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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ARIS C.,)	Case No. CV 19-0924-GW (JPR)
)	
Plaintiff,)	
)	ORDER ACCEPTING FINDINGS AND
v.)	RECOMMENDATIONS OF U.S.
)	MAGISTRATE JUDGE
ANDREW SAUL, Commissioner)	
of Social Security,)	
)	
Defendant.)	
)	
)	

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Complaint, motions for judgment on the pleadings, Administrative Record, and all other records on file as well as the Report and Recommendation of U.S. Magistrate Judge. On February 19, 2020, Plaintiff filed Objections to the R. & R., in which he mostly simply repeats arguments from his Motion for Judgment on the Pleadings and Opposition to Defendant’s Motion for Judgment on the Pleadings.

For instance, Plaintiff reiterates that the ALJ erred in giving great weight to the opinion of consulting examiner Dr. John Sedgh, who was subsequently removed from the panel of approved examining physicians. (See Objs. at 1-3.) He claims

1 that Sedgh did not conduct the tests he said he did and submitted
2 a "false" x-ray of Plaintiff's spine. (Id. at 1, 3.) As the
3 Magistrate Judge found, however, Plaintiff has not shown that
4 Sedgh actually made false statements or that the x-ray was
5 fabricated. (R. & R. at 15-16.) Indeed, she correctly
6 recognized that he was removed from the panel for problems with
7 tardiness, rushing, scheduling, and security – not fabricating
8 statements or documents – and that those issues were related
9 "only tangentially" to the reliability of his medical opinion.
10 (Id. at 14.) And even if Plaintiff is correct that the x-ray was
11 a "fake," he concedes that it showed greater impairment than
12 other doctors had diagnosed. (See Objs. at 3-4 (arguing that x-
13 ray showed "[m]oderately advanced discogenic disease" even though
14 "[t]here is nothing wrong with [his] lower back").) Thus, any
15 error by the ALJ in considering the x-ray was harmless, as the
16 Magistrate Judge recognized. (R. & R. at 16.)¹

17 Further, Plaintiff still has not explained what the
18 significance of Sedgh's purported misstatements were or what
19 tests he failed to perform, much less whether they mattered to
20 the ALJ's finding. (See id. at 14.) He claims that Sedgh's
21 opinion was "in total contradiction with four treating
22 physician[s] and . . . [x]-rays made in the last fifteen years."
23

24 ¹ To prove that the x-ray was "fake," Plaintiff attaches a
25 February 13, 2020 letter from orthopedic surgeon P. Douglas
26 Kiestler, stating that he has a "normal x-ray of the low back
27 (lumbar spine) for a person of his age." (Objs., Ex.) That
28 letter is neither part of the Administrative Record nor
referenced in Plaintiff's motion or opposition, however, and the
Court does not consider it. In any event, it does not prove that
the x-ray was fake and reflects that even if it was it actually
overstated Plaintiff's impairments.

1 (Objs. at 3.) It isn't clear what opinions or x-rays Plaintiff
2 is referring to or how they undermine Sedgh's assessment. To the
3 extent he is alluding to orthopedic surgeon Ranjan Gutpa's 2005
4 arthogram and 2016 x-ray of his shoulder, which showed a "Hill-
5 Sachs deformity" and "degenerative changes of the acromioclaviar
6 joint" (see Pl.'s Mot. J. Pleadings at 8), the Magistrate Judge
7 correctly explained how those findings were not inconsistent with
8 Sedgh's assessment that an x-ray of Plaintiff's shoulder – an x-
9 ray he does not dispute was taken – showed "degenerative
10 arthritic changes." (R. & R. at 16.)

11 Notably, Plaintiff concedes that "pain," including shoulder
12 pain, is not the reason he can't work. (Objs. at 5.) Rather, he
13 says, the "real problem" is the "numbness and tingling" he feels
14 in his arms when "seated for a long period of time." (Id.) But
15 as the Magistrate Judge found, the first time Plaintiff raised
16 that issue in many years was several weeks after he filed his DIB
17 application, when he complained to a doctor about his right arm.
18 (R. & R. at 17.) Indeed, he did not report any pain, injury, or
19 other problem concerning his shoulders or arms in nine doctor
20 visits between 2013 and 2015, as the Magistrate Judge noted.
21 (Id. (citing AR 298-305, 322-24, 326-28, 337-39, 344-46, 351-56,
22 361-63).) Further, that during that time he lifted weights at
23 the gym suggests a high level of functioning in his upper
24 extremities. (See id. (citing AR 302).)

25 Plaintiff correctly points out that Dr. Marco Angulo, the
26 doctor he first raised the numbness and tingling issue with in
27 2015, opined in February 2016 that Plaintiff had to "walk around
28 and not stay sitting for a prolonged period of time." (Objs. at

1 6 (citing AR 422).) But the Magistrate Judge correctly
2 determined that any error by the ALJ in not assigning that
3 opinion any particular weight was harmless given that Angulo did
4 not start seeing Plaintiff until just a few months before his
5 date last insured and several months after that noted that his
6 condition "ha[d] been progressing recently." (R. & R. at 18 n.17
7 (citing AR 422).) Further, it appears that Angulo's assessment
8 simply restated Plaintiff's subjective complaints. As the
9 Magistrate Judge found, the ALJ discounted those subjective
10 complaints, a finding Plaintiff has not challenged, and
11 contemporaneous treatment records do not corroborate the
12 sensations Plaintiff reported. (See id. at 19.) He claims
13 orthopedic surgeon Kiester's records "back[]" Angulo's
14 assessments (see Objs. at 6 (citing AR 423, 431)), but the cited
15 records are silent on whether Plaintiff can sit for a prolonged
16 period because of his upper-extremity impairments. Indeed, in
17 2005 Kiester noted Plaintiff's complaints of tingling in his arms
18 but concluded that his "only significant complaint" was
19 "tenderness at the base of his neck." (AR 423.) And although he
20 noted in 2018, more than two years after the date last insured,
21 that Plaintiff "report[ed] some tingling [in] both arms," he
22 ascribed no functional limitations from that impairment, finding
23 only "some weaknesses and loss of fine motor with the use of his
24 hands," which the RFC accounts for, as the Magistrate Judge
25 pointed out, by adding limitations for "frequent handling and
26 fingering due to his continued right upper extremity
27 instability." (R. & R. at 17 (citing AR 31).)

28 The Magistrate Judge also correctly recognized that

1 Plaintiff's reported functional limitations were inconsistent
2 with his activities of daily living. (Id. at 19-20.) She did
3 not point to Plaintiff performing those activities as proof that
4 his impairments did not exist. (See Objs. at 5.) Rather, she
5 drew the permissible inference that because he was able to
6 perform those activities his impairments were not as severe as he
7 reported. The same inference arises from Plaintiff's refusal to
8 seek medical help for the numbness in his arms. Although he
9 explains that he did not go to the doctor for years because he
10 "kn[e]w" they would just tell him to have surgery (id.), the fact
11 that he didn't suggests that his symptoms did not prevent him
12 from working.

13 Having reviewed de novo those portions of the R. & R. to
14 which Plaintiff objects, the Court accepts the findings and
15 recommendations of the Magistrate Judge. IT THEREFORE IS ORDERED
16 that judgment be entered affirming the Commissioner's decision
17 and dismissing this action with prejudice.

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DATED: November 18, 2020



GEORGE H. WU
U.S. DISTRICT JUDGE