 299, 324).

26
27 ⁵ On July 13, 2013, Plaintiff appeared at one doctor's
28 appointment with a limp and a cane, but there is no evidence in the

1 Third, the ALJ properly found that Plaintiff's statements
2 regarding his physical limitations were inconsistent with his
3 allegations of disability. Inconsistent statements regarding a
4 Plaintiff's functional limitations provide a clear and convincing
5 reason to find a plaintiff not fully credible. Smolen v. Chater, 80
6 F.3d 1273, 1284 (9th Cir. 1996); See Thomas v. Barnhart, 278 F.3d
7 947, 959 (9th Cir. 2002) (upholding an adverse credibility finding
8 in part due to a claimant's inconsistent statements to her doctors);
9 see also Brown v. Astrue, 405 F. App'x 230, 233 (9th Cir. 2010).
10 The ALJ cited to Plaintiff's August 2012 statement made to Dr. Santz
11 that he could lift 20 pounds repetitively "without pain" and wanted
12 to return to work because he was "pain free." (AR 31, 300). Dr.
13 Santz recommended physical therapy, but Plaintiff declined. (AR
14 300). The ALJ found this to indicate that Plaintiff's condition was
15 "relatively stable." (Id.). Plaintiff's inconsistent statements
16 regarding his functional limitations, specifically his statement
17 that he could lift 20 pounds repetitively, supports the ALJ's
18 conclusion that Plaintiff is less than fully credible.

19
20 The ALJ, in citing to Plaintiff's unexplained gaps in
21 treatment, the medical record, and his inconsistent statements,
22 articulated clear and convincing reasons to find Plaintiff less than
23 fully credible. The ALJ's assessment was consistent with
24 Plaintiff's testimony that he did not regularly see a doctor,
25 although he had insurance; had relatively normal examination
26
27 record that Plaintiff was prescribed a cane or that he regularly
28 used a cane because of his back problems. (AR 317).

