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

JOHN LEONARD COAKLEY,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,

Defendant.

Case No. ED CV 16-01724 AFM

**MEMORANDUM OPINION AND  
ORDER AFFIRMING DECISION  
OF COMMISSIONER**

**I. BACKGROUND**

Plaintiff John Leonard Coakley filed his application for disability insurance benefits under Title II of the Social Security Act on December 10, 2014, alleging disability beginning January 1, 2014. After denial on initial review and on reconsideration, a hearing took place before an Administrative Law Judge (ALJ) on February 4, 2016. In a decision dated March 2, 2016, the ALJ found that Plaintiff was not disabled within the meaning of the Social Security Act for the period from January 1, 2014, through the date of the decision. The Appeals Council declined to set aside the ALJ's unfavorable decision in a notice dated June 10, 2016. Plaintiff

1 filed a Complaint herein on August 11, 2016, seeking review of the  
2 Commissioner's denial of his application for benefits.

3 In accordance with the Court's Order Re: Procedures in Social Security  
4 Appeal, the Plaintiff filed a memorandum in support of the complaint on July 11,  
5 2017. The Commissioner filed a memorandum in support of her answer on  
6 August 15, 2017. Plaintiff did not file a reply. This matter now is ready for  
7 decision.

## 8 9 **II. DISPUTED ISSUE**

10 Whether the ALJ improperly evaluated Plaintiff's credibility and subjective  
11 complaints.

## 12 13 **III. STANDARD OF REVIEW**

14 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's decision to  
15 determine whether the Commissioner's findings are supported by substantial  
16 evidence and whether the proper legal standards were applied. *See Treichler v.*  
17 *Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014). Substantial  
18 evidence means "more than a mere scintilla" but less than a preponderance. *See*  
19 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Lingenfelter v. Astrue*, 504 F.3d  
20 1028, 1035 (9th Cir. 2007). Substantial evidence is "such relevant evidence as a  
21 reasonable mind might accept as adequate to support a conclusion." *Richardson*,  
22 402 U.S. at 401. This Court must review the record as a whole, weighing both the  
23 evidence that supports and the evidence that detracts from the Commissioner's  
24 conclusion. *Lingenfelter*, 504 F.3d at 1035. Where evidence is susceptible of more  
25 than one rational interpretation, the Commissioner's decision must be upheld. *See*  
26 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).

27 Error in a social security determination is subject to harmless error analysis.  
28 *Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012). Reversal "is not automatic,

1 but requires a determination of prejudice.” *Id.* A reviewing federal court must  
2 consider case-specific factors, including “an estimation of the likelihood that the  
3 result would have been different, as well as the impact of the error on the public  
4 perception of such proceedings.” *Id.* (footnote and citation omitted).

#### 6 **IV. FIVE-STEP EVALUATION PROCESS**

7 The Commissioner (or ALJ) follows a five-step sequential evaluation process  
8 in assessing whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920;  
9 *Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995), *as amended* April 9, 1996.  
10 In the first step, the Commissioner must determine whether the claimant is  
11 currently engaged in substantial gainful activity; if so, the claimant is not disabled  
12 and the claim is denied. *Id.* If the claimant is not currently engaged in substantial  
13 gainful activity, the second step requires the Commissioner to determine whether  
14 the claimant has a “severe” impairment or combination of impairments significantly  
15 limiting his ability to do basic work activities; if not, a finding of nondisability is  
16 made and the claim is denied. *Id.* If the claimant has a “severe” impairment or  
17 combination of impairments, the third step requires the Commissioner to determine  
18 whether the impairment or combination of impairments meets or equals an  
19 impairment in the Listing of Impairments (“Listing”) set forth at 20 C.F.R. part  
20 404, subpart P, appendix 1; if so, disability is conclusively presumed and benefits  
21 are awarded. *Id.* If the claimant’s impairment or combination of impairments does  
22 not meet or equal an impairment in the Listing, the fourth step requires the  
23 Commissioner to determine whether the claimant has sufficient “residual functional  
24 capacity” to perform his past work; if so, the claimant is not disabled and the claim  
25 is denied. *Id.* The claimant has the burden of proving that he is unable to perform  
26 past relevant work. *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992). If the  
27 claimant meets this burden, a *prima facie* case of disability is established. *Id.* The  
28 Commissioner then bears the burden of establishing that the claimant is not

1 disabled, because he can perform other substantial gainful work available in the  
2 national economy. *Id.* The determination of this issue comprises the fifth and final  
3 step in the sequential analysis. 20 C.F.R. §§ 404.1520, 416.920; *Lester*, 81 F.3d at  
4 828 n.5; *Drouin*, 966 F.2d at 1257.

## 5 6 **V. THE ALJ'S APPLICATION OF THE FIVE-STEP PROCESS**

7 At step one, the ALJ found that Plaintiff had not engaged in substantial  
8 gainful activity since January 1, 2014, the alleged onset date. (AR 20.) At step  
9 two, the ALJ found that Plaintiff had the following severe impairments:  
10 hypertension; obstructive sleep apnea syndrome with a continuous positive airway  
11 pressure usage; high blood pressure; major depression; post-traumatic stress  
12 disorder; anxiety; arthritis of the hips; degenerative joint disease of the knees;  
13 patellofemoral syndrome; lumbar facet syndrome; mild degenerative changes of the  
14 left shoulder; and fibromyalgia. (AR 20-21.) At step three, the ALJ found that  
15 Plaintiff did not have an impairment or combination of impairments that meets or  
16 medically equals the severity of one of the listed impairments. (AR 21-23.) The  
17 ALJ then found that Plaintiff had the residual functional capacity (RFC) to perform  
18 light work, except

19 [Plaintiff] can lift and carry 20 pounds occasionally and 10 pounds  
20 frequently; can stand and walk for three hours in an eight-hour  
21 workday and sit for six hours in an eight-hour workday with normal  
22 breaks; can frequently push and pull with the bilateral upper  
23 extremities; can frequently operate foot control operations bilaterally;  
24 can never climb ladders, ropes or scaffolds; can occasionally climb  
25 ramps or stairs, balance, stoop, kneel, and crouch, but never crawl; can  
26 perform bilateral overhead reaching only occasionally, but reaching in  
27 all other directions are not limited; can only perform jobs that can be  
28 performed while using a hand-held assistive device for uneven terrain

1 and prolonged ambulation; can occasionally have exposure to extreme  
2 cold, extreme heat, unprotected heights and excessive construction  
3 vibration; can have occasional use of moving machinery; can perform  
4 unskilled work at all reasoning levels appropriate for unskilled work;  
5 can only have occasional superficial interaction with the public. (AR  
6 23.)

7 At step four, based on Plaintiff's vocational background, testimony and  
8 testimony of the VE, the ALJ concluded that Plaintiff is not capable of performing  
9 his past relevant work as a drill sergeant and trainer. (AR 29.) However, based on  
10 Plaintiff's age, education, work experience, RFC and VE testimony, the ALJ  
11 determined at step five that there are jobs that exist in significant numbers in the  
12 national economy that the Plaintiff can perform, such as Inspector, Assembler and  
13 Sorter. Accordingly, the ALJ concluded that Plaintiff was not disabled as defined  
14 under the Social Security Act from January 1, 2014, through March 2, 2016, the  
15 date of the decision. (AR 31.)

## 16 17 **VI. THE ALJ'S ASSESSMENT OF PLAINTIFF'S CREDIBILITY AND** 18 **SUBJECTIVE COMPLAINTS**

19 An ALJ's assessment of pain severity and claimant credibility is entitled to  
20 "great weight." *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989). Where the  
21 claimant has produced objective medical evidence of an impairment which could  
22 reasonably be expected to produce some degree of pain and/or other symptoms, and  
23 the record is devoid of any affirmative evidence of malingering, the ALJ may reject  
24 the claimant's testimony regarding the severity of the claimant's pain and/or other  
25 symptoms only if the ALJ makes specific findings stating clear and convincing  
26 reasons for doing so. *See Cotton v. Bowen*, 799 F.2d 1403, 1407 (9th Cir. 1986);  
27 *see also Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996). Here, since the  
28 Commissioner has not argued that there was evidence of malingering and that a

1 lesser standard consequently should apply, the Court will apply the “clear and  
2 convincing” standard to the ALJ’s adverse credibility determination. *See Burrell v.*  
3 *Colvin*, 775 F.3d 1133, 1136 (9th Cir. 2014) (applying “clear and convincing”  
4 standard where the government did not argue that a lesser standard should apply  
5 based on evidence of malingering).

6 “General findings are insufficient; rather, the ALJ must identify what  
7 testimony is not credible and what evidence undermines the claimant’s complaints.”  
8 *Burrell*, 775 F.3d at 1138. An ALJ’s findings ““must be sufficiently specific to  
9 allow a reviewing court to conclude the adjudicator rejected the claimant’s  
10 testimony on permissible grounds and did not arbitrarily discredit a claimant’s  
11 testimony regarding pain.”” *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir.  
12 2015) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 345-46 (9th Cir. 1991). An ALJ  
13 may consider a variety of factors ordinarily used in assessing credibility. *See*  
14 *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002); *Light v. Soc. Sec.*  
15 *Admin.*, 119 F.3d 789, 792 (9th Cir. 1997) (an ALJ may consider inconsistencies  
16 within testimony or between testimony and conduct in weighing credibility);  
17 *Smolen*, 80 F.3d at 1284 (in determining credibility, the ALJ may consider  
18 “ordinary techniques of credibility evaluation”).

19 Here, the ALJ provided several reasons in support of her adverse credibility  
20 determination. First, the ALJ found that Plaintiff’s ability to participate in his daily  
21 activities “diminishes the credibility of his functional limitations.” (AR 25.) As  
22 summarized by the ALJ, Plaintiff testified that “he is unable to work due to  
23 fibromyalgia, hip issues, left shoulder pain, knee pain, bilateral fasciitis, and mental  
24 health issues. He asserted that he has difficulty standing, walking sitting, bending  
25 and sleeping.” (AR 24.) However, as also discussed by the ALJ, Plaintiff reported  
26 that “his activities of daily living included performing personal care tasks,  
27 preparing simple meals, helping with the laundry, driving, going outside on a daily  
28 basis, shopping in stores, playing games, using the computer, paying bills, handling

1 the finances and spending time with his wife and others.” (AR 25, citing AR 181-  
2 88 and Plaintiff’s testimony.) The ALJ further referred to Plaintiff’s testimony that  
3 he does some walking and exercising. (AR 24.) The inconsistency between the  
4 impairments claimed by Plaintiff and his “somewhat normal level of daily activity  
5 and interaction” (AR 25) is a valid basis for a negative credibility finding and is  
6 supported by substantial evidence in this case. *See Molina v. Astrue*, 674 F.3d  
7 1104, 1112 (9th Cir. 2012) (ALJ may discredit claimant’s testimony when  
8 “claimant engages in daily activities inconsistent with the alleged symptoms”); *see*  
9 *also Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009)  
10 (ALJ properly discounted claimant’s testimony because “she leads an active  
11 lifestyle, including cleaning, cooking, walking her dogs, and driving to  
12 appointments”). In making these findings regarding daily activities the ALJ  
13 pointed to specific testimony and compared it to the specific limitations claimed by  
14 Plaintiff. As the Commissioner points out, Plaintiff’s credibility may be properly  
15 discounted even if the level of his admitted daily activities was not wholly  
16 commensurate with full-time work. *See Molina*, 674 F.3d at 1113. In this case,  
17 Plaintiff’s ability to, *inter alia*, use the computer, pay bills, take responsibility for  
18 handling finances, drive, and walk are functions that are transferrable to a work  
19 setting. Plaintiff also testified that he had nearly completed an on-line MBA  
20 program. Accordingly, the ALJ specifically found that “[s]ome of the physical and  
21 mental abilities and social interactions required in order to perform these activities  
22 are the same as those necessary for obtaining and maintaining employment.” (AR  
23 25.) That provides a further ground for the credibility determination. *See Orn v.*  
24 *Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (adverse credibility finding may be based  
25 on the fact claimant engages in “pursuits involving the performance of physical  
26 functions that are transferable to a work setting”).

27 Second, the ALJ found that “the claimant has made inconsistent statements  
28 regarding matters relevant to the issue of disability.” (AR 25.) She provided two

1 examples of these inconsistencies. As one instance, the ALJ referred to a claim by  
2 Plaintiff in a function report that he had difficulty concentrating and completing  
3 tasks (AR 25, referring to AR 186) and contrasted that with Plaintiff's testimony at  
4 the hearing that he had completed 14 of 16 classes necessary to earn an online  
5 MBA (AR 25 citing testimony at AR 42-43). Plaintiff further testified that he  
6 would take one of his final classes in the next term, when that class became  
7 available. (AR 43.) The ALJ also compared Plaintiff's claim that he had difficulty  
8 walking and bending (AR 54), with his testimony that he was a strong person who  
9 did some pushups and extended stretching for exercise (AR 53). The inconsistency  
10 of Plaintiff's statements concerning concentration and completing tasks is strongly  
11 supported in the record; taken together with the varied testimony concerning  
12 Plaintiff's physical capabilities, substantial evidence supports the ALJ's finding that  
13 there were inconsistencies in Plaintiff's subjective symptom testimony and  
14 allegations. *See Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005) ("Where  
15 evidence is susceptible to more than one rational interpretation, it is the ALJ's  
16 conclusion that must be upheld."). These inconsistencies provide another legally  
17 sufficient reason on which the ALJ could properly rely in making an adverse  
18 credibility determination. *See id.*, at 680 ("In determining credibility, an ALJ may  
19 engage in ordinary techniques of credibility evaluation, such as considering . . .  
20 inconsistencies in claimant's testimony."); *Molina*, 674 F.3d at 1113 (ALJ properly  
21 rejected claimant's testimony in part because it was inconsistent with other  
22 evidence in the record); *Morgan, v. Comm'r of Social Sec. Admin.*, 169 F.3d 595,  
23 600 (9th Cir. 1999) (ALJ may properly consider conflict between claimant's  
24 testimony of subjective complaints and other evidence in the record).

25 As a final reason, the ALJ found that Plaintiff's subjective testimony was not  
26 substantiated by objective medical evidence in the record. (AR 25.) Although this  
27 may not be the *sole* reason to support an adverse credibility finding, "it is a factor  
28 that the ALJ can consider in his credibility analysis." *Burch*, 400 F.3d at 681;



1 *Morgan*, 169 F.3d at 600 (ALJ may properly consider conflict between claimant's  
2 testimony of subjective complaints and objective medical evidence in the record);  
3 *see also Tidwell v. Apfel*, 161 F.3d 599, 602 (9th Cir. 1999) (ALJ may properly rely  
4 on weak objective support for the claimant's subjective complaints); *Orteza v.*  
5 *Shalala*, 50 F.3d 748, 750 (9th Cir. 1995) (ALJ may properly rely on lack of  
6 objective evidence to support claimant's subjective complaints). In the present  
7 case, the ALJ's assessment of the objective medical evidence was supported by  
8 substantial evidence.

9 Accordingly, the Court concludes that the ALJ did not err in her adverse  
10 credibility determination.

11 \* \* \*

12 IT THEREFORE IS ORDERED that Judgment be entered affirming the  
13 decision of the Commissioner and dismissing this action with prejudice.

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15 DATED: September 14, 2017

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18 ALEXANDER F. MacKINNON  
19 UNITED STATES MAGISTRATE JUDGE  
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