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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JUAN MARCOS ACEVEDO-RODRIGUEZ,)	NO. SA CV 13-235-E
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION
)	
CAROLYN W. COLVIN, ACTING)	
COMMISSIONER OF SOCIAL SECURITY, ¹)	
)	
Defendant.)	
)	

PROCEEDINGS

Plaintiff filed a Complaint on February 13, 2013, seeking review of the Commissioner's denial of benefits. The parties filed a consent to proceed before a United States Magistrate Judge on March 12, 2013.

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¹ Carolyn W. Colvin, who became Acting Commissioner of Social Security as of February 14, 2013, is hereby substituted as Defendant in this matter. See Fed. R. Civ. P. 25(d)(1); 42 U.S.C. § 405(g).

1 Plaintiff filed a motion for summary judgment on August 14, 2013.
2 Defendant filed a motion for summary judgment on September 10, 2013.
3 The Court has taken both motions under submission without oral
4 argument. See L.R. 7-15; "Order," filed February 19, 2013.
5

6 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
7

8 Plaintiff asserted disability since May 14, 2007, based on a
9 variety of alleged physical and mental impairments (Administrative
10 Record ("A.R.") 54-60, 146-63, 173, 960-66). The Administrative Law
11 Judge ("ALJ") examined the voluminous record and heard testimony from
12 Plaintiff, a medical expert and a vocational expert (A.R. 18-254, 263-
13 1552).
14

15 The ALJ found Plaintiff has certain severe physical and mental
16 impairments, but retains the residual functional capacity to perform a
17 limited range of light work (A.R. 23, 25). Relying on the testimony
18 of the vocational expert, the ALJ found that Plaintiff could perform
19 particular jobs existing in significant numbers in the national
20 economy (A.R. 29-30, 61-62). The ALJ deemed not fully credible
21 Plaintiff's testimony regarding the severity of his subjective
22 symptoms (A.R. 25-28). The ALJ rejected the opinions of Plaintiff's
23 treating physician, Dr. Nina Trinh, who had opined Plaintiff could not
24 perform even sedentary work (A.R. 27). The Appeals Council considered
25 additional evidence, but denied review (A.R. 1-4, 255-62, 1553-1617).
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1 **STANDARD OF REVIEW**

2
3 Under 42 U.S.C. section 405(g), this Court reviews the
4 Administration's decision to determine if: (1) the Administration's
5 findings are supported by substantial evidence; and (2) the
6 Administration used proper legal standards. See Carmickle v.
7 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
8 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is "such
9 relevant evidence as a reasonable mind might accept as adequate to
10 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401
11 (1971) (citation and quotations omitted); Widmark v. Barnhart, 454
12 F.3d 1063, 1067 (9th Cir. 2006).

13
14 Where, as here, the Appeals Council considered additional
15 material but denied review, the additional material becomes part of
16 the Administrative Record for purposes of the Court's analysis. See
17 Brewes v. Commissioner, 682 F.3d 1157, 1163 (9th Cir. 2012) ("[W]hen
18 the Appeals Council considers new evidence in deciding whether to
19 review a decision of the ALJ, that evidence becomes part of the
20 administrative record, which the district court must consider when
21 reviewing the Commissioner's final decision for substantial
22 evidence."; expressly adopting Ramirez v. Shalala, 8 F.3d 1449, 1452
23 (9th Cir. 1993)); Taylor v. Commissioner, 659 F.3d 1228, 1231 (2011)
24 (courts may consider evidence presented for the first time to the
25 Appeals Council "to determine whether, in light of the record as a
26 whole, the ALJ's decision was supported by substantial evidence and
27 was free of legal error"); Penny v. Sullivan, 2 F.3d 953, 957 n.7 (9th
28 Cir. 1993) ("the Appeals Council considered this information and it

1 became part of the record we are required to review as a whole"); see
2 generally 20 C.F.R. §§ 404.970(b), 416.1470(b).

3
4 **DISCUSSION**

5
6 After consideration of the record as a whole, Defendant's motion
7 is granted and Plaintiff's motion is denied. The Administration's
8 findings are supported by substantial evidence and are free from
9 material² legal error. Plaintiff's contrary arguments are
10 unavailing.³

11
12 **I. Substantial Evidence Supports the ALJ's Residual Functional**
13 **Capacity Determination.**

14
15 Substantial medical evidence supports the ALJ's determination
16 that Plaintiff can perform a limited range of light work. Dr. Ursula
17 Taylor, a consultative examining internist, opined Plaintiff retains a
18 physical capacity consistent with the ALJ's conclusions (A.R. 1082-
19 87). Dr. Ernest Bagner, a consultative examining psychiatrist, opined
20 Plaintiff retains a mental capacity consistent with the ALJ's
21 conclusions (A.R. 1096-99). These doctors' opinions constitute
22 substantial evidence supporting the ALJ's residual functional capacity

23
24 ² The harmless error rule applies to the review of
25 administrative decisions regarding disability. See McLeod v.
26 Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart,
400 F.3d 676, 679 (9th Cir. 2005).

27 ³ The Court has considered all of Plaintiff's arguments
28 and has found those arguments unpersuasive. The Court discusses
Plaintiff's principal arguments herein.

1 determination. See Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th
2 Cir. 2001) (consultative examiner's opinion is substantial evidence
3 that can support an ALJ's finding of nondisability); see also Orn v.
4 Astrue, 495 F.3d 625, 632 (9th Cir. 2007) (examining physician's
5 independent clinical findings are substantial evidence).

6
7 The opinions of non-examining State agency physicians provide
8 further support for the ALJ's determination. See Tonapetyan v.
9 Halter, 242 F.3d at 1149 (non-examining physician's opinion may
10 constitute substantial evidence when opinion is consistent with
11 independent evidence of record); Lester v. Chater, 81 F.3d 821, 831
12 (9th Cir. 1995) (same). State agency physicians opined Plaintiff
13 retains a residual functional capacity at least as great as the
14 capacity the ALJ found to exist (A.R. 1089-93, 1100-17).

15
16 Additionally, the medical expert, Dr. Goldhamer, gave testimony
17 at the administrative hearing consistent with the residual functional
18 capacity the ALJ found to exist (A.R. 50-51). Where, as here, the
19 opinions of non-examining experts do not contradict "all other
20 evidence in the record," the Administration properly may rely on such
21 opinions. See Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995);
22 Curry v. Sullivan, 925 F.2d 1127, 1130 n.2 (9th Cir. 1990).

23
24 The record contains conflicting medical evidence, but it was the
25 prerogative of the ALJ to resolve the conflicts. See Lewis v. Apfel,
26 236 F.3d 503, 509 (9th Cir. 2001). Where, as here, the evidence "is
27 susceptible to more than one rational interpretation," the Court must
28 uphold the administrative decision. See Andrews v. Shalala, 53 F.3d

1 at 1039-40; accord Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir.
2 2002); Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997).

3
4 **II. The ALJ Did Not Materially Err in Evaluating Plaintiff's**
5 **Credibility.**

6
7 Although Plaintiff testified to subjective symptoms of allegedly
8 disabling severity, the ALJ found this testimony less than fully
9 credible (A.R. 26-28, 55-60). Contrary to Plaintiff's arguments, the
10 ALJ did not thereby materially err.

11
12 An ALJ's assessment of a claimant's credibility is entitled to
13 "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir.
14 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). The
15 discounting of a claimant's testimony regarding subjective symptoms
16 must be supported by specific, cogent findings. See Lester v. Chater,
17 81 F.3d at 834; see also Berry v. Astrue, 622 F.3d 1228, 1234 (9th
18 Cir. 2010) (reaffirming same); but see Smolen v. Chater, 80 F.3d 1273,
19 1282-84 (9th Cir. 1996) (indicating that ALJ must offer "specific,
20 clear and convincing" reasons to reject a claimant's testimony where
21 there is no evidence of malingering).⁴ As discussed below, the ALJ

22
23 ⁴ In the absence of an ALJ's reliance on evidence of
24 "malingering," most recent Ninth Circuit cases have applied the
25 "clear and convincing" standard. See, e.g., Chaudhry v. Astrue,
26 688 F.3d 661, 670, 672 n.10 (9th Cir. 2012); Molina v. Astrue,
27 674 F.3d 1104, 1112 (9th Cir. 2012); Taylor v. Commissioner, 659
28 F.3d at 1234; see also Ballard v. Apfel, 2000 WL 1899797, at *2
n.1 (C.D. Cal. Dec. 19, 2000) (collecting earlier cases). In the
present case, the ALJ's findings are sufficient under either
standard, so the distinction between the two standards (if any)

(continued...)

1 stated sufficient reasons for deeming Plaintiff's testimony less than
2 fully credible.

3
4 The ALJ properly reasoned that the objective medical evidence did
5 not support a level of physical or mental symptomatology that would
6 prevent Plaintiff from working (A.R. 26-28). Although a claimant's
7 credibility "cannot be rejected on the sole ground that it is not
8 fully corroborated by objective medical evidence, the medical evidence
9 is still a relevant factor. . . ." Rollins v. Massanari, 261 F.3d
10 853, 857 (9th Cir. 2001). Here, the medical evidence suggests
11 Plaintiff's mental and physical problems have not been, and are not
12 now, as profound as he has claimed (A.R. 266-434, 438-801, 803-05,
13 807-958, 969-1087, 1096-99, 1119-1195, 1199-1404, 1406-73, 1475, 1477-
14 78, 1480-1546, 1548-52, 1556-1603).

15
16 The ALJ also properly cited direct evidence of Plaintiff's
17 exaggeration of his symptoms (A.R. 28). According to Dr. Taylor,
18 Plaintiff "ambulated with mild antalgia into the room" but thereafter
19 claimed he could not get out of the chair, could not cooperate with
20 the examination, and could not even walk back out of the room without
21 being "partially carried" (A.R. 1084-87). Dr. Taylor reasonably
22 concluded that "there appears to be great exaggeration of symptoms"

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26
27 ⁴(...continued)
28 is academic. The Court observes, however, that the ALJ did cite
evidence of Plaintiff's malingering (A.R. 28, 1084-87).

1 (A.R. 1086).⁵ A claimant's demonstrated tendency to exaggerate can
2 furnish an adequate reason for rejecting the claimant's credibility.
3 See, e.g., Tonapetyan v. Halter, 242 F.3d at 1148; Bickell v. Astrue,
4 343 Fed. App'x 275, 277-78 (9th Cir. 2009); see also Copeland v.
5 Bowen, 861 F.2d 536, 541 (9th Cir. 1988) (disparity between a
6 claimant's representations and the observations of an examiner
7 properly may impeach a claimant's credibility).

8
9 In evaluating Plaintiff's credibility, the ALJ also stated:

10
11 The claimant testified that he dropped things and as a
12 result was unable to do household chores, but these
13 assertions are inconsistent with his statements noted above
14 as to being able to engage in household chores. The
15 claimant claims grogginess from his medications, although he
16 testified that he walks his dog, takes his daughter to
17 school and does exercises for his knees, hands and wrists.
18 It seems unlikely that an individual with a degree of pain,
19 grogginess and dysfunction as alleged by the claimant would
20 have the motivation, stamina, alertness etc., of doing these
21 types of activities.

22
23 (A.R. 28).

24 ///

25 _____
26 ⁵ Plaintiff asserts he "was having a bad day with his
27 knee" when he went to Dr. Taylor's office (Plaintiff's Motion at
28 12). This assertion, which the ALJ was not obligated to credit,
fails to explain why Plaintiff could walk into, but supposedly
could not walk out of, the same office on the same day.

1 Inconsistencies between a claimant's testimony and his or her
2 actions can support the rejection of the claimant's credibility. See,
3 e.g., Molina v. Astrue, 674 F.3d at 1112; Thomas v. Barnhart, 278 F.3d
4 at 958-59; Verduzco v. Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999).⁶
5

6 Thus, the ALJ stated sufficient reasons to allow this Court to
7 conclude that the ALJ discounted Plaintiff's credibility on
8 permissible grounds. See Moisa v. Barnhart, 367 F.3d 882, 885 (9th
9 Cir. 2004). The Court therefore defers to the ALJ's credibility
10 determination. See Lasich v. Astrue, 252 Fed. App'x 823, 825 (9th
11 Cir. 2007) (court will defer to ALJ's credibility determination when
12 the proper process is used and proper reasons for the decision are
13 provided); accord Flaten v. Secretary of Health & Human Services, 44
14 F.3d 1453, 1464 (9th Cir. 1995).
15

16 **III. The ALJ Did Not Err in Rejecting the Opinions of Dr. Trinh.**
17

18 An ALJ must provide "specific, legitimate reasons" based on
19 substantial evidence in the record for rejecting a treating
20

21 ⁶ Plaintiff's testimony concerning a purported inability
22 to perform housework because of dropping things from his hands is
23 not entirely clear, but does seem arguably inconsistent with
24 Plaintiff's unqualified report to a consultative examiner that
25 Plaintiff performs housework (compare A.R. 56 with A.R. 1097).
26 Assuming arguendo, however, that the ALJ's partial reliance on
27 this consideration was improper, the ALJ's credibility
28 determination nevertheless would stand. Under Carmickle v.
Commissioner, 533 F.3d 1155, 1163 (9th Cir. 2008), the infirmity
of one or two supporting reasons for an ALJ's credibility
determination does not require overturning the determination if
independently valid supporting reasons remain. Independently
valid supporting reasons remain in the present case.

1 physician's contradicted opinion. See Valentine v. Commissioner, 574
2 F.3d 685, 692 (9th Cir. 2009); Orn v. Astrue, 495 F.3d at 631-33.
3 Contrary to Plaintiff's arguments, the ALJ stated sufficient specific,
4 legitimate reasons for rejecting the contradicted opinions of Dr.
5 Trinh.

6
7 The ALJ stated:

8
9 Dr. Trinh went on to assess restrictions below an even
10 sedentary functional capacity . . . and elsewhere in the
11 record, requested that [Plaintiff] be placed on disability
12 partly on the basis of fibromyalgia,⁷ and symptoms which
13 include cognitive deficits, fatigue, diffuse joint pain.

14 . . . The assessed restrictions from a physical standpoint
15 are not explained by the treatment notes which for the most
16 part are notable for primary subjective tenderness and
17 decreased sensation. Significant cognitive deficits were
18 not noted on the examination of Dr. Bagner . . . nor are any
19 noted within the records of Dr. Trinh except for claimant's
20 subjective allegations.

21
22 (A.R. 27) (footnoted added).

23
24 Thus, the ALJ rejected Dr. Trinh's opinions because, inter alia,
25 the opinions relied on Plaintiff's subjective complaints. An ALJ is
26 free to disregard a treating physician's opinions that are based on a

27
28 ⁷ The ALJ properly found Plaintiff does not have any
severe fibromyalgia (A.R. 23-24).

1 claimant's subjective complaints where the ALJ has properly discounted
2 those subjective complaints. See Tonapetyan v. Halter, 242 F.3d at
3 1149; Fair v. Bowen, 885 F.2d 597, 605 (9th Cir. 1989) (disregarding
4 opinion premised on claimant's properly-discounted subjective
5 complaints is a specific, legitimate reason for rejecting a treating
6 physician's opinion); see also Mattox v. Commissioner of Social
7 Security, 371 Fed. App'x 740, 742 (9th Cir. 2010) ("a physician's
8 opinion of disability premised to a large extent upon the claimant's
9 own accounts of his symptoms and limitations may be disregarded where
10 those complaints have been properly discounted") (internal quotations
11 and citations omitted). As discussed above, the ALJ properly
12 discounted Plaintiff's subjective complaints.⁸

13
14 Additionally, the ALJ properly rejected Dr. Trinh's opinions as
15 unsupported by Dr. Trinh's treatment notes. See Bayliss v. Barnhart,
16 427 F.3d 1211, 1216 (9th Cir. 2005) (contradiction between treating
17 physician's assessment and clinical notes justifies rejection of
18 assessment); Batson v. Commissioner, 359 F.3d 1190, 1195 (9th Cir.
19 2004) ("an ALJ may discredit treating physicians' opinions that are
20 conclusory, brief, and unsupported by the record as a whole . . . or
21 by objective medical findings"); Connett v. Barnhart, 340 F.3d 871,
22 875 (9th Cir. 2003) (treating physician's opinion properly rejected
23 where treating physician's treatment notes "provide no basis for the
24 functional restrictions he opined should be imposed on [the

25 _____
26 ⁸ Significantly, Dr. Trinh relied in part on Plaintiff's
27 self-reported alleged cognitive problems. As the ALJ pointed
28 out, mental status testing of Plaintiff by Dr. Bagner tended to
refute Plaintiff's allegations of such problems (A.R. 27, 1097-
98).

1 claimant].").

2
3 **CONCLUSION**

4
5 For all of the reasons discussed herein, Plaintiff's motion for
6 summary judgment is denied and Defendant's motion for summary judgment
7 is granted.⁹

8
9 LET JUDGMENT BE ENTERED ACCORDINGLY.

10
11 DATED: September 20, 2013.

12
13 _____/S/
14 CHARLES F. EICK
15 UNITED STATES MAGISTRATE JUDGE
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24 _____
25 ⁹ The Court has considered and rejected each of
26 Plaintiff's arguments. Neither Plaintiff's arguments nor the
27 circumstances of this case show any "substantial likelihood of
28 prejudice" resulting from any error allegedly committed by the
Administration. See generally McLeod v. Astrue, 640 F.3d 881,
887-88 (9th Cir. 2011) (discussing the standards applicable to
evaluating prejudice).