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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GARTH NOLI CRANE,)	1:07-cv-00967-SMS
)	
Plaintiff,)	DECISION AND ORDER DENYING
)	PLAINTIFF'S SOCIAL SECURITY
)	COMPLAINT (DOC. 1)
v.)	
)	ORDER DIRECTING THE ENTRY OF
MICHAEL J. ASTRUE,)	JUDGMENT FOR DEFENDANT MICHAEL J.
Commissioner of Social)	ASTRUE, COMMISSIONER OF SOCIAL
Security,)	SECURITY, AND AGAINST PLAINTIFF
)	GARTH NOLI CRANE
Defendant.)	
)	
)	

Plaintiff, Garth Noli Crane, is proceeding in forma pauperis and pro se with an action in which he seeks judicial review of a final decision of the Commissioner of Social Security (Commissioner) denying Plaintiff's application for benefits. Pursuant to 28 U.S.C. § 636(c)(1), the parties have consented to the jurisdiction of the Magistrate Judge to conduct all further proceedings, including the entry of a final judgment.¹ Pending before the Court are the parties' briefs, which have been submitted without oral argument to the Honorable Sandra M.

¹ On November 21, 2007, District Judge Anthony W. Ishii ordered the case assigned to the undersigned Magistrate Judge for all purposes.

1 Snyder, United States Magistrate Judge.

2 I. Procedural History

3 Plaintiff, who was born on April 30, 1962, protectively
4 filed an application for Disability Insurance Benefits (DIB) on
5 June 1, 2004, alleging disability commencing on December 26,
6 1985, due to pain and weakness in the lower back and left leg,
7 nerve damage, stiffness and cramps from walking even short
8 distances due to an injury on the job, and two resulting back
9 surgeries. (A.R. 17, 62-64, 68-70.)

10 After his claim was denied initially and on reconsideration,
11 Plaintiff appeared with counsel and testified at a hearing before
12 the Honorable Patricia Leary Flierl, Administrative Law Judge
13 (ALJ) of the Social Security Administration (SSA), held on May
14 12, 2006. (A.R. 24-26, 17, 22, 161-88.) On September 21, 2006,
15 the ALJ denied Plaintiff's claim. (A.R. 17-22.) After the Appeals
16 Council denied Plaintiff's request for review on April 5, 2007,
17 Plaintiff filed the action here on July 6, 2007. (A.R. 7-9.)
18 Briefing commenced on May 16, 2008, with the filing of
19 Plaintiff's opening brief, and it concluded on August 8, 2008,
20 with the filing of Plaintiff's reply to Defendant's opposition.

21 Plaintiff had a period of disability from December 1, 1985,
22 to April 1, 2003, based on complications from his back surgery,
23 but he lost the benefits when he went to jail. (A.R. 76, 17.)

24 II. Standard and Scope of Review

25 Congress has provided a limited scope of judicial review of
26 the Commissioner's decision to deny benefits under the Act. In
27 reviewing findings of fact with respect to such determinations,
28 the Court must determine whether the decision of the Commissioner

1 is supported by substantial evidence. 42 U.S.C. § 405(g).
2 Substantial evidence means "more than a mere scintilla,"
3 Richardson v. Perales, 402 U.S. 389, 402 (1971), but less than a
4 preponderance, Sorenson v. Weinberger, 514 F.2d 1112, 1119, n. 10
5 (9th Cir. 1975). It is "such relevant evidence as a reasonable
6 mind might accept as adequate to support a conclusion."
7 Richardson, 402 U.S. at 401. The Court must consider the record
8 as a whole, weighing both the evidence that supports and the
9 evidence that detracts from the Commissioner's conclusion; it may
10 not simply isolate a portion of evidence that supports the
11 decision. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th
12 Cir. 2006); Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985).
13 It is immaterial that the evidence would support a finding
14 contrary to that reached by the Commissioner; the determination
15 of the Commissioner as to a factual matter will stand if
16 supported by substantial evidence because it is the
17 Commissioner's job, and not the Court's, to resolve conflicts in
18 the evidence. Sorenson v. Weinberger, 514 F.2d 1112, 1119 (9th
19 Cir. 1975).

20 In weighing the evidence and making findings, the
21 Commissioner must apply the proper legal standards. Burkhart v.
22 Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988). This Court must
23 review the whole record and uphold the Commissioner's
24 determination that the claimant is not disabled if the
25 Commissioner applied the proper legal standards, and if the
26 Commissioner's findings are supported by substantial evidence.
27 See, Sanchez v. Secretary of Health and Human Services, 812 F.2d
28 509, 510 (9th Cir. 1987); Jones v. Heckler, 760 F.2d at 995. If

1 the Court concludes that the ALJ did not use the proper legal
2 standard, the matter will be remanded to permit application of
3 the appropriate standard. Cooper v. Bowen, 885 F.2d 557, 561 (9th
4 Cir. 1987).

5 III. Disability Analysis and Findings

6 In order to qualify for benefits, a claimant must establish
7 that she is unable to engage in substantial gainful activity due
8 to a medically determinable physical or mental impairment which
9 has lasted or can be expected to last for a continuous period of
10 not less than twelve months. 42 U.S.C. §§ 416(i), 1382c(a)(3)(A).
11 A claimant must demonstrate a physical or mental impairment of
12 such severity that the claimant is not only unable to do the
13 claimant's previous work, but cannot, considering age, education,
14 and work experience, engage in any other kind of substantial
15 gainful work which exists in the national economy. 42 U.S.C.
16 1382c(a)(3)(B); Quang Van Han v. Bowen, 882 F.2d 1453, 1456 (9th
17 Cir. 1989). The burden of establishing a disability is initially
18 on the claimant, who must prove that the claimant is unable to
19 return to his or her former type of work; the burden then shifts
20 to the Commissioner to identify other jobs that the claimant is
21 capable of performing considering the claimant's residual
22 functional capacity, as well as her age, education and last
23 fifteen years of work experience. Terry v. Sullivan, 903 F.2d
24 1273, 1275 (9th Cir. 1990).

25 The regulations provide that the ALJ must make specific
26 sequential determinations in the process of evaluating a
27 disability: 1) whether the applicant engaged in substantial
28 gainful activity since the alleged date of the onset of the

1 impairment, 20 C.F.R. § 404.1520 (2006);² 2) whether solely on
2 the basis of the medical evidence the claimed impairment is
3 severe, that is, of a magnitude sufficient to limit significantly
4 the individual's physical or mental ability to do basic work
5 activities, 20 C.F.R. § 404.1520(c); 3) whether solely on the
6 basis of medical evidence the impairment equals or exceeds in
7 severity certain impairments described in Appendix I of the
8 regulations, 20 C.F.R. § 404.1520(d); 4) whether the applicant
9 has sufficient residual functional capacity, defined as what an
10 individual can still do despite limitations, to perform the
11 applicant's past work, 20 C.F.R. §§ 404.1520(e), 404.1545(a); and
12 5) whether on the basis of the applicant's age, education, work
13 experience, and residual functional capacity, the applicant can
14 perform any other gainful and substantial work within the
15 economy, 20 C.F.R. § 404.1520(f).

16 Here, the ALJ concluded that Plaintiff had a severe
17 impairment of residual chronic low back pain secondary to a
18 laminectomy with fusion at L5-S1 which did not meet or medically
19 equal an impairment listed in 20 C.F.R. Part 404, Subpart P,
20 Appendix I. (A.R. 19.) Plaintiff retained the residual functional
21 capacity (RFC) to lift and carry ten pounds and stand and/or walk
22 occasionally.³ (A.R. 19.) The ALJ concluded that the limitation
23 of standing and/or walking no more than two hours in an eight-
24 hour day, imposed by consultative internist Dr. Tahir Hassan and
25

26 ² All references are to the 2006 version of the Code of Federal
27 Regulations unless otherwise noted.

28 ³ "Occasionally" means occurring from very little up to one-third of the
time. Soc. Sec. Ruling 83-10 at 5.

1 state agency medical consultant Dr. Murray Mitts on October 5,
2 2004, resulted in Plaintiff's having a sedentary RFC. (A.R. 109,
3 112, 20-21.) Apparently the ALJ accepted the opinions of those
4 physicians as to Plaintiff's RFC. The doctors had also opined
5 that Plaintiff could only occasionally stoop, crouch, kneel,
6 crawl, climb, and balance. (A.R. 20, 109 [Dr. Hassan opined that
7 Plaintiff had otherwise unspecified "postural limitations" for
8 climbing, balancing, stooping, kneeling, crouching, and crawling
9 due to his back pain], 113.) Plaintiff had no past relevant work,
10 but as a younger individual with a limited education, the ability
11 to communicate in English, and the RFC for a full range of
12 sedentary work, there were sufficient jobs existing for
13 Plaintiff, and a finding that he was not disabled was directed by
14 Medical-Vocational Rule 201.18. (A.R. 20-21.)

15 IV. Factual Summary

16 A. Plaintiff's Testimony

17 Plaintiff, who completed eleventh grade, had a driver's
18 license, drove about two days a week for a mile or two, but had
19 problems with his leg cramping and pain in his lower back, which
20 were his worst physical problems (A.R. 166-67.) About two days
21 out of the week Plaintiff felt good, but at other times he was
22 unable to move around, so Plaintiff sat and relaxed. (A.R. 179-
23 80.) He tried to work around the house despite the doctor's
24 saying not to do so; he helped his wife with the laundry for a
25 short period of about half an hour; he did activities about
26 fifteen minutes at a time before having to stop. (A.R. 180.) On
27 most days he would lie down for most of the day. Most of the time
28 he could sleep at night, but sometimes his back would cramp, and

1 he would toss and turn. (A.R. 181.)

2 Plaintiff had two back surgeries in 1984 and 1985, a
3 laminectomy and then a fusion at the site of the L5 disk, which
4 helped for quite a while. However, recently Plaintiff had
5 suffered daily burning, cramping, and pain in his lower back,
6 right hip, and down his right leg. (A.R. 169.) He could lift
7 maybe five pounds, but he was not sure. (A.R. 175.) His bad leg
8 was three inches smaller around than the other. (A.R. 174-75.)
9 Bending and touching the floor were too painful to try; Plaintiff
10 could sit ten or fifteen minutes before having to change
11 position, stand up, or lie down for a few minutes. (A.R. 172-73.)
12 If Plaintiff took medication, it would be about half an hour or
13 so before he could sit for another fifteen minutes. (A.R. 174.)
14 He had problems standing for a long time, such as for half an
15 hour, and it would cause cramping and discomfort, so Plaintiff
16 then would sit down to take the weight off, and after about
17 fifteen minutes could stand back up. (A.R. 175.) He could walk
18 around his yard, which sometimes helped and sometimes made it
19 worse. (Id.) His doctor filled out a paper that said no twisting
20 from side to side, pushing or pulling with the arms, lifting, or
21 bending; he could raise his arms to head level but no further
22 because of cramping. (A.R. 176.)

23 Plaintiff was in prison between February 18, 2003, and May
24 15, 2004; he had no job but was in the general population and had
25 been cleared for food handling. (A.R. 184-86.)

26 Plaintiff had seen Dr. Samarro, who treated him for blood
27 pressure, and in April 2006 Plaintiff had an MRI and had seen a
28 specialist, Dr. King, who had given Plaintiff pain medication,

1 which Plaintiff said was Vicodin that he took about three times a
2 week; the other pain medication made him nauseous, so he did not
3 take it, and the Vicodin seemed to cause his close-up vision to
4 worsen. (A.R. 168-69, 177, 179, 181.) Plaintiff's doctor did not
5 recommend surgery because he said it would cause more damage.
6 (A.R. 174.) Plaintiff also testified to having been in the
7 hospital for his back several times since he was released from
8 incarceration. (A.R. 185-86.) He did not get pain medication
9 between 1999 and 2004. (A.R. 187.)

10 B. Medical Evidence

11 An x-ray of the lumbar spine taken July 25, 1996, reflected
12 a negative study except for slight narrowing at the L5-S1
13 interspace. (A.R. 150.)

14 John G. Nork, M.D., performed an orthopedic consultative
15 examination of Plaintiff on July 25, 1996. Plaintiff complained
16 of persistent but not constant pain in his back, aggravated by
17 prolonged standing and sitting, with occasional numbness and
18 cramping of his right leg without real, true radiation of pain.
19 Plaintiff took Flexeril and Tylenol with Codeine. The exam
20 revealed normal station, gait, cervical spine range of motion,
21 upper and lower extremities, hand grip strength, motor strength,
22 and sensation. Dr. Nork found restricted flexion, extension, and
23 bending of the lumbar spine; tenderness in the region of a well-
24 healed surgical scar in the midline over L3 through S1; and spasm
25 in the lumbar paraspinal muscles. Straight leg raising was
26 normal. X-rays of the lumbosacral spine revealed narrowing of the
27 L5-S1 interspace. The impression was status post lumbar
28 laminectomy with residual musculoligamentous sprain/strain. Dr.

1 Nork stated that Plaintiff had minimal residual findings
2 following his injury and surgery, and that he was capable of
3 performing some type of useful function. Plaintiff could
4 occasionally lift and carry twenty pounds, frequently lift and
5 carry ten pounds, stand and/or walk six hours in an eight-hour
6 workday, and sit continuously during the work day with breaks
7 every two hours without restriction. (A.R. 151-56.)

8 Records from the California Department of Corrections
9 reflected that in July 2003, Plaintiff was classified as
10 medically eligible for full duty and had been cleared for food
11 handling. (A.R. 104.)

12 Tahir Hassan, M.D., a diplomate of the American Board of
13 Internal Medicine, performed a comprehensive internal medicine
14 evaluation of Plaintiff for the Department of Social Services in
15 August 2004. (A.R. 107-09.) He reported Plaintiff's complaints of
16 back pain for twenty years that radiated to the left leg, and
17 cramping pain in the left leg after walking, for which Plaintiff
18 took Motrin. Examination of the motor system was normal with no
19 wasting, good tone with power of 5/5 in all extremities, normal
20 hand grip of 5/5 bilaterally, and normal gait. The sensory exam
21 was grossly intact, and reflexes were 2+ bilaterally with normal
22 Babinski. Extension of the cervical spine and extension and
23 flexion of the shoulder, elbow, knee, ankle, and wrist were
24 within normal limits; flexion of the lumbar spine was restricted
25 to 120 degrees, and forward flexion of the hip was restricted to
26 120 degrees on the left and 110 degrees to the right. Dr.
27 Hassan's diagnosis was chronic back pain secondary to surgery,
28 and mild uncontrolled hypertension. Dr. Hassan opined that based

1 on the exam, Plaintiff was limited to lifting fifty pounds
2 occasionally and twenty-five pounds frequently, standing and
3 walking with normal breaks for a total of about two hours in an
4 eight-hour workday, and sitting for a total of about six hours in
5 an eight-hour workday, with "postural limitations for climbing,
6 balancing, stooping, kneeling, crouching, and crawling" due to
7 back pain, with no other limitations. (A.R. 107-109, 109.)

8 Non-examining state agency medical consultant Murray Mitts,
9 M.D., opined on October 5, 2004, and another such consultant
10 confirmed on March 8, 2005, that Plaintiff's low back pain
11 resulted in an ability occasionally to lift and/or carry fifty
12 pounds, frequently lift and/or carry twenty-five pounds, stand
13 for at least two hours in an eight-hour day, sit about six hours
14 in an eight-hour workday, engage in unlimited pushing and
15 pulling, and occasionally climb, balance, stoop, kneel, crouch,
16 and crawl. (A.R. 111-18, 125-26.)

17 On December 3, 2004, Dr. Satwant Samrao, M.D., reported that
18 Plaintiff visited him for a blood pressure recheck and for pain
19 medications. (A.R. 122.) Dr. Samrao noted that Plaintiff had last
20 been seen in June 1999, and progress notes confirmed the time
21 interval. (A.R. 122-23.) The doctor assessed chronic low back
22 pain after a laminectomy in 1984 with fusion of L5-S1, and
23 hypertension; the plan was to continue on 100 milligrams of
24 Atenolol daily, Vicodin of five milligrams/500 milligrams every
25 eight hours, and fifteen milligrams of Mobic twice a day. (A.R.
26 122-24.)

27 In June 2005, Dr. Samrao examined Plaintiff and found a
28 minimal paraspinal muscle spasm, limited movements, and an old,

1 well-healed surgical scar. The assessment was chronic low back
2 pain status post laminectomy with fusion. An x-ray was ordered.
3 Plaintiff was instructed not to smoke because of bronchial
4 asthma, and no pain medication was given. (A.R. 140.) In July
5 2005, Mobic samples and a Vicodin prescription were dispensed.
6 (A.R. 139.)

7 An x-ray taken July 14, 2005, revealed narrowing of the L5-
8 S1 disc without significant reactive change, which the
9 radiologist thought was developmental. There was no reactive
10 change posteriorly of significance in the facets, and no change
11 from the prior exam of January 12, 2005. (A.R. 138.)

12 In August 2005, Dr. Samrao filled out disability papers,
13 scheduled Plaintiff for an MRI, and stated that it would more
14 than likely be normal, after which Plaintiff would be released to
15 work. (A.R. 137.) Dr. Samrao opined that Plaintiff had a chronic
16 condition that began on December 18, 2004, that rendered him
17 unable to work but did not require the care of someone in the
18 home. (A.R. 127.)

19 On March 8, 2006, an MRI of the lumbar spine with and
20 without contrast revealed normal curvature, normal promontory
21 angle, and normal height of disc spaces and vertebral bodies.
22 There was posterior disc bulging on the sagittal view at L5-S1
23 which was impacting the CSF column. There was also a right
24 paracentral disc extrusion impacting the right exiting and
25 central nerve root, with the nerve root displaced and the thecal
26 sac on the right side being flattened. (A.R. 135.) In the axial
27 projection, there was central disc bulging at L4-L5 impacting the
28 CSF column and the dural sac, but the neural foramina were

1 patent, and the exiting nerve roots were intact. The impression
2 was extruded disc in the right paracentral area impacting the
3 right central and most likely the exiting nerve root; however, it
4 was noted that Plaintiff's symptomatology was on the left side.
5 (A.R. 135.)

6 On March 23, 2006, Dr. Samrao reviewed the MRI results with
7 Plaintiff. Dr. Samrao noted the prolapsed disc right central,
8 paracentral area with impact in the right central canal and most
9 likely the exiting nerve roots; however, he noted that Plaintiff
10 had symptoms on the left side. The assessment was mild prolapsed
11 intervertebral disc. Plaintiff was counseled, no prescription was
12 written, and Dr. Samrao concluded, "The patient can go to work."
13 (A.R. 134.)

14 Notes of four examinations of Plaintiff by Henry Ho Kang,
15 M.D., Ph.D., appear in the record and reflect examinations
16 between April 2006 through August 2006. (A.R. 129-30, 157-58.)
17 However, most of the notes are illegible. Dr. Kang prescribed
18 various medications, including Relefen, Backlofen, and Vicodin,
19 for Plaintiff's back condition. He also recommended a home
20 exercise program for one month. (A.R. 157.) There does not appear
21 to be an assessment of Plaintiff's capacities and functional
22 limitations by Dr. Kang in the record.

23 V. Listed Impairment

24 The ALJ stated that the impairments listed which were most
25 nearly applicable to Plaintiff's medically determinable
26 impairment, particularly § 1.02 (major dysfunction of a joint due
27 to any cause), had been reviewed and were not met or medically
28 equaled under the facts of the case.

1 Plaintiff argues that his severe impairment did equate to
2 the listing at § 1.04 because of objective medical evidence,
3 namely, the MRI of Plaintiff's lumbar spine ordered by treating
4 physician Dr. Samrao in March 2006. Dr. Cicely Roberts, M.D.,
5 opined that the MRI showed posterior disc bulging on the sagittal
6 view at L5-S1 which was impacting the "CSF" (cerebrospinal fluid)
7 column, which constitutes the central canal of the spinal cord;
8 it also revealed central disc bulging at L4-L5 that was impacting
9 the CSF column and the dural sac; however, the neural foramina
10 were patent, and the exiting nerve roots were intact. (A.R. 135.)
11 Further, at L5-S1 there was a right paracentral disc extrusion
12 impacting the right exiting and central nerve root; the nerve
13 root was displaced, and the thecal sac on the right side was
14 flattened. The impression was an extruded disc in the right
15 paracentral area impacting the right central and mostly likely
16 the exiting nerve root. It was also noted that Plaintiff's
17 symptoms were on the left side. (A.R. 135.)

18 Plaintiff argues that this evidence meets the listing at
19 1.04, which states:

20 *Disorders of the spine* (e.g., herniated nucleus
21 pulposus, spinal arachnoiditis, spinal stenosis,
22 osteoarthritis, degenerative disc disease, facet
23 arthritis, vertebral fracture) resulting in
24 compromise of a nerve root (including the cauda equina)
25 or the spinal cord.

26 With:

- 27 A. Evidence of nerve root compression characterized
28 by neuro-anatomic distribution of pain, limitation
of motion of the spine, motor loss (atrophy with
associated muscle weakness or muscle weakness)
accompanied by sensory or reflex loss and, if
there is involvement of the lower back, positive
straight-leg raising test (sitting and supine);
or
B. Spinal arachnoiditis, confirmed by an operative
note or pathology report of tissue biopsy, or by

1 appropriate medically acceptable imaging, manifested
2 by severe burning or painful dysesthesia,
3 or posture more than once every two hours;
4 or
5 C. Lumbar spinal stenosis resulting in pseudo-
6 claudication, established by findings on appropriate
medically acceptable imaging, manifested by
7 chronic nonradicular pain and weakness, and
8 resulting in inability to ambulate effectively,
9 as defined in 1.00B2b.

7 It is Plaintiff's burden to establish that his impairment
8 met a listing. Bowen v. Yuckert, 482 U.S. 137, 146 n.5 (1987).
9 Mere diagnosis of a listed impairment is not sufficient to
10 sustain a finding of disability; there must also be the findings
11 required in the listing. Young v. Sullivan, 911 F.2d 180, 183
12 (9th Cir. 1990); 20 C.F.R. § 416.925(d). Generally, specific
13 medical findings are needed to support the diagnosis and the
14 required level of severity. 20 C.F.R. §§ 404.1525(c)-(d),
15 416.925(c). The Commissioner is not required to state why a
16 claimant failed to satisfy every different section of the listing
17 of impairments; rather, it is sufficient to evaluate the evidence
18 upon which the ultimate factual conclusions are based. Otherwise,
19 an undue burden would be put on the social security disability
20 process. Gonzales v. Sullivan, 914 F.2d 1197, 1200-01 (9th Cir.
21 1990).

22 Defendant argues that Plaintiff has failed to establish that
23 his impairment resulted in a compromised nerve root or spinal
24 cord, spinal arachnoiditis, or lumbar spinal stenosis resulting
25 in pseudoclaudication. It is unclear whether compromise of a
26 nerve root or spinal cord is established by the noted "impacting"
27 effect of the bulging disc at L5-S1 on the CSF column,
28 accompanied by right paracentral disc extrusion impacting the

1 right exiting and central nerve root combined with displacement
2 of the nerve root and flattening of the thecal sac. (A.R. 135.)

3 However, even if Plaintiff had established compromise of a
4 nerve root within the meaning of Listing 1.04, Plaintiff failed
5 to establish the additional requirements of Listing 1.04 (A),
6 (B), or (C). Plaintiff did not present findings of (C), lumbar
7 spinal stenosis resulting in pseudoclaudication established by
8 findings on medically acceptable imaging; likewise, Plaintiff did
9 not present evidence of manifestation of stenosis by chronic
10 nonradicular pain and weakness and resultant inability to
11 ambulate effectively. Plaintiff did not present findings of (B),
12 spinal arachnoiditis confirmed by operative note or pathology
13 report of tissue biopsy. Finally, Plaintiff did not present
14 evidence supporting a finding of evidence of nerve root
15 compression in (A), characterized by neuro-anatomic distribution
16 of pain, limitation of motion of the spine, or motor loss
17 (atrophy with associated muscle weakness or muscle weakness)
18 accompanied by sensory or reflex loss. Listing 1.04(A) further
19 requires that if there is involvement of the lower back, there
20 must be positive straight leg raising tests (sitting and supine).
21 Plaintiff failed to provide evidence of the positive test
22 results.

23 The Court considers the opinions of Plaintiff's treating
24 physicians, who concluded that Plaintiff was capable of working.
25 In addition, the Court acknowledges that the state agency medical
26 consultants signed opinions in which they concluded that
27 Plaintiff could work. Such opinions constitute evidence that the
28 Commissioner properly considered the question of medical

1 equivalence. See, Soc. Sec. Ruling 96-6p at p. 4 (the signature
2 of a state agency medical or psychological consultant ensures
3 that the consideration has been given by the expert to the
4 question of medical equivalence at the initial and
5 reconsideration levels of administrative review).

6 In summary, the Court concludes that there is substantial
7 evidence to support a finding that Plaintiff's impairment did not
8 meet or medically equal a listing.

9 VI. Subjective Complaints

10 Defendant interprets Plaintiff's brief as raising the issue
11 of whether or not the ALJ made proper credibility findings.
12 (Def't.'s Brief p. 7, Pltf.'s Brief p. 3.) It does not appear to
13 the Court that this issue was raised. Nevertheless, in an
14 abundance of caution, the Court will address the ALJ's handling
15 of Plaintiff's subjective complaints.

16 The ALJ expressly found that Plaintiff's impairment could
17 reasonably be expected to produce the alleged symptoms, but that
18 Plaintiff's statements concerning the intensity, persistence, and
19 limiting effects of the symptoms were not entirely credible.
20 (A.R. 20.) This adverse credibility finding must be based on
21 clear and convincing reasons. Carmickle v. Commissioner, Social
22 Security Administration,, 533 F.3d 1155, 1160 (9th Cir. 2008).

23 Here, after the ALJ summarized Plaintiff's subjective
24 complaints (A.R. 20), she stated various clear and convincing
25 reasons, supported by substantial evidence, for rejecting the
26 extent of the claimed symptoms (id.).

27 The ALJ relied on Plaintiff's not working in prison, even
28 though he was cleared for full duty with no restrictions in the

1 general population. (A.R. 104, 106.) A claimant's extremely poor
2 work history shows that the claimant has little propensity to
3 work and negatively affects his or her credibility regarding any
4 inability to work. Thomas v. Barnhart, 278 F.3d 947, 959 (9th
5 Cir. 2002).

6 The ALJ relied on the inconsistency of Plaintiff's
7 complaints with the opinions of his treating physicians,
8 including the opinion of Dr. Samrao that Plaintiff could work
9 based on symptomatology on the left side, and the doctor's having
10 counseled Plaintiff and filled no prescriptions. (A.R. 20, 134-
11 37.) She also expressly relied on the inconsistency or
12 discrepancy of the objective medical evidence, which showed an
13 extruded disc impacting the right central and most likely the
14 exiting nerve root, and Plaintiff's symptoms, which were on the
15 left side. (A.R. 20.) The ALJ also noted the inconsistency of
16 Plaintiff's claim of having seen Dr. Samrao from 1999 until he
17 was incarcerated in February 2003 with the doctor's records.
18 (A.R. 20.) The ALJ also mentioned the x-ray of July 2005 which
19 reflected narrowing of the L5-S1 disc without significant
20 reactive change. (A.R. 20, 138.) Finally, the ALJ noted that Dr.
21 Kang had seen Plaintiff four times and yet had prescribed only
22 non-invasive treatment (medication) and had not recommended
23 referral to any specialists. (A.R. 20.)

24 It is permissible to rely upon opinions of physicians
25 concerning the nature, severity, and effect of the symptoms of
26 which the claimant complains. Thomas v. Barnhart, 278 F.3d 947,
27 958-59 (9th Cir. 2002). A doctor's opinion that a claimant can
28 work is appropriately considered. Moncada v. Chater, 60 F.3d 521,

1 524 (9th Cir. 1995). Further, In this circuit, valid criteria for
2 evaluating subjective complaints include weak objective support
3 for claims and inconsistent reporting. Tidwell v. Apfel, 161 F.3d
4 599, 601-02 (9th Cir. 1998). Inconsistent statements are matters
5 generally considered in evaluating credibility and are properly
6 factored in evaluating the credibility of a claimant with respect
7 to subjective complaints. Thomas v. Barnhart, 278 F.3d 947, 958-
8 59 (9th Cir. 2002). The ALJ may consider whether the Plaintiff's
9 testimony is believable or not. Verduzco v. Apfel, 188 F.3d 1087,
10 1090 (9th Cir. 1999). Included in the factors that an ALJ may
11 consider are inconsistencies in the claimant's testimony or
12 between the claimant's testimony and the claimant's conduct.
13 Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir. 2004); Thomas v.
14 Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002). Although the
15 inconsistency of objective findings with subjective claims may
16 not be the sole reason for rejecting subjective complaints of
17 pain, Light v. Chater, 119 F.3d 789, 792 (9th Cir. 1997), it is
18 one factor which may be considered with others, Moisa v.
19 Barnhart, 367 F.3d 882, 885 (9th Cir. 2004); Morgan v.
20 Commissioner 169 F.3d 595, 600 (9th Cir. 1999). An ALJ may rely
21 on the conservative nature of treatment or a lack of treatment in
22 rejecting a claimant's subjective complaint of pain. Johnson v.
23 Shalala 60 F.3d 1428, 1433-34 (9th Cir. 1995).

24 The Court has reviewed all the reasons stated by the ALJ,
25 and the Court concludes that the ALJ cited clear and convincing
26 reasons for rejecting Plaintiff's subjective complaints regarding
27 the intensity, duration, and limiting effects of his symptoms,
28 and that the ALJ's reasons were properly supported by the record

1 and sufficiently specific to allow this Court to conclude that
2 the ALJ rejected the claimant's testimony on permissible grounds
3 and did not arbitrarily discredit Plaintiff's testimony.

4 VI. Expert Opinions

5 A. Substantial Evidence

6 Plaintiff attacks the ALJ's conclusion as to Plaintiff's
7 residual functional capacity and ability to adjust to other work.

8 The ALJ concluded that Plaintiff's RFC was for a full range
9 of sedentary work; he could lift and carry ten pounds and stand
10 and/or walk occasionally (up to one-third of the time). (A.R. 19,
11 21.) Sedentary work is defined by the regulations as follows:

12 Sedentary work involves lifting no more than
13 10 pounds at a time and occasionally lifting
14 or carrying articles like docket files, ledgers,
15 and small tools. Although a sedentary job is
16 defined as one which involves sitting, a certain
amount of walking and standing is often necessary
in carrying out job duties. Jobs are sedentary if
walking and standing are required occasionally and
other sedentary criteria are met.

17 20 C.F.R. § 404.1567(a).

18 The ALJ's conclusion was supported by the opinions of 1)
19 Plaintiff's treating physician, Dr. Samrao, who concluded that
20 Plaintiff could work without any stated limitations; 2) the
21 consulting internist, Dr. Hassan, who found a greater lifting and
22 carrying capacity but articulated a limitation to two hours of
23 standing and walking as well as postural limitations; and 3) the
24 state agency physicians, who also found greater lifting capacity
25 but recognized the two-hour per day standing limit as well as the
26 postural limitations.

27 The experts' opinions were based on and were consistent with
28 substantial, objective medical evidence of record; they were

1 well-supported by findings reached pursuant to medically
2 acceptable clinical and laboratory diagnostic techniques. Such
3 opinions of treating and examining physicians, and of non-
4 examining state agency medical consultants, constitute
5 substantial evidence. Miller v. Heckler, 770 F.2d 845, 849 (9th
6 Cir.1985); accord Andrews v. Shalala, 53 F.3d 1035, 1041 (9th
7 Cir.1995).

8 B. Adjusting to Other Work

9 At step five, Plaintiff objects to the ALJ's summary finding
10 that other jobs existed in the national economy without
11 identifying what those jobs were. He also objects that the ALJ's
12 conclusion that Plaintiff would adjust to other work was not
13 supported by substantial evidence.

14 The ALJ concluded that Plaintiff could perform the full
15 range of sedentary work. Being able to stand and walk only
16 occasionally does not conflict with an ability to perform
17 essentially the full range of sedentary work. 20 C.F.R. §
18 404.1567(a).

19 The ALJ did not expressly reject the postural limitations
20 (only occasional climbing, balancing, stooping, kneeling,
21 crouching, and crawling) assessed by the consulting, examining
22 physician and the state agency physicians. However, even if
23 adopted and fully credited, such postural limitations are not
24 inconsistent with an ability to perform the full range of
25 sedentary work. Postural limitations related to climbing,
26 balancing, kneeling, crouching, or crawling would not usually
27 erode the occupational base for a full range of sedentary work.
28 Soc. Sec. Ruling 96-9p at p. 6. Limitations to only occasional

1 climbing and balancing ordinarily would not have a significant
2 impact on the broad world of work. Soc. Sec. Ruling 85-15 at p.
3 6. A limitation to occasional stooping (and, logically, to only
4 occasional crouching, a progressively more strenuous form of
5 bending parts of the body) leaves the sedentary occupational base
6 virtually intact. Id.; Soc. Sec. Ruling 96-9p at p. 7. Likewise,
7 crawling and kneeling, which are relatively rare activities even
8 in arduous work, would be of little significance in the broad
9 world of work or within sedentary work. Id.

10 Where an ALJ's error consists of a failure to discuss
11 evidence favorable to the claimant, a reviewing court cannot
12 consider the error harmless unless it can confidently conclude
13 that no reasonable ALJ, when fully crediting the testimony, could
14 have reached a different disability determination. Stout v.
15 Commissioner, 454 F.3d 1050, 1056 (9th Cir. 2006). Here, even if
16 the postural limitations of the other physicians were fully
17 credited, the Court concludes with confidence that no reasonable
18 ALJ could have reached a different disability determination.

19 With respect to Plaintiff's challenge to the ALJ's failure
20 to identify specific jobs that he could perform, the Court notes
21 that it is sufficient to determine that a claimant could perform
22 essentially a full range of work (here, the full range of
23 sedentary work) and then apply the "grids," or Medical-Vocational
24 Rules, as a basis or framework for decision. It is the
25 Defendant's burden to show that Plaintiff could perform other
26 work existing in significant numbers in the national economy.
27 Tackett v. Apfel, 180 F.3d 1094, 1098-99 (9th Cir. 1999).

28 Defendant may meet this burden either by obtaining the opinion of

1 the VE or by relying on the medical-vocational guidelines (the
2 Medical-Vocational Guidelines at 20 C.F.R. pt. 404, subpt. P,
3 app. 2), which constitute administrative notice of the existence
4 of jobs for persons with specified limitations. Id. at 1099. When
5 the grids are applicable, the Secretary may obtain a directed
6 conclusion of nondisability and may take administrative notice
7 that jobs exist in the national economy that a claimant can
8 perform. Heckler v. Campbell, 461 U.S. 458, 461-462. The
9 guidelines may only be applied when they accurately reflect a
10 claimant's limitations. Desrosiers v. Secretary of Health & Human
11 Services, 846 F.2d 573, 576-77 (9th Cir. 1988). If a
12 nonexertional limitation significantly limits the range of work
13 one can perform, mechanical application of the grids is
14 inappropriate, and a VE is required. Tackett v. Apfel, 180 F.3d
15 1194, 1102 (9th Cir. 1999). Where nonexertional limitations are
16 found not to significantly limit a claimant's exertional
17 capacity, then use of the grids is appropriate. Razey v. Heckler,
18 785 F.2d 1426, 1430 (9th Cir. 1986), as amended, 794 F.2d 1348;
19 Odle v. Heckler, 707 F.2d 439, 440 (9th Cir.1983).

20 Here, as previously discussed, the use of Medical-Vocational
21 Rule 201.18 (A.R. 21) by the ALJ was appropriate.

22 Finally, with respect to Plaintiff's ability to adjust to
23 other work, Plaintiff argues that he had no transferable job
24 skills, and the ALJ made no finding that Plaintiff had such
25 skills. However, the ALJ found that Plaintiff did not have any
26 past relevant work and that thus, transferability of job skills
27 was not an issue. (A.R. 21.) This comports with the pertinent
28 regulatory law, 20 C.F.R. §§ 404.1568(d), 404.1565(a).

1 Transferable skills cannot be learned from work that is not
2 sufficient to qualify as past relevant work. Regulations provide
3 that "work experience" is relevant when it was performed in the
4 past fifteen years, lasted long enough for a plaintiff to learn
5 to do it, and was substantial gainful activity; if a plaintiff
6 has no work experience or has only worked "off-and-on" or for
7 brief periods of time during the fifteen-year period, the
8 activity will not generally be considered past relevant work. 20
9 C.F.R. § 404.1565(a).

10 VII. Disposition

11 Based on the foregoing, the Court concludes that the ALJ's
12 decision was supported by substantial evidence in the record as a
13 whole and was based on the application of correct legal
14 standards.

15 Accordingly, the Court AFFIRMS the administrative decision
16 of the Defendant Commissioner of Social Security and DENIES
17 Plaintiff's Social Security complaint.

18 The Clerk of the Court IS DIRECTED to enter judgment for
19 Defendant Michael J. Astrue, Commissioner of Social Security,
20 and against Plaintiff Garth Noli Crane.

21
22 IT IS SO ORDERED.

23 **Dated:** April 6, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE