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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIS J. R.,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

Case No. 5:18-cv-00313-KES

MEMORANDUM OPINION AND
ORDER

I.

BACKGROUND

On March 19, 2010, Plaintiff Cris R. (“Plaintiff”) filed an application for Social Security Disability Insurance Benefits (“DIB”). Administrative Record (“AR”) 428-31. On March 25, 2010, he filed an application for Supplemental Security Income (“SSI”). AR 436. In both applications, Plaintiff alleged that he became disabled and unable to work on March 3, 2010, due to multiple impairments (AR 482-483).

¹ Effective November 17, 2017, Ms. Berryhill’s new title is “Deputy Commissioner for Operations, performing the duties and functions not reserved to the Commissioner of Social Security.”

1 In their Joint Stipulation (“JS” at Dkt. 21), the parties summarized multiple
2 hearings conducted by Administrative Law Judges (“ALJ”), adverse decisions, and
3 remands by the Appeals Council. JS at 2-6. On May 25, 2017, the third and final
4 administrative hearing occurred at which Plaintiff, who was represented by
5 counsel, appeared and testified, as did a vocational expert (“VE”). AR 42-69.

6 On August 17, 2017, an ALJ issued the partially favorable decision that is
7 the subject of this appeal. AR 12-28. The ALJ found that Plaintiff suffered from
8 the medically determinable impairments of “chronic kidney disease; congestive
9 heart failure; hypertension; obesity; learning disability; and borderline intellectual
10 functioning.” AR 15. The ALJ found that before August 3, 2015, Plaintiff had a
11 residual functional capacity (“RFC”) to perform a range of sedentary work limited
12 to simple, repetitive tasks. AR 16-17. The ALJ assessed the same RFC on and
13 after August 3, 2015, with one change: the “need to elevate his legs for two hours
14 a day due to swelling and pain.” AR 24.

15 Based on this RFC analysis, the ALJ found that before August 3, 2015,
16 Plaintiff could have worked as an addresser, lens inserter, or assembler, and was
17 therefore not disabled. AR 26-27. As of August 3, 2015, however, there were no
18 jobs that existed in sufficient numbers in the national economy that Plaintiff could
19 perform, so the ALJ found him disabled as of that date. AR 27.

20 Dissatisfied with the ALJ’s findings that he only became disabled on August
21 3, 2015, i.e., eight months after his date last insured, Plaintiff timely appealed. JS
22 at 6.

23 II.

24 STANDARD OF REVIEW

25 A district court may review the Commissioner’s decision to deny benefits.
26 The ALJ’s findings and decision should be upheld if they are free from legal error
27 and are supported by substantial evidence based on the record as a whole. 42
28 U.S.C. § 405(g); Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v. Astrue,

1 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence means such relevant
2 evidence as a reasonable person might accept as adequate to support a conclusion.
3 Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir.
4 2007). It is more than a scintilla, but less than a preponderance. Lingenfelter, 504
5 F.3d at 1035 (citing Robbins v. Comm’r of SSA, 466 F.3d 880, 882 (9th Cir.
6 2006)). To determine whether substantial evidence supports a finding, the
7 reviewing court “must review the administrative record as a whole, weighing both
8 the evidence that supports and the evidence that detracts from the Commissioner’s
9 conclusion.” Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998). “If the
10 evidence can reasonably support either affirming or reversing,” the reviewing court
11 “may not substitute its judgment” for that of the Commissioner. Id. at 720-21.

12 “A decision of the ALJ will not be reversed for errors that are harmless.”
13 Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). Generally, an error is
14 harmless if it either “occurred during a procedure or step the ALJ was not required
15 to perform,” or if it “was inconsequential to the ultimate nondisability
16 determination.” Stout v. Comm’r of SSA, 454 F.3d 1050, 1055 (9th Cir. 2006).
17 Plaintiff bears the burden of establishing that the ALJ’s decision is based on
18 prejudicial legal error. Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012)
19 (court may not reverse absent a harmful error, and plaintiff bears burden of
20 establishing that an error is harmful).

21 III.

22 ISSUES PRESENTED

23 Issue One: Whether the ALJ’s RFC determination for the period between
24 March 3, 2010 and August 3, 2015 (specifically, the ALJ’s finding that Plaintiff
25 did *not* need to elevate his legs for two hours/day during these years) is supported
26 by substantial evidence. (JS at 7.)

27 Issue Two: Whether the ALJ erred in assessing Plaintiff’s subjective
28 symptom testimony. (Id.)

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IV.
DISCUSSION

A. ISSUE ONE: Leg Elevation.

1. Summary of the Relevant Medical Evidence.

The parties cited the following medical records in the Joint Stipulation which the Court summarizes in chronological order:

• AR 661-66 (March 3, 2010): Plaintiff was hospitalized for chest pain. As part of a nephrology consultation, Plaintiff reported “lower extremity edema of late.” AR 661-62. Dr. Agarwal noted, “1+ edema bilaterally, lower extremities.”² AR 662. On the same day, Plaintiff told Dr. Hoang that he had experienced shortness of breath for a month but could still walk and coach his daughter’s softball team, including “running with the team nearly every day.” AR 666. Dr. Hoang noted, “No pedal edema.” *Id.* At the time, Plaintiff consumed 3 or 4 hard liquor drinks per day and was described as a “chronic heavy alcoholic.” AR 659, 661, 666.

• AR 659 (March 4, 2010): Still at the hospital, Dr. Jamil observed “no pedal edema.”

• AR 886-87 (May 18, 2010): Plaintiff told Dr. Agarwal, “edema worse after standing for long periods.” AR 886. Dr. Agarwal noted, “trace edema.” AR 887.

• AR 878 (June 7, 2010): Per Dr. Hoang, “pt [patient] c/o [complains of] ... edema ... when pt walk over 15-20’.”

• AR 775-81 (June 17, 2010): Consultative examiner Dr. Klein performed an internal medicine evaluation. He observed no ankle swelling, normal gait, and

² The “1+” notation refers to a four-point scale commonly used to measure edema in which 1+ is the lowest rating. See https://www.medicinenet.com/edema/article.htm#what_does_pitting_edema_look_like_picture (defining clinical observations associated with each level of the four-point scale).

1 normal motor strength. AR 779. He opined that Plaintiff could walk, stand, or sit
2 six hours per workday. AR 780.

3 • AR 834 (November 21, 2011): At an in-hospital consultation with Dr.
4 Biswas, Plaintiff reported that he had been out of medicine for two months and was
5 having weakness with exertion and “some lower extremity edema as well.” A
6 physical examination, however, revealed “no edema.”

7 • AR 870 (December 8, 2011): This record states that Plaintiff made a
8 follow-up visit to Dr. Hoang after a recent emergency room visit, referencing
9 11/21/11. In the initial section documenting what Plaintiff told Dr. Hoang, the
10 record says, “Pt c/o dizziness sometimes [after?] [illegible] on legs. [illegible] x 3
11 day. [illegible] walk only < ½ block and home to [illegible, possibly “sister’s
12 house”] 10’ – [illegible] legs elevated [illegible] (45°) when pt sit down.” Plaintiff
13 characterizes this record as an opinion by Dr. Hoang “that Plaintiff should elevate
14 his legs at 45 degrees when sitting down.” (JS at 10.) This difficult-to-read record
15 appears instead to document what Plaintiff told Dr. Hoang he was already doing.

16 • AR 869 (January 19, 2012): Plaintiff characterizes this record as, “Dr.
17 Hoang repeated his instructions to Mr. Rabe stating ‘Patient still needs elevate his
18 legs to decrease leg edema.’” (JS at 10.) The Court’s deciphers this note to say,
19 “SOB [shortness of breath] ... walking over ½ block; pt still [or stated] needs
20 elevate his leg at home [illegible] by edema + SOB.” Again, this record may be
21 documenting Plaintiff’s complaints rather than giving Plaintiff instructions.

22 • AR 865-68 (January 24, 2012): Dr. Hoang completed a functional capacity
23 questionnaire. He listed Plaintiff’s impairments as DOE (dyspnea on exertion),
24 elevated BNP (possibly brain natriuretic peptide), reduced EF (ejection fraction),
25 and HTN (hypertension).³ AR 865. As symptoms, he noted edema. Id. He

26
27 ³ Elevated BNP and reduced EF are both conditions associated with heart
28 failure. See <https://www.aafp.org/afp/2006/1201/p1893.html> (2006 paper on the
role of BNP testing in heart failure),

1 opined that Plaintiff could sit for six hours/day but should elevate his legs to 45°
2 50-80% of the time spent sitting. AR 867. He also opined that Plaintiff would
3 need a 30-minute break after every 20 or 30 minutes of work and miss more than 4
4 days of work per month. AR 867-68. He wrote, “unable to stand for long because
5 of legs edema + CP [chest pain] + SOB.” AR 868.

6 • AR 863 (January 31, 2012): At a follow-up from his last 2010
7 appointment, Dr. Agarwal noted “trace edema” in Plaintiff’s extremities.

8 • AR 1008-09 (March 8, 2012): Dr. Sethi conducted a cardiovascular
9 consultation. Dr. Sethi documented that Plaintiff reported “feeling that his legs
10 become swollen when he walks and [he] has discomfort in both legs.” AR 1008.
11 When Dr. Sethi conducted a physical exam, however, he noted, “no peripheral
12 edema.” Id. Dr. Sethi recommended that Plaintiff “increase his activity level and
13 make an effort at weight reduction.” AR 1009.

14 • AR 892-94 (April 23, 2012): Dr. Agarwal again noted “trace edema” in
15 Plaintiff’s extremities. AR 893. He increased Plaintiff’s prescribed dosage of
16 Lasix/furosemide, a medication used to treat edema. AR 894.

17 • AR 895-97 (June 26, 2012): At his next appointment with Dr. Agarwal,
18 Plaintiff reported “occ [occasional] cp, no sob, no edema.” AR 895. He also
19 reported, “edema better with Lasix.” Id. Dr. Agarwal noted “trace edema” and
20 recommended continuing with Lasix. AR 896-97.

21 • AR 952-56 (September 20, 2013⁴): Dr. Steinberg completed a handwritten
22

23 [http://www.heart.org/HEARTORG/Conditions/HeartFailure/%20SymptomsDiagn
24 osisofHeartFailure/Ejection-Fraction-Heart-Failure-
25 Measurement_UCM_306339_Article.jsp#.XIKrsShKiUk](http://www.heart.org/HEARTORG/Conditions/HeartFailure/%20SymptomsDiagnosisofHeartFailure/Ejection-Fraction-Heart-Failure-Measurement_UCM_306339_Article.jsp#.XIKrsShKiUk) (description of
26 measurement of EF in heart failure).

27 ⁴ The date on the form is blank. This date was supplied in lieu of stating the
28 frequency of treatment. AR 952. This date appears to be the one and only time
Dr. Steinberg saw Plaintiff before completing the questionnaire. See AR 925.

1 cardiac impairment questionnaire. He checked that Plaintiff has edema, but he did
2 not list edema as a primary symptom. AR 952-53. He opined that Plaintiff could
3 only sit for one hour/day and could stand/walk for less than one hour/day. AR 954.
4 He restricted Plaintiff against kneeling, bending, and stooping, but he did not
5 mention leg elevation. AR 956.

6 • AR 936-38 (September 20, 2013): Dr. Steinberg completed a typed
7 cardiac impairment questionnaire. This questionnaire does not mention edema or
8 leg elevation. Dues to chest pain and fatigue, he offered the same opinion that
9 Plaintiff could only sit one hour/day and could stand/walk for less than one
10 hour/day. AR 938. He opined that “patient’s symptoms and limitations apply
11 dates back to 2010.” Id.

12 • AR 925-36 (September 20, 2013): Dr. Steinberg completed a qualified
13 medical evaluation report. Plaintiff denied joint swelling, muscle weakness, and
14 atrophy. AR 932. Dr. Steinberg observed that he had a normal gait and could
15 squat and get on and off the examination table without difficulty. Id. Dr.
16 Steinberg’s examination of Plaintiff’s extremities revealed no edema. AR 934. He
17 saw no feet or ankle swelling. AR 935-36. Plaintiff had a normal range of motion
18 in his hips, knees, ankles, and toes. Id. He also had full motor strength in his
19 lower extremities. AR 936.

20 • AR 950 (December 30, 2013): Dr. Hoang prepared a letter largely
21 repeating the opinions in his January 24, 2012 functional capacity questionnaire
22 (AR 865-68), including that Plaintiff would need to elevate his legs at a 45° angle
23 for 60-80% of the workday.

24 • AR 1068-76 (January 2-6, 2014): Plaintiff was hospitalized complaining
25 of abdominal pain. He went out to eat with family members in late December to
26 celebrate his birthday, after which he developed gastrointestinal symptoms that did
27 not subside. AR 1070. Physical examinations at the hospital noted no pedal
28 edema (AR 1071) and no extremity edema (AR 1075, 1078, 1087). Plaintiff was

1 “ambulatory in the halls.” AR 1081. Plaintiff was diagnosed with a “left
2 perinephric hematoma.” AR 1075. One of the doctors who treated Plaintiff was
3 Andrew Cheung. AR 1088. Regarding the hematoma, Dr. Cheung noted,
4 “Questionable ideology, possibly trauma as the patient reports his kids routinely
5 jump on his abdominal area.” AR 1048.

6 • AR 1032-35 (January 13, 2014): Plaintiff saw Dr. Cheung for a follow-up.
7 Dr. Cheung conducted a physical exam and noted “Extremities: Edema: none.”
8 AR 1034.

9 • AR 985 (March 4, 2014): Plaintiff reported to Dr. Hoang, “↑ [increased]
10 edema + AB [possibly aortic bruit] x 1 week.” He also reported seeing Dr. Cheung
11 in Corona in mid-January.

12 • AR 1028-31 (March 10, 2014): Dr. Cheung again noted no edema. AR
13 1030.

14 • AR 958-68 (March 31, 2014): Consultative examiner Haleh Safavi
15 authored a report. On examination, Dr. Safavi noted that Plaintiff had a normal
16 gait; his extremities did not show any edema; there was no evidence of swelling;
17 and Plaintiff had normal muscle tone, bulk, and strength. AR 960-61. Based on
18 this examination, Dr. Safavi opined that Plaintiff could perform a range of
19 sedentary work and did not assess any need to elevate his legs. AR 963-68.

20 • AR 1022-27 (April 21, 2014): Plaintiff reported to Dr. Cheung “stable LE
21 [lower extremity] edema.” AR 1022. On physical examination, however, Dr.
22 Cheung found no edema. AR 1024.

23 • AR 1103 (April 30, 2014): Dr. Agarwal completed a kidney disease
24 impairment questionnaire. He noted “edema” as a primary symptom. AR 1103.
25 He nevertheless opined that Plaintiff could walk, sit, or stand eight hours/day, and
26 he did not recommend leg elevation. AR 1104, 1106.

27 • AR 1016-21 (June 16, 2014): Dr. Cheung found no edema. AR 1018.

28 • AR 1012-15 (July 21, 2014): Plaintiff told Dr. Cheung that he had lost 20

1 pounds in 2 months. AR 1012. Dr. Cheung saw no edema. AR 1014.

2 • AR 1064-67 (July 21, 2014): Dr. Cheung completed a kidney disease
3 impairment questionnaire. He identified edema and fatigue as Plaintiff's primary
4 symptoms. AR 1064. He opined that Plaintiff could sit, stand, or walk for 8
5 hours/day. AR 1065. The form asked whether Plaintiff would need to elevate his
6 legs while seated, and Dr. Cheung left that section of the form blank. AR 1067.

7 • AR 1124-26 (January 12, 2015): Plaintiff visited Dr. Cheung again and
8 reported "doing well since last visit" in July 2014. AR 1124. Plaintiff denied LE
9 edema. Id. A physical exam revealed no extremity edema. AR 1125.

10 • AR 1127-29 (April 20, 2015): Plaintiff told Dr. Cheung "LE edema has
11 resolved" and "doing well." AR 1127. An exam revealed no edema. AR 1128.

12 • AR 1131-33 (June 1, 2015): Plaintiff told Dr. Cheung, "no LE edema."
13 AR 1131. Dr. Cheung observed no edema. AR 1132.

14 • AR 1109-10 (June 16, 2015): Dr. Hoang completed a disability
15 impairment questionnaire. He identified Dr. Cheung's records as providing the
16 "clinical and laboratory findings" supporting his opinions. AR 1107. He opined
17 that Plaintiff could sit for two hours/day and walk or stand less than one hour/day.
18 AR 1109. He also opined that it was "medically necessary" for Plaintiff to elevate
19 both legs at "all times" to "waist level." Id.

20 • AR 1134-36 (July 13, 2015): Plaintiff told Dr. Cheung, "no LE edema."
21 AR 1134. Dr. Cheung observed no edema. AR 1135.

22 • AR 1113-17 (August 3, 2015): Dr. Cheung prepared another kidney
23 disease impairment questionnaire. He identified leg edema as a positive clinical
24 finding. AR 1113-14. He indicated no limits on Plaintiff sitting or standing
25 continuously during the work day. AR 1115. He also indicated that Plaintiff
26 would need to elevate his legs while seated 1-2 hours/day. AR 1117. Finally, he
27 stated that the earliest date to which the "description of symptoms and limitations"
28 in the questionnaire applied was January 2014. Id.

1 • AR 1137-39 (August 24, 2015): Plaintiff told Dr. Cheung, “no LE
2 edema.” AR 1137. Dr. Cheung observed no edema. AR 1138.

3 • AR 1140-43 (December 21, 2015): Plaintiff reported to Dr. Cheung,
4 “stable LE edema.” AR 1140. Dr. Cheung observed “trace edema.” AR 1141.

5 • AR 1147-50 (August 15, 2016): This was Plaintiff’s next appointment
6 with Dr. Cheung. Dr. Cheung again observed “trace edema.” AR 1149.

7 **2. The ALJ’s Assessment of the Relevant Medical Evidence.**

8 The ALJ evaluated the doctors’ opinions, as follows:

9 • Dr. Vu: This medical expert (“ME”) testified at the hearing. He did not
10 assess any requirement for leg elevation. AR 52. The ALJ gave “significant”
11 weight to Dr. Vu’s clinical diagnoses but “little” weight to his RFC opinions which
12 the ALJ found overstated Plaintiff’s functional abilities. AR 25.

13 • Dr. Safavi: The ALJ gave “significant” weight to her report, because her
14 opinions were generally consistent with the longitudinal evidence and supported by
15 her own consultative examination. AR 22.

16 • Dr. Steinberg: The ALJ gave “minimal” weight to his opinions because his
17 restrictive functional assessments were inconsistent with his own “benign”
18 evaluation and other medical evidence. AR 20.

19 • Dr. Cheung: The ALJ gave “some” weight to his July 21, 2014 assessment
20 (AR 1064-67), discounting it as “somewhat optimistic” in light of Plaintiff’s
21 medical history. AR 22. The ALJ gave “great” weight to his August 3, 2015
22 assessment (AR 1113-17), finding it well-supported by the evidence and the
23 product of a long treating relationship. AR 25.

24 • Dr. Hoang: The ALJ gave “not significant” weight to the opinions in his
25 December 30, 2013 letter (AR 950), because they lacked supporting clinical
26 findings and contradicted Dr. Hoang’s own treating notes. AR 21-22. The ALJ
27 gave “some” weight to his June 16, 2015 questionnaire (AR 1109-10) but found it
28 inconsistent with the medical evidence and Plaintiff’s admitted activities. AR 23.

1 Regarding leg elevation, the ALJ expressly declined to adopt the limitation
2 in Dr. Hoang’s June 16, 2015 questionnaire that Plaintiff needed to elevate his legs
3 “at all times” to waist level. AR 23, citing AR 1109. The ALJ reasoned as
4 follows:

5 [T]he undersigned specifically declines to adopt a limitation
6 with respect to elevating his legs prior to the established onset date.
7 In making this decision, the undersigned considered the clinical and
8 diagnostic evidence contained in the record, the testimony of the
9 vocational expert, and the statements of the . . . claimant’s
10 representative as set forth in his post-hearing brief The
11 claimant’s representative contends that the need for leg elevation
12 came in 2011 (Exs. 29E [AR 618]). The undersigned was unable to
13 discern from Dr. Hoang’s treatment notes that the claimant was
14 advised to elevate his legs at a 45-degree angle at any point in the
15 relevant period. The record does not contain any objective diagnostic
16 or clinical evidence that the claimant had a medical necessity to
17 elevate his legs prior to the established onset date.

18 AR 23.

19 **3. Analysis of Claimed Errors.**

20 a. Substantial Evidence.

21 Plaintiff contends that the ALJ’s finding that Plaintiff only needed to elevate
22 his legs as of August 3, 2015 lacks substantial evidentiary support. (JS at 13.)
23 According to Plaintiff, “the record documents the need to elevate the lower
24 extremities at least as far back as December 8, 2011 (AR 870), when he was first
25 instructed to do so by his treating physician Dr. Hoang, M.D.” (JS at 13.)

26 Dr. Cheung opined in July 2014 that Plaintiff did not need to elevate his legs
27 (AR 1067), then opined on August 3, 2015 that he should elevate them for 2
28 hours/day (AR 1117). Dr. Cheung’s July 2014 assessment is consistent with Dr.

1 Safavi’s March 2014 opinion and Dr. Agarwal’s April 2014 opinion – both of
2 which stated that Plaintiff could perform fulltime, sedentary work without the need
3 for leg elevation. AR 958-68, 1103. Dr. Cheung’s July 2014 assessment is also
4 consistent with his own treatment notes from several consecutive months in early
5 2014 which noted no leg edema. AR 1030, 1024, 1018, 1014.

6 About one year later, on August 3, 2015, Dr. Cheung opined that Plaintiff
7 should elevate his legs for 2 hours/day (AR 1117). Dr. Cheung apparently saw a
8 worsening of Plaintiff’s condition during this year that caused him to change his
9 functional assessment.

10 Dr. Hoang opined on multiple occasions that Plaintiff needed to elevate his
11 legs, and his opinions grew more extreme over time. See AR 867 (1/24/12 opinion
12 that Plaintiff should elevate his legs 45° for 50 to 80% of his sitting time), AR 950
13 (12/30/13 opinion that Plaintiff should elevate his legs 45° for 60 to 80% of his
14 workday), AR 1109 (6/16/15 opinion that Plaintiff should elevate his legs 90° at
15 “all times”). The ALJ gave specific, legitimate reasons for discrediting these
16 opinions. First, they contradict Plaintiff’s treating notes from the same time
17 periods. In January 2012, Dr. Agarwal saw only “trace edema.” AR 863. After
18 treatment with medication, by June 2012, Plaintiff reported no edema. AR 895. In
19 September 2013, Dr. Steinberg examined Plaintiff and saw no edema. AR 934. In
20 December 2013, Plaintiff could go out to eat with family members, and in January
21 2014, the hospital saw no lower extremity edema. AR 1070, 1075, 1078. In the
22 same month when Dr. Hoang opined that Plaintiff required constant leg elevation
23 (i.e. June 2015), Plaintiff told Dr. Cheung that he had no lower extremity edema,
24 and Dr. Cheung observed none. AR 1131-32.

25 Second, Dr. Hoang’s opinions are inconsistent with Plaintiff’s testimony and
26 reported activities. At the most recent hearing, Plaintiff reported that he
27 understood his doctor’s recommendation to elevate his “leg” as applying to his
28 “right leg mainly.” AR 56. He testified that he elevated his right leg to waist level

1 3 or 4 times a day for about 15 minutes. Id. This is a far cry from elevating both
2 legs at all times, or even at all times when seated.

3 In sum, the ALJ properly weighed the relevant medical evidence, and
4 substantial evidence supports his determination that Plaintiff did not need to
5 elevate his legs in a way that would more than minimally effect his ability to work
6 until August 3, 2015.

7 b. Dr. Hoang.

8 Plaintiff contends that the ALJ failed to give a specific, legitimate reason for
9 discrediting Dr. Hoang's treatment notes. According to Plaintiff, the ALJ falsely
10 claimed that the notes are illegible, and as a result, failed to discuss Dr. Hoang's
11 opinions about edema and leg elevation. (JS at 10, 12.)

12 Dr. Hoang's notes are difficult to read. As discussed above, the ALJ could
13 reasonably have interpreted the 2010 and 2011 notes about leg elevation cited by
14 Plaintiff's counsel as documenting what Plaintiff told Dr. Hoang he was doing –
15 not what Dr. Hoang recommended that Plaintiff do. Moreover, as discussed above,
16 the ALJ gave specific and legitimate reasons for discrediting Dr. Hoang's opinions
17 relevant to leg elevation: inconsistency with contemporaneous treating records and
18 Plaintiff's reported activities.⁵ AR 22.

19 c. Dr. Cheung.

20 Finally, Plaintiff contends that the ALJ misinterpreted Dr. Cheung's August
21 3, 2015 opinion about leg elevation, because Dr. Cheung stated that his limitations
22 applied as of January 2014. (JS at 11-12, citing AR 1117.)

23 Again, Dr. Cheung completed a questionnaire in July 2014 in which he
24

25 ⁵ Indeed, if Dr. Huong's treatment notes are interpreted as recommending as
26 far back as 2010 that Plaintiff needed to elevate both legs when seated, his
27 recommendation would be inconsistent with his own treatment notes from March
28 3, 2010, documenting that Plaintiff could coach his daughter's softball team and
run with the team nearly every day despite mild edema. AR 666.

1 found that Plaintiff could sit, stand, or walk for the entirety of an 8-hour workday
2 and in which he declined to opine that Plaintiff needed to elevate his legs during
3 the workday. AR 1065-67. Given these express opinions from July 2014, it would
4 be unreasonable to interpret Dr. Cheung's August 2015 questionnaire responses as
5 retroactively imposing greater functional limitations going back to January 2014.
6 Plaintiff has not demonstrated legal error.

7 **B. ISSUE TWO: Plaintiff's Subjective Symptom Testimony.**

8 **1. Summary of Plaintiff's Subjective Symptom Testimony.**

9 In his Adult Function Report dated June 1, 2010, Plaintiff reported that he
10 took two walks on an average day. AR 516. He tried to get outside at least three
11 times a day. AR 519. He could only walk 1½ blocks before stopping to rest.⁶ AR
12 521. At home, he was able to prepare breakfast daily. AR 518. He did household
13 chores including washing dishes and folding clothes, but he could not do other
14 work because of "shortness of breath" and his "feet and legs swell up." AR 518-
15 19. Socially, he went out to eat or to the movies "maybe once or twice per week."
16 AR 520. Three times per week, he accompanied his girlfriend who drove to pick
17 up his daughter from school. *Id.* He did not check the box indicating that his
18 condition affected "sitting." AR 521. He did not use a cane or crutches. AR 522.

19 In an exertional questionnaire from January 2011, Plaintiff reported that his
20 ankles swell "from standing for long periods of time." AR 554. Nevertheless, on
21 an average day, he was able to take a walk and do some household chores such as
22 washing dishes, carrying laundry, vacuuming, and throwing out trash.⁷ AR 554-
23 55. He took a three-hour nap most days. AR 556. He again indicated that he did
24

25 ⁶ Compare, in March 2010, Plaintiff told doctors that he was coaching his
26 daughter's softball team and running with the team nearly every day. AR 666.

27 ⁷ He also testified that his wife does the laundry and he could not vacuum
28 due to asthma and dust. AR 135.

1 not use a cane or crutches. Id.

2 At the first hearing in February 2012, Plaintiff testified, “I can’t constantly
3 walk, my legs get all swollen.” AR 78. He claimed that he was hospitalized in
4 November 2011 because his legs were so swollen he could not walk.⁸ AR 82. He
5 testified that he could only sit 10 or 20 minutes and needed to elevate his feet. AR
6 84. After standing for 10 minutes, his legs swelled. AR 91. He could only walk
7 half a block before his legs became “all swollen.” AR 85. He tried to stay off his
8 feet as much as possible and did not do any household chores. AR 88. He could
9 not be on his feet more than a few minutes to wash dishes. AR 89. At the time, he
10 was drinking a can or two of beer every other day. AR 87.

11 At the second hearing in August 2014, Plaintiff testified that the last grade
12 he completed was ninth-grade.⁹ AR 123. After his doctors instructed him to stop
13 drinking, he stopped drinking on a regular basis about a month after he got out of
14 the hospital, apparently referring to his January 2011 hospitalization. AR 126-27.
15 When he tried to do physical activities like household chores or walking to the
16 park, he experienced swelling from his calf down to his toes. AR 128. He
17 estimated that he could only be on his feet for one half hour before needing to sit
18 and elevate his feet. AR 128-29. At home, he generally elevated his feet by laying
19 down. AR 129. His doctors recommended that he elevate his legs when he saw
20 swelling, and he estimated that he did so at least twice a week, but sometimes more
21 often if he spent longer standing. Id. On a “good” day, his legs would not swell;

23 ⁸ Under “history,” the January 2011 hospital records state, “The patient has
24 been out of his medication for 2 months He was having chest pain with
25 exertion with any walking and was having weakness with exertion.... He has
26 some lower extremity edema as well. He was admitted through the ER where his
27 blood pressure was severely elevated” AR 834. Under “physical
28 examination,” the hospital records state, “no edema.” Id.

⁹ At the first hearing, he testified that he started the 11th grade. AR 75.

1 he estimated he had four “good” days per week. AR 134.

2 At the third hearing in May 2017, Plaintiff testified that his legs swell
3 whenever he walks or is on his feet. AR 55. He takes Lasix 2 or 3 times a day to
4 decrease swelling. *Id.* His doctors had recommended elevating his “leg,” and he
5 explained that applied to his “right leg mainly.” AR 56. He testified that he
6 elevated his right leg to waist level 3 or 4 times a day for about 15 minutes. *Id.* He
7 estimated that he could be on his feet for about an hour before his feet would start
8 to swell, requiring him to sit down and elevate his feet. AR 58. His hematoma
9 gave him “problems” when sitting, but he estimated that he could sit for a “couple
10 hours” before needing to change position. *Id.* He testified that he has a
11 prescription for a cane and crutches because he “cannot move.” AR 60.

12 **2. The ALJ’s Reasons for Discounting Plaintiff’s Subjective**
13 **Symptom Testimony.**

14 The ALJ gave at least the following five reasons for discounting Plaintiff’s
15 extreme subjective symptom testimony: (1) inconsistent with his daily activities,
16 (2) inconsistent with the medical evidence, (3) routine, conservative treatment,
17 (4) noncompliance with recommended treatment, and (5) lack of supporting
18 objective evidence. AR 18-19.

19 As an example of inconsistency with daily activities, the ALJ noted that
20 Plaintiff could regularly go to movies or out to dinner. AR 18. This is inconsistent
21 with Plaintiff’s testimony that he could sit only 10 or 20 minutes and needed to
22 elevate his legs while doing so. AR 84; see also AR 17 (the ALJ referenced
23 Plaintiff’s testimony that he has trouble sitting due to his hematoma [AR 58] and
24 must elevate his legs throughout the day, i.e., after standing only a short while [AR
25 91, 128-29]). The ALJ noted Plaintiff’s testimony that he can do some household
26 chores and meal preparation. AR 18 (citing AR 518-19 and 554-55). This is
27 inconsistent with Plaintiff’s later testimony that his symptoms are so debilitating
28 that they prevent him from doing any household chores. AR 88 (“Q: Are you able

1 to do any household chores at all? A: No, I don't.")

2 As an example of inconsistency with the medical evidence, the ALJ
3 contrasted Plaintiff's testimony that his legs are always swollen¹⁰ with numerous
4 records from physical exams documenting no swelling or no edema. AR 18.
5 Indeed, as summarized above, many of those records reflect Plaintiff reporting
6 edema to a doctor, but the doctor observing no edema or trace edema (e.g., AR
7 886-87, 834, 1008, 1022-24), not a condition that would limit Plaintiff's standing
8 and walking to the extent he testified.

9 Regarding noncompliance, the ALJ found, "claimant's noncompliance with
10 blood pressure medications undermines the credibility of his allegations of
11 persistent chest pain and dyspnea, as it appears the symptoms are related to the
12 claimant's hypertension." AR 19. The ALJ cited records from Plaintiff's
13 November 2011 hospitalization indicating that he had run out of medications and
14 was counseled regarding the need for compliance. AR 19, citing AR 834. The
15 ALJ also cited a March 2012 cardiology consultation at which Plaintiff admitted
16 that he had not taken his blood pressure medication prior to the examination. AR
17 19, citing AR 1009; see also AR 1016 (in June 2014, Plaintiff told Dr. Cheung that
18 he occasionally missed doses of clonidine, a blood pressure medication, to avoid
19 its sedating side effects); AR 895-97 and AR 1028 (in June 2012, Plaintiff's edema
20 resolved after taking Lasix, but he stopped taking this medication and only started
21 it again in March 2014).

22 Thus, substantial evidence supports the above-discussed reasons supplied by
23 the ALJ. Considered together, they provide a clear and convincing reason to
24

25 ¹⁰ While Plaintiff did not use the word "always," he did testify that his legs
26 swell from walking, being on his feet, and "just moving around." AR 55. He also
27 testified that he could only sit 10 or 20 minutes and stand for 10 minutes due to leg
28 swelling, indicating leg swelling was always a problem unless he was laying down.
AR 84, 91.

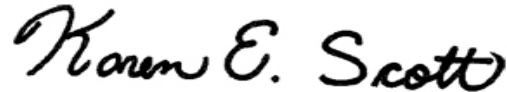
1 discount Plaintiff's subjective symptom testimony.

2 V.

3 **CONCLUSION**

4 For the reasons stated above, IT IS ORDERED that judgment shall be
5 entered AFFIRMING the decision of the Commissioner denying benefits.

6
7 DATED: March 12, 2019

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9 KAREN E. SCOTT
10 United States Magistrate Judge

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