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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HAMID HARANDI,
Plaintiff

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

Case No. 8:17-cv-0785-GJS

**MEMORANDUM OPINION AND
ORDER**

I. PROCEDURAL HISTORY

Plaintiff Hamid Harandi (“Plaintiff”) filed a complaint seeking review of Defendant Commissioner of Social Security’s (“Commissioner”) denial of his application for Disability Insurance Benefits (“DIB”). The parties filed consents to proceed before the undersigned United States Magistrate Judge [Dkts. 7, 9] and briefs addressing disputed issues in the case [Dkt. 15 (“Pltf.’s Br.”); Dkt. 16 (“Def.’s Br.”); Dkt. 17 (“Pltf.’s Reply”)]. The Court has taken the parties’ briefing under submission without oral argument. For the reasons discussed below, the Court affirms the decision of the Commissioner.

II. ADMINISTRATIVE DECISION UNDER REVIEW

In February 2014, Plaintiff filed an application for DIB, alleging that he became disabled as of April 30, 2013. [Dkt. 14, Administrative Record (“AR”) 197-

1 98.] The Commissioner denied his initial claim for benefits [AR 92-96] and
2 affirmed that denial on reconsideration [AR 99-103]. A hearing was held before an
3 Administrative Law Judge (“ALJ”), who issued an unfavorable decision on
4 November 4, 2015. [AR 15-32.] Plaintiff requested review from the Appeals
5 Council, but the Appeals Council denied his request for review [AR 1-6], and this
6 appeal followed.

7 Applying the five-step sequential evaluation process, the ALJ found that
8 Plaintiff was not disabled. *See* 20 C.F.R. §§ 404.1520(b)-(g)(1). At step one, the
9 ALJ concluded that Plaintiff had not engaged in substantial gainful activity since the
10 alleged onset date. [AR 18 (citing C.F.R. § 404.1571 *et seq.*)] At step two, the ALJ
11 found that Plaintiff suffered from the following severe impairments: “cervical and
12 lumbar degenerative disc disease (DDD), degenerative joint disease (DJD) of the
13 right shoulder, and cartilage tear in the right wrist (20 CFR 404.1520(c)).” [*Id.*]
14 Next, the ALJ determined that Plaintiff did not have an impairment or combination
15 of impairments that meets or medically equals the severity of one of the listed
16 impairments. [AR 455 (citing 20 C.F.R. Part 404, Subpart P, Appendix 1; 20 C.F.R.
17 §§ 404.1520(d), 404.1525, 404.1526).] [AR 20.]

18 The ALJ found that Plaintiff had the following residual functional capacity
19 (RFC):

20 [L]ight work as defined in 20 CFR 404.1567(b) except
21 occasionally lift and/or carry 20 pounds and frequently lift
22 and/or carry up [sic] ten pounds; stand and/or walk for a
23 total of six hours in an eight-hour workday; sit for a total
24 of six hours in an eight-hour workday; frequently climb,
25 balance, stoop, kneel, crawl, and crouch, but never able to
use ropes, ladders or scaffolds; manipulative limitations
with the right upper extremity, which is the dominant
extremity; occasional overhead reaching and frequent
handling and fingering.

26 [AR 21.] Applying this RFC, the ALJ found that Plaintiff is capable of performing
27 past relevant work as a purchaser (DOT 162.157-038) and assembly supervisor
28 (DOT 739.137-101) and, thus, is not disabled. [AR 31.]

1 **III. GOVERNING STANDARD**

2 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s decision to
3 determine if: (1) the Commissioner’s findings are supported by substantial evidence;
4 and (2) the Commissioner used correct legal standards. *See Carmickle v. Comm’r*
5 *Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d
6 1071, 1074 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a
7 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*
8 *Perales*, 402 U.S. 389, 401 (1971) (internal citation and quotations omitted); *see*
9 *also Hoopai*, 499 F.3d at 1074.

10 **IV. DISCUSSION**

11 Plaintiff contends that the ALJ: (1) erred in the assessment of his credibility
12 and (2) erred in the assessment of weight accorded to the opinions of two treating
13 physicians. [Pltf.’s Br. at 5, 1, 3.] Plaintiff also argues that the ALJ failed to
14 properly consider Plaintiff’s alleged amended onset date of April 30, 2014. [Pltf.’s
15 Br. at 9.] The Court disagrees with each of Plaintiff’s contentions and hereby
16 affirms.¹

17 **A. The ALJ Properly Considered Record Evidence From Before April**
18 **30, 2014, Plaintiff’s Amended Alleged Onset Date**

19 The Court will consider Plaintiff’s argument that he changed his alleged
20 disability onset date at the hearing prior to dealing with Plaintiff’s contention that
21 the ALJ improperly discounted his credibility.² The reason for this analysis is that
22 Plaintiff, through counsel at the hearing, attempted to amend his alleged onset date
23

24 ¹ Because it is logical to do so, the Court addressed these arguments in a different
25 order than presented by the parties.

26 ² Plaintiff’s argument was essentially a one paragraph “throw away” at the end of
27 his brief without *any* citation to authority. Perhaps the fleeting and unsupported
28 nature of the argument was the reason that the Commissioner’s sole response was to
state that Plaintiff’s amended onset date “fail[s] to alter the analysis.” [Def.’s Br. at
9.] Frankly, the Court found both parties’ briefing on this issue to be unhelpful.

1 without any prior notice to the ALJ, specifically for the purpose of avoiding any
2 conflict between his claim for disability and payments he had received for
3 unemployment. [AR 41.] Neither counsel nor Plaintiff made any claim or argument
4 that there was any change in – let alone significant worsening of – his medical
5 condition between April 30, 2013 (the original onset date alleged in the prior
6 proceedings) and April 30, 2014 (the date put forth at the hearing). *See* Social
7 Security Ruling (“SSR”) 83-20 (“[t]he medical evidence serves as the primary
8 element in the onset determination.”). In fact, counsel seemed to pick the date
9 randomly in an attempt to avoid a finding that Plaintiff stopped work for reasons
10 other than disability. But a claimant’s disability onset date is determined primarily
11 by the medical evidence, not as a random date selected to avoid bad evidence. Here,
12 there is evidence that Plaintiff had stopped work in April 2013 because his hours
13 were cut and he was laid off [AR 22, 322] and that he collected unemployment
14 benefits after April 30, 2013 [AR 41], which a claimant can only receive by stating
15 he or she is able to work.³ It also bears noting that Plaintiff’s new alleged onset date
16 of April 30, 2014 was ***after he filed for disability*** in this case in February 2014, so
17 he is essentially arguing now, to avoid consideration of earlier evidence, that he was
18 not disabled when he averred he was disabled and applied for disability benefits.

19 While a plaintiff may properly amend his or her claimed onset date at any
20 time during the proceedings,⁴ Plaintiff did not cite any authority for the proposition

21 _____
22 ³ Plaintiff was understandably trying to avoid the earlier onset date he had alleged
23 throughout the prior proceedings. *See, e.g., Copeland v. Bowen*, 861 F.2d 536, 542
24 (9th Cir. 1988) (recognizing that receipt of unemployment benefits can impact a
claimant’s alleged inability to work full time)

25 ⁴ Claimants generally amend to an ***earlier*** provable date in order to ensure that any
26 finding of disabling conditions is commensurate with a date on which they were
27 insured. In this case, it did not matter whether the ALJ determined an actual date of
28 disability because (1) there was no finding of disability at any time, and (2) there
was no argument that Plaintiff’s date last insured was prior to either alleged onset
date.

1 that he may do so to preclude consideration of unfavorable admissions or
2 inconsistent statements.⁵ Plaintiff does not contend that his medical condition
3 changed such that he became disabled at the later date and was *not* disabled at the
4 earlier, 2013, date. Rather, he argues only that the ALJ should ignore his earlier
5 records to avoid an adverse credibility finding. The Court does not find this
6 argument persuasive.

7 Moreover, Plaintiff does not attempt to explain why a later alleged onset date,
8 even if considered by the ALJ, would preclude the ALJ from considering evidence
9 from before that time as it relates to Plaintiff's credibility. Inconsistencies between
10 Plaintiff's testimony and the medical records presented by Plaintiff or arguments
11 previously made by Plaintiff, no matter when they occurred, are indicative of
12 Plaintiff's propensity for truthfulness.⁶ The ALJ's failure to specifically address the
13 earlier alleged onset date in his opinion was not error and provides no basis for
14 remand.

18 ⁵ It would be inappropriate to preclude an ALJ from considering contemporaneous
19 inconsistent statements simply because a claimant amended his onset date to after
20 the statements were made. For example, consider the case where a claimant tells
21 one doctor that he stopped work due to disability, but on the same date, admits to
22 another physician that he was laid off. The inconsistent statements, both within the
23 claimant's longitudinal medical records presented to the ALJ, are indicative of that
claimant's truthfulness. Thus, amendment of a claimant's alleged onset date does
not automatically and completely preclude an ALJ from considering evidence pre-
dating the amended date.

24 ⁶ Ultimately, because the ALJ did not find medical evidence to support that Plaintiff
25 was disabled at any time – whether on April 30, 2013 or April 20, 2014 – the ALJ
26 was not required to determine a specific date of disability. *See Sam v. Astrue*, 550
27 F.3d 808, 810 (9th Cir. 2008) (“[b]ecause the ALJ found that Sam was not disabled
28 *at any time* through the date of [the] decision, the question of *when* he became
disabled did not arise and the procedures prescribed in SSR 83-20 did not apply”)
(internal citation omitted) (emphasis in original).

1 **B. The ALJ’s Opinion Provides At Least One Clear and Convincing**
2 **Reason for the Credibility Determination.**

3 If a claimant produces objective medical evidence of an underlying
4 impairment that could reasonably be expected to produce the symptoms alleged and
5 there is no affirmative evidence of malingering, the ALJ must offer “clear and
6 convincing” reasons to reject the claimant’s testimony. *Smolen v. Chater*, 80 F.3d
7 1273, 1281-82 (9th Cir. 1996); *see also Reddick v. Chater*, 157 F.3d 715, 722 (9th
8 Cir. 1998) (“Unless there is affirmative evidence showing that the claimant is
9 malingering, the Commissioner’s reasons for rejecting the claimant’s testimony
10 must be clear and convincing.” (internal quotation omitted)). Moreover, “[t]he ALJ
11 must state specifically which symptom testimony is not credible and what facts in
12 the record lead to that conclusion.” *Smolen*, 80 F.3d at 1284; *Holohan v.*
13 *Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001) (the ALJ must “specifically identify
14 the testimony [the ALJ] finds not to be credible and must explain what evidence
15 undermines the testimony”); *Bunnell v. Sullivan*, 947 F.2d 341, 345-46 (9th Cir.
16 1991). In addition to the “ordinary techniques of credibility evaluation,” *Bunnell*,
17 947 F.2d at 346, the following factors may be considered in assessing credibility:
18 (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the claimant’s
19 testimony or between his testimony and conduct; (3) claimant’s daily living
20 activities; (4) claimant’s work record; and (5) testimony from physicians or third
21 parties concerning the nature, severity, and effect of claimant’s condition. *Thomas*
22 *v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002).

23 The ALJ found that although Plaintiff’s medically determinable impairments
24 could reasonably be expected to cause some of Plaintiff’s alleged symptoms,
25 Plaintiff’s allegations concerning the intensity, persistence, and limiting effects of
26 his symptoms were not credible to the extent alleged. [AR 22.] As discussed
27 below, the ALJ offered at least one legally sufficient reason to support this adverse
28 credibility determination.

1 At the administrative hearing, Plaintiff testified that he suffers from
2 significant pain that prevents him from working. As detailed above, however,
3 Plaintiff stated that he left his last job as a purchaser “because business started
4 getting slow, and my hours was cut.” [AR 43 (Plaintiff’s testimony); AR 21 (citing
5 AR 322) (“During a Psychiatric Examination completed on August 26, 2014, the
6 claimant stated that he was laid off from work, due to business being slow.”)].
7 Plaintiff was referring to being laid off in 2013. Plaintiff then, in February 2014,
8 filed a claim for disability alleging disability as of the time he stopped working –
9 April 2013. [AR 197.] The ALJ was entitled to rely on the clear inconsistency
10 between Plaintiff’s claim that disabling pain keeps him from working and his
11 testimony and comments to a physician that he stopped working due to a slowdown
12 at his job to find Plaintiff less than credible. [AR 21-22 (“[T]he claimant stated that
13 he was laid off from work, due to business being slow. This shows that the claimant
14 stopped working due to a business-related layoff rather than because of the allegedly
15 disabling pain.”) (internal citations omitted).] The ALJ thus provided at least one
16 clear and convincing reason to find Plaintiff’s claims of disabling pain to be less
17 than fully credible.

18 **A. The Weight Accorded To The Opinions Of Each Of Plaintiff’s**
19 **Treating Physicians Was Proper.**

20 Plaintiff next contends that the ALJ erred in his evaluation of the treating
21 physicians, Drs. Alan Lo and Reza Allamehzadeh. [Pltf.’s Br. at 2-5.]

22 In evaluating medical opinions, the case law and regulations distinguish
23 among the opinions of three types of physicians: (1) those who treat the claimant
24 (treating physicians); (2) those who examine, but do not treat the claimant
25 (examining physicians); and (3) those who neither examine nor treat the claimant
26 (non-examining physicians). *See* 20 C.F.R. §§ 404.1502, 404.1527; *see also Lester*
27 *v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). An ALJ is obligated to take into
28 account all medical opinions of record, resolve conflicts in medical testimony, and

1 analyze evidence. 20 C.F.R. § 404.1527(c); *Magallanes v. Bowen*, 881 F.2d 747,
2 750 (9th Cir. 1989).

3 In conducting this analysis, the opinion of a treating or examining physician is
4 entitled to greater weight than that of a non-examining physician. *Garrison v.*
5 *Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014). To reject the uncontradicted opinion of
6 a treating or examining physician, the ALJ must provide clear and convincing
7 reasons. *Ghanim v. Colvin*, 763 F.3d 1154, 1160-61 (9th Cir. 2014); *Lester*, 81 F.3d
8 at 830. When a treating or examining physician’s opinion is contradicted by another
9 opinion, an ALJ may not reject the opinion without “specific and legitimate
10 reasons” that are supported by substantial evidence in the record. *Ghanim*, 763 F.3d
11 at 1161; *Garrison*, 759 F.3d at 1012; *Lester*, 81 F.3d at 830-31. “This is so because,
12 even when contradicted, a treating or examining physician’s opinion is still owed
13 deference and will often be ‘entitled to the greatest weight . . . even if it does not
14 meet the test for controlling weight.’” *Garrison*, 759 F.3d at 1012 (internal citation
15 omitted).

16 Although ALJs “are not bound by any findings made by [non-examining]
17 State agency medical or psychological consultants, or other program physicians or
18 psychologists,” ALJs must still “consider findings and other opinions of State
19 agency medical and psychological consultants and other program physicians,
20 psychologists, and other medical specialists as opinion evidence, except for the
21 ultimate determination about whether [a claimant is] disabled” because such
22 specialists are regarded as “highly qualified . . . experts in Social Security disability
23 evaluation.” 20 C.F.R. §§ 404.1527(e)(2)(i). “Unless a treating source’s opinion is
24 given controlling weight, the [ALJ] must explain in the decision the weight given to
25 the opinions of a State agency medical or psychological consultant or other program
26 physician, psychologist, or other medical specialist.” 20 C.F.R. §§
27 404.1527(e)(2)(ii); *see also* SSR 96-6p (“Findings...made by State agency medical
28 and psychological consultants and other program physicians and psychologists

1 regarding the nature and severity of an individual’s impairment(s) must be treated as
2 expert opinion evidence of nonexamining sources,” and ALJs “may not ignore these
3 opinions and must explain the weight given to these opinions in their decisions.”).

4 **1. The ALJ Provided Specific and Legitimate Reasons for**
5 **Assigning Dr. Lo’s Conclusion That Plaintiff Was “Disabled”**
6 **Limited Weight.**

7 The ALJ provided a thorough discussion of medical tests done and the
8 opinions of several physicians, including two of Plaintiff’s treating physicians and
9 multiple Disability Determination Specialists. Relevant to the issues raised in this
10 appeal, the ALJ gave “great weight” to one of the specialists, Dr. G. Spinka, M.D.,
11 who completed a Physical Residual Functional Capacity Assessment on April 15,
12 2014. Dr. Spinka opined that Plaintiff was “not disabled” and detailed his
13 functional limitations, which were later included in Plaintiff’s RFC. [AR 28 (citing
14 AR 73).] The ALJ noted that Dr. Spinka’s review of Plaintiff’s records included
15 discussion of the findings of Dr. Gerayli, Plaintiff’s treating pain management
16 doctor, who stated that Plaintiff was on Gabapentin for pain control, and that he had
17 right lower L/S tenderness, but no spasms and full range of motion. Dr. Gerayli also
18 noted that Plaintiff’s gait was normal and there was no evidence of neruo defecits.
19 Based on his review of the complete medical record as of April 2014, Dr. Spinka
20 “concurred with a light residual functional capacity” due to Plaintiff’s cervical and
21 lumbar issues. The ALJ found this conclusion persuasive “as it is well supported by
22 explanation and by the medical evidence, and it reflects consideration of the entire
23 medical record by a specialist who is familiar with the Social Security regulations.”
24 [AR 29.] Dr. Weeks, another Disability Determination Specialist, also reviewed the
25 medical evidence of record and concurred with Dr. Spinka’s conclusion that
26 Plaintiff was not disabled. The ALJ credited this opinion for the same reason that he
27 accorded Dr. Spinka’s opinion great weight. [AR 30.]

28 Within a few weeks of Dr. Spinka’s review, on May 13, 2014, Dr. Lo, one of

1 Plaintiff's treating physicians, completed a medical source statement for the purpose
2 of evaluating a claim of disability. [AR 331-334; 375.] Dr. Lo noted that Plaintiff
3 had been recommended for surgery, which Plaintiff was considering at the time, and
4 that he (Dr. Lo) was inclined to agree that surgery might be the best course for
5 Plaintiff's sciatica symptoms. [AR 332; 375.] Dr. Lo also noted that Plaintiff had a
6 comorbidity for anxiety that was controlled on Xanax. [*Id.*] Dr. Lo further noted
7 that he hoped his "brief summary" would be useful in evaluating Plaintiff, but that
8 he was not sure he would see Plaintiff again given that he was not on Plaintiff's
9 insurance any longer. [AR 375.] As the ALJ specifically pointed out, Dr. Lo also
10 noted that there was still a possibility for improvement (given that Plaintiff was still
11 evaluating surgery at that time), and did not make any finding that that Plaintiff was
12 permanently disabled.⁷ [*Id.*] The ALJ therefore properly assigned "little weight"
13 to Dr. Lo's conclusion that Plaintiff was disabled, preferring the opinion of the
14 Social Security Disability specialists who had reviewed Plaintiff's complete medical
15 file and addressed Plaintiff's specific limitations.

16 **2. The ALJ Provided Specific and Legitimate Reasons for**
17 **Discounting Dr. Allamehzahdeh's Opinion.**

18 Plaintiff also contends that the ALJ should have given greater or controlling
19 weight to the opinion of Dr. Allamehzahdeh, a treating physician who specializes in
20 internal medicine. Dr. Allamehzahdeh offered the extreme opinion that Plaintiff
21 could not work *any* hours during a workday; could not lift *anything* on an
22 occasional or frequent basis; and could *never* bend, stoop, manipulate his right hand,
23 or raise his right hand over shoulder level. [AR 396.] And, in contrast to Plaintiff's
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25 ⁷ Nor did Dr. Lo discuss any particular limitations in opining that he believed
26 Plaintiff was completely (albeit perhaps temporarily) disabled. In other words,
27 while he opined on the ultimate issue of disability – an issue reserved for the
28 Commissioner – he did not provide any evidence or analysis that would assist the
ALJ in determining whether Plaintiff had specific functional limitations.

1 own statements on his function report [AR 21, 234], Dr. Allamehzahdeh opined that
2 it was difficult for Plaintiff to have normal activities.

3 The ALJ discounted Dr. Allamehzahdeh’s opinion, in part, because he “did
4 not have a longitudinal history with the claimant.” [AR 30.] He thus had no
5 apparent basis for his extreme conclusions, particularly since he also noted (as the
6 ALJ pointed out) that Plaintiff was still considering surgical options, so there was,
7 potentially, an “option for improvement.”⁸ [AR 31.] In sum, it was proper for the
8 ALJ to give little weight to the extreme opinion of a physician, for the stated reason
9 that he did not have significant history with the Plaintiff.

10 **V. CONCLUSION**

11 For all of the foregoing reasons, **IT IS ORDERED** that the decision of the
12 Commissioner finding Plaintiff not disabled is **AFFIRMED**.

13

14 **IT IS SO ORDERED.**

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16 DATED: August 30, 2018

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GAIL J. STANDISH
UNITED STATES MAGISTRATE JUDGE

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⁸ The Court is not saying that Plaintiff was required to have surgery before being declared disabled. But the conclusory opinions on which Plaintiff relies do not themselves find that Plaintiff’s condition is permanent and stationary, with surgery as the only remaining option.