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Paulo H.R.,

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Plaintiff,

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v.

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KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL SECURITY,

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Defendant.

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I. SUMMARY OF RULING

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Plaintiff challenges the denial of his applications for Social Security Disability Insurance Benefits and Supplemental Security Income.¹ The Court concludes that the Administrative Law Judge stated adequate reasons for discounting Plaintiff's symptom testimony and for assigning little weight to

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¹ Plaintiff's name has been partially redacted in accordance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi, the current Acting Commissioner of the Social Security Administration, is hereby substituted in as the Defendant.

Case No. 8:20-cv-01070-PD

**MEMORANDUM OPINION
AND ORDER AFFIRMING
ALJ'S DECISION**

1 the treating physician's opinion. For these reasons, the Court affirms the
2 agency's decision.

3 **II. PROCEEDINGS BELOW**

4
5 On December 8, 2016, Plaintiff filed an application for social security
6 disability insurance benefits alleging disability since March 15, 2011.
7 [Administrative Record ("AR") AR 171-74; Joint Stipulation ("JS") 2.]²
8 Plaintiff's applications were denied administratively on April 13, 2017, and
9 upon reconsideration on June 13, 2017. [AR 98-102, 104-09.] Plaintiff
10 requested a hearing, which was held on July 21, 2017, before an
11 Administrative Law Judge ("ALJ"). Plaintiff appeared without counsel and
12 testified through an interpreter. A vocational expert also testified. [AR 42.]

13 On March 18, 2019, the ALJ issued a decision finding that Plaintiff was
14 not disabled. [AR 20-41.] The Appeals Council denied Plaintiff's request for
15 review on April 20, 2020, rendering the ALJ's decision the final decision of the
16 Commissioner. [AR 1-5.]

17 The ALJ followed the requisite five-step sequential evaluation process
18 to assess whether Plaintiff was disabled under the Social Security Act. *Lester*
19 *v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995); 20 C.F.R. § 416.920(a). At step
20 one, the ALJ found that Plaintiff had not engaged in substantial gainful
21 activity since March 15, 2011, the alleged onset date. [AR 28.] At step two,
22 the ALJ found that Plaintiff had the following severe impairments: "lumbar
23 spine degenerative disc disease (DDD) and right knee internal derangement."
24 [AR 29 ¶ 3.] At step three, the ALJ found that Plaintiff does "not have an
25 impairment or combination of impairments that meets or medically equals the
26

27 ² The Administrative Record is CM/ECF Docket Numbers 16 through 16-9 and
28 the Joint Stipulation is Docket Number 20.

1 severity of one of the listed impairments in 20 CFR Part 404, Subpart P,
2 Appendix 1.” [AR 30 ¶ 4.]

3 Before proceeding to step four, the ALJ determined that Plaintiff has
4 the Residual Functional Capacity (“RFC”) to perform light work with the
5 following limitations:

6 [L]ift, carry, push, or pull up to 20 pounds occasionally, 10 pounds
7 frequently; stand/walk for four hours out of an eight-hour day; sit
8 for six hours out of an eight-hour day; occasionally climb ramps,
9 stairs, ladders, ropes, or scaffolds; occasionally balance, stoop,
10 kneel, crouch, and crawl; and is limited to occasional exposure to
11 hazards such as moving mechanical parts and unprotected heights.

12 [AR 30 ¶ 5.]³ Based on this RFC and the testimony of a vocational expert, the
13 ALJ found that Plaintiff could not perform his past relevant work as a
14 production machine operator, but that there are jobs that exist in significant
15 numbers in the national economy that Plaintiff can perform. [AR 35-36.] The
16 ALJ concluded that Plaintiff was not disabled. [AR 37.]

17 **III. STANDARD OF REVIEW**

18 Under 42 U.S.C. § 405(g), a district court may review the agency’s
19 decision to deny benefits. A court will vacate the agency’s decision “only if the
20 ALJ’s decision was not supported by substantial evidence in the record as a
21 whole or if the ALJ applied the wrong legal standard.” *Coleman v. Saul*, 979

22 ³ The regulations define light work as follows:

23 Light work involves lifting no more than 20 pounds at a time with frequent
24 lifting or carrying of objects weighing up to 10 pounds. Even though the weight
25 lifted may be very little, a job is in this category when it requires a good deal of
26 walking or standing, or when it involves sitting most of the time with some
27 pushing and pulling of arm or leg controls. To be considered capable of
28 performing a full or wide range of light work, you must have the ability to do
substantially all of these activities. If someone can do light work, we determine
that he or she can also do sedentary work, unless there are additional limiting
factors such as loss of fine dexterity or inability to sit for long periods of time.

20 C.F.R. § 416.967(b).

1 F.3d 751, 755 (9th Cir. 2020) (citations omitted). “Substantial evidence means
2 more than a mere scintilla but less than a preponderance; it is such relevant
3 evidence as a reasonable person might accept as adequate to support a
4 conclusion.” *Id.*; *Biestek v. Berryhill*, ___ U.S. ___, 139 S. Ct. 1148, 1154
5 (2019) (same).

6 It is the ALJ’s responsibility to resolve conflicts in the medical evidence
7 and ambiguities in the record. *Ford v. Saul*, 950 F.3d 1141, 1149 (9th Cir.
8 2020). Where this evidence is “susceptible to more than one rational
9 interpretation” the ALJ’s reasonable evaluation of the proof should be upheld.
10 *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008); *Tran v.*
11 *Saul*, 804 F. App’x 676, 678 (9th Cir. 2020).

12 Error in Social Security determinations is subject to harmless error
13 analysis. *Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012). Error is
14 harmless if “it is inconsequential to the ultimate nondisability determination”
15 or, despite the legal error, “the agency’s path is reasonably discerned.”
16 *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014).

17 **IV. DISCUSSION**

18 **A. The ALJ did not err in rejecting Plaintiff’s subjective** 19 **symptom testimony**

20 Plaintiff contends that the ALJ failed to provide specific, clear and
21 convincing reasons for rejecting his testimony regarding his impairments,
22 symptoms, and resulting limitations in assessing the RFC. [JS 7-11.]

23 **1. Relevant Law**

24 In the absence of proof of malingering, an ALJ may reject a litigant’s
25 believability by identifying “specific, clear, and convincing” reasons supported
26 by substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir.
27 2017). An ALJ may consider a variety of factors in analyzing the believability
28 of a claimant’s symptom testimony, including “ordinary techniques of

1 credibility evaluation.” *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005);
2 *Evans v. Berryhill*, 759 F. App’x 606, 608 (9th Cir. 2019) (same).

3 Inconsistent daily activities “may provide a justification for rejecting
4 symptom testimony,” but “the mere fact that a plaintiff has carried on certain
5 daily activities [] does not in any way detract from her credibility as to her
6 overall disability.” *Revels v. Berryhill*, 874 F.3d 648, 667 (9th Cir. 2017)
7 (citation and quotations omitted). Even when a claimant’s activities “suggest
8 some difficulty functioning, they may be grounds for discrediting the
9 claimant’s testimony to the extent that they contradict claims of a totally
10 debilitating impairment.” *Molina v. Astrue*, 674 F.3d 1104, 1112-13 (9th Cir.
11 2012); *Wennet v. Saul*, 777 F. App’x 875, 877 (9th Cir. 2019) (citing *Molina*).

12 An ALJ may also consider whether there is a lack of objective medical
13 evidence supporting a claimant’s allegations. However, this factor “cannot
14 form the sole basis” for discounting subjective symptom testimony. *Burch*, 400
15 F.3d at 681; *Davis v. Berryhill*, 736 F. App’x 662, 665 (9th Cir. 2018).

16 Even if an ALJ impermissibly relies “on one of several reasons in
17 support of an adverse credibility determination,” the error is harmless if “the
18 ALJ’s remaining reasoning and ultimate credibility determination were
19 adequately supported by substantial evidence in the record.” *Carmickle v.*
20 *Comm’r Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008) (citation and
21 emphasis omitted).

22 **2. Plaintiff’s Subjective Symptom Testimony**

23 **a. Hearing testimony**

24 At the hearing, Plaintiff testified that he understood English and spoke
25 it in other settings but prefers to speak Spanish. [AR 48.] He testified that
26 he worked in his last job at Waste Management for 18 years where he was
27 promoted to supervisor at the landfill. [AR 49.] Plaintiff described his
28 principal duty as checking the machines to make sure that they worked and

1 working as a dispatcher to direct the trucks via radio where to dump the
2 garbage. [AR 50-51.] When other employees took time off, Plaintiff would
3 step in as a machine operator loading the trucks. [AR 52.]

4 Plaintiff stated that on December 7, 2010, he hurt his back a hole while
5 working in a hole and mixing cement. [AR 53.] In 2011, he went through
6 surgery and afterward could no longer work. [AR 53.] He testified that his
7 back burns a lot, his leg hurts and that he cannot stand or sit for very long.
8 [AR 53.] He has received ten injections which did not help. [AR 55.] Plaintiff
9 stated that a surgeon told him he could not undergo any further surgery and
10 he was given pills that have helped for his arthritis. [AR 55.]

11 Plaintiff testified that he takes his dog to the park three times a week.
12 [AR 55.] He lives with his wife and is unable to help with the chores. [AR 55.]
13 Plaintiff stated that he is unable to put his socks on when it is very cold and
14 experiences more pain during cold weather . [AR 57.] He takes walks,
15 sometimes as long as thirty minutes, and goes out to eat with his kids and
16 wife. [AR 57.]

17 **3. The ALJ's Decision**

18 The ALJ provided three reasons for discounting Plaintiff's subjective
19 symptom testimony: (1) there was a lack of objective medical evidence in
20 support; (2) the testimony was inconsistent with testimony of daily activities;
21 and (3) the testimony of the efficacy of the injections was inconsistent with the
22 record. [AR 32-33.]

23 The ALJ reviewed the record and found that Plaintiff's medically
24 determinable impairments could reasonably be expected to cause the alleged
25 symptoms, but determined that Plaintiff's statements concerning the
26 intensity, persistence, and limiting effects of the symptoms are "not fully
27 supported" for the reasons stated above. [AR 32.]
28

4. Analysis

The ALJ did not find that Plaintiff had engaged in any degree of malingering – as evidenced by the ALJ’s statement to the effect that “the claimant’s medically determinable impairments could reasonably be expected to cause the alleged symptoms.” [AR 32.] Therefore, the ALJ was obliged to provide at least one “specific, clear, and convincing” reason supported by substantial evidence for rejecting Plaintiff’s testimony concerning the intensity, persistence and limiting effects of his symptoms. *Trevizo*, 871 F.3d at 678.

a. Objective Medical Evidence

While inconsistencies with the objective medical evidence cannot be the sole ground for rejecting a claimant’s subjective testimony, inconsistencies are factors that the ALJ may consider when evaluating subjective symptom testimony. *Burch*, 400 F.3d at 681; *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); see Soc. Sec. Ruling (“SSR”) 16-3p, at *5, 2017 WL 5180304 (March 2016) (“objective medical evidence is a useful indicator to help make reasonable conclusions about the intensity and persistence of symptoms, including the effects those symptoms may have on the ability to perform work-related activities”).

Here, the ALJ summarized Plaintiff’s testimony including his back injury and right knee problems, inability to stand or sit for anything other than short periods of time, limitations on lifting and carrying no more than 10 pounds, and daily activities. [AR 31.] The ALJ then discussed the objective medical findings and treatment records in detail. [AR 31-32.] The ALJ noted that while Plaintiff described his back and leg pain as constant but varying in intensity and preventing him from lifting heavy things, bending over or walking fast, medical records revealed inconsistent pain ratings and contrary objective findings. [AR 32.] The ALJ cited to records where Plaintiff rated his

1 back pain as 6/10 and right leg as 4 to 5/10, and described both as constant.
2 [*Id.* (citing (AR 527, 537, 539, 541, 544, 546, 550, 552.) Rather than indicating
3 severe pain, even if only intermittently, these ratings show that Plaintiff
4 reported moderate pain to his physicians. These inconsistent statements of
5 pain are valid grounds to discredit testimony. *See Arellano v. Colvin*, Case
6 No. 5:15-cv-00192-FFM, 2016 U.S. Dist. LEXIS 68854, at *11 (C.D. Cal. 2016)
7 (testimony of pain conflicted with prior pain rating reports to doctors).

8 Additionally, the ALJ acknowledged that the objective medical evidence
9 contained positive findings which would tend to support some of Plaintiff's
10 assertions, including decreased range of motion in Plaintiff's back and knee.
11 However, the ALJ also observed that many physical examination findings
12 contradicted statements of severe pain. [AR 34.] In particular, the ALJ cited
13 to findings that Plaintiff had grossly intact cranial nerves, only slightly
14 diminished sensation and muscle strength, normal thoracic and cervical
15 spine, and normal physical examination of shoulders, elbows, wrists, hands,
16 and hips. [AR 477-79.] That the examinations that did not reveal muscular
17 atrophy or other physical signs of inactivity is relevant evidence in assessing
18 credibility in light of Plaintiff's testimony. *See Meanel v. Apfel*, 172 F.3d 1111,
19 1114 (9th Cir. 1999) (ALJ entitled to discount testimony of near total
20 inactivity where claimant "did not exhibit muscular atrophy or any other
21 physical signs of an inactive, totally incapacitated individual"). The ALJ also
22 cited to records which did not reveal acute distress and noted that Plaintiff
23 was well-developed and well-nourished [AR 418, 477, 503, 555], all
24 inconsistent with Plaintiff's testimony that he was largely inactive and
25 debilitated. *See Noah v. Berryhill*, 732 F. App'x 520, 522 (9th Cir. 2018).

26 In sum, the ALJ did not assert that the medical record revealed no
27 physical limitations, but rather that there was evidence which did not support
28 the significant limitations claimed by Plaintiff.

1 **b. Daily Activities**

2 The ALJ’s second reason for discounting Plaintiff’s subjective symptom
3 testimony was due to inconsistencies with testimony related about his daily
4 activities. The ALJ stated that while Plaintiff “testified he could not stand or
5 sit for long periods, and had difficulty walking, he also noted that he would
6 drive his wife to and from work and son to and from school, walk his dog to
7 the park, and sometimes go out to eat with his children.” [AR 33.] The ALJ
8 also observed that despite the severity of pain alleged in his knee and back,
9 Plaintiff stated he could climb about 20 stairs. [AR 32.]

10 Here, the ALJ reasonably found that Plaintiff’s admitted activities
11 suggest a greater functional ability than other testimony which suggested
12 near total inactivity and alleged that Plaintiff must alternate from sitting and
13 standing to laying down on his carpet due to the pain. *See Wennet v. Saul*,
14 777 F. App’x 875, 877 (9th Cir. 2019) (where statements of daily activity
15 “suggest some difficulty functioning, they may be grounds for discrediting the
16 claimant’s testimony to the extent that they contradict claims of a totally
17 debilitating impairment”). Plaintiff takes issue with the ALJ’s lack of
18 explanation regarding the immediate transferability of activities such as
19 climbing stairs, walking a dog, or driving to a work setting. [JS 9.] However,
20 it is clear from the decision that the ALJ found that each of these activities
21 contradicted a limitation asserted by Plaintiff which, if true, would preclude
22 work. As the ALJ found, walking a dog for up to 30 minutes would contradict
23 statements about having difficulty walking or not being able to stand for long
24 periods. This a reasonable conclusion and an example of an ordinary
25 technique of credibility evaluation of statements regarding pain and daily
26 limitations, which directly implicate Plaintiff’s ability to work. *See Ghanim v.*
27 *Colvin*, 763 F.3d 1154, 1165 (9th Cir. 2014); *see also Jack P. v. Saul*, 2021 WL
28 4295753, at *3 (C.D. Cal. 2021) (ALJ reasonably concluded that ability to take

1 a dog for a long walk conflicted with testimony that the plaintiff could only
2 walk for short distances and provided a basis to discount the testimony).

3 **c. Efficacy of Injections**

4 The final reason the ALJ gave to discount Plaintiff's subjective symptom
5 testimony was an inconsistency between Plaintiff's hearing testimony that the
6 10 injections he received did not help and medical records indicating
7 otherwise. [AR 33.] In doing so, the ALJ cited to evidence in the record which
8 reflected that Plaintiff stated the injections provided relief. Specifically, the
9 ALJ cited to a May 6, 2015 treatment record in which Plaintiff stated that the
10 injection "gave temporary relief." [AR 498.] The ALJ also cited to a December
11 9, 2014 record in which Plaintiff responded to an injection of Toradol 60 mg
12 with Marcaine 1 cc and Lidocaine 1 cc as by starting to have immediate relief.
13 [AR 509.] Most significantly, the ALJ's cited to a January 6, 2015 record
14 reflecting that Plaintiff stated that the Toradol injection helped and the
15 physician described the injection as effective. [AR 511.]

16 In response, Plaintiff draws an analogy to a leaking tire, describing the
17 injections as being a temporary repair that eventually gives way to a flat tire,
18 with the tire being the pain Plaintiff experiences. [JS 18.] That may be an
19 appropriate analogy, but the issue before the Court is whether the ALJ
20 reasonably found inconsistencies in Plaintiff's testimony and the record. If so,
21 then the ALJ was entitled to assess credibility by factoring in that
22 discrepancy. Here, Plaintiff may have continued to feel pain after the
23 injections or the pain may have returned; the ALJ never stated otherwise.
24 However, Plaintiff stated that the injections "did not help" at the hearing
25 when records show he had made statements indicating the opposite. The ALJ
26 employed an ordinary technique of credibility assessment in comparing the
27 unambiguous statements. *See Fair v. Bowen*, 885 F.2d 597, 604 n.5 (9th Cir.
28

1 1989) (prior inconsistent statements about pain may be taken into account
2 during credibility assessment).

3 Accordingly, the ALJ stated sufficient valid reasons to allow this Court
4 to conclude that the ALJ discounted Plaintiff's subjective symptom testimony
5 on permissible grounds.

6 **B. The ALJ properly considered Dr. Mays' opinion**

7 **1. Relevant Law**

8 In assessing a claimant's RFC, the ALJ is required to consider all
9 limitations and restrictions imposed by all impairments, even those deemed
10 not severe. *See* SSR 96-8p, 1996 WL 374184, at *5 (July 1996) (requiring
11 ALJ's RFC assessment to "consider limitations and restrictions imposed by all
12 of an individual's impairments, even those that are not 'severe'"). The RFC
13 reflects the most a claimant can do despite his limitations. *See Smolen v.*
14 *Chater*, 80 F.3d 1273, 1291 (9th Cir. 1996). The ALJ assesses a claimant's
15 RFC "based on all of the relevant medical and other evidence," including any
16 statements provided by medical sources. 20 C.F.R. §§ 404.1513(a),
17 404.1545(a)(3), 404.1546(c). An ALJ's determination of a claimant's RFC
18 must be affirmed if the ALJ has applied the proper legal standard and
19 substantial evidence in the record as a whole supports the decision. *See*
20 *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005).

21 An ALJ must consider all medical opinions of record. 20 C.F.R.
22 § 404.1527(b).⁴ Courts give varying degrees of deference to medical opinions
23 based on the provider: (1) treating physicians who examine and treat; (2)

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25 ⁴ Section 404.1527 applies because Plaintiff filed his application before March
26 27, 2017. For an application filed on or after March 27, 2017, 20 C.F.R. § 404.1520c
27 would apply. The new regulations changed how the Social Security Administration
28 considers medical opinions and prior administrative medical findings, eliminated the
use of the term "treating source," and eliminated deference to treating source
medical opinions. *See* 20 C.F.R. § 404.1520c(a); *see also* 81 Fed. Reg. 62560, at
62573-74 (Sept. 9, 2016).

1 examining physicians who examine, but do not treat; and (3) non-examining
2 physicians who do not examine or treat. *Valentine v. Comm’r Soc. Sec.*
3 *Admin.*, 574 F.3d 685, 692 (9th Cir. 2009). A treating physician’s opinion is
4 generally given the most weight and may be “controlling” if it is “well-
5 supported by medically acceptable clinical and laboratory diagnostic
6 techniques and is not inconsistent with the other substantial evidence in [the
7 claimant’s] case record[.]” 20 C.F.R. § 404.1527(c)(2); *Revels v. Berryhill*, 874
8 F.3d 648, 654 (9th Cir. 2017) (citation omitted). Most often, the opinion of a
9 treating physician is given greater weight than the opinion of a non-treating
10 physician, and the opinion of an examining physician is given greater weight
11 than the opinion of a non-examining physician. *See Garrison v. Colvin*, 759
12 F.3d 995, 1012 (9th Cir. 2014).

13 The ALJ must provide “clear and convincing” reasons to reject the
14 ultimate conclusions of a treating or examining physician. *Embrey v. Bowen*,
15 849 F.2d 418, 422 (9th Cir. 1988); *Lester*, 81 F.3d at 830-31. When a treating
16 or examining physician’s opinion is contradicted by another opinion, the ALJ
17 may reject it only by providing specific and legitimate reasons supported by
18 substantial evidence in the record. *Orn v. Astrue*, 495 F.3d 625, 633 (9th Cir.
19 2007); *Lester*, 81 F.3d at 830; *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d
20 1155, 1164 (9th Cir. 2008). “An ALJ can satisfy the ‘substantial evidence’
21 requirement by ‘setting out a detailed and thorough summary of the facts and
22 conflicting evidence, stating his interpretation thereof, and making findings.’”
23 *Garrison*, 759 F.3d at 1012 (citation omitted).

24 **2. Dr. Mays’ opinion**

25 Archie R. Mays, M.D., treated Plaintiff at the Tri-City Health Group
26 beginning December 2014. [AR 506.] In his Disability Impairment
27 Questionnaire dated July 13, 2017, Dr. Mays diagnosed Plaintiff with right
28 knee internal derangement, right knee medial meniscal tear, chronic lumbar

1 sprain/strain, herniated nucleus pulposus, failed back syndrome, and lumbar
2 redispach. [AR 554.] Dr. Mays opined that Plaintiff could sit for 1 to 2
3 hours, stand/walk for 1 to 2 hours, and occasionally lift and carry up to 10
4 pounds during an 8 hour workday. [AR 557-58.] He further opined that
5 Plaintiff should not sit, stand, or walk continuously in a work setting, and
6 would have to get up and move around approximately every 10 to 15 minutes
7 for 20 to 30 minutes before sitting down again. [*Id.*] Dr. Mays opined that
8 Plaintiff has no significant limitations in doing repetitive reaching, handling,
9 fingering or lifting and would have minimal limitations grasping, turning and
10 twisting objects, using fingers/hands for fine manipulations, and using arms
11 for reaching (including overhead) in an 8 hour workday. [AR 558-59.]
12 Finally, he opined that Plaintiff could not push, pull, kneel, bend, stoop or
13 remain in a stable and constant position more than a few minutes at a time.
14 [AR 560-61.]

15 **3. The ALJ assigned little weight to Dr. Mays' opinion**

16 The ALJ assigned little weight to the opinion of Dr. Mays. [AR 33.] The
17 ALJ observed that Dr. Mays' findings were internally inconsistent and
18 contradicted by his own treatment records. [*Id.*] Specifically, the ALJ noted
19 that Dr. Mays' own documentation of pain complaints and functional abilities
20 revealed a less severe assessment than his opinion reflected in the Disability
21 Impairment Questionnaire. [AR 34.] Finally, the ALJ cited a lack of
22 comparable objective findings in finding that the objective medical record did
23 not support Dr. Mays' opinion and concluding that the opinion warranted
24 little weight.

25 **4. Analysis**

26 While the ALJ credited Dr. Mays' general physical exam in July 2017 as
27 consistent with his diagnoses on the questionnaire, she observed that the
28 findings of Plaintiff's functional abilities were internally inconsistent. [AR

1 34.] In assigning little weight to Dr. Mays' opinion, the ALJ pointed to an
2 inconsistency regarding the doctor's assessment of Plaintiff's ability to lift.
3 The ALJ noted that in one portion of the report Dr. Mays indicated that
4 Plaintiff could only occasionally lift up to 10 pounds. However, in the next
5 section, the doctor assessed that Plaintiff had no significant limitations for
6 repetitive lifting and only minimal limitations in using upper extremities,
7 bilaterally. [*Id.*; see AR 558-59 ¶¶ 12-13.]

8 Additionally, the ALJ also found that the doctor's July 2017 estimates
9 regarding the severity of Plaintiff's pain (8-9/10) were inconsistent with his
10 own treatment notes which had routinely documented the reported pain level
11 as 6/10 (back pain) and 4-5/10 (right leg pain). [AR 33-34 (citing 527, 537,
12 539, 541, 546, 550, 552, 563).] Notably, Dr. Mays indicated that Plaintiff
13 reported to him that the back pain was a constant 6/10 and the right knee
14 pain was a constant 5/10 in a report completed only two months prior to the
15 July 2017 questionnaire. [AR 552.] In an August 2018 report also cited by
16 the ALJ, Dr. Mays indicated again that Plaintiff reported 6/10 constant back
17 pain and 5/10 constant right knee pain. [AR 564.] The inconsistency in the
18 pain level reports and the doctor's differing assessments about Plaintiff's
19 limitations for lifting within the same questionnaire were proper bases upon
20 which the ALJ discounted Dr. Mays' opinion. *Matrunich v. Comm'r of SSA*,
21 478 F. App'x 370, 371 (9th Cir. 2021) (ALJ did not err in discounting opinion
22 where reporting was internally inconsistent); see also *Khan v. Colvin*, 2014
23 WL 285173, at *7 (C.D. Cal. 2014) (no error in finding that inconsistency
24 between two portions of the same report was reason to discount treating
25 physician's opinion).

26 Citations to Dr. Mays' treatment notes also reveal complaints and
27 observations of decreased sensation of the right big toe and decreased range of
28 motion with pain. [AR 531, 533, 537, 539, 544, 546.] Yet, these notations do

1 not support Dr. Mays' July 2017 physical examination which noted
2 substantial sensory and motor deficits, including gross reduction of sensation
3 to his back and neck, moderate to severe tenderness in his knee, and
4 significant reduction in range of motion to his back and knee. [AR 555.] The
5 inconsistencies between the July 2017 examination and Dr. Mays' own
6 treatment notes were a valid reason to discount his opinion and further
7 support the ALJ's finding that the doctor's records were inconsistent with his
8 July 2017 opinion. *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001)
9 (inconsistencies between doctor's notes and later opinion provide reason to not
10 fully credit treating physician's opinion).

11 The other reason the ALJ gave for assigning little weight to Dr. Mays'
12 opinion was that there was a lack of comparable objective findings. [AR 34]
13 However, the ALJ failed to elaborate on this reasoning and indicate what
14 portions of the overall record, aside from Dr. Mays' own notes, specifically
15 conflicted with the doctor's opinion.⁵

16 Accordingly, while the ALJ did not properly discount Dr. Mays' opinion
17 based on a comparison with the overall medical record, the internal
18 inconsistencies of Dr. Mays' own findings provide a clear and convincing
19 reason to affirm the ALJ's decision on this ground.
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26 ⁵ The Commissioner points to portions of the records that could support the ALJ's
27 reasoning [JS 23], but this post hoc argument is not sufficient. *Bray v. Comm'r of Social Sec.*
28 *Admin.*, 554 F.3d 1219, 1225 (9th Cir. 2009) ("Long-standing principles of administrative law
require us to review the ALJ's decision based on the reasoning and factual findings offered by
the ALJ - not post hoc rationalizations that attempt to intuit what the adjudicator may have
been thinking").

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V. CONCLUSION

For the reasons stated above, the ALJ's decision is AFFIRMED.
IT IS SO ORDERED.

Dated: March 2, 2022



PATRICIA DONAHUE
UNITED STATES MAGISTRATE JUDGE

1 NOTICE: THIS DECISION IS NOT INTENDED FOR PUBLICATION IN
2 WESTLAW, LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.

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